

SOUTH AFRICA / JUDGMENT

Mbonani v Cars for Africa (Pty) Ltd (NCT/303321/2023/75(1)(b)) [2024] ZANCT 63 (25 November 2024) [2024] ZANCT 63

COURT

National Consumer Tribunal

BEFORE

M Peenze, A Potwana, S Mbhele

CASE / FILE NUMBER

NCT/303321/2023/75(1)(b)

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IN THE NATIONAL CONSUMER TRIBUNAL

HELD IN CENTURION

Case number: NCT-303321-2023-75(1)(b)

In the matter between:

ZODWA EVA MBONANI

APPLICANT

And

CARS FOR AFRICA (PTY) LTD

RESPONDENT

Coram:

Dr M Peenze Presiding Tribunal Member

Dr A Potwana Tribunal Member

Mr S Mbhele - Tribunal Member

Date of Hearing - 21 November 2024

Date of Judgment - 25 November 2024

JUDGMENT AND REASONS

1. The applicant is Zodwa Eva Mbonani (the applicant), a consumer as defined in section 1 of the Consumer Protection Act, 68 of 2008 (the CPA). Adv Nganeo Nemukula, instructed by M Ningiza Attorneys Inc., represented the applicant at the hearing.
2. The respondent is Cars for Africa (Pty) Ltd (the respondent), a supplier as defined in section 1 of the CPA. Mr Yenzokhule Maphosa, an attorney from Naidoo & Roelof Attorneys, represented the respondent at the hearing.

TERMINOLOGY

3. A reference to a section in this judgment refers to a section of the CPA.
4. A reference to a rule refers to the “Regulations for matters relating to the functions of the Tribunal and Rules for the conduct of matters before the National Consumer Tribunal”.^[1]

TYPE OF APPLICATION

5. The applicant referred this matter to the National Consumer Tribunal (the Tribunal) in terms of section 75(1)(b). The applicant first referred his complaint to the National Consumer Commission (the NCC), who, after an assessment, concluded on 23 May 2023 that the redress sought by the applicant could not be provided in terms of the CPA.
6. Regarding section 75(1)(b), if the NCC issued a notice of non-referral as it did in the present matter, the complainant may refer the matter directly to the Tribunal, with leave of the Tribunal. The Tribunal granted and issued such leave on 22 October 2024.

FACTUAL

BACKGROUND

7. The complaint's essence is that the respondent allegedly sold the applicant a defective pre-owned 2017 Renault Kadjar Blaze (the vehicle) on 16 March 2022.
8. The respondent provided various services at the applicant's request. The applicant did not allege that services were provided poorly. Her allegations were limited to the infringement of her right to receive a vehicle free from defects.
9. At collection, the vehicle's odometer indicated approximately 99,276 km.^[2] The applicant collected the vehicle on 17 March 2022. As documented in the sale- and instalment agreement (the instalment agreement) concluded with Standard Bank Limited (Standard Bank), the purchase price was R198,202.50. No purchase agreement was signed with the respondent.
10. According to the applicant, she noticed warning lights on the dashboard illuminated. On 30 May 2022, she requested the respondent to attend to the warning lights. On 1 June 2022, the respondent advised her to collect the vehicle. Despite the respondent's numerous attempts to rectify the mechanical issues, the warning lights on the dashboard remained.

