

**IN THE NATIONAL CONSUMER TRIBUNAL
HELD IN CENTURION**

Case Number: **NCT/450844/2026/100(6)(a)**

In the matter between:

NATIONAL CONSUMER COMMISSION

APPLICANT

And

FLAWLESS CARS (PTY) LTD

RESPONDENT

Coram:

Adv C Sassman - Presiding Tribunal member

Mr S Hockey - Tribunal member

Ms N Maseti - Tribunal member

Date of the hearing: 11 September 2026

Date of judgment: 14 September 2026

JUDGMENT AND REASONS

THE PARTIES

1. The applicant is the National Consumer Commission (the applicant or the NCC), a juristic person established in terms of section 85(1) of the Consumer Protection Act 68 of 2008 (the CPA). The applicant is responsible for enforcing the CPA by monitoring the consumer market to ensure that prohibited conduct and offences are prevented, detected, and prosecuted.
2. At the hearing, the applicant was represented by Mr Takalani Kutumela, the applicant's Legal Advisor.

3. The respondent is Flawless Cars (Pty) Ltd, a supplier as defined in section 1 of the CPA, who, in the ordinary course of business, facilitates the sale of motor vehicles on behalf of its owners to third parties.
4. At the hearing, the respondent was represented by Mr Jide Adebayo (Mr Adebayo), a candidate attorney at Tony Okorie Attorneys Incorporated.

TERMINOLOGY

5. A reference to a section in this judgment refers to a section in the CPA unless indicated otherwise.
6. A reference to a rule in this judgment refers to the Rules of the Tribunal¹.

APPLICATION TYPE AND JURISDICTION

7. This is an application made in terms of section 100(6)(a) for the issuing of an administrative fine on the respondent for failure to comply with a compliance notice issued in terms of section 100(1) by the applicant on 15 August 2025.
8. The Tribunal has jurisdiction to hear this matter in terms of section 27(a)(i) of the National Credit Act 34 of 2005 (the NCA).

BRIEF BACKGROUND AND FACTS

9. On 27 February 2018, the applicant received a complaint from a consumer, Ms Ntsako Matjokana (the consumer), detailing that on 12 December 2015, she purchased a used Ford Fiesta motor vehicle from the respondent for R170 000.00.
10. She alleged that after taking possession of the vehicle, it presented with certain defects and was returned to the respondent for repairs on 8 January 2016. The vehicle remained in the respondent's possession for repairs until 24 February 2016, when the consumer was advised she could collect it. However, when attempting to collect the vehicle, it appeared that not all defects had been repaired, and the vehicle was left with the respondent until 16 March 2016, at which point the consumer was advised to collect it again.

¹ Published under GN 789 in GG 30225 on 28 August 2007 as amended by GN 428 in GG 34405 on 29 June 2011, GN R203 in GG 38557 on 13 March 2015 and GN 157 in GG 39663 on 4 February 2016

11. When collecting the vehicle, it still presented with mechanical problems. The consumer then took the vehicle to Lazarus Ford Centurion for an independent diagnosis and was quoted R94 087.17 for repairs, which included an engine replacement.
12. The applicant submits that in June 2016, the consumer requested the cancellation of the sale agreement. Still, the respondent ignored the request and collected the vehicle from the consumer for further repairs. The vehicle was never returned to the consumer, and the applicant submits that, in September 2025, the vehicle was tracked and found in the respondent's possession, stripped for parts. The respondent denies stripping the vehicle.
13. The applicant investigated the complaint and, in its investigation report, records that, having regard to the date that the conduct, which is the cause of the consumer's complaint, arose, the matter is time-barred from being referred to the Tribunal for adjudication. Instead, on 15 August 2025, the applicant issued the respondent with a compliance notice² (the notice). The notice stated that the respondent had contravened the following sections of the CPA:
 - Section 48(2)(a) and (b);
 - Section 49(1)(a) and (b) read together with sections 49(2) and (4), paragraph (a) and (b);
 - Section 55(2); and
 - Section 56(2).
14. Furthermore, the respondent was instructed to, within 14 days of the receipt of the notice, refund the consumer R170 000.00.
15. The respondent failed to comply with the notice, and on 18 May 2026, the applicant filed an application with the Tribunal in terms of section 100(6)(a).

