



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case number: A18/2025

Magistrates' court case number: 12218/2016

In the matter between:

PURE SILK INVEST 2 (PTY) LTD

t/a GROUP 1 NISSAN KUILS RIVER

Appellant

and

JACQUES ALEX MARTIN

Respondent

Coram:	Van Zyl, AJ (Nziweni, J concurring)
Heard on:	9 October 2025
Judgment:	: 3 December 2025

Summary: Civil appeal from magistrates' court – appeal against dismissal of special plea of jurisdiction under section 69 of the Consumer Protection Act 68 of 2006, and upholding of respondent's claim on the merits – no reason to interfere with magistrates' court's decision on either aspect

ORDER

The appeal is dismissed, with costs, including counsel's fees taxed on Scale B.

JUDGMENT

VAN ZYL, AJ:

Introduction

1. Aspects of the parties' respective rights and obligations under the Consumer Protection Act 68 of 2008 (CPA) are the focus of this judgment. It is common cause that the CPA finds application in this matter.¹
2. The appellant (the defendant in the magistrates' court) appeals against the judgments of the Kuils River Magistrates' Court handed down on 31 October 2022, in respect of the appellant's special plea, and thereafter on 11 November 2024, in respect of the merits of the action. The respondent sought the payment of R175,000.00, with interest, from the appellant, upon the tender of the return of a defective vehicle, a Nissan Navara 2.5 dCi SE 4x4, by the respondent. He also claimed damages arising from expenses incurred as a result of the problems with the vehicle. His claims were based both of the relevant provisions of the CPA and on the common law.
3. The magistrates' court found against the appellant both on the special plea and the merits of the action. The appellant was ordered to refund the purchase price to the respondent. No order was made in relation to the respondent's claim for damages.
4. The appellant relies on a wide range of appeal grounds, which essentially entails that the magistrate was wrong in finding that the vehicle displayed material defects, and that the respondent should have been aware of the fact that the second-hand vehicle could not be expected to perform like a new one.

The special plea

5. The special plea raised by the appellant in the magistrates' court was that the

¹ The respondent is a "consumer" and the appellant a "supplier" as defined in section 1 of the CPA. The vehicle constitutes "goods" as contemplated in that section.

court did not have the necessary jurisdiction to hear the matter, as the respondent (as plaintiff) had not followed the hierarchy of remedies provided for in section 69 of the CPA. In essence, the appellant sought to argue that the respondent was not entitled to approach the court to seek redress for its damages. The special plea was dismissed.

6. The respondent argues that the appellant should have taken steps to appeal the judgment on the special plea immediately after its delivery. Thus, having waited until the conclusion of the merits of the action, the applicant has perempted² its appeal as far as the special plea was concerned. The appellant, on the other hand, contends that the judgment on the special plea did not bring the action to finality, and it therefore had no option but to pursue its appeal against the special plea judgment together with the judgment on the merits.
7. There may be some merit in the respondent's argument insofar as the judgment on the special plea was final as regards the issue of the court's jurisdiction. The appellant's notice of appeal, confusingly, refers expressly to the judgment on the merits although the grounds of appeal include criticism of the jurisdiction judgment. Whether the appellant's delay and the manner in which its appeal was raised pointed indubitably to an intention to abandon an appeal is another question. That was not fully argued before this Court but it seems to me, in any event, that the issue raised in the special plea is one of some public importance, and deserving of consideration. The application of the doctrine of peremption is not absolute,³ and I accordingly prefer to address the issue rather than to halt it in its tracks.
8. Section 69 of the CPA reads as follows:

“69 Enforcement of rights by consumer

A person contemplated in section 4(1) may seek to enforce any right in terms of this Act or in terms of a transaction or agreement, or otherwise resolve any dispute with

² *Natal Rugby Union v Gould* 1999 (1) SA 432 (SCA) at 443F-G.

