

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

Case Number: **NCT/435320/2026/73(2)(b)**

In the application between:

NATIONAL CONSUMER COMMISSION

APPLICANT

And

SUNWARD MOTORS (PTY) LTD

FIRST RESPONDENT

MFC, A DIVISION OF NEDBANK LTD

SECOND RESPONDENT

Coram:

Dr A Potwana - Presiding Tribunal member

Prof K Moodaliyar - Tribunal member

Mr S Hockey - Tribunal member

Date of hearing: 17 September 2026

JUDGMENT AND REASONS

THE PARTIES

1. The applicant is the National Consumer Commission (NCC), an organ of the state outside the public service but within the Republic of South Africa's public administration.¹ During the hearing, the applicant's legal advisor, Mr Lebogang Kutumela, represented the applicant.
2. The first respondent is Sunward Motors (Pty) Ltd (Sunward), a supplier as defined under section 1 of the Consumer Protection Act 68 of 2008 (CPA). During the hearing, the first respondent was represented by Mr Johan Nysschens, a legal practitioner from Johan Nysschens Attorneys (Mr Nysschens).
3. The second respondent is MFC, a division of Nedbank Ltd (MFC), a credit provider as defined under the National Credit Act 34 of 2005 (NCA). During the hearing, Advocate Marius Reineke of the Johannesburg Society of Advocates, instructed by Hainsworth Koopman Attorneys, represented the second respondent.

¹ Section 85 of the Consumer Protection Act 68 of 2008 (CPA).

APPLICATION TYPE AND JURISDICTION

4. The applicant alleges that the first respondent contravened several provisions of the CPA and thereby committed prohibited conduct.
5. Section 27 of the NCA empowers the Tribunal to adjudicate allegations of prohibited conduct.

FACTS

6. On 26 October 2023, the applicant received a complaint from Lourens Mathys Visser (the complainant) against Sunward. The complainant alleged that on 9 February 2023, he purchased a used 2016 Ford Tourneo Connect from Sunward for R341 852.50. MFC financed the purchase. When the complainant collected the vehicle, he was informed that it had been taken in for servicing at Ford Aurina Motors CC.
7. On 9 March 2023, whilst filling up the vehicle with fuel at a filling station, the complainant inspected it and discovered it lacked oil. Subsequently, the complainant informed Sunward. Sunward advised the complainant to go to its accredited RMI Workshop, Ford Aurina Motors. Ford Aurina Motors confirmed that there was insufficient oil in the engine. The workshop manager booked the vehicle for immediate service.
8. After two hours of servicing the vehicle, the workshop manager handed the consumer a 5-litre container of dirty oil drained from the vehicle's engine. The complainant, however, realised this could not be true because the engine had already been confirmed to lack sufficient oil.
9. The applicant alleges that the service conducted before the complainant took delivery of the vehicle was defective because the oil filters were not replaced, and that a glued oil sump was discovered. On 16 May 2023, three months after the sale of the vehicle, whilst the complainant was driving on the N1 from Vanderbijlpark to Orania, the vehicle broke down. He towed it to his home in Vanderbijlpark and informed Sunward about the defect.
10. Sunward told the complainant to take the vehicle to MF Repair and Tune Up Centre. A diagnostic report indicated that the following needed to be repaired:
 - 10.1. Cylinder Head Recondition,
 - 10.2. Pistons,
 - 10.3. Head Gasket,
 - 10.4. Top Gasket set,
 - 10.5. Bottom Gasket set,
 - 10.6. Oil pump,
 - 10.7. Water pump,

- 10.8. Thermostat,
 - 10.9. Head bolts,
 - 10.10. Cam Belt Kit,
 - 10.11. Glow Plugs x 4,
 - 10.12. Injectors x 4,
 - 10.13. Turbo Charger with Actuator, and
 - 10.14. Anti-freeze.
11. The repair costs quoted amounted to R170 516.02. The complainant shared the quotation with Sunward. Sunward indicated that they would take the vehicle to their RMI-accredited workshop for repairs. On 16 October 2023, the first respondent collected the vehicle and delivered it to JJ Velddientse for repairs.
 12. On or about 2 November 2023, the complainant appointed attorneys. The attorneys sent a letter of demand to Sunward requesting payment of R170 516.02, as quoted by MF Repair and Tune UP Centre for repairs.² In its investigation report, the NCC alleges that the attorneys requested Sunward to fix the vehicle. Sunward did not respond.
 13. On 29 January 2024, Sunward contacted the complainant and informed him that the vehicle had been repaired. After collecting the vehicle, the complainant discovered that it exhibited the same defects complained of.
 14. On 4 February 2024, six days after it was collected, the vehicle broke down again. It has been in the care and possession of Sunward since. The complainant continued to make monthly payments towards MFC. The applicant alleges that Sunward's refusal to cancel the sale agreement and refund the complainant the purchase price has caused the complainant to incur further damages in the form of insurance premiums in the amounts of R6 203.27 and R4 269.83.
 15. Through his attorneys, the complainant sent another letter of demand requesting that Sunward cancel the sale agreement and refund the purchase price of R341 852.50. The letter of demand is dated 26 February 2024. On 26 January 2026, the NCC referred a matter to the Tribunal in terms of section 73(2)(b) of the CPA, alleging that Sunward contravened several provisions of the CPA. In "Part D: Order sought from the Tribunal" of the prescribed form for referring matters to the Tribunal, Form T1.73(2)(b) CPA, the NCC stated that it seeks an order in the following terms:

