

SOUTH AFRICA / JUDGMENT

Tingle v Mazda Southern Africa (Pty) Ltd (NCT/227890/2022/75(1)(b)) [2022] ZANCT 47 (7 July 2022) [2022] ZANCT 47

COURT
National Consumer Tribunal

BEFORE
J Simpson

CASE / FILE NUMBER
NCT/227890/2022/75(1)(b)

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IN
THE NATIONAL CONSUMER TRIBUNAL
HELD
IN CENTURION
Case
Number: NCT/227890/2022/75(1)(b) CPA
In

the matter between: SEAN
TINGLE APPLICANT
and
MAZDA
SOUTHERN AFRICA (PTY) LTD RESPONDENT

Coram: Adv
J Simpson – Presiding Tribunal member

RULING

AND REASONS

(LEAVE TO REFER)

APPLICANT

1. The Applicant in this matter is Mr Sean Tingle, a major male (“Mr Tingle” or “the Applicant”).

RESPONDENT

2. The Respondent is Mazda Southern Africa (Pty) Ltd (“Mazda” or “the Respondent”).

APPLICATION TYPE

3. This is an application in terms of Section 75(1)(b) of the CPA.
4. Section 75(1) of the CPA states the following –

“If the Commission issues a notice of non-referral in response to a complaint, other than on the grounds contemplated in section 116, the complainant concerned may refer the matter directly to –

- (a) ...
- (b) the Tribunal, with the leave of the Tribunal.”

JURISDICTION

5. Section 75(5) of the CPA states that:

“The Chairperson of the Tribunal may assign any of the following matters arising in terms of this Act to be heard by a single member of the Tribunal, in accordance with section 31(1)(a) of the National Credit Act:

- (a)...
 - (b) an application for leave as contemplated in subsection (1)(b).”
6. Accordingly, the Tribunal has jurisdiction to hear this application for leave to refer a complaint to the Tribunal as contemplated under section 75(1)(b).
 7. A single member of the Tribunal may hear the application in accordance with section 75(5)(b) of the CPA.

BACKGROUND

8. The complaint is not clearly described and contains no detail as to the sequence of dates and events. It appears Mr Tingle purchased a Mazda 3 (“the vehicle”) from a Mazda dealership on 1 November 2019. He took the vehicle to a Mazda dealership in Woodmead for its various services and for repairs to be done. Over a period of years, Mr Tingle reported various problems with the vehicle’s suspension and steering. Mazda continued to service and repair the vehicle, but Mr Tingle believes a suspension problem remains. He took a video of the alleged rattle that occurs sometimes, and he took the vehicle to a suspension specialist. The date of the video is unclear but appears to have been taken after

2020. The undated, single sentence letter from the suspension specialist only states that there is a slight knocking noise, but it cannot be determined where it is coming from. Mr Tingle alleges the vehicle has a rattle, is unstable and dangerous. He wants the vehicle replaced with one of a similar specification. It is unclear whether this means he wants a new vehicle or another vehicle of similar age and kilometres.
9. Mr Tingle lodged a complaint with the Motor Industry Ombudsman of South Africa (MIOSA) on 28 September 2021. MIOSA issued a recommendation on 18 January 2022, stating that it could not recommend that the vehicle be replaced as the sixmonth period required by the CPA had expired. He lodged a complaint with the National Consumer Commission (NCC) on 7 February 2022. The NCC issued a Notice of Non-referral dated 28 April 2022.
10. Mr Tingle lodged an application for leave in terms of section 75(1)b) of the CPA with the Tribunal on 17 May 2022.
11. Mazda filed an answering affidavit opposing the application. Mazda submits that the dealership repaired all the faults reported over the years. The current problem alleged by Mr Tingle was never reported to Mazda. The dealership did various test drives with the vehicle, and no problems were reported. Mr Tingle is unable to demonstrate or replicate the defect he alleges. The 15 000 km service was done on 18 December 2019, and Mr Tingle reported no problems. The 30 000 km service was done on 21 October 2020. The brake discs were skimmed to cure a brake shudder. On 30 November 2020, the brake discs and pads were replaced. The first time Mr Tingle reported a noise while driving was in June 2021. The front

wheel bearing was replaced. The vehicle had covered 47 115 km by 23 August 2021.

12. Mr Tingle filed a replying affidavit. In summary, he restated that the vehicle has a problem with its suspension.

APPLICATION FOR LEAVE

13. In terms of section 75(1) of the CPA, the Applicant may only refer the matter directly to the Tribunal with leave of the Tribunal.
14. Previously, the Tribunal held formal hearings on leave to refer, and all the parties would be present. In the matter of *Lewis Stores (Pty) Ltd v Summit Financial Partners (Pty) Ltd and Others* (Case no 314/2020) [2021] ZASCA 91 (25 June 2021) SAFLII, the court provided useful guidance to the Tribunal in decisions regarding leave to refer. It held that a formal hearing on leave to refer was unnecessary, there was no test to be applied and the decision to consider leave could not be appealed.