³ *Booi v Amathole District Municipality and others* 2022 (3) BCLR 265 (CC) para 29.

a supplier, by-

- (a) referring the matter directly to the Tribunal, if such a direct referral is permitted by this Act in the case of the particular dispute;
- (b) referring the matter to the applicable ombud with jurisdiction, if the supplier is subject to the jurisdiction of any such ombud;
- (c) if the matter does not concern a supplier contemplated in paragraph (b)-
 - (i) referring the matter to the applicable industry ombud, accredited in terms of section 82 (6), if the supplier is subject to any such ombud; or
 - (ii) applying to the consumer court of the province with jurisdiction over the matter, if there is such a consumer court, subject to the law establishing or governing that consumer court;
 - (iii) referring the matter to another alternative dispute resolution agent contemplated in section 70; or
 - (iv) filing a complaint with the Commission in accordance with section 71; or
- (d) approaching a court with jurisdiction over the matter, if all other remedies available to that person in terms of national legislation have been exhausted.”

9. An ordinary reading of the section indicates that it is couched in permissible language through the use of the word “may” at the outset. There has nevertheless been uncertainty as to the impact of the reference in section 69(d) to “*other remedies available*”. Counsel for the appellant has referred us to various cases in which the exhaustion of the other remedies set out in section 69 was required.⁴ None of these decisions emanate from this Division, and I respectfully decline to follow them.
10. In *Parch Properties 72 (Pty) Ltd v Summervale Lifestyle Estate Owner's Association and others*⁵ the Supreme Court of Appeal (SCA) provides useful guidelines in considering the proper approach to a provision like section 69 of the CPA. In that case the question arose whether the High Court had the necessary jurisdiction to, as court of first instance, determine disputes between homeowners and homeowners’ associations, or whether the dispute

⁴ *Joroy 4440 CC v Potgieter and another NNO* 2016 (3) SA 465 (FB); *Ngoza v Roque Quality Cars* (NCTII9905/2017II3(3) & 75(1)(b) 2018 ZANCT 70 (28 June 2018); *Oos Vrystaat Kaap Bedryf Beperk v Cilliers* 2019 JDR 0049 (FB); *Nzwana v Dukes Motors t/a Dampier Nissan* [2019] ZAECHC 81 (3 September 2019).

⁵ [2025] ZASCA 155 (17 October 2025). See also *Midstream Homeowners' Association NPC v Ngobeni* [2025] ZAGPPHC 792 (25 July 2025) paras 14-19.

first had to be referred to the Ombud established under the Community Scheme Ombud Services Act 9 of 2011 (CSOS Act). It was accepted that the CSOS Act's purpose is to provide for the establishment of the Community Schemes Ombud Service (the service), its mandate and functions, and a dispute resolution mechanism in community schemes: *"Importantly, the CSOS Act was established, inter alia, for the purpose of providing an expeditious and informal cost-effective mechanism for the resolution of disputes"*.⁶

11. Section 38(1) of the CSOS Act provides that any person who is a party to or affected by a dispute, "may" make an application to the Ombud in relation to certain disputes. The SCA pointed out that that was *"a clear indication of a choice of forum"*.⁷ It referred to *Coral Island Body Corporate v Hoge*,⁸ where the court dealt with a dispute in which the body corporate of a residential property sectional title scheme sought declaratory and interdictory relief against one of its members. Despite the mundane nature of the dispute, the court held that:

"Compelling constitutional and social policy considerations informed the introduction of the legislation that is manifest in the Ombud Act. The promotion of access to justice by those not easily able to afford to litigate in the civil courts was but one of those considerations. Another was the social utility to be achieved by the provision of a relatively cheap and informal dispute resolution mechanism for the disposal of community-scheme-related issues. It requires little insight to appreciate that those commendable policy considerations would be liable to be undermined if the courts were indiscriminately to entertain and dispose of matters that should rather have been brought under the Ombud Act. Whilst judges and magistrates may not have the power to refuse to hear such cases, they should, in my view, nonetheless use their judicial discretion in respect of costs to discourage the inappropriate resort to the courts in respect of matters that could, and more appropriately should, have been taken to the Community Schemes Ombud Service."