15.1. Declaring Sunward's conduct to be in contravention of section 55(2) read with section 56(3) of the CPA,

² Annexure 'LMV1 – 9' to the applicant's affidavit.

- 15.2. Declaring Sunward's contravention of section 55(2) read with section 56(3) of the CPA prohibited conduct,
 - 15.3. Interdicting Sunward from engaging in conduct referred to above,
 - 15.4. Directing Sunward to cancel the vehicle sale agreement and take back the vehicle,
 - 15.5. Directing Sunward to refund the complainant the purchase price of the vehicle in the amount of R227 057.50 and pay it to the MFC's bank account,
 - 15.6. Directing Sunward to refund the complainant the amount of R217 815, 81 for monthly instalments paid to MFC,
 - 15.7. Directing Sunward to refund the complainant an amount of R6 203.27 for insurance premiums paid to OUTsurance Company Ltd,
 - 15.8. Directing Sunward to refund the complainant an amount of R4 269.83 for insurance premiums paid to OUTsurance Company Ltd,
 - 15.9. Directing Sunward to cancel the vehicle finance agreement,
 - 15.10. Directing Sunward to pay an administrative penalty in the amount of R1 000 000.00,
 - 15.11. The Tribunal issues a certificate in terms of section 115 of the CPA, and
 - 15.12. Any other appropriate order contemplated in section 4(2)(b)(ii) of the CPA.
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16. Sunward opposes the application. They allege that the defects or damages to the vehicle were caused by the complainant not maintaining the vehicle or excessive use of the vehicle, wear and tear due to degraded oil used, and the complainant's contention that Ford Aurinia Motors did not properly attend to the service of the vehicle.
 17. Sunward alleged a material non-joinder of Aurinia Motors CC, alternatively, a misjoinder of Sunward. The consumer's view was that Aurinia Ford did not provide proper service, including failing to fill the coolant and replace the oil.
 18. Sunward states that the vehicle travelled more than 14,000 km in two months. This indicates that the vehicle was not defective. The assessment by MF Repair and Tune Centre indicated that the engine seemingly suffered damage. This damage is indicative of, and a clear result of, the vehicle being driven with insufficient or contaminated engine oil, excessive temperatures, or extended service intervals.
 19. After the vehicle broke down on 4 February 2024, Sunward claims that they collected the vehicle and, with express consent, transported it and ensured that an entire replacement engine was supplied and fitted to the vehicle as per section 56(3) of the CPA. The complainant elected this option. The vehicle is free of defects, of good quality, and fit for purpose. The complainant was advised of this and requested to collect his vehicle but has failed to do so.

20. MFC also filed an opposing affidavit. It raised a point in limine on the basis that it purchased the vehicle from Sunward for R302 898.00. That transaction between it and Sunward is not a consumer agreement because it is a juristic person with an annual turnover exceeding the prescribed threshold. It claimed that the agreement is governed by common law and that the Tribunal has no jurisdiction to adjudicate civil and contractual disputes. In an earlier ruling, the Tribunal dismissed the special plea.
21. In a subsequent finance agreement between the complainant and MFC, MFC retained ownership. In terms of section 5(2)(d) of the CPA, the finance agreement is not governed by the CPA. The Tribunal has no jurisdiction in relation to the finance agreement.
22. MFC denies the alleged defects because the allegations are not supported by evidence. It states that the vehicle was a 2016 model, approximately seven years old, with an odometer reading of 100,469 km. As such, the complainant could not reasonably have expected the vehicle to be in a mechanically sound condition, as that of a new vehicle, given that it would be subject to normal wear and tear. Within seven weeks of taking delivery of the vehicle, the complainant had driven approximately 14,000 km. This does not support the complainant's assertion that the vehicle was not in a good working order when he purchased it. The quotation presented by the applicant is not a diagnostic report but a quotation for work that needed to be done.
23. According to MFC, the principal debt payable by the complainant to the MFC was R341 852.51. This amount comprises the purchase price and additional charges in respect of, inter alia, a warranty, insurance, delivery charges, and licensing and registration fees. The complainant paid R217 979.43 to MFC.
24. MFC denies that the NCC is entitled to the relief sought. It argues that the vehicle cannot be returned to Sunward because MFC owns the vehicle. The vehicle must be returned to the MFC if the Tribunal orders cancellation of the finance agreement. The amount to be refunded to MFC is R341 852.51, being the purchase price it paid to Sunward. The amount claimed from MFC should be reduced by a reasonable amount for the use of the vehicle in terms of section 20(5) and (6) of the CPA. It seeks an order dismissing the application with costs on an attorney-and-own-client scale.

