



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

Case No: AR373/21

In the matter between:

KEITH ASHLEY REUBEN

APPELLANT

and

**CMH DATCENTRE HIGHWAY
LEE STOLZ**

**FIRST RESPONDENT
SECOND RESPONDENT**

ORDER

On appeal from: the Pinetown Magistrates' Court (sitting as court of first instance):

1. The appeal is upheld.
2. The order of the Magistrates' Court, Pinetown, dated 5 July 2021, is set aside and substituted with the following:
 - (a) The special plea of lack of jurisdiction is dismissed.
 - (b) The action shall proceed to trial before a different magistrate.
3. The respondents are ordered to pay the costs of the appeal, jointly and severally, the one paying the other to be absolved.

JUDGMENT

Date delivered: 05 December 2025

Masipa J (Gounden AJ concurring)**Introduction**

[1] This is an appeal against the judgment of the Magistrates' Court, Pinetown, delivered on 5 July 2021, in which the court upheld the respondents' special plea and dismissed the appellant's action for want of jurisdiction. The magistrate held that because the appellant pleaded that the transaction was regulated by the Consumer Protection Act 68 of 2008 ("the CPA"), and invoked s 41 of that Act, he was obliged to first exhaust the internal remedies contemplated in s 69(a)-(c) before approaching a civil court.

[2] The appeal raises three interrelated questions:

- (a) how s 69 of the CPA must be interpreted;
- (b) whether the appellant's amendment to rely on s 41 bound him exclusively to a statutory enforcement route; and
- (c) whether, given the nature of the relief claimed, the internal remedies could in any event have provided effective redress.

Background

[3] The appellant purchased a BMW motor vehicle from the first respondent, represented by the second respondent. He was attracted to the vehicle by online advertisements which stated that it was fitted with Xenon lights. The appellant regarded this as an important feature and alleges that, but for that representation, he would not have concluded the contract.

[4] After delivery he discovered that the vehicle did not in fact have Xenon lights. When he raised this with the respondents, they attributed it to "human error" and a "clerical mistake" in the advertisement and declined to remedy the problem or compensate him.

[5] The appellant instituted action in the Magistrates' Court, claiming R82 078.29, being the cost of installing Xenon lights. The claim is, in substance, one for damages arising from misrepresentation: the appellant alleges that he was induced by a false

statement to pay a price he otherwise would not have paid and has suffered economic loss in consequence thereof.

[6] After interlocutory skirmishes, the appellant amended his particulars of claim by inserting paragraph 7A. In that paragraph he alleged that the oral contract between himself and the first respondent “is regulated by the Consumer Protection Act 68 of 2008” and pleaded that the respondents’ conduct amounted to “false and deceptive advertising” as contemplated in s 41 of the CPA. The amendment did not alter the relief claimed: he continued to seek damages in the amount of R82 078.29.

[7] The respondents filed a special plea contending that, by invoking the CPA, the appellant was bound to the internal remedies as set out in s 69(a)-(c), and that he had no right of access to a court “until” those remedies had been exhausted. On that basis the magistrate held that the court lacked jurisdiction and dismissed the action.

Grounds of appeal

- [8] In broad terms, the appellant contends that the magistrate erred in law by:
- (a) construing s 69 of the CPA as a peremptory jurisdictional bar;
 - (b) failing to appreciate that the appellant’s cause of action remains a claim for common-law damages which the CPA institutions have no power to award;
 - (c) treating the amendment as having displaced the common law, in conflict with s 2(10) of the CPA; and
 - (d) dismissing the action instead of, at most, staying it.

Issues

- [9] The core issues are:
- (a) the proper interpretation of s 69 of the CPA;
 - (b) the effect of the appellant’s amendment in light of the principle that parties are bound by their pleadings;
 - (c) whether the CPA’s internal remedies could realistically provide the relief the appellant seeks; and

- (d) whether, on the facts and the applicable authorities, the magistrate's decision can stand.

The law

Interpretation of s 69

[10] Interpretation is conducted in accordance with *Natal Joint Municipal Pension Fund v Endumeni Municipality*.¹ The exercise is unitary and objective: text, context and purpose must be read together to arrive at a sensible meaning that gives effect to the statute's design.

[11] The Constitutional Court reiterated in *Cool Ideas 1186 CC v Hubbard*² and *Chisuse and Others v Director-General, Department of Home Affairs and Another*³ that interpretation must be consonant with the spirit, purport and objects of the Bill of Rights, including the right of access to courts in s 34 of the Constitution. Where more than one interpretation is reasonably open, the one that best promotes constitutional rights must be preferred.