⁶ *Parch Properties supra* para 12.

⁷ At para 14.

⁸ 2019 (5) SA 158 (WCC) paras 8-10. My emphasis.

12. The SCA, in turn, held:⁹

“[16] The Coral Island approach is consistent with the Constitution and the purpose of CSOS and related legislation...

[17] Generally, the high court has authority to hear any matter that comes before it, unless the specific law or rule expressly limits that authority or grants it to another tribunal. The question is whether such limitation can be implied. This Court in Thobejane restated what Kriegler J held in Metcash Trading Ltd v Commissioner South African Revenue Service and Another that ‘there is a strong presumption against the ouster of the High Court’s jurisdiction, and the mere fact that a statute vest jurisdiction in one court is insufficient to create an implication that the jurisdiction of another court is thereby ousted’.

[18] The CSOS Act does not explicitly or implicitly exclude the high court’s inherent jurisdiction to hear community scheme disputes. The fact that the Ombud has wider powers does not imply the exclusion of the court’s jurisdiction. In our view, the Act was designed to co-exist with the court system providing the parties with a choice of a forum, not to replace it entirely.”

13. I am of the view that these principles are of equal application in the case of the CPA. Such approach has in any event been taken in this Court. In *Takealot Online (RF) (Pty) Ltd v Driveconsortium Hatfield (Pty) Ltd*,¹⁰ for example, the court held in favour of the consumer that it had the necessary jurisdiction to determine issues arising from those sections of the CPA which deals with unfair, unreasonable or unjust contract terms (in particular sections 48 of the Act read with section 52 thereof).

14. The CPA contains no express ouster of the court’s jurisdiction, and one is mindful of the SCA’s remarks in *Motus Corporation (Pty) Ltd and another v Wentzel* in relation to section 69 of the CPA.¹¹

“[25] The section has caused considerable difficulty and is the source of conflicting judgments in the high court. The authors of Commentary on the Consumer

⁹ *Parch Properties supra* paras 16-18. My emphasis.

¹⁰ [2021] ZAWCHC 280 (11 October 2021).

¹¹ [2021] 3 All SA 98 (SCA) paras 25-27. My emphasis.

Protection Act say that 'the various entities that can be approached for purposes of redress are not indicated in s 69 in an order that presents a clear picture of the exact route that a person has to follow in this quest for redress'. Nonetheless they suggest that the section contemplates a hierarchy of remedies and they make a valiant effort to describe such hierarchy. The difficulty posed by the notion that the section creates a hierarchy of remedies is illustrated by cases where the route taken by the dissatisfied consumer has avoided the applicable ombudsman with jurisdiction in terms of s 69(b). Requiring dissatisfied consumers to pursue other remedies under s 69 before approaching the high court under s 69(d) has resulted in the consumer being non-suited. ...

[26] ... It suffices to say that the primary guide in interpreting the section will be s 34 of the Constitution and the guarantee of the right of access to courts. Section 69(d) should not lightly be read as excluding the right of consumers to approach the court in order to obtain redress. A claim for cancellation of the contract and the refund of the price of goods on the grounds that they were defective falls under the actio redhibitoria and dates to Roman times. Our courts have always had jurisdiction to resolve such claims and there is no apparent reason why the section should preclude a consumer, at their election, from pursuing that avenue of relief until they have approached other entities.

[27] The section is couched in permissive language consistent with the consumer having a right to choose which remedy to pursue. Those in (a), (b) and (c) appear to be couched as alternatives and, as already noted, there is no clear hierarchy. Had that been the aim it would have been relatively simple to set the hierarchy out in a sequence that would have been apparent, not 'implied', and clear for the consumer to follow. Furthermore, subsec (d) does not refer to the consumer pursuing all other remedies 'in terms of this Act', but of pursuing all other remedies available in terms of national legislation. That could be a reference to legislation other than the Act, or to the remedies under both the Act and other applicable consumer legislation, ...Given the purpose of the Act to protect the interests of the consumer, who will always be the person seeking redress under it, there is no apparent reason why they should be precluded from pursuing immediately what may be their most effective remedy. Nor is there any apparent reason why the dissatisfied consumer who turns to a court having jurisdiction should find themselves enmeshed in procedural niceties having no bearing on the problems that caused them to approach the court."