THE LAW

25. Section 55(2) of the CPA states-

'Except to the extent contemplated in subsection (6), every consumer has a right to receive goods that—

- (a) are reasonably suitable for the purposes for which they are generally intended;

- (b) are of good quality, in good working order and free of any defects;
- (c) will be useable and durable for a reasonable period of time, having regard to the use to which they would normally be put and to all the surrounding circumstances of their supply; and
- (d) comply with any applicable standards set under the Standards Act, 1993 (Act No. 29 of 1993), or any other public regulation.'

26. Section 56(3) of the CPA states –

'If a supplier repairs any particular goods or any component of any 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.'

CONSIDERATION OF THE MERITS

- 27. Sunward's technical legal point, based on the alleged material non-joinder of Aurinia Motors CC, alternatively, a misjoinder of Sunward, lacks merit. In relation to section 56(2) of the CPA, there is no evidence before the Tribunal that the service rendered by Aurinia Motors CC caused the defects.
- 28. In relation to the applicant's allegation that Sunward contravened section 56(3) of the CPA, it is undisputed that the vehicle broke down on 16 May 2023. On 16 October 2023, Sunward collected the vehicle and delivered it to JJ Velddientse for repairs. On 29 January 2024, Sunward contacted the complainant and informed him that the vehicle had been repaired. Six days after the complainant collected the vehicle, it broke down again. There is no evidence before the Tribunal that Aurinia Motors CC did any work on the vehicle after Sunward repaired it in January 2024, and it subsequently broke down six days after the complainant collected it. Accordingly, this point fails.
- 29. Sunward admits that it collected the vehicle, had it assessed, and repaired it at its own cost. This, according to Sunward, was despite the existence of a bona fide dispute regarding the cause and liability for the damages. They allege that the defects or damages to the vehicle were caused by the complainant not maintaining the vehicle or excessive use of the vehicle, wear and tear due to degraded oil used, and the complainant's contention that Ford Aurinia Motors did not properly attend to the service of the vehicle. As explained above, there is no evidence that Aurinia Motors CC performed any work on the vehicle
- 30. In view of the above, we find that by repairing the vehicle at its own cost, Sunward upheld the complainant's section 56(2) right. In terms of section 56(3) of the CPA, after the vehicle broke down six days after the initial repair, Sunward was obliged to either replace the vehicle or refund the complainant the purchase price. Any other interpretation could result in suppliers undermining consumers' section

56(3) right to demand a replacement or a refund by claiming that the goods were not defective in the first place or that there was a bona fide dispute regarding the cause and liability for the defects.

31. During the hearing, Mr Nysschens vigorously argued that after the vehicle broke down in February 2024, the parties reached a compromise. His argument of a compromise, however, rests solely on the undisputed fact that after the vehicle broke down, Sunward provided the complainant with a courtesy vehicle and the fact that paragraph 19 of the letter of demand, the complainant's attorneys stated that *'We are amicable to settlement of the matter and request that you can attend our offices for a round table meeting to discuss a reasonable settlement of the matter.'*
32. It is evident from the complainant's attorneys' letter of demand dated 26 February 2024 addressed to Sunward that the complainant's attorneys cancelled the transaction and demanded a full refund of the purchase price. Mr Nysschens, however, did not present any evidence as to when his client, Sunward, provided a courtesy vehicle to the complainant, whether Sunward's representatives attended the offices of the complainant's attorneys, or when the compromise agreement was reached. Since JJ Velddientse's second invoice is dated 20 May 2024, the balance of probabilities indicates that Sunward repaired the vehicle at least two months after the complainant's attorney demanded a refund.
33. In view of the lack of any evidence of the compromise agreement, we are not persuaded that the complainant and Sunward reached any compromise under which the complainant withdrew his demand for a refund, as stated in the letter of demand dated 26 February 2024, and agreed that Sunward should repair the vehicle again. Consequently, the argument that the complainant and Sunward reached a compromise is not supported by evidence and fails. By repairing the vehicle after the complainant demanded a refund, Sunward undermined the complainant's right to demand a refund and thereby contravened section 56(3) of the CPA.
34. We turn to consider MFC's arguments. We find that although the agreement between the complainant and MFC constitutes a credit agreement, section 5(2)(d) of the CPA makes it clear that the provisions of the CPA apply to the vehicle. MFC's claim that the agreement between itself and Sunward constitutes a credit agreement does not deprive the Tribunal of jurisdiction to consider the allegations that the respondents contravened provisions of the CPA. Accordingly, MFC's point in limine that the Tribunal lacks jurisdiction lacks merit. It is dismissed accordingly.
35. MFC contends that the fact that the complainant had driven approximately 14,000 km within seven weeks does not support the complainant's assertion that the vehicle was not in a good working order when he purchased it. MFC's contention is misplaced. First, the section 56(2) warranty extends to six months after the date of purchase. Therefore, even if the vehicle was in a good working order when the complainant purchased it, section 56(2) provides a statutory warranty of six months. As evidenced by the vehicle's

