

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 2023- 046832

Delete whichever is not applicable

- (1) REPORTABLE: YES/ NO
- (2) OF INTEREST TO OTHER JUDGES: YES/NO
- (3) REVISED: YES/NO

18 September 2025

DATE

SIGNATURE

In the matter between:

LAMBONS (PTY) LTD

Applicant

and

THE NATIONAL CONSUMER TRIBUNAL

First Respondent

THE NATIONAL CONSUMER COMMISSION

Second Respondent

WILHELMINA JOHANNA BERNARDO

Third Respondent

JUDGMENT

M MOKADIKOA-CHAUKE AJ

INTRODUCTION

1. This is a review application wherein the applicant, Lambos (Pty) Ltd ("the applicant"), seeks an order in the following terms:
 - 1.1. That the judgment of the first respondent ("Tribunal"), delivered on 14 April 2023 under case number NCT/239846/2022/100(6)(a), be reviewed and set aside;
 - 1.2. That the Compliance Notice issued by the second respondent ("Commission") on 4 November 2021 in terms of section 100(6)(a) of the Consumer Protection Act 34 of 2005 ("the CPA") be reviewed and set aside, and to the extent necessary, that this Court condones the applicant's non-compliance with section 7 of the Promotion of Administrative Justice Act 3 of 2000 ("PAJA");
 - 1.3. That the first and second respondents be ordered to pay the costs of this application, jointly and severally, the one paying the other to be absolved; and
 - 1.4. That both the Tribunal's ruling and the Commission's compliance notice be declared unlawful administrative acts.
2. The applicant makes it plain that it does not seek a definitive adjudication on the underlying dispute between itself and the third respondent, Ms Bernardo. The latter is joined to these proceedings by reason of the fact that her rights may be implicated, albeit indirectly.

3. The second and third respondent ("Barnado") oppose the application. The essence of their opposition is fourfold:
 - 3.1. That the applicant has failed to comply with the requirements section 7(1) and 9(1) of PAJA;
 - 3.2. That no substantive grounds exist warranting the review of the impugned decisions of either the Commission or the Tribunal;
 - 3.3. That the applicant's founding papers fail to disclose a cause of action in review; and
 - 3.4 That the applicant's delay in instituting proceedings is inordinate and unexplained.

BACKGROUND

4. The material facts are largely common cause and may be summarised thus:
 - 4.1. On 9 February 2012, the third respondent purchased a GWM Steed 2.5 TCI single cab 4x4 motor vehicle from the applicant, operating as a GWM franchise under the trade name Lambons Kimberley. The vehicle was financed through GWM Finance, a division of WesBank, itself a division of FirstRand Bank Ltd.
 - 4.2. Within the first month of purchase, the vehicle manifested numerous mechanical and technical defects, prompting repeated interventions by the applicant between February and November 2012.

- 4.3. The applicant thereafter refused to release the vehicle to the third respondent unless she signed an acknowledgment that the vehicle had been satisfactorily repaired. She declined to do so without first testing the vehicle. The vehicle has since remained in the applicant's possession.
- 4.4. The third respondent lodged a complaint with the second respondent, which referred the matter to the Motor Industry Ombudsman of South Africa ("MIOSA") on 18 March 2014.
- 4.5. MIOSA recommended that the matter be resolved in terms of sections 56 and 20 of the CPA. It recommended further that the applicant inspect the vehicle and, if necessary, refund the purchase price less deductions or assist in calculating the cost of usage.
- 4.6. Following litigation initiated by the third respondent in this Court, the second respondent issued a Compliance Notice on 4 November 2021 pursuant to an order by Nthambeleni AJ.
- 4.7. The Compliance Notice required the applicant either to refund the consumer the purchase price, less permissible deductions under section 20 of the CPA, or to replace the vehicle with one of equivalent value, in accordance with section 56(3).
- 4.8. The applicant received the Compliance Notice on 25 November 2021. It sought an extension in terms of section 101(1)(b) of the CPA to lodge a review, but no such review application was filed.

4.9. On 11 August 2022, the second respondent instituted proceedings before the Tribunal to enforce the Compliance Notice. On 14 April 2023, the Tribunal imposed an administrative fine of R200,000.

4.10. The present review application was launched in May 2023, approximately 18 months after the Compliance Notice was issued.

THE APPLICANT'S CASE

5. The applicant challenges both the Compliance Notice and the Tribunal's ruling on several grounds.

5.1. As regards the Compliance Notice, it avers that its version was disregarded, that it was denied the opportunity to present a full account, and that the notice was premised on errors of fact. Reliance is placed on section 6(2)(c), (d), (e)(iii), (iv), (f)(i) and (h)(i) of PAJA.

5.2. As regards the Tribunal's judgment, the applicant contends that it was denied its audi alteram partem rights, that the Tribunal committed gross irregularities by refusing to entertain its collateral challenge to the validity of the Compliance Notice, and that its request for an adjournment to regularise the review process was unreasonably denied.