THE APPLICANT'S SUBMISSIONS

16. The applicant submitted that the compliance notice was served on the respondent by email, but that it has failed to comply with it for more than one year. The respondent is still in possession of the vehicle, and its failure to refund the

² See pages 75 – 78 of the case record.

consumer resulted in financial loss to her. The respondent's failure to comply with the notice has left the consumer in a dire situation with nothing to show for the money she spent. The respondent also failed to comply with MIOSA's³ recommendations.

17. The respondent has not objected to the notice in terms of section 101(1).
18. There is no evidence of any previous contraventions of the CPA; however, the mere fact that the respondent failed to comply with the notice is an aggravating factor on its own.
19. It was only after the matter was referred to the Tribunal that the respondent attempted to co-operate by making a settlement offer which the applicant rejected. The applicant is unable to provide an exact amount of the respondent's profit from the transaction, but believes the respondent must have profited in some way or another from the sale of the vehicle.
20. The applicant cannot provide the Tribunal with the respondent's annual turnover, but the Tribunal is still within its rights to grant an administrative fine of R1 000 000.00 as requested.

THE RESPONDENT'S SUBMISSIONS

21. Mr Adebayo submitted that after the respondent received the notice, it sought legal advice and appointed his firm to represent it. Mr Adebayo emailed the applicant on 6 May 2026, notifying them that his firm had been appointed to represent the respondent.
22. After the 14 days specified on the notice had lapsed and after receiving notice of the application to the Tribunal, the respondent made a settlement offer to the applicant, which it refused.
23. The respondent suggested many alternatives to resolve this matter, but both the applicant and the consumer have been hostile towards the respondent.
24. The Tribunal must consider that the respondent's failure to comply with the notice is a one-off incident, as is the consumer's complaint that resulted in the notice

³ The Motor Industry Ombudsman of South Africa.

being issued. There is no evidence that the respondent has a practice of selling defective vehicles or of contravening the CPA, and its failure to comply with the notice has affected only one consumer. This is the first time the respondent is appearing before the Tribunal, and there is no evidence of any previous contraventions of the CPA.

25. The respondent accepts that the consumer has suffered a financial loss and is out of pocket to the tune of R170 000.00. However, the respondent sells vehicles on behalf of its clients and only receives a commission on each sale. In addition, it carried out repairs to the vehicle at its own cost. Therefore, the R170 000.00 that the consumer paid for the vehicle cannot be considered a profit that the respondent derived from the transaction.
26. The respondent co-operated with the applicant, its investigators, and MIOSA but disputes its liability.
27. The respondent is of the view that no administrative fine should be imposed on it. However, should the Tribunal find it appropriate to impose a fine, it should be substantially less than the amount prayed for by the applicant. The respondent respectfully submits that in such a case, a fine not exceeding R50 000.00 would be appropriate.
28. The respondent has incurred legal costs in defending this matter and requests that a cost order be granted in its favour on a party and party scale.

CONSIDERATION OF SUBMISSIONS

29. At the hearing, and in their papers, both parties attempted to delve into the merits of the consumer's complaint. However, the consumer's complaint is not before the Tribunal for adjudication and the Tribunal is primarily concerned with the respondent's failure to comply with the notice once issued.
30. The respondent does not dispute that it failed to comply with the notice, and therefore, its failure to comply must be sanctioned.
31. The Tribunal considered the submissions made by the applicant and the respondent and is satisfied that the respondent elected not to comply with the

notice. The respondent provided no valid reason for failing to comply and appears to have no intention of complying with the notice in future.

32. The nature of the respondent's disregard for the legislation and the applicant as a regulatory authority justifies the Tribunal imposing an administrative fine on the respondent.

CONSIDERATION OF AN ADMINISTRATIVE FINE

33. The applicant requested the Tribunal to impose an administrative fine on the respondent. Section 112(3) of the CPA outlines the factors the Tribunal must consider when determining an appropriate fine. These are listed and discussed under separate subheadings below.

The nature, duration, gravity, and extent of the contravention

It has been more than one year since the notice was issued to the respondent, and it has failed to comply with the sole request in it, namely, to refund the consumer. Its failure to comply with the notice indicates that it operates with disregard for the regulator tasked with enforcing compliance with the CPA.

Any loss or damage suffered as a result of the contravention

The notice required the respondent to refund the consumer R170 000.00 within 14 days of receipt thereof. The respondent's failure to comply has undoubtedly caused the consumer financial prejudice.

