

SOUTH AFRICA / JUDGMENT

National Consumer Commission v Wynberg Used Cars (Pty) Ltd (NCT/278553/2023/73(2)(b)) [2023] ZANCT 41 (29 September 2023)

[2023] ZANCT 41

COURT

National Consumer Tribunal

BEFORE

MC Peenze, P Manzi-Ntshingila, A Potwana

CASE / FILE NUMBER

NCT/278553/2023/73(2)(b)

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IN

THE NATIONAL CONSUMER TRIBUNAL HELD IN CENTURION

Case

Number: NCT/278553/2023/73(2)(b)

In

the matter between:

NATIONAL
CONSUMER COMMISSION
APPLICANT
and
WYNBERG USED CARS (PTY)
LTD
RESPONDENT

Coram:

Dr MC Peenze
-
Presiding Tribunal member
Ms P Manzi-Ntshingila
- Tribunal member
Dr A Potwana
-
Tribunal member
Date
of hearing -
26 September 2023
Date
of judgment - 29 September
2023

JUDGMENT

AND REASONS

THE PARTIES

1. The applicant is the National Consumer Commission, a juristic person established in terms of section 85(1) of the Consumer Protection Act 68 of 2008 (CPA). The applicant is responsible for enforcing the CPA by monitoring the consumer market to ensure prohibited conduct and offences are prevented, detected, and prosecuted.
2. At the hearing, the applicant was represented by Mr Ludwe Biyana, the applicant's senior legal advisor.
3. The respondent is Wynberg Used Cars (Pty) Ltd. The respondent is a private company registered in terms of the company laws of South Africa, with registration number 2016/318221/07, and is defined as a supplier in terms of section 1 of the CPA.
4. The respondent did not oppose this application.
5. The Tribunal was satisfied that the applicant had served the application on the respondent at its last known address in terms of rule 30 (1)
- (b) of the Tribunal rules.[1] As the respondent did not file an answering affidavit, the Tribunal proceeded to hear the application by default.

TERMINOLOGY

6. A reference to a section in this ruling refers to a section of the CPA unless stated otherwise.

TYPE OF APPLICATION

7. This is an application in terms of section 73(2)(b) in which the applicant alleges that the respondent has contravened certain provisions of the CPA and, in doing so, has engaged in prohibited conduct. The applicant seeks an order to that effect and, further, an order to instruct the respondent to repair the complainants' vehicles.

BACKGROUND AND FACTS

8. In 2019, the applicant received three complaints against the respondent.
9. After investigation, the applicant decided to refer two of these complaints to the Tribunal for adjudication.

Pumla Sybil Mredlane (the first complainant)

10. The first complainant purchased a vehicle from the respondent on 26 August 2017 for R165,000.00. The vehicle manifested defects in September 2017. The first complainant returned the vehicle for repairs on 11 September 2017, 7 November 2017, and 12 December 2017. The respondent failed to repair the vehicle.
11. On 26 October 2020, during mediation proceedings, the respondent emailed the first complainant, suggesting that she return the vehicle for a “relook” at the faults initially mentioned. The first complainant returned the vehicle on 4 November 2020 at a towing expense of R62,405.61, but the respondent refused to repair the vehicle.
12. The applicant alleges that the cause of the complaint is the respondent’s refusal to repair the vehicle on 4 November 2020.
13. The applicant submits that the respondent’s failure to repair the vehicle constitutes a contravention of Section 55(2)(a) to (c) and Section 56(2)(a).

Fabian Clyde Baatjies (the second complainant)

14. The second complainant bought a vehicle from the respondent on 21 October 2016 for R64,000.00.
15. The vehicle manifested defects within six months of the transaction, and the second complainant returned the vehicle for repairs in November 2016. The second complainant was furnished with a courtesy vehicle while his vehicle was being repaired.
16. The respondent has, up to date, not repaired the vehicle despite various demands from the second complainant.
17. The applicant alleges that the cause of the complaint is the respondent’s refusal to repair the vehicle, which act is continuing.
18. The applicant submits that the respondent’s failure to repair the vehicle constitutes a contravention of Section 55(2)(a) to (c) and Section 56(2)(a).

SECTION 116(1) TIME LIMITATION

19. The applicant argued that the referral of the two complaints to the Tribunal is not prohibited in terms of section 116(1), as the cause of the complaints rests either in the last request made for repairs or the continuing refusal by the respondent to repair the vehicles.
20. The Tribunal is a creature of statute and must apply section 116(1) as it stands. No provision is made in the section for interrupting the limitation and time constraint.
21. Based on the applicant’s evidence, the original cause for the first complaint arose in September 2017 and the second in November

2016. The cause of action occurred when the vehicles were diagnosed. The results were communicated to the respondent, who failed to repair the vehicle. Accordingly, the cause of action in both instances occurred more than three years before the application to the Tribunal in July 2023.
22. Section 116(1) states that a complaint may not be made to the Tribunal more than three years after the cause of the complaint arose. In past judgments, the Tribunal regarded the period a complaint was with the applicant or an accredited ombud as interruptive of the prescribed period. However, in *First Rand Bank Ltd v Ludick*,^[2] the High Court held that the Tribunal has no power or discretion to extend the three years. The High Court judgment binds the Tribunal,
- which must strictly apply the three-year time bar.
23. The CPA does not contain any provisions or exceptions relating to the cause of action being delayed or only arising after the consumer made a final demand for repairs. Section 116(1) of the CPA is a stand-alone provision and cannot be interpreted in any other way than the plain reading of it.
24. The applicant's submission that the respondent's failure to repair the vehicles constitutes a continuous activity is misguided. The respondent's failure to repair the vehicles occurred in 2017 and 2016, respectively, when it was requested to do so. The failure to repair the vehicles is an isolated incident which has not yet been resolved. The applicant's interpretation of continuous conduct, as provided in section 116(1)(b), is problematic. Such an interpretation would lead to a situation where a consumer can bring any unresolved complaint before the Tribunal at any time, even decades after the fact. This could not have been the intention of the legislature.
25. Therefore, the Tribunal's finding on jurisdiction disposes of the application, and the Tribunal cannot adjudicate on the case's merits.

CONCLUSION

The applicant has brought the application more than three years after the act or omission which constitutes the cause of the two

complaints. The application is timebarred and cannot be adjudicated by the Tribunal.

ORDER

27. Accordingly, the Tribunal makes the following order:

27.1 The application is dismissed, and

27.2 No cost order is made.

[signed]

Dr MC Peenze

Presiding Tribunal member

Tribunal members Ms P Manzi-Ntshingila and Dr A Potwana concur.

[1] Regulations for matters relating to the functions of the Tribunal and Rules for the conduct of matters before the National Consumer

Tribunal, 2007 published under government notice 789 in Government Gazette 30225 on 28 August 2007.

[2] First Rand Bank Ltd v Ludick A 277/2019 High Court of South Africa, Gauteng Division, Pretoria, 18 June 2020 (unreported) at para [16]. Although the matter referred to section 166 of the NCA, section 116 of the CPA has the same wording. Therefore, the same principles are applicable.

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