THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case no. A2024-092517

(1) REPORTABLE: Yes☒/ No ☐
(2) OF INTEREST TO OTHER JUDGES: Yes☒ / No ☐
(3) REVISED: Yes ☒ / No ☐

Date: 15 May 2026 O Ben-Zeev

In the matter between:

NATIONAL CONSUMER COMMISSION	First Appellant
NDLENENI VOLLIE ADOONS	Second Appellant
and	
NATIONAL CONSUMER TRIBUNAL	First Respondent
CAR CARE CLINIC WILROGATE (PTY) LTD	Second Respondent

JUDGMENT

BEN-ZEEV AJ (with whom DU PLESSIS J concurs)

Introduction

[1] The appellants have brought an appeal against the entire judgment and order of the first respondent (the "Tribunal"), in which it dismissed the appellants' claim on

the basis that the referral to the Tribunal was time-barred under section 116(1) of the Consumer Protection Act 68 of 2008 (the “Act”).

[2] The second respondent (the “Supplier”) supplied and installed a second-hand engine in a Land Rover belonging to the second appellant (the “Consumer”) on 25 July 2020. Subsequently, after the Consumer reported to the Supplier some concerns about the vehicle, the engine caught fire on 24 September 2020.

[3] On 13 November 2020 the Supplier informed the Consumer that the vehicle fire was not the result of the Supplier’s work on the vehicle, and that, as a result, it would not provide the Consumer with a remedy contemplated under section 54(2) of the Act. The first appellant (the “Commission”) referred the matter to the Tribunal on 15 September 2023.

[4] The issue to be determined on appeal is when the three-year period under section 116(1) of the Act begins. The Supplier argues that it commences on the last date upon which the Supplier provided the services in question, namely on 25 July 2020. The appellants submit that this period commenced after the Supplier refused to remedy the defect, or refund the Consumer, in accordance with section 54(2) of the Act, namely on 13 November 2020.

Factual background

[5] The second appellant is a consumer for the purposes of the Act in this matter. On 22 June 2020, he noticed a “squeaky sound” while he was driving his vehicle and took his vehicle to the second respondent on 23 June 2020. For the purposes of the Act, the second respondent is a supplier.

[6] The Consumer and the Supplier agreed to resolve the issue by replacing the entire engine of the vehicle with a second-hand engine. This was done by the Supplier, and the Consumer collected the vehicle on 25 July 2020.

[7] The problems with the vehicle persisted after the replacement of the engine. On 27 July 2020 the vehicle was collected by the Supplier for further repairs and was subsequently returned to the Consumer on 1 August 2020. On 4 August 2020 the

vehicle displayed a "restricted performance" warning, which the second appellant brought to the second respondent's attention. The second respondent advised the second appellant to ignore this as it was said to be caused by the sensor.

[8] On 24 September 2020, the engine caught fire while the Consumer was driving the vehicle, and the Consumer immediately brought it to the Supplier's attention. The vehicle was towed to the Supplier's workshop, and the Supplier undertook to submit a claim under its own liability insurance.

[9] On 13 November 2020, the Consumer received an email with an assessment report that allegedly cleared the Supplier of any wrongdoing. The Consumer, dissatisfied with this outcome, first approached the Ombudsman for Short-Term Insurance, South Africa Consumer Complaints, and the Motor Industry Ombudsman of South Africa ("MIOSA"). When the matter was still not resolved, he lodged a complaint with the first appellant (the "Commission") on 12 May 2021. The Commission appointed Mr Madzhie Ramalamula as an investigator to this matter on or about 1 August 2022.

[10] The Commission concluded its investigation on 9 September 2023. It found the Supplier in breach of section 54(1)(b) and (c) read together with section 54(2)(a) of the Act, in that the services that it provided were not in a manner or quality that a person is generally entitled to expect and the supplier has refused to remedy the defect in the quality of services performed, or refund the consumer a reasonable portion of the price paid. The matter was then referred to the Tribunal on 15 September 2023.

[11] The Tribunal first dealt with the question of whether, in the light of section 116(1) of the Act, it had the necessary jurisdiction to hear the matter. The Tribunal rejected the appellants' argument that the cause of complaint arose only on 13 November 2020 (the date on which the consumer received the assessment report), on the basis that section 54 of the Act referred to the performance and the quality of the service that had been received. It found that the service giving rise to the Consumer's complaint was the installation of the engine, which had been carried out between June and July 2020. The Tribunal accordingly held that the Commission had to file its application before July 2023. The Commission failed to do so.