5.3. The applicant further seeks condonation for its failure to comply with the time limits in section 7(1) of PAJA, and exemption under section 7(2)(c) from exhausting the internal remedy provided for in section 101 of the CPA.

THE FIRST RESPONDENT'S CASE

6. The Tribunal, has not opposed the application and accordingly abides the decision of this Court.

THE SECOND RESPONDENT'S CASE

7. The application falls short of the requirements of **Section 7(1) of the Promotion of Administrative Justice Act 3 of 2000 ("PAJA")**, which provides:

"Any proceedings for judicial review in terms of section 6(1) must be instituted without unreasonable delay and not later than 180 days after the date—
(a) subject to subsection (2)(c), on which any proceedings instituted in terms of internal remedies as contemplated in subsection (2)(a) have been concluded;
or
(b) where no such remedies exist, on which the person concerned was informed of the administrative action, became aware of the action and the reasons for it, or might reasonably have been expected to have become aware of the action and the reasons."

8. Although PAJA allows a period of 180 days for the institution of review proceedings, the applicant has not brought any application for condonation in this Court, despite conceding that the review is out of time. In the absence of such condonation, the Court is not empowered to entertain the relief sought in prayer 2 of the notice of motion. The application is therefore fatally defective on this basis alone.
9. The applicant deliberately ignored the compliance notice issued on 4 November 2021, notwithstanding its full knowledge of the binding nature of such notice

and the consequences of non-compliance. The notice was issued after the Commission had duly considered the report of the Motor Industry Ombudsman of South Africa ("MIOSA"), which unequivocally confirmed the defective condition of the motor vehicle in question and recommended remedies in terms of sections 20 and 56 of the Consumer Protection Act 68 of 2008 ("CPA").

10. It is the Commission's case that as far back as 25 November 2021, the applicant was aware that its proper cause of action lay in a review in terms of section 101 of the CPA. Instead of pursuing that statutorily prescribed route, the applicant wrongfully sought an extension of time from the Commission. The Commission, however, has no statutory authority to grant such an extension. In terms of section 101(2) of the CPA, only the National Consumer Tribunal is empowered to entertain and determine an application to set aside or vary a compliance notice.
11. The applicant's conduct demonstrates a contemptuous disregard of the statutory framework. By deliberately ignoring the compliance notice, misdirecting its recourse, and adopting a dismissive posture toward the Commission's directives, the applicant has shown a disdain both for the law and for the processes designed to vindicate consumer rights. Such conduct cannot now be converted into a complaint of procedural unfairness.
12. It is the Commission's case that, as to the Tribunal's judgment of 14 April 2023, the Tribunal acted within its limited jurisdiction under Section 100(6)(a) of the CPA, which is confined to determining whether a compliance notice has been issued and whether there has been non-compliance. The Tribunal is not empowered to interrogate the validity of a compliance notice; that enquiry

properly lies under Section 101. The applicant's attempt to characterise the Tribunal's decision as a reviewable irregularity is therefore misconceived.

13. In sum, it is the Commission's case that the compliance notice was lawfully issued, the Tribunal lawfully confirmed the consequences of non-compliance, and the applicant's obstructive and dilatory conduct cannot be rewarded by this Court. The application is devoid of merit and falls to be dismissed with costs on an appropriate scale.

THE THIRD RESPONDENT'S CASE

14. It is the Third Respondent's case that she purchased a motor vehicle from the Applicant in terms of an instalment sale agreement concluded with GWM Finance, a division of WesBank, which is itself a division of FirstRand Bank Limited. The vehicle in question was a GWM Steed 2.5 TCI single cab 4x4 motor vehicle.
15. Shortly after taking delivery, the vehicle experienced persistent technical and mechanical defects, which the Third Respondent reported to the Applicant on 27 February 2012. The Applicant undertook repair work on the vehicle on approximately ten occasions between February and November 2012.
16. After the final repair attempt, the Applicant informed the Third Respondent that the vehicle would only be returned to her upon her signing an acknowledgment that the vehicle had been repaired to her satisfaction. The Third Respondent refused to sign the acknowledgment as she had not been afforded the opportunity to test the vehicle following the repairs. Thereafter, the Applicant retained possession of the vehicle, which remains in its custody to date.

17. On 12 November 2013, the Third Respondent submitted a formal complaint to the National Consumer Commission, which in turn referred the matter to the Motor Industry Ombudsman of South Africa ("MIOSA") on 18 March 2014. The Third Respondent thereafter brought an application to compel the Commission to issue a compliance notice. Pursuant to that application, the compliance notice was issued on 4 November 2021. The Applicant, with full knowledge of the notice's implications and binding nature, deliberately failed to comply with it and further failed to file a review against the compliance notice in terms of section 101 of the Consumer Protection Act, 68 of 2008 ("CPA").
18. Following the Applicant's non-compliance, the Commission instituted proceedings against the Applicant before the Consumer Tribunal on 11 August 2022. The Tribunal granted condonation for the late filing of the Applicant's opposing affidavit and, on 26 April 2023, handed down judgment ordering the Applicant to pay an administrative fine of R200,000 into the National Revenue Fund in terms of section 213 of the Constitution.
19. The Applicant thereafter launched the present review application in May 2023, approximately 18 months after the issuance of the compliance notice. The Third Respondent contends that there was undue and inexcusable delay before the institution of this review and that the Applicant has provided no explanation for its failure to exhaust the internal remedy provided for under section 101 of the CPA, nor for the delay in launching the application.
20. It is the Third Respondent's case that, in the absence of any valid justification for the delay or failure to follow the statutory process, there is no basis to entertain the relief sought in prayer 2 of the Applicant's notice of motion. Should