11. Between March and July 2022, the applicant completed about 20,000 km.
12. On 26 July 2022, the applicant made an insurance claim with Guardrisk, complaining of a wheel bearing on the left front seizing up. This claim was repudiated, as complete hub assemblies were not covered under the wheel bearing component cover.[3]
13. On 27 July 2022, the applicant took the vehicle on her own initiative to Rivonia Auto Expert Bosch Car Service to strip and replace the cylinder head.[4] The quotation outlined the required repair of the turbo, fuel pump, and boost pipe, among other things. The quoted repairs amounted to R130,439.86.[5]
14. When the warning signs were illuminated again on the dashboard in August 2022, the respondent advised the applicant to take the vehicle for a service. The applicant took the vehicle to Car Service City Springs, who confirmed per email as follows on 23 August 2024:
“Please find attached photos of the suspension of the above vehicle. As per retailer where vehicle was bought from its only control arms. The check on this vehicle was not done before it was sold to customer with accident damaged. The defect found is that the Left Front shock is bent, stabilizer bar, and lower control arm. Steering rack boot torn. With the crossmember also been damaged and whelded, causing the stabilizer bar to rub against the subframe and causing the noise when driving.”[6]
15. The applicant alleged that mechanical defects existed at the date of purchase, which the respondent concealed. The respondent denied that the vehicle was defective or previously involved in an accident. It also outlined that the applicant did not return the vehicle for a refund within the first six months and that the repairs requested were completed to the satisfaction of the consumer.
16. On 20 September 2022, following a tow-in, CSC Benoni completed another inspection on the vehicle as part of an insurance claim. This was done at the applicant's request.[7] The vehicle is still with CSC Benoni.[8]
17. After considering the applicant's complaint, the Motor Industry Ombudsman of South Africa made a finding unfavourable to the applicant, as it found that the applicant repaired the vehicle on her own, nullifying the six-month implied statutory warranty. The NCC confirmed this finding.
18. Unhappy with the NCC's finding, the applicant requested leave to refer her complaint to the Tribunal on 1 February 2023. The leave to refer ruling was issued on 22 October 2024.
19. The applicant alleges the contravention of sections 55(2)(a) and (b) read with section 56. The relief sought in terms of section 56 is for an order directing the respondent to refund the applicant the purchase price and all costs involved.

THE RELEVANT LEGAL PROVISIONS

20. In terms of section 55(2)(a) and (b), every consumer[9] has a right to receive goods reasonably suitable for the purpose for which they are generally intended, of good quality, in good working order, and free of defects.
21. Section 56 deals with an implied warranty of quality. Subsection (2) states that within six months after delivery of any goods to a consumer, the consumer may return the goods to the supplier without penalty and at the supplier's risk and expense if the goods fail to satisfy the requirements and standards contemplated in section 55. The supplier must then, at the election of the consumer, either repair or replace the failed, unsafe, or defective goods or refund the consumer the price paid by the consumer for the goods.
22. If a supplier repairs any goods or any component of any such goods and the failure, defect, or unsafe feature has not been remedied within three months after that repair, section 56(3) outlines that the supplier must replace the goods or refund the consumer the price paid by the consumer for the goods.

REQUEST FOR A POSTPONEMENT

23. At the hearing on 21 November 2024, the applicant requested a postponement, outlining her intention to obtain and call an expert witness to assist the Tribunal. The respondent opposed the request for a postponement, arguing that the applicant was dominus litis in this matter, which then was set down after the pleadings closed. A postponement would result in financial jeopardy for the respondent, given that lawyers were appointed and legal costs incurred.
24. The Tribunal considered the parties' arguments for and against a postponement. The Tribunal was persuaded that a postponement was not in the interest of justice. The applicant had adequate opportunity to give notice per Rule 17B of its intention to call an expert witness. By failing to file a notice per Rule 17B timeously, the request to postpone was brought unexpectedly during the hearing. In the absence of good reasons, the Tribunal found that the applicant did not show good cause for postponing the matter. On a balance of convenience, the prompt finalisation of the matter was found to be in the interest of justice.

POINT IN LIMINE: FAILURE TO CITE STANDARD BANK

Parties'

submissions

25. According to the respondent, the relief requested is not competent as the credit provider, Standard Bank, was not joined in these proceedings.
26. The respondent outlined that the relief requested by the applicant includes a refund of the purchase price and a cancellation of the purchase agreement. As the supplier did not enter into a purchase agreement with the consumer but with Standard Bank, the respondent submitted that any refund should be made to Standard Bank and not the consumer. The

respondent further outlined that Standard Bank is the owner of the vehicle. Therefore, the return of the vehicle to the supplier, as requested by the consumer, will affect Standard Bank's financial interests.