[12] Following the judgment of the High Court in *First Rand Bank v Ludick*,[1] the Tribunal held that it had no power or discretion to extend the three-year period contemplated in section 116(1) of the Act. It dismissed the Commission's application.

The appellants' case on appeal

[13] The appellants submit that the cause of action only emerged when the Consumer was aware of the issue and that he had a potential claim against the Supplier. They argue that the Consumer only learned of the improper installation of the engine on 13 November 2020, when he received the assessment report from the Supplier. In other words, the cause of action arose from the refusal of the Supplier to provide the Consumer with a remedy in terms of section 54(2) of the Act, and not from the failure to perform services in a manner that meets the requirements of section 54(1) of the Act.

[14] The appellants argue that a consumer cannot complain to the Commission before the supplier is required to either remedy the defect or refund the consumer, and the supplier refuses to do so. The appellants submit that this was the position adopted in *National Consumer Commission v Sandton Repo Cars (Pty) Ltd*.[2]

[15] As a further argument, the appellants suggest that the refusal of the second respondent to remedy the defective vehicle constitutes a continuing practice, which has not ceased. Seen in this light, the three-year period under section 116 of the Act has not even commenced as yet.

[16] The appellants note that the Act requires a consumer to first approach the applicable industry ombud and, thereafter, if the matter is still not resolved, to refer the matter to the Commission. The Commission may refer the matter to the Tribunal, or may issue a notice of non-referral, in which event the consumer may apply for leave to approach the Tribunal directly.

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[1] [2020] ZAGPPHC 821 (18 June 2020) ("*Ludick*").

[2] Unreported judgment of the Gauteng Division, Johannesburg, under case no. A2024-074388, dated 26 October 2025 ("*Sandton Repo*").

[17] The appellants argue that it would have been possible for the Tribunal to make an innovative order under section 4(2)(ii)(bb) of the Act, to the effect that "*prescription is interrupted while an Ombud or the Commission is dealing with a complaint*". They submit that this is justifiable if it were to advance, protect, promote and assure the realisation of consumers' rights in terms of the Act. The appellants recognise that section 166 of the Act imposes an absolute bar. They submit, however, that by way of an innovative order under section 4 of the Act, the Tribunal may consider the interruption of the three-year period under certain circumstances.

The Supplier's case on appeal

[18] The Supplier argues that the wording of section 116 of the Act is phrased in prohibitive terms and restrains the power of the Tribunal, and the Tribunal had no authority to extend the three-year period. The Tribunal is a statutory body without inherent jurisdiction and it therefore cannot condone the filing of a referral outside the three-year period prescribed in the Act.

[19] The Supplier argues that the complaint in this matter could only relate to the services that were rendered by it, namely the installation of the replacement engine, and not the disavowal of wrongdoing that was expressed to the Consumer in November 2020. The former, not the latter, was the "cause of complaint" for the purposes of the Act. Among other things, the Supplier relies on the investigation report of the Commission, which found that the cause of the fire was the failure of the Supplier to properly connect the fuel pipe to the engine. It accordingly submits that the period contemplated in section 116 of the Act commenced on 25 July 2020.

[20] However, during argument the Supplier conceded that if the defect in the installation of the engine had come to the Consumer's attention only on 24 September 2020, when the engine had caught fire, then this would be the date from which the three year period commenced, and the Consumer's claim would therefore have been in time.

A statutory time bar is not prescription

[21] In their heads of argument, the appellants conflate a statutory time bar with prescription. The latter is governed under the provisions of the Prescription Act 68 of 1969. The former frequently arises in statutory provisions and, provided that they afford a litigant adequate and fair opportunity to seek judicial redress, are enforceable.