The court held –

“[15] As I have explained, the NCA provides for an expeditious, informal and costeffective complaints procedure. Section 141(1)(b) confers on the Tribunal a wide, largely unfettered discretion to permit a direct referral. The NCA does not require a formal application to be made and it is not necessary for

purposes of the present appeal, nor is it desirable, to circumscribe the factors to which the Tribunal should have regard. There is no test to be applied in deciding whether or not to grant a direct referral to it in respect of a complaint. The purpose of the provision is simply for the Tribunal to consider the complaint afresh, with the benefit of any findings by the Regulator, and to decide whether it deserves its attention. Circumstances which may influence its decision may include the prospects of success, the importance of the issue, the public interest to have a decision on the matter, the allocation of resources, the complainant's interest in the relief sought and the fact that the Regulator did not consider that it merited a hearing before the Tribunal. The list is not intended to be exhaustive."

15. As no test is applied, the Tribunal will consider the matter in the general context of the circumstances as submitted by the parties.

PROVISIONS OF THE CPA

16. Section 54 of the CPA states –

"Consumer's rights to demand quality service

- (1) When a supplier undertakes to perform any services for or on behalf of a consumer, the consumer has a right to—
 - (a) the timely performance and completion of those services, and timely notice of any unavoidable delay in the performance of the services;
 - (b) the performance of the services in a manner and quality that persons are generally entitled to expect;
 - (c) the use, delivery or installation of goods that are free of defects and of a quality that persons are generally entitled to expect, if any such goods are required for performance of the services; and
 - (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.
- (2) 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.
17. Section 55 of the CPA states:

“.....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.....”

18. Section 56 of the CPA states:

“(1) In any transaction or agreement pertaining to the supply of goods to a consumer there is an implied provision that the producer or importer, the distributor and the retailer each warrant that the goods comply with the requirements and standards contemplated in section 55, except to the extent that those goods have been altered contrary to the instructions, or after leaving the control, of the producer or importer, a distributor or the retailer, as the case may be.

- (2) Within six months after the 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, and the supplier must, at the direction of the consumer, either—

- (a) repair or replace the failed, unsafe or defective goods; or
- (b) refund to the consumer the price paid by the consumer, for the goods.”
- (3) 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.

19. Section 53(1)(a)(1) defines a “defect” as:

“(i) any material imperfection in the manufacture of the goods or components, or in performance of the services, that renders the goods or results of the service less acceptable than persons generally would be reasonably entitled to expect in the circumstances; or

- (ii) any characteristic of the goods or components that renders the goods or components less useful, practicable or safe than persons generally would be reasonably entitled to expect in the circumstances;”

20. Section 57 states –

“(1) A service provider warrants every new or reconditioned part installed during any repair or maintenance work, and the labour required to install it, for a period of three months after the date of installation or such longer period as the supplier may specify in writing.

- (2) A warranty in terms of this section—
- (a) is concurrent with any other deemed, implied or express warranty;
 - (b) is void if the consumer has subjected the part, or the goods or property in which it was installed, to misuse or abuse; and
 - (c) does not apply to ordinary wear and tear, having regard to the circumstances in which the goods are intended to ordinarily be used.
21. Sections 55 and 56 of the CPA only apply within six months after purchasing goods. Based on the evidence submitted, Mr Tingle did not report any major defect with the vehicle within the six-month period. It appears he only reported the alleged suspension problem in 2021. There is no evidence of Mr Tingle claiming that the vehicle was defective and must be replaced, repaired, or a refund must be made within the 6-month period after purchase. The repairs done to the vehicle within this period were normal services and repairs. Even if Mr Tingle proved a defect in the vehicle which had occurred within the six-month period, it would not necessarily mean the vehicle is defective as a whole and must be replaced. There is no apparent basis for any claim

under sections 55 and 56 of the CPA, and specifically section 56(3), as alleged by Mr Tingle.

22. Mr Tingle appears to be insisting on a replacement vehicle. There is no reasonable prospect of Mr Tingle being able to prove a claim under sections 55 and 56, possibly allowing such a remedy. The Tribunal considered granting leave for a possible claim under

sections 54 and 57 of the CPA. However, Mr Tingle has not made any submissions relevant to these sections, and the evidence does not support a finding being made. In any event, these sections do not provide for any replacement of the vehicle, only further repair of the specific part which was replaced or repaired. Further, it appears the vehicle was repaired under warranty at the time, and Mr Tingle did not incur any costs.

23. The Tribunal does not see any reasonable prospect of a claim being proven in terms of the CPA.

ORDER

24. Accordingly, for the reasons set out above, the Tribunal makes the following order:

24.1 The application for leave to refer is refused; and

24.2 No order is made as to costs.

DATED ON THIS 7TH DAY OF JULY 2022

Adv J Simpson

Presiding Tribunal Member

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