[12] Section 69 of the CPA provides that a consumer *may* seek to enforce any right "by" referring the matter to the Tribunal, an ombud, an alternative dispute resolution agent, the Commission, "or" by "approaching a court with jurisdiction...if all other remedies available...have been exhausted". The use of the word *may* is permissive, not mandatory. The Legislature's choice not to use "must" or "shall" is significant and must be respected.

[13] The Supreme Court of Appeal in *Motus Corporation (Pty) Ltd t/a Zambezi Multi Franchise and Another v Wentzel*⁴ noted that s 69(d) has given rise to conflicting high court judgments and observed, in obiter, that the "primary guide" to its interpretation is s 34 of the Constitution. It emphasised that s 69(d) "should not lightly be read as excluding the right of consumers to approach the court"⁵ and that

¹ *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; 2012 (4) SA 593 (SCA).

² *Cool Ideas 1186 CC v Hubbard and Another* [2014] ZACC 16; 2014 (4) SA 474 (CC).

³ *Chisuse and Others v Director-General, Department of Home Affairs and Another* [2020] ZACC 20; 2020 (6) SA 14 (CC).

⁴ *Motus Corporation (Pty) Ltd t/a Zambezi Multi Franchise and Another v Wentzel* [2021] ZASCA 40 (SCA); [2021] 3 All SA 98 (SCA) (*Motus*).

⁵ *Ibid* para 26.

the section is “couched in permissive language consistent with the consumer having a right to choose which remedy to pursue”.⁶

[14] Courts have since followed this guidance in *Takealot Online (RF) (Pty) Ltd v Drive Consortium Hatfield (Pty) Ltd*;⁷ *Steynberg v Tammy Taylor Nails Franchising No 45 (Pty) Ltd*;⁸ and *Khoza v Ifa Fair-Zim Hotel and Resort (Pty) Ltd and Another*,⁹ all of which rejected an interpretation that makes exhaustion a jurisdictional precondition.

[15] In *Pieterse and Others v Organic Synthesis (Pty) Ltd and Another*,¹⁰ which dealt with claims for damages under s 61, the court held that forcing consumers first through the s 69 routes would serve no purpose, as the mechanisms there contemplated cannot adjudicate or grant damages. It concluded that there was no need for plaintiffs suing for personal injuries to plead or prove exhaustion of s 69 remedies.

The CPA and the common law

[16] Section 2(10) of the CPA 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.” The CPA supplements, but does not displace, common-law causes of action. A litigant may elect to rely on the common law, the CPA, or on both, provided the pleaded remedy falls within the jurisdiction and competence of the chosen forum.

Effect of the amendment and pleadings

[17] It is trite that parties are bound by their pleadings. The respondents are correct that once the appellant amended his particulars of claim to insert paragraph 7A and there pleaded that the contract was regulated by the CPA and that the advertising was “false and deceptive” as contemplated by s 41, the magistrate was

⁶ Ibid para 27.

⁷ *Takealot Online (RF) (Pty) Ltd v Driveconsortium Hatfield (Pty) Ltd* [2021] ZAWCHC 280 (*Takealot*).

⁸ *Steynberg v Tammy Taylor Nails Franchising No 45 (Pty) Ltd*, (Unreported) (23655/2021) Gauteng Division, Pretoria (21 June 2022) (*Steynberg*).

⁹ *Khoza v Ifa Fair-Zim Hotel and Resort (Pty) Ltd and Another* [2024] ZAKZDHC 45 (*Khoza*).

¹⁰ *Pieterse and Others v Organic Synthesis (Pty) Ltd and Another* [2024] ZAGPPHC 1195 (*Pieterse*).

entitled, indeed obliged, to consider the CPA. The issue is not whether the CPA applied at all the appellant accepted that it did but argued that it was not mandatory.

[18] However, the amendment did not change the remedy sought. Before and after the amendment, the appellant claimed damages in the sum of R82 078.29. He did not ask the court to declare prohibited conduct, set aside a transaction in terms of the CPA, or impose administrative sanctions. He asked for reimbursement of the loss he says he suffered because he was induced by a misrepresentation, now described as one that also contravenes s 41.

[19] Even where a plaintiff frames the Particulars of Claim wrong with reference to the CPA, the remedy may remain one in delict or contract. Section 2(10) recognises that co-existence. The appellant's characterisation of the misrepresentation as falling within s 41 did not convert his damages claim into a purely "statutory" cause of action that must travel exclusively along CPA institutional pathways. It identified the normative standard breached; it did not abandon the common-law consequences of that breach.