15. In legislation such as the Promotion of Administrative Justice Act 3 of 2000,

where the exhaustion of internal remedies prior to turning to the court is without a doubt required,¹² provision is expressly made for the court to condone a failure to do so where the interests of justice so require.¹³ No such provision is made in the CPA. This is a further indication that the CPA does not contemplate preventing consumers from approaching a court even prior to having knocked at the doors of the forums listed in section 69.

16. As is clear from the SCA's remarks in *Motus*, it is counter-intuitive to hold that the respondent should have been barred from approaching the court in circumstances where the CPA itself focuses on the protection of consumers interests *inter alia* in ensuring "*accessible, transparent and efficient redress*"¹⁴ for consumers where required.¹⁵
17. Section 2(10), moreover, provides that no "*provision of this Act must be interpreted so as to preclude a consumer from exercising any rights afforded in terms of the common law*".
18. In the premises, I am of the view that the magistrates' court was correct in holding that it enjoyed the necessary jurisdiction to determine the action, and thus in dismissing the appellant's special plea.

The merits of the action

19. There was much argument in relation to various defects in the vehicle, but at its core the case is simple, and it does not bode well for the appellant.
20. It is clear from the evidence that the respondent, who was elderly, was looking to buy a "bakkie" with his pension money. He wished to start a small

¹² Under section 7(1).

¹³ Under section 7(2).

¹⁴ See the preamble to the CPA, read with section 3(1)(h): "*3(1) The purposes of this Act are to promote and advance the social and economic welfare of consumers in South Africa by - (h) providing for an accessible, consistent, harmonised, effective and efficient system of redress for consumers.*"

¹⁵ Section 2(1) provides that the CPA "*must be interpreted in a manner that gives effect to the purposes set out in section 3.*"

landscaping business to make a living post-retirement. He required a 4x4 functionality. It turned out that the vehicle, sold to him by the appellant, was unsuitable for its intended purpose. It was neither of good quality nor in good working order and free of defects, and it was not usable or durable for a reasonable period, despite the appellant's attempts to repair it.

21. It is common cause that the vehicle was purchased from the appellant for R175 000.00 on 18 August 2016. The respondent took possession on 23 August 2016. On 24 August 2016, the respondent began experiencing problems with the vehicle, in particular with the ABS and 4x4 systems' warning lights. On 7 September 2016 a diagnostic inspection performed on the vehicle returned certain fault codes, indicating potential faults in the relevant systems (4x4 and ABS). Mr Morris, who was appointed by the appellant, performed the diagnostics. The respondent effected repairs, which included the cleaning of the relevant sensors linked to those systems, as well as the supplying and fitting of an idle pulley, the replacement of the front brakes, and the removal of the control unit and replacement of the inside gear.
22. On 16 September 2016, shortly after the respondent again took possession of the vehicle, it came to a standstill. The appellant was informed. It took the vehicle in for further repairs on or about 21 September 2016, whereafter it was returned to the respondent. On 29 September 2016 the respondent experienced issues with the exhaust system, which he caused to be inspected and repaired by Scorpion Exhaust Systems, Strand. It was discovered that oil or fluid was leaking at the rear of the vehicle. On 30 September 2016, concerned about the overall condition of the vehicle, the respondent took the vehicle for a further assessment at Dekra in Strand. The Dekra report, coupled with his experiences in the vehicle, was worrying and, in the circumstances, the respondent elected to return the vehicle and demand a refund of the purchase price. The appellant refused to refund the purchase price or accept the return of the vehicle.
23. The respondent instituted this action on 16 November 2016, claiming a

refund and resultant damages. As indicated, the magistrate ordered the refund against return of the vehicle, but not damages.

