National Consumer Commission v Herring & Van der Burgh CC t/a Auto King, Milnerton and Another

Case No: NCT/417334/2025/73(2)(b) (National Consumer Tribunal, Centurion)

Date of Judgment: 2 October 2026

1. Summary of the Judgment

1.1. The National Consumer Commission (NCC) received a complaint from Mrs Ncumisa Magoda (the consumer), who purchased a used 2015 model Hyundai H1 motor vehicle from Herring & Van der Burgh CC t/a Auto King, Milnerton (the first respondent) for R328 345.00 on 8 October 2022. The vehicle had 161 230 km on the odometer. The consumer paid a deposit of R90 000.00, with the balance financed by MFC, a division of Nedbank Limited (the second respondent), which paid R246 117.70 to the first respondent and retained ownership of the vehicle under an instalment agreement.

1.2. Over the next six months, the vehicle presented persistent defects. The consumer returned the vehicle to the first respondent on multiple occasions: in October 2022 (oil leak repaired), December 2022 (stabiliser bush rubbers replaced), and February 2023 (turbocharger reconditioned by Phone A Part). Despite these repairs, the vehicle continued to emit smoke and make noise. On 15 March 2023, the consumer took the vehicle to Hyundai Bellville for a diagnostic test, which confirmed an internal oil leak in the turbocharger causing the engine to consume oil, and provided a list of parts requiring replacement totalling R96 658.00. On 16 March 2023, the consumer returned the vehicle to the first respondent, advised them of the diagnosis, left the vehicle in their possession, and requested cancellation of the sale agreement. The consumer

complained to MIOSA, which could not meet her expectations, and she collected the vehicle in October 2023. On 29 February 2024, the consumer paid R21 800.00 for repairs to the cylinder head and valves after petrol was allegedly introduced into the diesel engine.

1.3. The NCC referred the matter to the Tribunal under section 73(2)(b) of the Consumer Protection Act 68 of 2008 (CPA), alleging that the first respondent contravened sections 55(2) and 56(3) of the CPA. The NCC sought orders declaring the contravention prohibited conduct, cancelling the sale agreement, ordering the first respondent to take back the vehicle and refund the consumer's deposit of R90 000.00, all instalments paid to the second respondent, and R21 800.00 in repair costs, imposing an administrative fine of R1 000 000.00, and cancelling the credit agreement with the second respondent.

1.4. The first respondent denied contravening the CPA, arguing that: (i) the incorrect entity (Auto One Motors (Pty) Ltd) had been cited; (ii) the matter was time-barred under section 116(1)(a); (iii) the vehicle was excluded under section 55(6) because the consumer was informed it was a high-mileage used vehicle sold without a spare key or service book; (iv) the consumer used the vehicle extensively as a taxi (over 15 000 km in five months); (v) minor issues were repaired at no cost; (vi) the consumer introduced petrol into the diesel engine, causing damage; and (vii) the vehicle was involved in an accident after delivery. The second respondent opposed the relief sought, arguing that it was the legal owner of the vehicle and that the orders sought were not competent as they would deprive it of its property without compensation.

1.5. The Tribunal found that the first respondent contravened sections 55(2)(a), (b) and (c) and 56(3) of the CPA. Key findings included:

1.5.1. Incorrect citation: The Tribunal rejected the argument that the application should be dismissed because the wrong entity was cited. The Tribunal found that the incorrect identification of a party is not a bar to amendment, that both entities were closely associated and operated

jointly, and that the first respondent was always aware of who the supplier was. The citation was amended to reflect Herring & Van der Burgh CC t/a Auto King, Milnerton.

1.5.2. **Discrepancies in the NCC's papers:** The Tribunal noted inconsistencies between the NCC's affidavit and its investigation report, and adjudicated the sequence of events based on the first respondent's version and documentary evidence. However, the Tribunal held that these discrepancies did not warrant dismissal, as the proceedings before the Tribunal are informal and inquisitorial, and the referral was complete and valid without the affidavit.

1.5.3. **Section 55(6) exclusion:** The Tribunal rejected the first respondent's argument that the vehicle was excluded under section 55(6). The exclusion only applies to section 55(2)(a) and (b), not (c) and (d). The Tribunal held that for a vehicle to be excluded, it would need to be in a condition requiring repair before normal use (e.g., accident-damaged, written-off, or unroadworthy). Age, high mileage, and absence of a spare key or service book are not sufficient to exclude a vehicle from the provisions of section 55(2)(a) and (b).

1.5.4. **Accident allegation:** The Tribunal found no evidence to support the first respondent's allegation that the vehicle was involved in an accident after delivery. The first respondent's own DEKRA Condition Report attributed minor dents, scratches, and chip marks to normal wear and tear.

1.5.5. **Fuel contamination:** The Tribunal accepted that the consumer introduced petrol into the diesel engine, causing damage, but found that this event occurred in February 2024, approximately sixteen months after delivery, and fell outside the implied warranty in section 56. It did not account for the mechanical issues experienced in the first six months after delivery.