Respondents' argument and Ramangwa

[20] The respondents submitted that by expressly pleading the CPA, the appellant "chose his Act" and is bound to the enforcement structure of that Act, including internal remedies. They relied on *Ramangwa v Pro-Quick (Pty) Ltd and Another*,¹¹ a National Consumer Tribunal decision, as illustrating the "correct" pathway. The consumer in that matter approached the Motor Industry Ombudsman of South Africa ("MIOSA"), the National Consumer Commission ("NCC"), and then the Tribunal, which declared prohibited conduct under s 41 and authorised him, through a s 115(2)(b) certificate, to claim damages in a civil court.

[21] *Ramangwa* does not assist the respondents in the way they contend. First, it is a decision of the Tribunal, not a court, and is therefore not binding on this court. Second, *Ramangwa* merely demonstrates that one route is available when a

¹¹ *Ramangwa v Pro-Quick (Pty) Ltd and Another* [2023] ZANCT 24 (*Ramangwa*).

complainant has gone to the NCC and obtained a notice of non-referral. It does not hold that this route is mandatory in every case involving s 41.

[22] More fundamentally, *Ramangwa* underscores the limits of CPA institutions: even after the complainant had walked the full statutory path, the Tribunal could only declare prohibited conduct and authorise a certificate; it could not award damages. The complainant still had to litigate in a civil court in order to recover his loss. That structure is precisely what *Pieterse* and *Steynberg* recognised: internal mechanisms have no power to adjudicate and award compensatory damages, particularly in cases of economic loss or personal injury.

[23] The respondents' submission would require consumers like the appellant to traverse a circuitous loop MIOSA or other ADR, NCC, Tribunal, only to end up in the same court with the same damages claim that they commenced with. Nothing in the language or purpose of s 69 of the CPA, or in *Motus*, *Khoza*, *Takealot*, *Pieterse* or *Steynberg*, suggests that the Legislature intended such a duplicative and constitutionally burdensome procedure as a condition precedent to a delictual claim.

[24] The respondents were correct that *Motus*, *Takealot* and *Khoza* concerned s 48 rather than s 41 of the CPA. But the interpretive guidance given in those matters related to s 69, not to the specific section conferring the substantive right. The question is whether internal exhaustion is a jurisdictional precondition whenever the CPA is invoked; *Motus* and the later cases answer that in the negative. The fact that those disputes concerned unfair contract terms, while this one concerns a misleading advertisement, is a factual distinction of no interpretive significance to the meaning of s 69.

Powers of an appeal court

[25] An appellate court is entitled to interfere where the court a quo misdirected itself on a question of law or reached a conclusion that could not reasonably be supported on the evidence and applicable principles.¹²

Analysis

Characterisation of the cause of action

[26] On the pleadings, the appellant's cause of action remains a claim for damages arising from a misrepresentation that induced a contract. The gravamen is that the appellant was misled by the representation that the vehicle had Xenon lights, that he would not have bought it or would have paid less had the truth been disclosed, and that he has incurred loss in having to install the lights himself or accept a less valuable vehicle.

[27] The amendment introducing paragraph 7A did not introduce any new head of relief. It merely linked the factual misrepresentation to the normative standard in s 41 of the CPA. Whether characterised as a negligent misrepresentation at common law or as "false and deceptive" advertising, the remedy sought is the same: compensation for loss. The claim therefore falls naturally within the ordinary civil jurisdiction of the Magistrates' Court.

Does pleading s 41 oust the common law?

[28] The respondents argued that once the appellant pleaded s 41, he elected to proceed "under the CPA" and could no longer rely on the common law. That contention is irreconcilable with s 2(10) of the CPA, which states that nothing in the Act precludes a consumer from exercising common-law rights. It is also inconsistent with the way other courts have treated CPA-based pleadings. In *Takealot* and *Steynberg*, for example, the courts dealt with claims framed with reference to specific CPA provisions but did not suggest that such pleading extinguished common-law remedies or civil jurisdiction.

¹² See *R v Dhlumayo and Another* 1948 (2) SA 677 (A); *Trencon Construction (Pty) Ltd v Industrial Development Corporation of South Africa Ltd and Another* [2015] ZACC 22; 2015 (5) SA 245 (CC) para 88.

[29] The preferred view is that the appellant, by amendment, chose to bolster his misrepresentation allegations by placing them within the statutory framework of s 41. That choice may have evidential or interpretive consequences, but it does not oust the common law or compel the use of internal CPA remedies that cannot yield the relief he seeks.

Is s 69 of the CPA a mandatory jurisdictional precondition?

