



**HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: A183630/25

(1) REPORTABLE: NO.
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.
DATE: 7... September 2026

SIGNATURE

In the matter between:

KIA EAST RAND (PTY) LTD

and

NATIONAL CONSUMER COMMISSION

NATIONAL CONSUMER TRIBUNAL

MOTOR FINACE CORPORATION

MILLS MALEKGALE LEUTLE

APPELLANT

FIRST RESPONDENT

SECOND RESPONDENT

THIRD RESPONDENT

FOURTH RESPONDENT

J U D G M E N T

COX, AJ (with Davis J concurring)

Introduction

[1] The appellant is a dealer in new and second-hand motor vehicles. On 9 September 2022 the appellant sold a used Audi A3 to a consumer, being the fourth respondent. Approximately five weeks later, on 22 October the vehicle overheated and on 27 October the low oil pressure warning light on the instrument cluster lit up, resulting in repairs by the appellant. It appears that the issue with the warning light was never truly resolved as the same problem raised its head again early in January of 2023.

[2] On this occasion the appellant had the vehicle partially repaired by Audi Eastrand and had some further repairs done by Rotary Auto Tech. All the repairs was done at no cost to the consumer.

[3] Subsequent to the above the consumer informed the appellant that she was cancelling the purchase of the vehicle and demanded a refund of the purchase price, which demand was refused by the appellant.

[4] The consumer lodged a complaint with the Motor Industry Ombud of South Africa (MIOSA). The appellant did not accept the outcome which led the consumer to file a complaint with the National Consumer Commission (the NCC). The NCC lodged an application before the National Consumer Tribunal (the Tribunal) alleging that the appellant had contravened certain sections of the Consumer Protection Act, 68 of 2008 (the CPA).

[5] The Tribunal found that the appellant contravened section 56(3) of the CPA and ordered it to repay the purchase price to the consumer in the amount of R245 075.00 and imposed on an administrative fine of R50 000 on the appellant.

[6] The appellant appealed to this court against both the finding that it contravened section 56(3) and the sanction imposed.

The facts

[7] On 09 September 2022 Ms Leutle, the consumer purchased from KIA EAST RAND (PTY) LTD (the appellant) a used 2015 model Audi A3 1.8T FSI having 116 393km on its odometer for R245 075.00.

[8] On 19 October 2022, the consumer lodged a complaint with the appellant, reporting that the vehicle was overheating and that the engine oil pressure warning light had illuminated. The appellant effected repairs to the vehicle and returned it to the consumer on 22 October 2022. Thereafter, the consumer reported that the engine oil pressure warning light still illuminated. The vehicle was again repaired by the appellant and returned to the consumer on 27 October 2022.

[9] On 10 January 2023 the consumer reported the same issue with the engine oil pressure warning light. The appellant collected the vehicle from the consumer and took it to Audi East Rand for repairs. Audi East Rand effected some repairs and informed the appellant that it wished to conduct further diagnostic testing as the said warning light was still illuminating intermittently even after the repairs. The appellant declined the request by Audi and moved the vehicle to Rotary Turbo Tech to complete the repairs. According to the consumer the appellant cited costs as the reason for refusing Audi's request for running additional tests.

[10] Without explaining what was done, the appellant averred that the vehicle was driven "extensively" by the appellant after completion of the repairs by Rotary Turbo Tech. The appellant was satisfied with the repairs and late in January 2023 delivered the vehicle to the consumer.

[11] Approximately a week after its delivery the appellant received yet a further report from the consumer stating that the engine made a “knocking sound” and that it was smoking excessively. The appellant sent a technician to where the vehicle was in Limpopo. There, Given, the brother of the consumer, informed the technician that he added oil to the engine. It appeared that he overfilled the engine with 2 litres of oil which resulted in damage to the engine.

[12] On 14 February 2023, the consumer addressed a letter to the appellant in which she communicated her intention to cancel the purchase agreement and to exercise the remedies available to her under the Consumer Protection Act 68 of 2008. She accordingly demanded a refund of the purchase price of the vehicle. The appellant, however, rejected the consumer’s demand and declined to refund the purchase price.

[13] The consumer subsequently approached MIOSA for assistance. As the appellant failed to comply with the determination by it she lodged a complaint with the NCC who referred the consumer’s complaint to the Tribunal.

The appellant’s position

[14] The appellant's case was that its employees had been accommodating towards the consumer throughout the repair process. In this regard, it was contended that the consumer had been provided with a courtesy vehicle while her Audi motor vehicle was undergoing repairs. The appellant further maintained that the repairs had been successfully completed and that the associated costs had been borne by it.

[15] The appellant also argued before the Tribunal that the subsequent excessive smoking and "knocking" sound experienced by the vehicle were not attributable to any defect in the repairs undertaken by it. Instead, it contended that these

problems arose as a result of Given having overfilled the engine oil. On this basis, the appellant denied that it had contravened any provision of the CPA.

[16] A further submission was that the administrative fine of R50 000 imposed on it by the Tribunal was excessive.