[22] The differences between prescription and a statutory time bar are significant. While section 17(1) of the Prescription Act precludes a Court from raising prescription *mero motu*, the same is not correct in respect of statutory time bars, and, provided that it affords the parties an opportunity to make representations in respect of this matter, a court or tribunal may raise this issue with the parties on its own accord.[3]

[23] Section 12 of the Prescription Act provides that the period of prescription commences as soon as the debt is due, subject to certain provisos. Prescription will only commence to run once the creditor has knowledge, or, exercising reasonable care could have acquired knowledge, of the identity of the debtor and the facts from which the debt arises. The completion of prescription will also be delayed by a period of a year if any of the circumstances contemplated in section 13 of the Prescription Act exist.

[24] Importantly, sections 14 and 15 of the Prescription Act provide that prescription will be interrupted, either by the express or tacit acknowledgement of liability by the debtor, or by the service of process on the debtor whereby the creditor claims payment of the debt.

[25] Statutory time bars arise from the provisions of the applicable legislation – in this case section 116 of the Act. Provided that a statutory time bar affords a potential claimant sufficient time to initiate proceedings after coming to know of the cause of action, the provision will be constitutionally valid.[4] The appellants have not challenged the constitutionality of this provision.

[3] *Mostert NO v Registrar of Pension Funds and others* 2018 (2) SA 53 (SCA) at paragraphs 33 – 37.

[4] *Brümmer v Minister of Social Development and others* 2009 (6) SA 323 (CC) at paragraphs 50 – 51.

[26] Just as one cannot automatically rely on the provisions of one statute in the interpretation of another, one cannot import the provisions of the Prescription Act into a statutory time bar. Section 116 of the Act must be interpreted in terms of its own text, context and purpose, as seen in the light of the Constitution, and the appellants cannot rely on the provisions of the Prescription Act if they have failed to meet the deadline imposed by section 116.

[27] Because section 116 of the Act constitutes a statutory time bar, it would not be appropriate for the Tribunal to avoid its consequences by way of an innovative order that would "interrupt" prescription. At most, it could be that the power of the Tribunal to make an innovative order includes the power to condone a failure to bring proceedings within the three-year period contemplated in section 116 of the Act.

[28] What complicates the matter is that both the statutory period under section 116 of the Act, as well as the prescription of a debt other than one under section 11(a), (b), or (c) of the Prescription Act, are three years. These are two different time restrictions and if a consumer's complaint also gives rise to a debt for the purposes of the Prescription Act, the consumer would be required not only to bring a claim within the period contemplated under section 116 of the Act, but also ensure that their claim has not prescribed.[5] In such an instance it would therefore be insufficient for the Tribunal to condone the late filing of the claim under section 116 of the Act, as the claim may have also prescribed under the Prescription Act as well. It is not clear whether innovative order powers under the Act are able to declare that a matter has not prescribed, or whether that falls outside of its scope.

[29] In light of the approach I take in this matter, it is not necessary to examine whether or not the Tribunal can make an order condoning a failure to meet the time period set out in section 116 of the Act, or the implications of prescription.

The commencement of the period under section 116 of the Consumer Protection Act

[30] The question in this matter is what conduct on the part of the Supplier constitutes the cause of complaint for the purposes of section 116(1) of the Act. This

[5] *Minister of Safety and Security v De Witt* 2009 (1) SA 457 (SCA).

will determine when the three-year time bar commenced. In particular, is the cause of complaint the act of installation on the part of the Supplier, or the refusal on the part of the Supplier to provide a remedy under section 54(2) of the Act?

[31] There is a third possibility, namely that the cause of complaint is the event that gave rise to the dispute between the parties. In this instance, the relevant date would be 24 September 2020, when the engine of the Consumer's vehicle caught fire. It is however difficult to conceptualise this event as a cause in itself. If the appellants' case is correct and the engine caught fire because of the Supplier's failure to properly install the engine, then the cause of the complaint is the installation of the engine and not the fire itself. The engine catching fire is the consequence of the alleged faulty installation; this event did not in itself bring the complaint into being.

[32] The principles of statutory interpretation are well established. Interpretation is a unitary exercise in which the text, context and purpose are considered simultaneously.[6] The starting point is the grammatical meaning of the words used in the statute, but one does not pit the plain meaning of the words against the context and purpose of the provision.[7]

[33] Statutes must be interpreted purposively and within their context.[8] This means that legislative provisions are interpreted in light of the text of the legislation as a whole. Our Courts have also recognised that context includes, amongst others, the mischief which the legislation aims to address, the social and historical background of the legislation and other related legislation.[9]

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[6] *Road Traffic Management Corporation v Waymark Infotech* 2019 (5) SA 29 (CC) at paragraph 31.