24. The appellant contended that the respondent had concluded a “limited warranty” in purchasing the vehicle, which entailed a limited mechanical warranty of a 1 000km, or one month. This clearly materially curtailed the extent to which the respondent could rely on the provisions of the CPA. The evidence in this regard shows, however, that the respondent’s attention had not been drawn to the limitation at the time of the purchase of the vehicle. It was not explained to him that he would be waiving various of his rights under the CPA in signing the warranty. The limited warranty was not expressly conveyed or pointed out to him when signing the sale agreement or any of other documents signed at the time – fairly hastily, according to the respondent’s evidence.
25. The respondent testified that, on the date of delivery, he began experiencing issues with the vehicle, and he informed the appellant shortly thereafter (in particular as regards the “4x4” and “ABS” systems). He did not attempt to engage the 4x4 system. Despite the appellant’s attempt at repairing the vehicle, it broke down shortly thereafter, coming to a standstill. The vehicle was again sent to the appellant for repairs. Within days of again taking delivery of the vehicle, the respondent experienced a further issue with the exhaust system which prompted him to have the vehicle inspected and repaired at Strand Scorpion Exhaust Systems, who advised him that the vehicle was leaking oil, was unsafe to drive, and that he should have the vehicle inspected. The respondent had the vehicle inspected by Dekra and, given the issues and fault codes recorded therein, coupled with the other issues experienced with the vehicle, he elected to request a refund from the appellant.
26. The respondent’s expert witness, Mr Delport, a qualified diesel mechanic, did not take the matter much further. He assessed the vehicle in June 2023. The Dekra report recorded a fluid leak (from suspected driveshaft oil seal), which he estimated would cost between R3,500 and R4,000 to repair. The fault

codes picked up during his diagnostics (and as recorded in the Dekra report) could be appearing if they had not been cleared previously. He was not able to confirm if the warning lights would be activated, as the vehicle had not been not driven, and would need to be driven with 4x4 engaged to test further.

27. From the evidence it appears that the appellant had not given the respondent a detailed description in relation to defects in the vehicle, or explanation as to what could be expected from the vehicle. Notably, in cross-examination the appellant's finance manager, Ms Abdeen, testified that the warranties sold to the respondent were "extras", because vehicles older than 5 years will usually go to trade. She has not received any training in respect of the CPA, and did not advise the respondent on any aspect of the CPA when concluding the transaction.
28. Mr Lipschitz, the appellant's dealer principal, testified that the vehicle should have gone to trade – it would have been sold to a "*cheapy dealer*" who would "*fix it up*" and sell voetstoots. None of the appellant's documents referred to the CPA. This was confirmed by Mr St Clair, also a dealer principal, who was of the view that this transaction breached policy that the appellant should not sell vehicles to the public with more than 120,000kms on the clock, or more than 5 years old. The vehicle was meant to go to trade. Mr Cuff, the appellant's sales executive, confirmed that a vehicle of this age and millage would normally go to trade. He could not recall if the respondent had read through the offer to purchase.
29. The respondent's evidence was that he had only been told that Nissan was a good brand, what the year model and odometer reading were, and that the vehicle was sold "as is".
30. The appellant made much in argument of the fact that the respondent had known that he was buying a used vehicle and that he should not have been surprised when the defects were revealed. This argument is glib. On the appellant's own evidence the vehicle ought to have gone to trade. It should

not have been sold to the respondent, particularly not in circumstances where the relevant provisions of the CPA were *toto caelo* ignored in the conclusion of the transaction. The appellant was irresponsible in doing so.