27. The applicant argued that the instalment agreement between Standard Bank and the consumer is irrelevant to the proceedings, as the respondent is not a party to it.[10] According to the applicant, all instalments are paid monthly, and Standard Bank has no interest in the consumer dispute between the parties. The applicant outlined that the application was limited to the supplier's alleged contravention of sections 55 and 56 and that Standard Bank would not be affected by any ruling of the Tribunal.

The law

28. Section 5(2)(d) of the CPA reads as follows:

“(2) This Act does not apply to any transaction—

- (d) that constitutes a credit agreement under the National Credit Act, but the goods or services that are the subject of the credit agreement are not excluded from the ambit of this Act”.

29. Section 127 of the National Credit Act, 35 of 2005 (the NCA) provides for the following process:

“127. Surrender of goods—

- (1) A consumer under an instalment agreement, secured loan or lease—

- (a) may give written notice to the credit provider to terminate the agreement; and

- (b) if-

- (i) the goods are in the credit provider's possession, require the credit provider to sell the goods; or

(ii) otherwise, return the goods that are the subject of that agreement to the credit provider's place of business during ordinary business hours within five business days after the date of the notice or within such other period or at such other time or place as maybe agreed with the credit provider.

- (2) Within 10 business days after the later of-

- (a) receiving a notice in terms of subsection (1) (b) (i): or

- (b) receiving goods tendered in terms of subsection (1)(b) (ii) a credit provider must give the customer rating notice setting out the estimated value of the goods and any other prescribed information,

- (3) Within 10 business days after receiving a notice under subsection (2), the consumer may unconditionally withdraw the notice to terminate the agreement in terms of subsection (1) (a), and resume possession of any goods that are in the credit provider's possession, unless the consumer is in default under the credit agreement."

30. In *MFC (A Division of Nedbank Ltd) v JAJ Botha*,^[11] the court was faced with a similar challenge. As in this matter, the applicant in Botha's case:

"[H]ad purchased the vehicle in question from a car retailership at the instance of the respondent for the purpose of being able to sell it on to the respondent in terms of the instalment sale agreement. The instalment sale agreement is a credit agreement within the meaning of the NCA. The applicant's real role in the sale of the vehicle was thus one of credit provider, and not one of supplier of the goods in question. It is, therefore, unsurprising that the agreement between the applicant and the respondent expressly excluded any warranty by the applicant as to the condition of the vehicle selected by the respondent. The respondent had nevertheless returned the vehicle to the applicant on or about 30 August 2012 because he had become dissatisfied with it on account of its allegedly defective condition... The applicant wishes to deal with the return of the vehicle in terms of s127 of the NCA... The effect of the court acceding to this would be that the vehicle would be sold, and the proceeds credited in reduction of the amount owed by the respondent to the applicant in terms of the aforementioned instalment sale agreement. The respondent, on the other hand, appears to consider that consenting to such a cause and not opposing the current application would compromise what he considers to be his rights in terms of Part H of chap. 2 of the Consumer Protection Act 68 of 2008 ('the CPA'). He maintains that he returned the vehicle to the applicant in the exercise of his rights in terms of s 56(2) of the CPA..."^[12]

31. The court in Botha chose a middle-of-the-road approach. On the one hand, the court held that the NCA was excluded by section 5(2)(d) of the CPA and rejected the respondent's submission that he was covered by section 56(2) of the CPA.^[13] On the other hand, the court held that the applicant had not complied with section 129(1) provisions and adjourned the matter to a future unspecified date pending compliance with section 129(1) of the NCA.^[14]

32. It is understood that Botha's case elicited significant disquiet amongst the ranks of academia. In a joint academic paper penned by Professor Jannie Otto of the University of Johannesburg, Professor Corlia M Van Heerden of the University the following was outlined:^[15]