Findings of the Tribunal

[17] The Tribunal found that the vehicle overheated within six months of its purchase. In the Tribunal's view, this rendered the vehicle less suitable for the purpose for which it had been acquired and demonstrated that it was not of good quality, was not in good working order, and was not free from defects. The Tribunal further held that the vehicle was neither durable nor capable of being used for a reasonable period as contemplated by the applicable consumer protection provisions. Notwithstanding these findings, the Tribunal found that section 53(1)(a)(i) was not applicable in this instance as there was no evidence of any material imperfection in the manufacture of the vehicle.

[18] The Tribunal rejected the appellants' contention that the illumination of the engine oil pressure warning light, as well as the repairs undertaken by Audi and Rotary Turbo Tech, were attributable merely to normal wear and tear. The Tribunal found, on the contrary, that these factors demonstrated that the vehicle had characteristics or components which rendered it less useful, less practicable, or less safe than a person would reasonably be entitled to expect. The Tribunal accordingly concluded that the vehicle remained defective throughout.

[19] The Tribunal considered the import of section 56(3) of the Consumer Protection Act and concluded that its provisions are mandatory. It found that, in circumstances where goods are repaired by a supplier and, within three months of such repair, the original failure, defect or unsafe feature remains unremedied,

or a further failure, defect or unsafe feature manifests itself, the supplier is under a statutory obligation to replace the goods or refund the consumer with the purchase price paid.

[20] In the light thereof it found that the appellant contravened the provisions of section 56(3) by failing to offer the consumer a refund or replacement of her vehicle.

The sanction imposed

[21] The Tribunal referenced section 112(1) read with section 151(2) with regards to the imposition of an administrative fine for the contravention of section 56(3).

[22] It considered the factors listed in section 112(3) of the Act, namely:

- a) The nature, extent, gravity and extent of the contravention;
- b) Any loss or damage suffered as a result of the contravention;
- c) The behaviour of the respondent;
- d) The level of profit derived from the contravention;
- e) The degree to which the respondent cooperated with the NCC and the tribunal;
- f) Whether it has been found that the respondent previously contravened the provisions of the CPA.

[23] In its consideration of the matter, the Tribunal found that the consumer had suffered prejudice in that she had not been refunded the purchase price of R245 075.00, notwithstanding that the vehicle remained in the possession of the appellant. The Tribunal accordingly concluded that the appellant had retained the benefit of the purchase price while also retaining possession of the vehicle.

[24] The Tribunal further found that, although the appellant had cooperated with the National Consumer Commission during its investigation, it had done little to facilitate the expeditious resolution of the dispute. The Tribunal also considered that there was no evidence that the appellant had previously contravened the provisions of the Act.

[25] Having considered the aforementioned, it stated that the conduct of the appellant should be condemned and visited with severe fines to deter the appellant and other suppliers from undermining consumer's rights and imposed an administrative fine of R50 000 on the appellant.

[26] In addition, the appellant was ordered to refund the consumer in the amount of R245 075 within 10 days of the Tribunal's judgment.

Discussion

[27] The appellant challenged the Tribunal's findings on two principal grounds. First, it contended that the Tribunal misdirected itself in concluding that the appellant had contravened section 56(3) of the Consumer Protection Act 68 of 2008. Secondly, it argued that the administrative fine imposed was so disproportionate to the facts and circumstances of the case as to be shockingly inappropriate.

[28] Section 56(3) reads as follows:

“If a supplier repairs any particular goods or any component of such goods, and within three months after that repair, the failure defect or unsafe feature has not been remedied, or a further failure, defect or unsafe feature is discovered the supplier must

a. replace the goods; or

- b. *refund to the consumer the price paid by the consumer for the goods*".

[29] The appellant submitted that the vehicle had been successfully repaired in January 2023 prior to its return to the consumer. In advancing this submission, considerable reliance was placed on the evidence concerning the overfilling of the engine oil by Given. The appellant argued that, but for that incident, the consumer would not have sought to cancel the agreement. According to the appellant, the subsequent engine difficulties were not attributable to any defect present in the vehicle when it was returned to the consumer but were instead the consequence of the excessive oil added by Given.

[30] Counsel for the appellant emphasised that the initial overheating of the vehicle had been rectified and sought to minimise the significance of the continued illumination of the engine oil pressure warning light. It was submitted that the overfilling of the engine oil constituted the true cause of the damage that manifested after the vehicle had been repaired and returned to the consumer. On that basis, the appellant contended that it bore no liability towards the consumer, as the subsequent damage was said to have been caused solely by the consumer's own conduct.

[31] The respondent maintained that, irrespective of the alleged overfilling incident, the consumer had already become entitled to the remedies contemplated in section 56(3) of the Act. The respondent's position was that the consumer's right to cancel the transaction and obtain a refund had arisen prior to the occurrence of the alleged over filling incident and was therefore unaffected by it.

[32] The provisions of section 56(3) is very clear and upon applying it to the facts of this case we agree with the respondent that the overfilling of the engine

oil becomes a moot point. For the consumer to qualify for or obtain the remedy of a refund of the purchase price, she only had to show that within three months after the initial repairs by the appellant, the original defect persisted or that a further defect was discovered.

