

SOUTH AFRICA / JUDGMENT

National Consumer Commission v Supertech Motor Holdings (Pty) Ltd trading as BMW (NCT/335480/2024/73(2)(b)) [2024] ZANCT 27 (11 September 2024) [2024] ZANCT 27

COURT

National Consumer Tribunal

BEFORE

N Maseti, A Potwana, C Ntsoane

CASE / FILE NUMBER

NCT/335480/2024/73(2)(b)

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and SAFLII Policy

IN THE NATIONAL CONSUMER TRIBUNAL

HELD IN CENTURION

Case number: NCT/335480/2024/73(2)(b)

In the matter between: NATIONAL CONSUMER COMMISSION APPLICANT and SUPERTECH
MOTOR HOLDINGS (PTY) LTD TRADING AS BMW RESPONDENT

Coram:

Ms N Maseti – Presiding Tribunal member

Dr A Potwana – Tribunal member

Mr C Ntsoane – Tribunal member

Date of hearing: 11 September 2024 via the Microsoft Teams digital platform.

JUDGEMENT AND REASONS

APPLICANT

1. The applicant is the National Consumer Commission, a juristic person established under section 85 of the Consumer Protection Act 68 of 2008 (the CPA).

2. On the day of the hearing, Ms Ntsako Ngobeni (Ms Ngobeni), a legal advisor employed by the applicant, represented the applicant.

RESPONDENT

3. The respondent is Supertech Motor Holdings (Pty) Ltd, a private company trading as BMW. The respondent is a supplier as defined under section 1 of the CPA.
4. On the day of the hearing, Adv Naseeha Patel (Ms Patel), an advocate instructed by A. Bothma- Attorney-At- Law, represented the respondent.

INTRODUCTION

5. On 28 June 2024, the applicant filed the prescribed form for referring complaints to the Tribunal, Form TI.73(2)(b) CPA, with the Tribunal's Registrar. The referral documents were served on the respondent's attorneys electronically on 27 June 2024 by consent. The applicant's documents attach proof of the respondent's consent to be served by electronic mail.
6. In "Part D: Order sought from the Tribunal" of the prescribed form for referring complaints to the Tribunal, Form TI.73(2)(b) CPA, the applicant stated that it seeks an order in the following terms:
 - 6.1. Declaring the respondent's contravention of section 54(1)(b) and (d) as well as (2)(a) and (b) be declared prohibited conduct.
 - 6.2. Interdicting the respondent from engaging in conduct fully detailed in paragraph 6.1 above.
 - 6.3. Directing the respondent to repair the consumer's vehicle and return it to the consumer in at least as good a condition as it was when the consumer made it available to the supplier.
 - 6.4. Directing the respondent to pay an administrative penalty of R1 000 000.00 (One Million Rands).
 - 6.5. Any other appropriate order contemplated under section 4(2)(b)(ii) of the CPA.

FACTS

7. The applicant's founding affidavit is deposed to by Ms Thezi Mabuza, the applicant's Deputy Commissioner (Ms Mabuza). In her affidavit, Ms Mabuza submitted that she deposed to the affidavit pursuant to her having studied the investigation report authored by Mr Shumani Mudau (Mr Mudau). The basis for the applicant's case is that the applicant received a complaint from Ms Nomtshato Cynthia Lutu (the consumer), who alleged that on 6 October 2021, she took her vehicle to the respondent for a quote and possible repairs because it was leaking oil and losing power. The respondent diagnosed the vehicle and provided the consumer with a quotation for R8 439. 36 and R10 733.

62. The consumer authorized the respondent to repair her vehicle for the total sum of R19 974.47.
8. On or about 2 November 2021, the respondent called the consumer and told her to collect the vehicle. On 3 November 2021, the consumer paid for the repairs and collected the vehicle. After driving the vehicle for 10km, she started smelling oil as she did before the repairs were performed and the vehicle emitted smoke. She stopped and contacted the respondent. The respondent sent a driver to attend to the vehicle. The driver discovered that the vehicle's engine was covered in oil and drove it back to the respondent's premises. Upon arrival, the vehicle caught fire, but it was quickly extinguished. The respondent's manager informed her that some of the parts fitted in the vehicle were not original parts and advised her to sell it.
9. Observing that the respondent was not willing to repair her vehicle, the consumer filed a complaint with the Motor Industry Ombudsman of South Africa (MIOSA). The MIOSA recommended that the respondent repair the vehicle. The respondent repaired the vehicle and returned it to the consumer in December
2022. The consumer tried to drive the vehicle and found that it was not working. She requested the respondent to repair it. The respondent diagnosed the vehicle again and discovered that the vehicle could not operate due to a blocked catalytic converter. The respondent issued a quote for R144 820.56 for repairs.
10. The applicant alleges that the supplier is refusing to repair the consumer's vehicle and return it to the consumer in at least the same condition as it was when the consumer made it available to the respondent.
11. Based on the above, the applicant suspected that the respondent had committed prohibited conduct, and Ms Mabuza appointed Mr Mudau and others as inspectors to investigate the activities of the respondent. A copy of the investigation report authored by Mr Mudau is annexed to Ms Mabuza's affidavit.
12. The application is opposed. The essence of the respondent's case is that the consumer's vehicle is a 2008 BMW 323i. In 2010, the vehicle was involved in an accident. In 2011, the vehicle's service contract was suspended by BMW. Non-adherence to the service contract may cause problems at a later stage. As an older model, the vehicle requires further attention. Original parts for such an older model might not be readily available to it conduct repairs, and if the vehicle is out of a motor plan, it might not have been well-maintained.

