

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

DELETE WHICHEVER IS NOT APPLICABLE

1.REPORTABLE: YES

2.OF INTEREST TO OTHER JUDGES: YES

3.REVISED: NO

13 APRIL 2026

S YACOOB

CASE NUMBER: A2024 - 107939

In the matter between:

EDAN TRADERS (PTY) LTD

Appellant

and

THE NATIONAL CONSUMER TRIBUNAL

First Respondent

ZODWA NYULI (in her capacity as presiding tribunal member)

Second Respondent

SIHLE PRISCA NOKUTHULA NDLOVU

Third Respondent

obo SBUYILE TRANSPORT (PTY) LTD

Coram: Windell, Yacoob et Wanless JJ

Heard: 26 November 2025

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail and uploading it onto the relevant electronic platform. The date and time for hand-down is deemed to be 10h00 on the 13 of April 2026.

Summary: Appeal against decision of National Consumer Tribunal – onus on supplier of goods to show issues either did not exist at the time of delivery, or were disclosed and accepted by consumer – consistent with principles of consumer protection.
Consumer protection – unconscionable conduct – misleading representations – prohibited terms and conditions - supplier taking advantage of ignorance of consumer - supplier using voetstoots standard clause to avoid statutory obligations.
Procedure – Rule 49(4) – where appeal noted without leave having been required, notice of appeal must state grounds of appeal clearly and concisely.
Costs – appellant ignoring court directives regarding navigability of electronic file – appeal record in any event not compliant with requirements for physical record - justifies punitive costs order.

ORDER

On appeal from: The National Consumer Tribunal

1. The appeal is dismissed, with costs on an attorney and client scale.

JUDGMENT

YACOOB J (WINDELL et WANLESS JJ concurring):

INTRODUCTION

[1] The appellant, Edan Traders (“Edan”), has noted an appeal against a decision of the National Consumer Tribunal (the first respondent, to which I refer as “the Tribunal”), which found that Edan had contravened certain sections of the Consumer Protection Act, 68 of 2008 (“the CPA”) and that those contraventions constituted prohibited conduct. The Tribunal ordered Edan to pay Ms Ndlovu, who is the third respondent in this appeal, an

amount of R316 250. The decision was taken by a full panel of the Tribunal, and an appeal against the decision lies with this Court in terms of s 148 of the National Credit Act, 34 of 2005 ("the NCA"), read with s 59(3).

[2] Edan seeks an order that the appeal is upheld, with costs, and substituting the Tribunal's order with an order that Ms Ndlovu's application is dismissed with costs. The basis of the appeal appears to be that the Tribunal's findings are not supported by the evidence before it.

[3] In the proceedings before the Tribunal, Ms Ndlovu represented herself but did not give evidence. Edan filed an affidavit and also called a witness, Mr Eddie Visser. The members of the Tribunal made it clear that as far as evidence was concerned, only Ms Ndlovu's documentary evidence would be taken into account. The factual summary I set out below is based primarily on the papers before the Tribunal. Much of the evidence relied on by both parties is hearsay. However, there is some supporting photographic and documentary evidence that permits the court to come to a conclusion.

FACTUAL BACKGROUND AND THE TRIBUNAL'S FACTUAL FINDINGS

[4] Ms Ndlovu purchased a vehicle from Edan in the following circumstances. She wished to purchase a truck in order to start a business hauling coal. She was unable to obtain a loan from an ordinary bank, nor was she able to afford a new vehicle. She approached Edan because she was referred to it as a company that would provide financing,¹ and because she had identified a truck that she could afford.

[5] On 28 September 2020, after Ms Ndlovu identified the truck she wished to purchase, a person called Bianca prepared a "payment structure" which Ms Ndlovu was satisfied with and agreed to. This provided that she would pay R375 000 plus VAT and

¹ Financing appears to have been provided by a separate company that the same address on its letterhead as Edan, and appears to be a sister company, which explains why Ms Ndlovu at certain times conflates the two.

“Hydraulics”. Bianca then provided her with an offer to purchase (“OTP”), which she signed on the basis that it would be the same as the payment structure. Ms Ndlovu then paid R20 000 as part of a 50% deposit and agreed to pay the remainder of the deposit on 1 October 2020.

[6] Ms Ndlovu then reviewed the documents when she reached home and discovered that the amount reflected on the OTP was R405 000. In addition, the two documents referred to different vehicles. She assumed it was a simple error and that the R405 000 was the R375 000 plus R30 000 for hydraulics. The next day, she emailed Bianca asking that the OTP be corrected. Bianca’s response was instead to ask for proof of payment as someone else was interested in the truck. Ms Ndlovu responded that she had paid R20 000 to secure the truck.

[7] When Ms Ndlovu returned to Edan on 1 October, she was told that someone else had chosen the truck and paid a deposit, despite Ms Ndlovu having been asked to pay and having paid R20 000. Ms Ndlovu was shown other trucks she could not afford, and then the owner, who she identifies as “Eddie”, (Eddie Visser, who later testified before the Tribunal), advised her that a truck of make “International” was available, that was “very strong and in good condition”. Ms Ndlovu annexed to her complaint screenshots of a message from Mr Visser saying this. Ms Ndlovu accepted Mr Visser’s advice on the assumption that he had some expertise. A new OTP was issued for this truck and she paid an additional amount of R158 800 towards the deposit, still on 1 October. The total amount she was to pay for this new truck was R316 250.² Ms Ndlovu also appears to have rented certain equipment for the truck from another company with the same address as Edan.