"[T]he consumer buys a motor vehicle from a motor retailership. He cannot pay the full amount of the purchase price immediately. The motor retailership assists him to apply for finance at a financial institution (for example, a bank). that the motor vehicle is financed and an installment agreement (previously called an installment sale agreement) is concluded between the consumer and the bank. Within six months after the delivery of the vehicle, the consumer starts to experience problems with it and it becomes too clear that the vehicle is of an unsatisfactory quality, cannot be used for the purposes for which it was bought, and is defective... If the customer attempts to hold the motor retailership responsible, the retailership argues that it no longer owns the vehicle and that the bank should be

approached. Indeed, the retailership argues that the bank was the seller of the vehicle - which it often is. Should the consumer attempt to hold the bank responsible, the bank refers to the instalment agreement in which any warranty as to the condition of the vehicle is expressly excluded, and the bank also argues that it only financed the deal. After all, the bank is not a seller of vehicles in the first place. To make matters worse, it seems that uncertainty over the application of two very important pieces of consumer protection legislation [National Credit Act 34 of 2005 and the Consumer Protection Act 68 of 2008] may leave the consumer without adequate protection...”[16]

33. In *Platinum Wheels (Pty) Ltd v National Consumer Commission and Another* (the Platinum matter),[17] the High Court confirmed that, where a purchase agreement was concluded between the consumer and the supplier, the consumer could lodge a complaint under sections 55 and 56 against the supplier despite the supplier not being a party to the instalment agreement. The court confirmed that the CPA's provisions apply to the purchase agreement between the consumer and supplier.[18] This principle was also applied in *Motus Corporation (Pty) Ltd t/a Zambezi Multi Franchise (Renault) South Africa v Abigail Wentzel*[19] (the Motus matter).
34. Consequently, the question is what is the nature of the transaction between the applicant and the respondent? Further, what is the nature of the transaction between the applicant and the credit provider? Is section 5(2)(d) applicable? If applicable, an enquiry into the applicability of section 56 to “the goods” will be triggered, together with scrutiny of sections 5(1)(d) and 5(5). These questions are relevant to address the respondent's in limine argument and determine the Tribunal's authority to deal with the application.

Facts

before the Tribunal

35. It is common cause that the respondent, who is a retailer and supplier, entered into a sale agreement with Standard Bank. the applicant and Standard Bank then concluded a “Credit Transaction Instalment Sale Agreement” (the instalment agreement). Under this agreement, Standard Bank is the vehicle's present owner and seller to the applicant.
36. No evidence was placed before the Tribunal that the respondent sold the vehicle to the consumer. The respondent did not make an “offer to purchase” or conclude a “sale agreement” with the applicant.
37. The evidence further confirms that the respondent is not a party to the instalment agreement between Standard Bank and the applicant. Per this instalment agreement, both the applicant and the respondent acted as agents of Standard Bank in the purchase of the vehicle:

“3. Sale

3.1 We [Standard Bank Limited] hereby sell the Goods to you, and you purchase the Goods from us on the terms and conditions set out in this Agreement

4. Ownership of the Goods

4.1 We will be the owner of the Goods for the duration of this Agreement.

4.2 Ownership of the Goods will only pass to you once you have paid all amounts due and complied with of your obligations in terms of this Agreement.

5. Delivery and risk in the Goods

5.1 You have selected the Goods from the Supplier and we have no knowledge of the purpose for which the Goods are to be used.

5.2 You must inspect the Goods on our behalf, and if you are satisfied that the Goods are free of defects, you must sign the Authority to Release the Goods and give it to the Supplier. By doing this, you are instructing us to pay the Supplier for the Goods.

5.3 You will act as our agent when taking delivery of the Goods so that we become the owner of the Goods. The Supplier will act as our agent for the purpose of delivering the Goods to you.

