

COURT ONLINE COVER PAGE

IN THE HIGH COURT OF SOUTH AFRICA
Gauteng Local Division, Johannesburg

CASE NO: **A2024-074388**

In the matter between:

SANDTON REPO CARS (PTY) LTD

Plaintiff / Applicant / Appellant

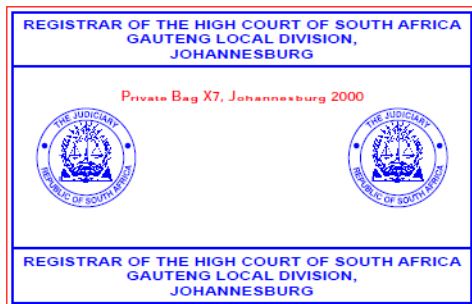
and

NATIONAL CONSUMER COMMISSION

Defendant / Respondent

JUDGMENT

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**Registrar of High Court , Gauteng
Local Division,Johannesburg**

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG



Case Number: A2024-074388

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
DATE: 26/10/ 2025	
SIGNATURE	

In the matter between:

SANDTON REPO CARS (PTY) LTD

Appellant

And

NATIONAL CONSUMER COMMISSION

Respondent

JUDGMENT

FISHER J

Introduction

- [1] This is an appeal from a decision of the National Consumer Tribunal (the Tribunal) in terms of section 148(2)(b) of the National Credit Act of 2005 (NCA) as read with the Consumer Protection Act of 2008 (the CPA).
- [2] This court sits on, what has been held by the Supreme Court of Appeal to be an automatic appeal and as a court of first instance.¹
- [3] The Tribunal, comprising three members, handed down the decision under appeal on 10 June 2024 against the appellant on a referral by the National Consumer Commission (the Commission) arising from a complaint lodged with it relating to the sale of a motor vehicle.
- [4] The appellant raised a special plea contending that the complaint in issue was limited as contemplated by section 116(1) of the CPA which provides that a complaint may not be referred or made to the Tribunal more than three years after the act or omission that is the cause of the complaint or, in the case of a course of conduct or continuing practice, the date that the conduct or practice ceased.
- [5] The Tribunal held, on the merits, that the appellant had contravened section 51(1)(b), which prohibits a supplier from making a transaction subject to terms which have as their purpose the achieving of a waiver of rights or the avoidance of the supplier's obligation, section 55(2)(a) to (c) which allows the consumer the right to receive goods that are fit for purpose and free of defects; and section



¹ (see *The National Credit Regulator v Lewis Stores (Pty) Ltd* (937/18) [2019] ZASCA 190 (13 December 2019) ; *Platinum Wheels (Pty) Ltd v The National Consumer Commission & Another* (612/2023) [2024] ZASCA 163 (29 November 2024)).

56(2(b) of the CPA, which allows the return of the good at the expense of the supplier for a refund within six months of purchase without penalty in the event of the item not being fit for purpose.

- [6] The contraventions were declared to be prohibited conduct under the CPA and an administrative fine in the amount of R 100 000 was imposed by the Tribunal; the appellant was ordered to refund the complainant, Ms Erika Mouton, the sum of R459 900.00 after collection of the vehicle by the appellant at its own risk and expense; and no order was made for costs.



- [7] The appellant has confined its argument of the appeal to the rejection of the special plea.
- [8] The following background facts, which stretch from May 2020 to the present, found the appeal.

Background Facts

- [9] On 13 May 2020 Ms Mouton purchased a second hand 2018 Volkswagen golf (the vehicle) from the appellant for a cash price of R459 900. A representation was made to Ms Mouton by the appellant, on her specific request for assurance that the vehicle had not been in any accidents, that this was indeed the case. There is a WhatsApp communication of this representation in evidence.
- [10] On 18 May 2020 the vehicle began to leak oil. Ms Mouton eventually took the vehicle for assessment during October 2020 to Volkswagen (VW) Tableview which, on 05 October 2020 reported to her that, on their examination of the vehicle, they were able to confirm that the vehicle had been in an accident. They opined that the vehicle was unsafe to drive.

[11] On 8 October 2020, the appellant was informed, through Ms Mouton's then attorneys, that she was cancelling the agreement and that she sought a refund of the purchase price of the vehicle. It must be borne in mind that this was within the six-month period allowed in terms of section 56(2)(b) of the CPA for return of the vehicle at the supplier's cost.

[12] The appellant refused to collect the vehicle and demanded that it be delivered by Ms Mouton to its premises so that it could be allowed to inspect the vehicle to determine what was owed to it for the usage of the vehicle before it would agree to the cancellation and refund.