13. The respondent submits that when the consumer collected her vehicle on 3 November 2021, she was advised that further tests needed to be conducted as the respondent suspected that the DME had been tampered with previously. The consumer responded by saying that she would take the vehicle as it was. After the vehicle caught fire, the consumer acknowledged that a third party had replaced the tappet cover before she brought the vehicle to the respondent.
14. After the consumer filed a complaint with the MIOSA, the respondent complied with the MIOSA recommendations. It attended to the initial repairs, replaced the metal tappet cover with a plastic tappet cover, repaired the oil leaks, and repaired all related burnt and damaged components. It also resprayed the vehicle's bonnet as per the MIOSA's recommendation. The MIOSA further recommended the respondent prepare estimates for any work that needed to be done on the catalytic converters, as the consumer had not paid for this. On 2 December 2022, the respondent provided the quote to the consumer for the replacement of two catalytic converters and a DME control unit.
15. The respondent contends that the consumer's vehicle has since been successfully repaired[1] but the consumer is not willing to take her vehicle back.

THE LAW

16. Section 54(1)(b) and (d) of the CPA states:

“When a supplier undertakes to perform any services for or on behalf of a consumer, the consumer has a right to—

- (a) ...
- (b) the performance of the services in a manner and quality that persons are generally entitled to expect;
- (c) ...
- (d) the return of any property or control over any property of the consumer in at least as good a condition as it was when the consumer made it available to the supplier for the purpose of performing such services having regard to the circumstances of the supply, and any specific criteria or conditions agreed between the supplier and the consumer before or during the performance of the services.”

17. Section 54(2)(a) and (b) of the CPA states:

“If a supplier fails to perform a service to the standards contemplated in subsection (1), the consumer may require the supplier to either—

- (a) remedy any defect in the quality of the services performed or goods supplied; or

- (b) refund to the consumer a reasonable portion of the price paid for the services performed and goods supplied, having regard to the extent of the failure.”

ANALYSIS OF THE EVIDENCE

18. It is undisputed that on or about 2 November 2021, the respondent called the consumer and told her to collect her vehicle. On 3 November 2021, the consumer paid for the repairs and collected the vehicle. After driving the vehicle for 10km, she started smelling oil as she did before the repairs were performed and the vehicle emitted smoke. The respondent repaired the vehicle and returned it to the consumer in December 2022. The consumer tried to drive the vehicle and found that it was not working. The respondent diagnosed the vehicle again and discovered that the vehicle could not operate due to a blocked catalytic converter and issued a quote for R144 820.56 for repairs.
19. In view of the above, the Tribunal finds that the respondent failed to perform the repairs in a manner and quality that persons are generally entitled to expect. It should have conducted a full diagnosis of the faults that needed to be repaired before agreeing to repair the consumer’s vehicle. Secondly, it should not have asked the consumer to collect her vehicle and receive payment whilst knowing fully well that the vehicle still lacked power^[2] and that further tests were still needed. People are entitled to expect that when they take their goods to service providers for repairs, the goods will have been repaired when suppliers contact them to collect those goods and demand payment for the repairs. The undisputed fact that the vehicle manifested the same problems that the respondent was supposed to repair proves that the respondent failed to repair the vehicle in a manner and quality that persons are generally entitled to expect.
20. Concerning the allegation that the respondent contravened section 54(1)(d) of the CPA, we note that the vehicle was not in a drivable condition when it was brought to the respondent. Further, the applicant does not deny that the respondent repaired the damage caused by the fire and resprayed the vehicle. In short, there is no evidence that the vehicle is not in good condition as it was when the consumer made it available to the respondent. Even though the respondent discovered that the vehicle could not operate due to a blocked catalytic converter and issued a quote for R144 820.56, there is no evidence that this defect did not exist before the applicant took the vehicle to the respondent or that the respondent caused this defect.
21. Regarding the allegation that the respondent contravened section 54(2)(a), we note that the applicant did not present any evidence to counter the respondent’s claim that it remedied the defects in the quality of the initial repairs by replacing the metal tappet cover with a plastic tappet cover, repairing the oil leaks, repairing all related burnt and damaged components and also resprayed the vehicle’s bonnet as per the MIOSA’s recommendation.

22. Concerning the allegation that the respondent contravened section 54(2)(b), we record that the applicant has not laid out any factual basis to support this claim. There is no evidence that the consumer required the respondent to refund to the consumer a reasonable portion of the price paid for the services performed and goods supplied, having regard to the extent of the failure.