5.4 The Supplier and you will only act as our agent for the purposes set out in this Agreement.

5.5 Subject to your rights in the CPA, you agree that we have made no warranties or representations to you as to the state, condition or fitness of the Goods. We are not the manufacturer of the Goods, and we have not inspected the Goods and could, therefore, not reasonably have discovered any defects in the Goods.

5.6 The risk in the Goods will pass to you when you take delivery of the Goods or when you sign this Agreement, whichever is earlier.”[20]

Consideration

38. Although the consumer, selected the vehicle and negotiated the purchase price, the retailer did not sell it to the consumer. As it is common cause that no purchase agreement was concluded between the consumer and the retailer, the role of the consumer in this matter remained that of Standard Bank’s agent. The retailer sold the vehicle to Standard Bank for cash, and Standard Bank took over ownership of the vehicle.

39. The Tribunal turns to consider the various contractual relationships relevant in this matter.

The purchase agreement between Standard Bank and the retailer

40. Standard Bank is a juristic person whose asset value or annual turnover equals or exceeds the threshold value determined by the Minister (R2 million). As the CPA determines that a juristic person whose annual turnover exceeds the threshold cannot be a consumer, the sales agreement between the bank and the retailer is not a consumer agreement.[21] Consequently, such a sales agreement will not be protected by the CPA.

41. If a sales agreement is not protected by the CPA, a consumer cannot claim the infringement of a consumer right as outlined in the CPA and can also not allege prohibited conduct per the CPA. Common law will regulate the sales agreement, and civil action must be instituted if a person believes it could prove a claim in a civil court. The Tribunal does not have jurisdiction to adjudicate civil or contractual complaints.
42. The evidence confirms that Standard Bank purchased the goods from the respondent in a common law sales agreement not covered by the CPA. Despite Standard Bank using the applicant as an agent to confirm the quality of the vehicle, the applicant is not bound by such a sales agreement, except to the extent that the applicant fulfilled the role of an agent. Accordingly, the applicant can rely on the rights and liabilities generally attached to the role of an agent.

The instalment agreement between Standard Bank and the consumer

43. In the subsequent instalment agreement concluded between Standard Bank and the applicant, Standard Bank retained ownership to provide security for its debt.[22]
44. As the instalment agreement is excluded from the CPA in terms of section 5(2)(d), the Tribunal is persuaded that the NCA, not the CPA, must regulate the rights and responsibilities outlined in the instalment agreement. This means that the applicant, as a consumer, cannot hold Standard Bank accountable in terms of the CPA for selling a defective vehicle, and the Tribunal will not have the statutory authority to consider a complaint of prohibited conduct against

Standard Bank. The applicant may consider instituting civil proceedings to claim damages and other relief.

45. The Tribunal understands the unfortunate predicament of consumers who seem caught in the legalities of purchasing vehicles through credit providers. Unfortunately, as a creature of statute, the Tribunal can only adjudicate within the constraints of its authority as prescribed in the NCA and the CPA. Although the spirit of the CPA necessitates that consumers should be able to hold any supplier, including banks, accountable for selling vehicles, the definition of instalment agreements allows for the sale of goods to occur outside the protection of the CPA. A sales and instalment agreement that meets

the criteria of a credit agreement as set out in section 8 of the NCA (frequently only referred to as an instalment agreement)[23] is explicitly excluded from the protection of the CPA.[24]

46. However, there are two specific scenarios in which a consumer could file a complaint of prohibited conduct under the CPA despite having bought a vehicle through an instalment agreement:

- (i) Complaint against the credit provider:

Suppose the credit provider is also a supplier, as defined in the CPA. In that case, it remains responsible for ensuring that a vehicle sold as part of an instalment agreement is of good quality. Reliance only on the confirmation by the consumer as a layperson will, in such circumstances, circumvent a supplier's responsibilities under the CPA. To succeed with such a complaint, the consumer must provide evidence that the credit provider supplies^[25] vehicles in the ordinary course of business and that they are accountable as suppliers^[26] under the CPA. This complaint will fall under the qualification relating to "goods" in section 5(2)(d) of the CPA;

(ii) Complaint against the supplier

If the consumer signed an offer to purchase with a supplier (before concluding an instalment agreement), the consumer would enjoy protection under sections 55 and 56 of the CPA. As confirmed in the Platinum matter, a complaint of prohibited conduct against the supplier may be considered under the CPA based on the offer to purchase despite the existence of an instalment agreement with a credit provider to which the supplier is not a party.