[30] The magistrate approached s 69 in light of earlier decisions such as *Joroy 4440 CC v Potgieter and Another NNO*¹³ and *Nzwana v Dukes Motors t/a Dampier Nissan*,¹⁴ treating it as a peremptory exhaustion requirement. In doing so he failed to engage with the later guidance in *Motus* and its progeny, or with the constitutional imperative of s 34 of the Constitution.

[31] Properly interpreted, s 69 does not impose a rigid hierarchy. It lists a range of avenues available to consumers, including, but not limited to courts. *Motus* explicitly warned against an interpretation that would preclude consumers from “pursuing immediately what may be their most effective remedy”¹⁵ and emphasised the permissive nature of the wording of the section. That is underscored by the structural reality demonstrated in *Pieterse* and *Ramangwa*: even when internal remedies are pursued, the consumer must ultimately approach a court for damages.

Could internal remedies provide effective redress here?

[32] In the present matter, the appellant’s “most effective remedy” is plainly a damages claim in a civil court. There is no suggestion that the Tribunal, NCC, or an ombud could have determined the quantum of his loss, assessed causation, or granted him a money judgment. Requiring him to first embark on internal processes incapable of providing that outcome would not promote but rather frustrate the CPA’s purpose and the Constitution’s guarantee of access to courts.

[33] The facts of this matter illustrate why a rigid exhaustion requirement is inappropriate. The appellant’s complaint is narrow and clearly defined: the

¹³ *Joroy 4440 CC v Potgieter and Another NNO* 2016 (3) SA 465 (FB).

¹⁴ *Nzwana v Dukes Motors t/a Dampier Nissan* [2019] ZAECGHC 81.

¹⁵ *Motus* para 27.

advertisement wrongly stated that the vehicle had Xenon lights, the respondents admit that this was a “human error”, they declined to rectify it, and the appellant claims the cost of rectification. There is no suggestion of systemic industry practice or public-interest issues requiring administrative investigation or sectoral intervention. The dispute is quintessentially one for a civil court: Was there a misrepresentation? Was it material? Did it induce the contract? What loss did it cause, if any?

[34] None of those questions can be finally and effectively answered by the NCC, the Tribunal or an ombud. At most, those bodies might have declared prohibited conduct and enabled the appellant, via s 115 of the CPA, to bring precisely the same damages claim in a civil court. It is difficult to see how such duplication would serve the interests of justice or the purposes of the CPA in circumstances where the dispute is already crystallised and justiciable.

Remedy: stay or dismissal

[35] Even if one assumed, contrary to *Motus* and later authority, that internal remedies should ordinarily be explored before litigation, the appropriate course would have been to stay the proceedings pending such steps, not to dismiss the action. The magistrate’s order had the effect of terminating the proceedings and, given the passage of time since the cause of action arose, effectively barring the appellant from re-instituting proceedings due to prescription.

[36] The above result sharply offends the constitutional principle of access to courts. It places the appellant in a worse position than if he had never invoked the CPA at all. Nothing in the wording of s 69 or in the scheme of the CPA warrants an interpretation that closes the civil courts to a consumer in these circumstances.

Conclusion

[37] In summary, on a proper interpretation of s 69 of the CPA, and having regard to the appellant’s pleaded cause of action, the nature of the relief he seeks, the limits of the CPA’s internal mechanisms, and the line of authority culminating in *Motus*, *Pieterse*, *Khoza* and related decisions, the magistrate misdirected himself in law by:

- (a) treating s 69 of the CPA as a peremptory jurisdictional bar;
- (b) construing the amendment as an abandonment of the common law;
- (c) failing to recognise that the CPA institutions could not grant the damages the appellant claimed; and
- (d) dismissing, rather than staying (if at all), the proceedings.

[38] These misdirections justify appellate interference. The special plea ought to have been dismissed, and the matter allowed to proceed to trial before a different magistrate.

Order

[39] The following order is made:

1. The appeal is upheld.
2. The order of the Magistrates' Court, Pinetown, dated 5 July 2021, is set aside and substituted with the following:
 - (a) The special plea of lack of jurisdiction is dismissed.
 - (b) The action shall proceed to trial before a different magistrate.
3. The respondents are ordered to pay the costs of the appeal, jointly and severally, the one paying the other to be absolved.

Masipa J

Gounden AJ

Case information

Date of hearing: 07 November 2025

Date of judgment: 05 December 2025

For the appellant: Adv. PJ Blomkamp SC

Instructed by: Manoj Haripersad Attorneys Inc.
Pinetown

For the respondents: Adv. K Dredge

Instructed by: Pearce, Du Toit & Moodie, Durban