31. There are various provisions of the CPA that come into play.
32. Section 48 of the CPA stipulates that a supplier must not offer to supply, supply, or enter into an agreement to supply any goods or services on terms that are unfair, unreasonable, or unjust. Additionally, a supplier must not require a consumer, or any person to whom goods or services are supplied at the direction of the consumer, to waive any rights, assume any obligation, or waive any liability of the supplier.
33. In terms of section 49 of the CPA, a provision in a consumer agreement that limits the risk or liability of the supplier or constitutes an assumption of risk or liability by the consumer, or acknowledges any fact by the consumer must be brought to the consumer's attention in a specified manner. These provisions must be written in plain language, and the nature and effect of the notice must be presented in a conspicuous manner that is likely to attract the attention of an ordinarily alert consumer. It must be given before the consumer enters into the transaction.
34. Section 51 of CPA provides that a supplier must not make a transaction or agreement subject to any term or condition if its general purpose or effect is to defeat the purposes and policy of the CPA or mislead or deceive the consumer. A supplier must not include terms that directly or indirectly purport to waive or deprive a consumer of a right in terms of the CPA, avoid a supplier's obligation or duty in terms of the CPA, set aside or override the effect of any provision of the CPA, or authorize the supplier to do anything that is unlawful in terms of the CPA or fail to do anything that is required in terms of the CPA.
35. The provisions of section 55 of the CPA state that, except for goods bought at an auction, every consumer has the right to receive goods that are

reasonably suitable for the purposes for which they are generally intended, are of good quality, in good working order, and free of any defects, and will be usable and durable for a reasonable period of time, considering the use to which they would normally be put and the circumstances of their supply. Additionally, it is irrelevant whether a product failure or defect was latent or patent, or whether it could have been detected by a consumer before taking delivery of the goods.

36. Section 55(6) provides an exception to section 55(2)(a) and (b).¹⁶ It stipulates that section 55(2)(a) and (b) does not apply to a transaction if the supplier has informed the consumer that the supplier has offered the particular goods in a specific condition, and the consumer has agreed to accept the goods in that condition or acted reasonably with accepting goods in that condition.
37. Section 56 provides that in any transaction or agreement for the supply of goods to a consumer, there is an implied warranty that the producer, importer, distributor, and retailer each guarantee that the goods comply with the requirements and standards set out in section 55, except if the goods have been altered contrary to instructions or after leaving their control. Within six months of delivery, if the goods fail to meet these standards, the consumer may return them to the supplier without penalty and at the supplier's risk and expense. The supplier must either repair or replace the defective goods or refund the consumer. If a supplier repairs the goods and they fail again within three months, the supplier must replace the goods or refund the consumer. This implied warranty and the right to return goods are in addition to any other implied or express warranties or conditions.

¹⁶ Section 55(2):
“(2) Except to the extent contemplated in subsection (6), 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
(d) comply with any applicable standards set under the Standards Act, 1993 (Act 29 of 1993), or any other public regulation.”

38. The CPA affords consumers robust protections that significantly limit the applicability of *voetstoots* clauses and so-called limited warranties, particularly in the sale of vehicles by dealerships. Section 55 of the CPA explicitly grants consumers the right to receive goods that are reasonably suitable for the purposes for which they are generally intended, of good quality, in good working order, and free of defects. This right is not diminished by the age or mileage of the vehicle. Age and mileage pertain to the wear and tear expected from use, but they do not justify the sale of a defective vehicle. A vehicle, regardless of its age or mileage, must still be free from defects that impair its functionality, durability and safety.
39. Section 55(6) does not safeguard the supplier against all claims relating to post- purchase quality issues. It only qualifies the first two of the four standards listed in section 55(2). It will always be open to a consumer to claim that the goods were not useable or durable for a reasonable period of time or that they did not meet other statutory requirements. Section 55(6) clarifies that while a supplier can inform a consumer of a specific condition of goods, this does not exempt the supplier from liability unless the consumer has been expressly informed and has expressly agreed to accept the goods in that specific condition. This means that any defects must be clearly and explicitly communicated to the consumer, and mere reliance on a general *voetstoots* clause is insufficient. The description must be detailed enough to inform the consumer about the specific defects, not just a broad statement that the goods are sold "as is".
40. Moreover, section 56 of the CPA introduces an implied warranty of quality, ensuring that goods comply with the requirements set out in section 55. This warranty cannot be easily overridden by a *voetstoots* clause, as doing so would conflict with the overarching consumer protection objectives of the CPA. Specifically, section 51 prohibits any term or condition in a transaction that seeks to waive or deprive a consumer of a right provided by the CPA, or that misleads or deceives the consumer. Section 48 of the CPA emphasizes that a supplier cannot require a consumer to waive any rights or assume any obligation on terms that are unfair, unreasonable, or unjust. Given this

provision, any attempt by a dealership to use a *voetstoots* clause or limited warranty to circumvent the consumer's right to quality, defect-free goods would be unfair and thus unenforceable.