The behaviour of the respondent

The respondent appears to have acted with a disregard for consumer rights, the legislation enacted to protect consumers and the instructions from the regulatory authority mandated to enforce compliance in the industry.

The market circumstances in which the contravention took place

The respondent's conduct illustrates that the market in which it operates is one in which consumers are often vulnerable to exploitation and expect vehicle dealerships to comply with the law and any requests from regulators.

The level of profit derived from the contravention

The applicant did not submit the exact amount of profit derived by the respondent. The Tribunal accepts that the R170 000.00 sale price that the consumer paid for

the vehicle likely cannot constitute the profit that the respondent derived from the transaction.

The degree to which the respondent has cooperated with the National Consumer Commission and the Tribunal

The evidence before the Tribunal indicates that the respondent failed to act on receipt of the notice and only communicated with the applicant through its legal representative from 6 May 2026, the following year. The Tribunal accepts that the respondent, after receiving notice of the application to the Tribunal, made a settlement offer to the applicant, which was rejected. The respondent accordingly filed an answering affidavit to defend the allegations made against it.

Whether the respondent has previously been found in contravention of the CPA

The applicant has not submitted any indication of any prior investigations or enforcement instituted against the respondent.

CONCLUSION

34. The applicant plays a pivotal role in enforcing compliance with the CPA and protecting consumer rights. Failure to comply with a notice issued in terms of section 100(1) is viewed in a serious light and cannot be condoned. The Tribunal must ensure that consumers' rights are protected and that suppliers comply with the legislation and instructions of regulatory authorities. Imposing an administrative fine on the respondent is warranted in this instance as a punitive measure.
35. Regarding the quantum of the administrative fine, section 112(2) provides that an administrative fine imposed may not exceed the greater of 10% of the respondent's annual turnover during the preceding financial year or R1 000 000.00. The applicant did not submit any evidence of the respondent's turnover. The Tribunal can, however, still impose a fine of up to R1 000 000.00.
36. Considering the facts and events of the matter, the Tribunal finds a fine of R100 000.00 (one hundred thousand rand) appropriate in this instance.

COSTS

37. The respondent requested the Tribunal to make a cost order against the applicant.
38. Section 147(2)(a) of the NCA only permits the Tribunal to make a cost order after making a finding in respect of a complaint referred under section 75(1)(b) of the CPA or 141(1)(b) of the NCA. Therefore, the Tribunal is not permitted to make a cost order when not adjudicating such a complaint. Accordingly, in this case, section 147(1) of the NCA applies, requiring each party participating in a hearing to bear its own costs.
39. From the reading of section 147 of the NCA, it is clear that the Tribunal is not empowered to award costs in instances where a matter has been referred to it by the NCC. This interpretation was confirmed in *The National Consumer Commission v Univision Services Association NPC*,⁴ where it was held that the NCC acts to protect consumer rights and is not merely seeking redress for personal infringement of a civil right, the same way a consumer would.
40. The NCC acts in the public interest in the pursuit of its statutory obligation to enforce consumer rights, not only on behalf of those who have complained to it, but also on behalf of the public at large.⁵ The Court held that, in this sense, there is no reason for the general rule regarding costs in civil litigation to apply to referrals made by the NCC in terms of section 73(2)(b). By extrapolation, the same would apply to applications made to the Tribunal by the NCC in terms of section 100(6)(a).

ORDER

41. Accordingly, the Tribunal makes the following order:

41.1 The respondent must, within 30 (thirty) business days of the issuing of this judgment, pay an administrative fine of R100 000.00 (one hundred thousand rand) into the National Revenue Fund referred to in section 213 of the Constitution⁶ using the following bank account details:

⁴ (618/2017) [2018] ZASCA 44 (28 March 2018).

⁵ Univision at paragraph 17.

⁶ Constitution of the Republic of South Africa, Act 108 of 1996.

Bank: Nedbank Limited

Account holder: Department of Trade, Industry and Competition

Account type: Current account

Account number: 126 884 7941

Branch name: Telecoms and Fiscal

Branch code: 198765

Reference: NCT/450844/2026/100(6)(a) and the name of person or business making the payment; and

41.2 There is no cost order.

Adv C Sassman

Presiding Tribunal member

Tribunal members Mr S Hockey and Ms N Maseti concur.

Authorised for issue by The National Consumer Tribunal

National Consumer Tribunal

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