Finding

47. In this case, the applicant failed to provide evidence that Standard Bank is a supplier as defined in the CPA and further failed to provide evidence that she signed an offer to purchase with the respondent. She relied only on the instalment agreement with Standard Bank to hold the supplier accountable for alleged defects in the vehicle. Such reliance is misplaced. As a result, the dicta in the Platinum and Motus matters do not apply. On this basis, the application stands to be dismissed.

Conclusion

48. To bring a complaint of prohibited conduct before the Tribunal, the consumer must provide evidence that a consumer agreement^[27] was concluded or that the exception outlined in section 5(2)(d) applies to the instalment agreement. Suppose a consumer had entered a purchase agreement with the supplier and an instalment agreement with the bank. In that case, the consumer may apply (as a user of the goods) for an order of prohibited conduct against the supplier. Such an application will be based on the purchase agreement that formed the basis of the sale. If the Tribunal then finds that the vehicle was indeed defective, a further order directing a refund will be competent if the bank, as the owner of the vehicle, is cited.
49. If no purchase agreement was concluded, the consumer cannot bring a complaint of prohibited conduct under the CPA against the supplier or retailer. An action against the retailer will not be competent if sole reliance is placed on the instalment agreement because the retailer did not sell the vehicle to the consumer, and the sale to the credit provider was conducted outside the protection of the CPA. As a result, sections 55 and 56 will not apply. Similarly, an action by the consumer against the bank will not be competent under the CPA in these circumstances because the cause of action (namely, concluding the instalment agreement) is excluded from the CPA's protection. The only recourse in such an instance is

to surrender the vehicle under section 127 of the NCA by returning the goods that are the subject of that agreement to the bank's place of business during ordinary business hours within five business days after the date of the notice or within such other period or at such other time or place as may be agreed with the credit provider.

50. In this case, the applicant failed to provide evidence that the vehicle was bought from the respondent. Accordingly, the Tribunal is persuaded that it has no statutory jurisdiction to consider the respondent's sale of an allegedly defective vehicle.

51. Standard Bank, as the owner of the goods,[28] and the contracting party in the instalment agreement has a direct interest in the applicant's allegation of prohibited conduct

and her request for a refund. The Tribunal has no jurisdiction to order the repayment of the purchase price where the financing bank is the owner of the vehicle and has not been cited in the proceedings.

52. Other than confirming that section 5(2)(d) applies by virtue of law to goods sold and financed in contracts involving instalment agreements governed by the

53. NCA, the Tribunal makes no ruling regarding the merits of the matter.

ORDER

53. In the result, the Tribunal makes the following order:

53.1. The application is dismissed; and

53.2. There is no cost order.

(signed)

DR. MC PEENZE

PRESIDING MEMBER

Tribunal members Dr A Potwana and Mr S Mbhele concur.

[1] Published in GN 789 in GG 34405 of 29 June 2007.

[2] Page 40 of the record.

[3] Page 78 of the record.

[4] Page 75 of the record.

[5] Page 76-77 of the record.

[6] Page 55 of the record.

[7] Page 25 of the record

[8] Page 79 of the record.