41. In the circumstances of the present matter, the appellant cannot rely on a *voetstoots* clause to absolve itself the responsibility to provide a defect-free vehicle under the CPA. The sale of a slightly older vehicle with mileage over 120,000kms does not equate to an acceptance of defects by the consumer on any reading of the CPA. The age and mileage of a vehicle are distinct from defects: the former relates to normal wear and tear, whereas the latter refers to faults that impair the vehicle's functionality and safety.
42. To claim a refund under section 56(3), several specific conditions must be met. In *Motus Corporation (Pty) Ltd and another v Wentzel*¹⁷ the SCA provided clarity on these requirements. First, the supplier must first have attempted to repair the defective parts of the goods within the six-month implied warranty period. Second, the recurrence or discovery of further defects must occur within three months after the initial repair. The defects can be the same as the original ones that were repaired or new defects that affect the goods' functionality, safety, or usability. Third, whilst section 56(3) specifies that defects must be "discovered," the court in *Wentzel* emphasized that these defects should be reported to the supplier. Fourth, the defects must be material in nature. *Wentzel* clarifies that the materiality of a defect under the CPA is determined by its impact on the core functionality, usability, and safety of the product. Minor issues that do not significantly impair these aspects are unlikely to be considered material defects. Wear and tear issues are not excluded from section 56 as long as they have an impact on the functionality, usability and safety of the product.¹⁸
43. On the evidence, the respondent's case satisfied these requirements. The nature and impact of the limited warranty was not explained to him, and he

¹⁷ [2021] 3 All SA 98 (SCA).

¹⁸ See the National Consumer Tribunal's decision in *Leutle v Kolev Motors CC* (NCT/136678/2019/75(1)(b)) [2021] ZANCT 26 (20 July 2021) para 30.

never used the vehicle after the final attempt to have it repaired because he was informed that it was unsafe to drive. Viewed objectively, the series of issues experienced with the vehicle substantially undermined its suitability for the purposes for which it had been purchased. The respondent states that he would not have purchased the vehicle had he known of the true state of affairs.

44. Although the magistrate did not draw a distinction in her ultimate finding, it appears to me that she had come to the correct decision on the facts, either on the basis of the relevant provisions of the CPA or the common law principles of the *actio redhibitoria*.¹⁹ As indicated, the respondent had, in his particulars of claim, relied on both.

Conclusion

45. It follows that there is no reason to interfere with the magistrate's court's decisions either on the court's jurisdiction or the merits of the action.

Costs

46. There is no reason why the normal rule as to costs should not be followed, namely that costs should follow the event. The respondent sought a punitive costs order because of what he characterised as the appellant's attempted and belated appeal in relation to jurisdiction, but I do not think that that is warranted on the facts of this matter. In the exercise of my discretion, I am of the view that counsel's fees should be taxed on Scale B as contemplated in Rule 67A²⁰ of the Uniform Rules of Court.

Order

47. In the premises, I suggest that the following order be granted:

¹⁹ See *Mkhize v Lourens* 2003 (3) SA 292 (T).

²⁰ Which applies to work done after 12 April 2024.

The appeal is dismissed, with costs, inclusive of counsel's fees taxed on Scale B.

P. S. VAN ZYL

Acting Judge of the High Court

I agree, and it is so ordered.

C. N. NZIWENI

Judge of the High Court

Appearances:

For the appellant:

Instructed by:

Mr H. J. Potgieter

Smit & Hugo Attorneys

For the respondent:

Instructed by:

Ms N. Essa

Boucher Attorneys