the Court be inclined to condone non-compliance with the provisions of section 7 of the Promotion of Administrative Justice Act, 3 of 2000 ("PAJA"), and that no grounds exist to review or set aside the compliance notice issued by the Commission.

FINDINGS

Deliberate Non-Compliance with the Compliance Notice

21. The Applicant deliberately refused to comply with the Compliance Notice issued by the National Consumer Commission on 4 November 2021. The conduct, including withholding the vehicle and demanding storage fees, demonstrates a contemptuous disregard for the Commission's authority.
22. In *Oudekraal Estates (Pty) Ltd v City of Cape Town & Others 2004 (6) SA 222 (SCA)*, para 32, the Supreme Court of Appeal held that an unlawful administrative act remains legally effective until set aside by a court. The Court emphasized that the legal consequences of the administrative act persist until formally annulled.

Failure to Utilize Statutory Remedy under Section 101 of the CPA

23. The Applicant failed to seek a review under section 101 of the CPA, which constitutes a failure to exhaust statutory remedies.
24. In *State Information Technology Agency SOC Ltd v Gijima Holdings (Pty) Ltd [2017] ZACC 40*, para 40, the Constitutional Court confirmed that PAJA provides the exclusive mechanism for challenging administrative action, and failure to utilise this remedy renders the review application defective.

25. The Court further emphasized that parties cannot ignore statutory remedies and later seek relief under PAJA outside the prescribed processes (para 43).

Undue Delay in Instituting Review Proceedings

26. The Applicant delayed instituting review proceedings for approximately 18 months, without seeking condonation.
27. Section 7(1) of PAJA mandates that proceedings for judicial review be instituted without unreasonable delay and not later than 180 days after the person becomes aware of the administrative action.
28. In *State Information Technology Agency SOC Ltd v Gijima Holdings (Pty) Ltd [2017] ZACC 40*, para 44, the Constitutional Court held that undue delay undermines the rule of law and certainty in administrative processes, stressing that the right to review is not absolute and must be exercised within reasonable timeframes.

Lawfulness and Rationality of the Compliance Notice

29. The Compliance Notice issued by the National Consumer Commission was lawful, rational, and procedurally fair.
30. In *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others 2007 (12) BLLR 1097 (CC)*, para 110, the Constitutional Court held that administrative action must be lawful, reasonable, and procedurally fair. The standard of reasonableness requires that administrative decisions be rationally connected to the purpose for which the power was granted and consider all relevant factors.

5. Tribunal's Jurisdiction and Powers

31. The National Consumer Tribunal acted within its jurisdiction in imposing an administrative fine of R200,000 under section 100(6)(a) of the CPA.
32. In ***Merafong City Local Municipality v AngloGold Ashanti Ltd 2017 (2) SA 211 (CC)***, para 36, the Constitutional Court confirmed that administrative bodies must act within their statutory powers and that actions beyond those powers are ultra vires and invalid.
33. The Tribunal was correct to impose the fine, as the Applicant had failed to comply with a legally binding Compliance Notice.

6. Applicant's Contentions Are Without Merit

34. The Applicant has failed to demonstrate any reviewable irregularity, illegality, or irrationality in the administrative acts of the Commission or the Tribunal.
35. In ***Camps Bay Ratepayers and Residents Association v Harrison 2011 (4) SA 42 (CC)***, para 23, the Constitutional Court held that a party seeking to set aside administrative action bears the onus of proving that the action was unlawful, unreasonable, or procedurally unfair. Mere dissatisfaction with an administrative decision is insufficient to warrant review.
36. In the result I make the following order:
 1. The application is dismissed.

2. The Applicant is ordered to pay the costs of this application on the scale as between attorney and client, including the costs of two counsel where so employed.
3. An attorney-and-client costs order is justified in this matter, having regard to the Applicant's deliberate non-compliance with a binding Compliance Notice, its failure to pursue the statutory remedies available under section 101 of the CPA, its undue delay of more than 18 months in launching the review, and the contemptuous and obstructive conduct exhibited towards the Commission and Tribunal throughout the proceedings.
4. Such conduct warrants censure, as it demonstrates not only disregard for statutory authority but also an abuse of judicial process. In these circumstances, a punitive costs order is necessary both to mark the Court's disapproval of the Applicant's conduct and to indemnify the Respondents fully against the expense to which they have been put.



M MOKADIKOA-CHAUKE AJ

HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

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Reserved: 25 August 2025

Handed down: 16 September 2025