- [9] Section 1 of the CPA defines a consumer in respect of any particular goods or services as: (a) A person to whom those particular goods or services are marketed in the ordinary course of the supplier's business; (b) A person who has entered into a transaction with a supplier in the ordinary course of the supplier's business, unless the transaction is exempt from the application of this Act by section 5
- (2) or in terms of section 5 (3); (c) If the context so requires or permits a user of those particular goods or a recipient or beneficiary of those particular services, irrespective of whether that user, recipient or beneficiary was a party to a transaction concerning the supply of those particular goods or services; and (d) A franchisee in terms of a franchise agreement, to the extent applicable in terms of section 5(6)(b) to (e).
- [9] Section 1 of the CPA defines a consumer in respect of any particular goods or services as:
- (a) A person to whom those particular goods or services are marketed in the ordinary course of the supplier's business;
- (b) A person who has entered into a transaction with a supplier in the ordinary course of the supplier's business, unless the transaction is exempt from the application of this Act by section 5
- (2) or in terms of section 5 (3);
- (c) If the context so requires or permits a user of those particular goods or a recipient or beneficiary of those particular services, irrespective of whether that user, recipient or beneficiary was a party to a transaction concerning the supply of those particular goods or services; and
- (d) A franchisee in terms of a franchise agreement, to the extent applicable in terms of section 5(6)(b) to (e).
- [10] Pages 104 of the record. Also see page 14 of the record.
- [11]
- [2013] ZAWCHC 107.
- [12] Id paras 2 to 3.
- [13] Id para 13.
- [14] Id para 19,2.
- [15] Barnard, Otto and van Heerden "Redress in terms of the National Credit Act and the Consumer Protection Act for defective goods sold and finance in terms of an instalment agreement"
- (2014) 24 SAMLJ 247-248.

[16] Id page 247 -248.

[17] (A261/2021) [2022] ZAGPPHC 831 (2 November 2022).

[18] Ibid, paras 49-55.

[19]

[2021] ZASCA 40.

[20] Page 301 of the record.

[21] A “consumer agreement”, as defined in section 1 of the CPA, means an agreement between a supplier and a consumer other than a franchise agreement.

[22] See *Roshcon v Anchor Auto Body Builders* 2014 (4) SA 319 (SCA), where the Court held that “commercial arrangements directed at finance houses securing their interests by taking ownership of the property that is the subject of a financing agreement, serve an entirely legitimate commercial purpose”

(at 334 E).

[23] An “instalment agreement”, as defined in section 1 of the NCA, means a sale of movable property in terms of which – (a) All or part of the price is deferred and is to be paid by periodic payments; (b) Possession and use of the property is transferred to the consumer; (c) Ownership of the property either – (i) Passes to the consumer only when the agreement is fully complied with; or (ii) Passes to the consumer immediately subject to a right of the credit provider to re-possess the property if the consumer fails to satisfy all of the consumer’s financial obligations under the agreement; and (d) Interest, fees or other charges are payable to the credit provider in respect of the agreement, or the amount that has been deferred.

[23] An “instalment agreement”, as defined in section 1 of the NCA, means a sale of movable property in terms of which –

(a) All or part of the price is deferred and is to be paid by periodic payments;

(b) Possession and use of the property is transferred to the consumer;

(c) Ownership of the property either –

(i) Passes to the consumer only when the agreement is fully complied with; or

(ii) Passes to the consumer immediately subject to a right of the credit provider to re-possess the property if the consumer fails to satisfy all of the consumer’s financial obligations under the agreement; and

(d) Interest, fees or other charges are payable to the credit provider in respect of the agreement, or the amount that has been deferred.

[24] Section 5(2)(d) of the CPA.

[25] “Supply”, when used as a verb in relation to goods, is defined in section 1 of the CPA as inclusive of selling, renting,

exchanging and hiring of such goods in the ordinary course of business for consideration [own emphasis]

[26] A “supplier”, as defined in section 1 of the CPA, means a person who markets any goods or services.

[27] A purchase agreement or Offer to Purchase between a consumer and a retailer or supplier will constitute a consumer agreement.

[28] Page 106 of the record.

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