[33] The evidence established that on 19 October 2022 the vehicle presented with two concurrent problems, namely overheating and the illumination of the engine oil pressure warning light. The appellant undertook repairs and returned the vehicle to the consumer on 22 October 2022. Despite those repairs, the engine oil pressure warning light continued to illuminate, necessitating the vehicle's return to the appellant. Following further repairs, the vehicle was again returned to the consumer on 27 October 2022.

[34] However, on 10 January 2023 the same complaint resurfaced. The vehicle was once more booked in with the appellant and remained in its possession for approximately three weeks while further attempts were made to remedy the defect. In total, the appellant was afforded three opportunities to rectify the recurring engine oil pressure fault. Notwithstanding these repeated repair attempts, the defect persisted and was never successfully cured.

[35] Based on the foregoing, we are satisfied that the jurisdictional requirements established by section 56(3) had been established and that the finding of the Tribunal that the appellant contravened section 56(3) was correct in that the appellant failed to replace the vehicle or refund the purchase price to the consumer as directed by the section, despite it having been in for repairs on different occasions.

[36] In keeping with the court's finding it is unnecessary to consider counsel's arguments that that the illuminating warning light did not constitute a significant

defect which destroyed or impaired the utility or effectiveness thereof for the purpose for which it had been sold or for which it was commonly used.

[37] On the issue of sanction, Section 112(2) of the CPA provides for a fine of 10% of the contravening party's turnover to the maximum of R1 million.

[38] Counsel for the appellant submitted that the administrative fine imposed by the Tribunal was excessive and startlingly inappropriate in the circumstances. In support of this contention, counsel emphasised that the appellant had, at all material times, attended to the repairs at its own expense and had provided the consumer with a courtesy vehicle while the vehicle was undergoing repairs. Counsel further relied on the fact that the appellant was a first-time offender and contended that this constituted a significant mitigating factor, to which the Tribunal failed to accord sufficient weight.

[39] The respondent submitted that the appellant was principally responsible for the delay in the finalisation of the dispute, which resulted in considerable inconvenience and financial prejudice to the consumer. In this regard, it was emphasised that the vehicle has remained in the appellant's possession in excess of three years, thereby depriving the consumer of the use and benefit of the vehicle for an extended period.

[40] Counsel for the respondent further reminded the Court that MIOSA had already finalised the dispute and issued its determination. Notwithstanding this, the appellant elected not to abide by that determination, a decision which, according to the respondent, materially contributed to the delay in bringing the matter to finality.

[41] The respondent accordingly submitted that, in adjudicating the appeal, the Court should remain mindful of the underlying purpose of the Consumer

Protection Act, namely the promotion and protection of consumers' rights and interests. It was argued that the appellant's conduct must be evaluated against that legislative objective, particularly considering the prejudice allegedly suffered by the consumer because of the prolonged dispute.

[42] Referencing other instances wherein the Tribunal has imposed fines of R500 000¹ and R1 million², this court in *Avura Motors*³ deemed a fine of R100 000 appropriate in similar circumstances. In that case a vehicle was sold with a defective cooling system which was eroded and rusted. In *Platinum Wheels*⁴ an appeal against a finding and imposition of a fine of R 50 000 by the Tribunal in comparable circumstances was successful, but not due to a finding that the fine was inappropriate, but due to unrelated procedural issues.

[43] In the present matter the Tribunal considered the factors listed in section 112(3)⁵ and concluded that a fine of R50 000 is appropriate in the circumstances. No submission was made that the provisions of the section were ill considered or applied incorrectly. Based on the foregoing we find that the imposed fine is not shocking nor inappropriate hence the appeal against the imposed fine must fail.

[44] There is no reason for the court to deviate from the practice that costs follow the result.

Order

[45] The order is as follows:

The appeal is dismissed with costs.

¹ *National Consumer Commission v Cell C* (11February 2025).

² *National Consumer Commission v Braaiblock (Pty) Ltd* (11 December 2024).

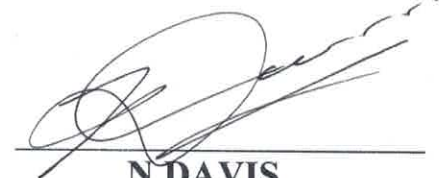
³ (A68/2025) [2025] ZAGPPHC 1129 (1 October 2025)

⁴ *Platinum Wheels (Pty)Ltd v National Consumer Commission* 2025(3)SA 459(SCA)



I D COX
Acting Judge of the High Court
Gauteng Division, Pretoria

I agree and it is so ordered.



N DAVIS
Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 20 August 2025

Judgment Delivered: 7 September 2026

APPEARANCES:

For Appellant:

Adv: F W Botes SC

Instructed by:

A J Stone Attorneys, Bedfordview,
Johannesburg

For Respondent:

Adv G Khumalo

Instructed by:

Gildenhuys Malatji Inc., Groenkloof, Pretoria