1.5.6. **Defect and contravention:** The Tribunal found that the vehicle had a persistent oil leak that rendered it defective at the time of sale. The vehicle was of a quality less acceptable than persons would generally be reasonably entitled to expect, and was less useful, practicable, or safe than reasonably expected. It was also not usable and durable for a reasonable period. The first respondent contravened section 55(2)(a), (b) and (c). No evidence was led to prove a contravention of section 55(2)(d).

1.5.7. **Section 56(3):** Within three months of repairing the vehicle, the same oil leak persisted, and a further mechanical fault (turbocharger) was reported. The first respondent was obliged to replace the vehicle or refund the consumer, but instead continued repairing. By failing to replace or refund, the first respondent contravened section 56(3)(a) and (b).

1.5.8. **Relief and jurisdiction:** The Tribunal found that the consumer was entitled to relief under section 56(3) as early as November 2022. The Tribunal cancelled the sale agreement and ordered the consumer to surrender the vehicle to the first respondent. The Tribunal found that the second respondent's instalment agreement fell short of the statutory definition of an instalment agreement in the absence of a sale agreement and possession of the vehicle, and therefore had to be set aside. The Tribunal exercised its wide discretion under section 4(2)(b)(ii)(bb) of the CPA and section 150(i) of the National Credit Act 34 of 2005 (NCA) to make appropriate and innovative orders. The first respondent was ordered to refund the consumer's deposit of R90 000.00 and to repay the second respondent R246 117.70. The Tribunal held that any claim for instalments, insurance premiums, or repairs would amount to a claim for damages, which the Tribunal could not award under section 56(3); the consumer could approach the Chairperson of the Tribunal for a certificate under section 115(2) to claim damages in a civil court.

1.5.9. **Administrative fine:** The Tribunal considered the factors in section 112(3) of the CPA and imposed an administrative fine of R100 000.00 on the first respondent. The Tribunal found that the contraventions were serious, caused inconvenience and financial prejudice to the consumer, and demonstrated a disregard for the CPA, although there was no evidence of malice or prior contraventions.

1.5.10. **Costs:** The Tribunal confirmed that it is not empowered to award costs in matters referred to it by the NCC under section 73(2)(b), as the NCC acts in the public interest in pursuing its statutory obligation to enforce consumer rights. Each party was ordered to bear its own costs.

2. Impact of this Case

This case reinforces and clarifies several important principles under the CPA and the NCA. Key effects include:

2.1. **Incorrect citation is not fatal:** The misidentification of a party in Tribunal proceedings is not a bar to amendment, particularly where the parties are closely associated, the correct party was aware of the proceedings, and no undue prejudice would result. The Tribunal's informal and inquisitorial nature favours substance over form.

2.2. **Section 55(6) exclusion is narrowly construed:** The exclusion from section 55(2)(a) and (b) for goods sold in a specific condition applies only to vehicles that require repair before normal use (e.g., accident-damaged, written-off, or unroadworthy). Age, high mileage, and absence of a spare key or service book do not exclude a vehicle from the statutory warranty.

2.3. **Persistent defects render goods defective:** A persistent oil leak present at the time of sale, which continues after repairs, renders a vehicle defective under section 53(1)(a)(ii). The vehicle is less acceptable, less

useful, less practicable, and less safe than consumers are reasonably entitled to expect.

2.4. **Section 56(3) is mandatory and non-discretionary:** Once a repair has been effected and the defect persists or a further defect is discovered within three months, the supplier must replace the goods or refund the purchase price. The supplier is not entitled to continue repairing indefinitely, and the consumer is not required to accept further repairs.

2.5. **Credit providers' rights are protected through innovative orders:** The Tribunal acknowledged the lacuna in the CPA regarding credit providers' rights when goods are returned to suppliers. Using its wide discretion under section 4(2)(b)(ii)(bb) of the CPA and section 150(i) of the NCA, the Tribunal ordered the supplier to repay the credit provider the amount it paid for the vehicle, thereby protecting the credit provider from being left without its asset or its money.

2.6. **Damages are not recoverable under section 56(3):** The Tribunal cannot order a refund of instalments, insurance premiums, or repair costs under section 56(3). These amount to damages, which may only be claimed in a civil court after obtaining a certificate under section 115(2) of the CPA.

2.7. **Administrative fines are warranted for serious contraventions:** A R100 000 fine was imposed for contraventions that were serious but not malicious, continuous, or repeated, and where there were no prior contraventions. This demonstrates that fines are punitive and proportionate to the nature and gravity of the conduct.

2.8. **No costs in NCC referrals:** The Tribunal confirmed that it lacks the power to award costs in matters referred to it by the NCC under section 73(2)(b), as the NCC acts in the public interest to enforce consumer rights, not to seek redress for a personal civil right.

2.9. Consumers' rights are paramount: The case reaffirms that consumers have binding legal rights under the CPA to receive goods that are of good quality, in good working order, free of defects, and usable and durable for a reasonable time, and that suppliers who fail to comply with their statutory obligations will face legal consequences.