NATIONAL CONSUMER COMMISSION
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NATIONAL CONSUMER COMMISSION v KIA EAST RAND (PTY) LTD

CASE NO: NCT/396874/2025/73(2)(b)

1. SUMMARY OF THE JUDGEMENT

On 9th of September 2022, the Complainant bought a used 2015 Audi A3 (the vehicle) with an odometer reading of 116 393 km from the 1st Respondent herein referred to as "*Kia East Rand*". In October 2022, the Complainant informed Kia East Rand that the vehicle was overheating and that the "Low Engine Pressure" warning had illuminated on the instrument cluster. Kia East Rand proceeded to collect the vehicle from the Complainant and replaced the water pump without cost to the Complainant.

Upon receiving the vehicle, the Complainant reported to Kia East Rand that the vehicle was not fully repaired as the "Low Engine Oil Pressure" warning light was still present. Kia East Rand attended to repair the defect and returned the vehicle to the complainant on 27 October 2022. In January 2023, the engine warning light illuminated again and Kia East Rand undertook to partially repair the vehicle at an Audi workshop and was furthermore informed in writing that the oil pressure warning light illuminated intermittently after Audi completed its share of the repairs. Kia East Rand proceeded to use the services of Rotary, who ultimately carried out the repairs, which also failed.

In response, and following Kia East Rand's express refusal to assist, the Complainant contacted Kia East Rand on 29 April 2022 to cancel the sales agreement and request a full refund. Her request was also based on newly discovered information that the vehicle had been involved in an accident, which directly contradicted her prior condition that she would not purchase an accident-damaged vehicle.

The Tribunal's findings in what constitutes a "defect", the Tribunal held that the provisions of section 53(1)(a)(i) were not relevant in this enquiry as there was no evidence that there were any material imperfection in the manufacture of the vehicle, and further held that section 53(1)(a)(ii) is relevant and applicable in the matter as characteristics of the vehicles and defective components of the vehicle after they were repaired for the first time rendered the vehicle less useful, practicable or safe than persons generally would be reasonably entitled to expect in the circumstances.

The Tribunal also held that the overheating of the vehicle and the blowing up of the cylinder head gasket within six months of purchase rendered the vehicle less suitable for the purpose for which it was generally intended. The vehicle was not of good quality, not in good working order and was not free of defects. Furthermore, the vehicle was not usable and durable for a reasonable period of time, having regard to the use to which it would normally be put and to all the surrounding circumstances of its supply. Therefore, in terms of section 56(2) of the CPA, the complainant was entitled to demand that Kia East Rand repair the vehicle.

In terms of section 56(3) of the CPA, the Tribunal further held that the provisions of the section are obligatory in nature, in that; when a supplier (Kia East Rand) undertakes to repair defective goods and within a period three months a further defect, further failure or unsafe feature is discovered, the supplier must either replace the goods or refund the purchase price if, the failure, defect, or unsafe feature has not been remedied. The Tribunal further held that a literal interpretation of the provisions of section 56(3) of the CPA means that Kia East Rand ought to have either replaced the vehicle or refunded the purchase price to the Complainant.

Kia East Rand, in its defense, argued that the defective components of the vehicle were defective due to wear and tear and therefore Kia East Rand was not liable for any refund or replacement of the vehicle. However, the Tribunal rejected this argument and found that the Complainant had properly exercised her right to cancel the transaction within the statutory period. The Kia East Rand’s refusal to honour that right amounted to prohibited conduct under the CPA.

The Tribunal ultimately ordered that the Complainant be refunded the full purchase price of **R 245 075.00**. The Tribunal acknowledged the seriousness of the respondent’s conduct and to impose an administrative fine of **R 50 000.00**.

The outcome serves as a reaffirmation of consumer rights under the CPA and a caution to suppliers who attempt to evade statutory obligations through unfair contract terms or by refusing to engage meaningfully when defects are reported.

2. **IMPACT OF THIS CASE**:

This case reinforces that consumers have binding legal rights under the CPA to cancel a sale and obtain a refund for defective goods within the implied six months of the purchase of goods, read together with section 56(3) of the implied warranty of three months on repaired goods. The Tribunal's order makes it clear that non-compliance by suppliers will attract legal consequences.

Here are some key effects of the case:

- **Definition of a Defect in terms of 53(1)(a)(i) and 53(1)(a)(ii) of the CPA.**

  The Tribunal clarified on the application of section 53(1)(a)(i) in that the section applies where there are material imperfections in the manufacture of the goods, and section 53(1)(a)(ii) applies when a defect is in relation to components of the goods.

- **Affirmation of consumer's right to cancel and refund under section 56(3):**

  The Tribunal confirmed that if the supplier undertakes to repair defective goods or components within a period of three months after the repairs, a further defect, further failure or unsafe feature is discovered, the supplier must either replace the goods or refund the purchase price and not repair the goods.

- **Refusal to award damages for repairs:**

  The Tribunal awarded a refund in relation to the purchase:

- **Administrative fine imposed, but serious warning issued:**

  An administrative fine of **R 50,000.00** was imposed on Kia East Rand; furthermore, the Tribunal viewed the conduct as a serious disregard for consumer rights. The fine serves as a deterrent and a clear warning to suppliers who fail to comply with the CPA.

- **Full Refund Despite Depreciation:**

  The Tribunal ordered the full refund of **R 245 075,00** of the purchase price of the vehicle as financed by the MFC. This indicates that loss of value does not automatically excuse the supplier’s liability, especially when the consumer attempted to exercise their rights timeously.