[7] *Independent Community Pharmacy Association v Clicks Group Ltd and Others* 2023 (6) BCLR 617 (CC) at paragraph 238.

[8] *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism* 2004 (4) SA 490 (CC) at paragraphs 89 – 90; *Chisuse and Others v Director-General, Department of Home Affairs and Another* 2020 (6) SA 14 (CC) at paragraph 51.

[9] *Department of Land Affairs and Others v Goedgelegen Tropical Fruits (Pty) Ltd* 2007 (6) SA 199 (CC) at paragraph 53; *Shaik v Minister of Justice and Constitutional Development & Others* 2004 (3) SA 599 (CC) at paragraphs 17 – 18.

[34] Statutes must also be interpreted in a manner that promotes the spirit, purport and object of the Bill of Rights.[10] This means that where there is more than one reasonable interpretation of a statute, the interpretation that better promotes the spirit, purport and object of the Bill of Rights must be preferred.[11] Interpretation should also not result in statutory provisions being rendered nugatory.[12]

[35] In my view, the operative word in section 116(1)(a) of the Act is "complaint". A consumer has three years from the date of the cause of their complaint to refer proceedings to the Tribunal. The question therefore is what act or omission on the part of the Supplier prompted or gave rise to the complaint of the Consumer under the Act.

[36] If one has regard to section 69 of the Act, a complaint is a mechanism by which a consumer may approach the Commission to enforce a right in terms of the Act. The cause for complaint can therefore be understood as a breach of a right under the Act that may be addressed by way of enforcement under section 69.

[37] Chapter 2 of the Act is entitled "Fundamental Consumer Rights". It covers a range of matters that encompass the entire scope of the consumer market. The point at which a complaint arises would depend on the nature of the right that is infringed.

[38] For example, section 8 proscribes discriminatory marketing. Sections 11 and 12 provide for a consumer's right to privacy and restrict unwanted direct marketing. These arise before an agreement is concluded between a consumer and a supplier. An infringement of those rights would immediately give rise to a complaint.

[39] On the other hand, section 16 of the Act provides for a consumer's right to a cooling-off period after direct marketing. Section 16(3) allows a consumer to rescind a transaction resulting from any direct marketing within five business days of the date on which the agreement was concluded, or the date on which the goods were

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[10] *Independent Institute of Education (Pty) Ltd v KwaZulu-Natal Law Society and Others* 2020 (2) SA 325 (CC) at paragraph 2; *Investigating Directorate: Serious Economic Offences and Others v Hyundai Motor Distributors (Pty) Ltd and Others: In re: Hyundai Motor Distributors (Pty) Ltd and Others v Smit NO and Others* 2001 (1) SA 545 (CC) at paragraph 22.

[11] *Wary Holdings (Pty) Ltd v Stalwo* 2009 (1) SA 337 (CC) at paragraph 45.

[12] *National Credit Regulator v Opperman and Others* 2013 (2) SA 1 (CC) at paragraph 41.

provided. The complaint in this instance would arise only after the supplier refuses a consumer's attempt to rescind the agreement in terms of this section.

[40] Similarly, section 17 provides for a consumer's right to cancel advance reservations, bookings, or orders. Section 17(5) prevents a supplier from charging a cancellation fee where the consumer was unable to honour the booking, reservation or order because of a death or hospitalisation of the person for whose benefit the booking, reservation or order was made. A complaint against a breach of this provision could only arise once all of the elements of this provision are met, namely that a supplier charged a cancellation fee against a consumer that failed to honour a booking, reservation, or order, and that the supplier charged a cancellation fee notwithstanding this failure being the result of the death or hospitalisation of the person for whose benefit the booking was made.

[41] Part H of Chapter 2 of the Act deals with the consumer's right to fair value, good quality, and safety. It is notable that section 56 of the Act provides for an implied warranty of quality pertaining to the supply of any goods. In other words, section 56 expressly creates an implied term in a consumer agreement that provides that any goods that are supplied comply with section 55 of the Act. Section 56(2) of the Act expressly provides for what must take place if the goods in question do not meet the standard in section 55: the consumer may return the goods within six months, either for the repair or the replacement of the defective goods, or for a refund.