[13] Ms Mouton referred the matter to the Motor Industry Ombudsman of South Africa (MIOSA) on 15 January 2021. MIOSA's recommendation was that the Appellant should collect the car from Ms Mouton at its own expense and refund Ms Mouton.

[14] Thereafter, the matter was referred to the National Consumer Commission (the Commission) which conducted an investigation, through its investigator Mr Velaphi Mabuza.

[15] Pursuant to the investigation, the Commission determined that there was a reasonable suspicion that the appellant had committed prohibited conduct under the CPA and referred to matter for hearing by the Tribunal in terms of section 73(2)(b) of the CPA.

[16] The Commission succeeded as aforesaid and the appellant appeals the outcome, the only ground of appeal pursued being the refusal of the special plea.

[17] I turn now to the argument by the appellant in relation to the special plea.

Special plea of limitation under section 116 of the CPA

- [18] The application before the Tribunal was instituted during May 2023. The appellant pleaded that the three-year prescription period under section 112 of the Prescription Act 68 of 1969 expired and that the claim had prescribed. It contended that the claim prescribed on 18 May 2023 and that the date on which the application was brought should have been determined at 22 May 2020.
- [19] There was some dispute about whether the date of filing of the complaint was 12 or 22 May 2020 on the basis of a clerical rejection by the registrar of the first filing on 12 May 2020 and the correction and refiling of the application on 22 May 2020. This dispute is, however, irrelevant in light of the findings herein.
- [20] The appellant argued that the time lapse provision in section 116 was akin to prescription. It relied on cases relating to extinctive prescription of debts under the Prescription Act 68 of 1969.
- [21] On this basis it was argued that Ms Mouton had knowledge of all the facts necessary and the facts giving rise to the claim by 18 May 2020 - when the oil leak occurred - and thus prescription began to run from that date.
- [22] To my mind, although the comparison of the enquiry of the elapsing of the three-year period under section 116 as being akin to prescription of a debt may be superficially attractive, the inquiries are in respect of different concepts: the one dealing with the arising of a debt; the other being in respect of conduct complained of.
- [23] Section 116 does not contain the provisions relating to knowledge of cause and delay and interruption or the deeming provisions which one finds in the Prescription Act.



[24] It is, in any event, on the facts, unnecessary to seek to import prescription principles into this inquiry or to make parallels with prescription and we were not addressed on the competency to do so.

[25] The complaint in this matter arose not only in the supply of the defective goods but also in the refusal by the appellant to collect the vehicle at its own cost and make the refund to which Ms Mouton was entitled under the CPA.

[26] The refusal persists. The vehicle remains uncollected by the appellant and there has been no refund. The purchase price was financed and Ms Mouton has been obliged to continue to pay the instalments due to the financial institution.



[27] Accordingly, the conduct which founded the complaint is a course of conduct as contemplated in section 116 and the time period has not started running

[28] Thus, the Tribunal correctly rejected the special plea.

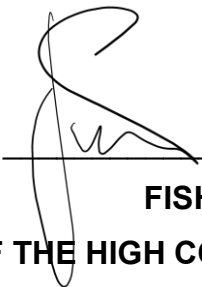
Costs

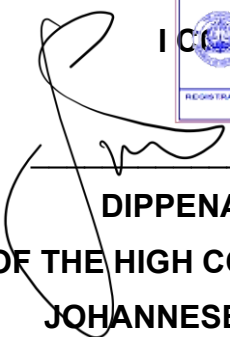
[29] There is no reason why the costs should not follow the result. In my view the complexity and treatment of the appeal by the parties is such that scale B is appropriate.

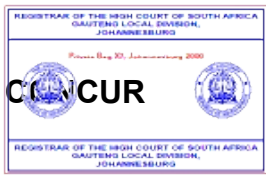
Order

[30] The following order is made:

The appeal is dismissed with costs on scale B


FISHER J
JUDGE OF THE HIGH COURT
JOHANNESBURG


DIPPENAAR J
JUDGE OF THE HIGH COURT
JOHANNESBURG



This Judgment was handed down electronically by circulation to the parties/their legal representatives by email and by uploading to the electronic file on Case Lines. The date for hand-down is deemed to be 26 October 2025.

Heard: 21 October 2025

Delivered: 26 October 2025

APPEARANCES:

Appellant's counsel: Adv S Subroyen

Appellant's Attorneys: KG Tserkezis Inc

Respondent's Counsel:

Adv S Masitenyane

Respondent Attorneys:

MNM Associates Inc