National Consumer Commission v Sunward Motors (Pty) Ltd and Another
breakdown and JJ Velddientse's invoice dated 16 January 2024, the defects manifested within six months of the date of delivery. Despite this, we note that the applicant does not seek an order declaring that MFC contravened section 56(2) of the CPA. The repairs to the vehicle render such a finding unnecessary.

CONCLUSION

36. Under section 1 of the CPA, it is evident that:
 - 36.1. "supplier" means a person who markets any goods or services',
 - 36.2. "market", when used as a verb, means to promote or supply any goods or services', and
 - 36.3. "supply", when used as a verb in relation to goods, includes selling the goods.
37. In this matter, Sunward marketed the vehicle and entered into a purchase agreement with the complainant. Subsequently, MFC supplied it to the complainant. Accordingly, Sunward and MFC fall within the definition of 'supplier' under the CPA. Although the agreement between the complainant and MFC constitutes a credit agreement, section 5(2)(d) of the CPA makes it clear that the provisions of the CPA apply to the vehicle. Accordingly, the complainant was entitled to demand a repair, a refund, or a replacement from Sunward, MFC, or both. The applicant chose to demand a repair only from Sunward.
38. Sunward repaired the vehicle, but it broke down again six days after the complainant collected it. Notably, among the items listed in the invoice dated 16 January 2026 is a 'Recon Engine' for R30 000.00. Among the items listed in the invoice dated 20 May 2024 is a 'Second Hand Engine' for R9 500.00. It follows that, in terms of section 56(3) of the CPA, Sunward ought to have refunded the purchase price to the complainant as demanded by the letter of demand on behalf of the complainant dated 26 February 2024. By failing to refund the purchase price and repairing the vehicle, Sunward contravened section 56(3) of the CPA.
39. It is axiomatic to mention that the provisions of section 56(3) of the CPA do not entitle a supplier to repair goods if, 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.' Accordingly, after the vehicle broke down again, the complainant was entitled to demand a refund from Sunward. He did so via his attorney's letter of demand dated 26 February 2024. As explained above, we are not persuaded that the complainant and Sunward reached a compromise following the complainant's attorneys' demand for a refund.
40. As stated in the preceding paragraphs, the complainant was entitled to demand a repair, a refund, or a replacement from Sunward, MFC, or both. He chose to demand a repair only from Sunward. Sunward repaired the vehicle, but it broke down again six days after the complainant collected it. It follows that, in terms of section 56(3) of the CPA, Sunward is liable for the refund of the sum of R302 898.00. In these proceedings, Sunward did not claim joint and several liability with MFC. In the absence of evidence that

suggests that MFC is jointly and severally liable with Sunward for the defective repairs, we find no basis for holding MFC liable for contravening section 56(3) of the CPA.

41. Concerning the prayers for costs of credit and cancellation of the credit agreement, we find that the CPA does not apply to credit agreements. Also, we cannot order a refund of the other amounts claimed by the applicant for insurance premiums, as these amounts constitute damages that can be awarded only after a proper assessment by a civil court.
42. In view of, among others, the repairs conducted by Sunward, we do not deem it just and equitable to impose an administrative fine in these circumstances. During the hearing, Mr Kutumela fittingly advised the panel that the NCC abandoned the prayer for an interdict.

ORDER

43. Accordingly, for the reasons set out above, the Tribunal makes the following order:
 - 43.1. Sunward contravened section 56(3) of the CPA,
 - 43.2. Sunward's contravention of 56(3) of the CPA is declared prohibited conduct,
 - 43.3. Sunward is hereby directed to refund the complainant the purchase price of the vehicle, being R302 898.00, within seven days of the issuing of this judgment, and
 - 43.4. There is no order as to costs.

Thus, done and signed on 28 September 2026.

[signed]

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Dr A Potwana

Presiding Tribunal Member

Tribunal members, Prof K Moodaliyar and Mr S Hockey concur.

Authorised for issue by The National Consumer Tribunal

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