[42] The fact that section 56(2) sets out an internal process to follow, which affords a specific right to the consumer and imposes a specific obligation on the supplier, suggests that it is an infringement of section 56(2) that gives rise to a complaint in terms of section 69 of the Act, and not the breach of section 55. In other words, although the supply of defective goods is an infringement of section 55 of the Act, the complaint lies against the failure of a supplier to remedy an issue in accordance with section 56(2). If this were not the case, then the supply of defective products would prompt consumers to rely on their remedies under section 69 of the Act instead of first calling upon the supplier to resolve the matter under section 56(2) of the Act. Where a provision sets out the manner in which a specific breach of the Act should be

remedied, that provision should be followed first before the general remedy provisions of section 69 are invoked.[13]

[43] In the same manner that a complaint would therefore fall against a breach of section 56(2) of the Act and not against section 55, I am of the view that a complaint would lie not against a failure under section 54(1) of the Act, but rather against section 54(2). Section 54(2) provides an internal mechanism to address a failure under section 54(1). A complaint under the Act cannot be made against section 54(1) – the mere failure to provide quality service. The complaint must be made against the failure or the refusal of the supplier to rectify the matter under section 54(2).

[44] This position better accords with the purpose and policy of the Act which is set out in section 3. Among other things, this section sets out the purposes of the Act as promoting fair business practices, promoting consumer confidence, empowerment and the development of a culture of consumer responsibility; the provision of a consistent, accessible and efficient system of consensual resolution of disputes arising from consumer transactions, and providing for an accessible, consistent, harmonised, effective and efficient system for redress for consumers. These purposes are better achieved by encouraging consumers to approach suppliers first to address a failure to provide quality services before invoking the more formal dispute resolution machinery in the Act.

[45] The complaint in terms of the Act was prompted by the refusal of the Supplier to remedy the matter. This is what led the Consumer to invoke the machinery of section 69 of the Act.

[46] Properly understood, therefore, the cause of the Consumer's complaint in this matter is not the poor installation of the engine, or the engine subsequently having caught fire in September 2020. These events prompted the Consumer to approach the Supplier for redress under section 54(2), which he did. The cause for the Consumer's complaint under the Act is the Supplier's refusal to provide a remedy to the Consumer. In doing so, the Supplier breached the Act in a manner that left the

[13] *Madrassa Anjuman Islamia v Johannesburg Municipality* 1917 AD 718 at 728.

Consumer with no other option except to invoke the mechanisms under section 69 of the Act.

[47] This Court was confronted with a similar issue in *Sandton Repo*. In that matter the Tribunal had found, among other things, that the appellant had contravened section 55(2) of the Act, which confers on a consumer the right to receive goods that are fit for purpose and free of defects, and section 56(2)(b) of the Act, which allows a consumer to return the good at the expense of the supplier for a refund if the item is not fit for purpose. The Court in that matter held as follows:[14]

> "The complaint in this matter arose not only in the supply of the defective goods but also in the refusal by the appellant to collect the vehicle at its own cost and make the refund to which Ms Mouton was entitled under the Act.
>
> The refusal persists. The vehicle remains uncollected by the appellant and there has been no refund. The purchase price was financed and Ms Mouton has been obliged to continue to pay the instalments due to the financial institution."

[48] The Court did not set out the basis on which it reached this conclusion. If it is both the supply of defective goods and also the refusal of the supplier to collect the vehicle and refund the consumer, then the three-year period under section 116 would commence upon the supply of the defective goods. The refusal to collect the vehicle and refund the consumer follows on that act and is no longer the "cause".

[49] I also have doubts that a refusal under section 56(2) of the Act amounts to a course of conduct or a continuing practice. If a refusal to remedy the matter under section 56(2) is a continuing practice that prevents the three-year period in section 116 of the Act from commencing, a matter falling under section 56 (and similarly a matter falling under section 54 of the Act) would be effectively exempt of the statutory time bar. Once a supplier has refused to remedy the matter, regardless of whether it has a legitimate basis to do so or not, the period in section 116 would effectively be permanently suspended, rendering it effectively nugatory.

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[14] *Sandton Repo* at paragraphs 25 – 26.