FINDING

23. The respondent contravened section 54(1)(b) of the CPA.

CONSIDERATION OF AN APPROPRIATE ADMINISTRATIVE FINE

24. The applicant wants an administrative fine to be imposed on the respondent. The respondent argues that an administrative fine is inappropriate since it always tried to assist the consumer and did the necessary repairs. We disagree with the respondent. If it had properly diagnosed the faults from the onset and properly repaired the consumer's vehicle before receiving payment, the consumer would not have been subjected to the inconvenience she suffered.
25. In terms of section 151(1) of the NCA, an administrative fine may be imposed in respect of prohibited or required conduct in terms of the CPA. Such a fine may not exceed the greater of 10% of the respondent's annual turnover during the preceding financial year or R1 000 000.00.
26. Section 112(3) of the CPA outlines the factors the Tribunal must consider when determining an appropriate fine. We shall deal with each of these factors in so far as they relate to the contravention of section 54(1)(b) of the CPA under the sub-headings below.

The nature, duration, gravity and extent of the contravention

27. The applicant alleges that the respondent's conduct is serious because it has shown a blatant disregard for the provisions of the CPA and has severely prejudiced the consumer. The respondent has not presented any response to this allegation.

Any loss or damage suffered as a result of the contravention

28. In view of the uncontroverted evidence that the consumer's vehicle was repaired as initially agreed, there is no proof of any financial loss or damage suffered by the consumer. The respondent has not presented any response to this allegation. We note, however, that the respondent's conduct has prejudiced the consumer, who has not been in possession of the vehicle since at least 6 October 2021.

The behaviour of the respondent

29. The applicant alleges that the respondent showed no regard for the consumer's rights.

The level of profit derived from the contravention

30. There is no evidence of the profit derived by the respondent from contravening section 54(1)(b) of the CPA.

The degree to which the respondent co-operated with the applicant

31. The applicant states that the respondent formally co-operated with the applicant but was unwilling to comply with the provisions of the CPA. The respondent submits that it assisted the consumer with the repairs as recommended by the MIOSA.

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

32. There is no evidence that the respondent previously contravened the provisions of the CPA.

CONCLUSION

33. By failing to repair the consumer's vehicle in a manner and quality that persons are generally entitled to expect before asking the consumer to collect the vehicle and receiving payment on 3 November 2024, the respondent contravened section 54(1)(b) of the CPA. There is no evidence to support the allegation that the respondent contravened sections 54(1)(d) and 54(2) of the CPA. As the applicant did not present evidence to contradict the respondent's evidence that the defective repairs were remedied, there is no basis to order the respondent to repair the consumer's vehicle again.
34. The applicant has failed to lay any basis for an interdict. In any event, the prayer for an interdict is misguided. In *Shoprite Investment Limited v The National Credit Regulator*[3], the full bench of the High Court of South Africa (Gauteng Division, Pretoria) supported a concession that a restraining order would serve no purpose as the legislation, the National Credit Act 34 of 2005, already proscribed the granting of reckless credit. Similarly, in the present matter, an interdict will not serve any purpose as the CPA already prohibits the conduct that the applicant wants to interdict.
35. Based on a conspectus of all the evidence presented to us and having considered the parties' submissions on all the factors prescribed in section 151(3) of the CPA, the Tribunal finds that an administrative fine of R20 000.00 (Twenty Thousand Rands) is appropriate.

ORDER

36. The Tribunal makes the following order:
- 36.1. The respondent contravened section 54(1)(b) of the CPA.
- 36.2. The respondent's contravention of section 54(1)(b) of the CPA is declared prohibited conduct.
- 36.3. The respondent must ensure that all the repairs that the consumer paid for were properly conducted.

36.4. The respondent must allow the consumer to collect her vehicle within seven business days of the date of the issuance of this order without any further charges.

36.5. The respondent must pay an administrative fine in the sum of R20 000.00 (Twenty Thousand Rands) within 30 business days from the date of the issuance of this order into the bank account of the National Revenue Fund, the details of which are as follows:

Bank: The Standard Bank of South Africa

Account holder: Department of Trade and Industry

Branch name: Sunnyside

Branch code: 010645

Account number 3[...]

Reference: NCT/289282/2023/73(2)(b).

36.6. There is no order as to costs.

Thus, done and dated 12 September 2024.

[Signed]

.....

Dr A Potwana

Presiding Tribunal Member

Tribunal members Ms N Maseti and Mr C Ntsoane concur.

[1] See paragraphs 13, 14, 17, 18, 19, and 31 of the respondent's Answering Affidavit.

[2] Paragraph 24 of the respondent's Answering Affidavit.

[3] [2019] ZAGPPHC 956 (18 December 2019) at para 48.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZANCT/2024/27.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/national-consumer-commission-v-supertech-unknown-topic-anct-2024>

Prepared on 11 October 2026 · Esheria