[50] The correct position in my view is that the cause of complaint for the purposes of section 116(1)(a) of the Act in this matter is the conduct that enables a consumer to use the mechanisms contemplated under section 69 of the Act. In this instance, and in *Sandton Repo Cars*, this would not have been the defective service or goods, but rather the refusal on the part of the supplier to remedy the matter in accordance with the relevant provision.

[51] This matter is distinguishable from the case in *Ludick* and in *Roopal*.[15] In those matters the issue that prompted the complaint was the conclusion of credit agreements that were reckless under section 80 of the National Credit Act 34 of 2005. Because the issue at hand in those matters was the conclusion of those credit agreements, the period under that statutory time bar would have commenced upon the conclusion of those agreements.

[52] In this matter, however, the Consumer's complaint does not relate to the conclusion of the contract, but to the service provided by the Supplier in terms of section 54 of the Act. In matters falling under section 54 of the Act, the "act or omission" for the purposes of section 116(1) is not merely the rendering of defective services in breach of s 54(1), but rather the failure or refusal on the part of the supplier to provide one of the remedies in s 54(2), when called upon to do so. It is that refusal which, in the scheme of the Act, first entitles a consumer to "complain" in the sense contemplated in section 69 of the Act.

[53] The cause for complaint in this case, therefore, only arose on 13 November 2020, which means that the period under section 116(1)(a) of the Act had not lapsed when the Commission referred the matter to the Tribunal on 15 September 2023. The Tribunal therefore erred in finding that the time period under section 116(1) of the Act had lapsed.

[54] In my view, this complaint falls within the ambit of section 116(1)(a) of the Act, and the complaint was brought in time. It is not necessary to decide whether the refusal

[15] *Roopal N.O. v Mphephu* 2022 ZAGPJHC 1160 (29 November 2022).

of the Supplier constitutes a continuing practice for the purposes of section 116(1)(b) of the Act.

[55] Having taken the view that it did not have jurisdiction to hear the matter, the Tribunal did not hear the matter on the merits. Now that it is clear that the complaint had not lapsed under section 116(1) of the Act, the appropriate remedy is to remit the matter back to the Tribunal.

Costs

[56] This appeal was brought by the Commission on behalf of the Consumer.

[57] In *Biowatch* the Constitutional Court set out the general rule for costs in constitutional litigation. Where the dispute was between a private party and an organ of state, and the organ of state was successful, then each party should bear its own costs.[16] The reasons for this were to diminish the chilling effect against parties seeking to enforce constitutional rights; the public interest in constitutional litigation; and because the state bears the primary responsibility for ensuring that the law and state conduct are consistent with the Constitution.

[58] While this matter was not framed as constitutional litigation, the principles enunciated in *Biowatch* find application here: the question raised was *bona fide* and prompted the ventilation of matters of public importance. It would be appropriate not to mulct the respondent with costs.

[59] Furthermore, it is apparent that while the Consumer acted promptly at every step of the matter, and brought a complaint to the Commission without delay, the Commission itself left the referral of this matter to the Tribunal to the eleventh hour. Had it acted with the expeditiousness that is required of it under section 72(1)(d) of the Act, the question of the Tribunal's jurisdiction would not have arisen at all. The Commission is urged to ensure that its investigations are conducted with speed, not last-minute haste.

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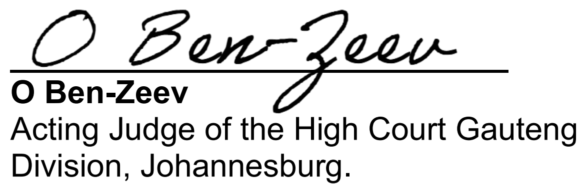
[16] *Biowatch Trust v Registrar, Genetic Resources and others* 2009 (6) SA 232 (CC) at paragraphs 22 – 23.

Order

[60] The following order is made:

1. The appeal is upheld.
2. The judgment and order of the National Consumer Tribunal under case number NCT/287279/2023/73(2)(b) is hereby set aside.
3. The matter is remitted to the National Consumer Tribunal to be heard on the merits.
4. There is no order as to costs.



O Ben-Zeev
Acting Judge of the High Court Gauteng Division, Johannesburg.

Date of hearing:	04 February 2026
Date of judgment:	15 May 2026
For the appellants:	R Nthambeleni SC
For the second respondent:	J W Steyn