[8] According to Ms Ndlovu, she was told that the truck had to go for a service but would be ready in three days. It was not. She was then told that it would be ready on 8 October, but it was not. She was then told that the truck failed its roadworthiness test,

² This is the amount that the Tribunal ordered Edan to pay Ms Ndlovu.

and the identified problems would be resolved so that it could be retested. She was not told what those problems were. According to her, she had not been told in advance that the truck still needed to be certified roadworthy. Ms Ndlovu was told the truck was ready on 4 November 2020 and on 5 November went to Edan with a driver to collect the truck.

[9] The driver took the truck on a test drive with Edan staff, and on the way back it broke down at Edan's gate. It would not start. She left the truck at Edan with the driver, and it took two days to repair. The driver then left to go and fetch a load from Brits, but the truck broke down on his way there. Edan informed Ms Ndlovu first that the driver must make sure there is sufficient water, then that this was because the truck was out of diesel, but Ms Ndlovu's driver informed her that there was diesel but the filter was dry and he suspected that the pump was not circulating diesel through the engine. This would become a recurring theme. When the driver was then returning from Brits with a load, the engine was very hot and he stopped to avoid damage. He then noticed that a tyre was burning. This was apparently two days after delivery was taken.

[10] According to Ms Ndlovu the truck had further breakdowns consistently. Edan assisted her until the first month was up and then she was told that the one-month warranty had expired. She used mechanics referred to her by Edan but the truck was never finally fixed and never able to be used for the purpose for which it was bought. She had to replace the starter and a pump but this did not help. She also replaced a gearbox. By 02 March 2021 Ms Ndlovu told Mr Visser that the truck had not been able to complete one load and that she had no money left to fix it. He referred her to an electrician, but she indicated that she could not pay an electrician and asked for assistance, which request was apparently denied. However Ms Ndlovu does annex a quote by an electrician dated 03 March 2021 which shows that the truck had low fuel pressure on the gear pump, amongst other issues. It is unclear whether this was the same pump which according to the tax invoice was replaced. It appears that all the trips undertaken by the truck were relatively short and within Gauteng, for example from Brits to City Deep and from Pretoria to Benoni.

[11] On 24 March 2021 Ms Ndlovu asked Mr Visser whether Edan could replace the truck since she had obtained no value from it. It is unclear whether there was any response to this request. Eventually, the truck broke down and her driver left it on the side of the road with the keys hidden as he could not stay there until someone went to recover it. The quote to repair it came to R147 000 and Ms Ndlovu could not afford that. In fact, she lost the contract for hauling coal and had to abandon the business.

[12] Edan's first version under oath appears to have been its opposing affidavit filed before the Tribunal in August 2023. This affidavit was deposed to by Mr Gert Scheepers, the financial manager. It is not clear why he was the deponent, as he did not seem to have had any direct interaction with Ms Ndlovu.

[13] Mr Scheepers makes an unsubstantiated allegation that an unidentified representative of Edan told Ms Ndlovu that the vehicle still had to be inspected, as well as fitted with new tyres. He alleges a full service was done, but does not specify what the initial inspection revealed and what repairs, if any, were done. Mr Scheepers also alleges that the breakdown on the day of collection was a minor air leak (it is unclear where this leak was situated) which was immediately repaired, and that after collection Ms Ndlovu called Edan to repair the vehicle numerous times due to burnt starters and batteries needing replacement, all within the first month after the breakdown. It is unclear from where he obtains the information regarding the causes of the various breakdowns. He says that the mechanics informed Edan (it is unclear what person was informed) that the fuel tanks were empty and no fuel was feeding the engine, leading to the driver having to "overwork" the engine to try and start it, resulting in subsequent breakdown.

[14] Mr Scheepers then skips ahead to 1 April 2021, just less than five months after the truck was delivered, when Ms Ndlovu informed Edan that the truck had broken down and had been left on the road near Garankuwa, Pretoria. I pause to note that it is unclear whether the failure to deal with events in the intervening period is an attempt to imply that all was well in that period. However it is clear that people from Edan had multiple communications with Ms Ndlovu regarding multiple breakdowns in that intervening period.

[15] Edan then sent a recovery vehicle to assist and appointed an auto electrician and a mechanic to inspect and report on the condition of the truck. According to Mr Scheepers auto-electrician's report "concluded" that the vehicle had run out of fuel on more than one occasion within a short period. The report is dated 11 August 2021, and states that the auto-electrician attended the vehicle on an unspecified date, and was found to have flat batteries and to have run out of fuel. It states that the auto-electrician was called two days later to attend the vehicle and found again that it had flat batteries and had run out of fuel, as well as having a burnt-out starter. The report does not make any conclusions, but reports on what was apparently found.

[16] The mechanic's report is dated 12 August 2021, and states that the mechanic was called to attend the truck on 5 April 2021. They found that the diesel injectors were faulty and that water was leaking from the cylinder head, which was found to be cracked. The mechanic concludes that this damage resulted from low fuel, because fuel acts as a coolant for injectors, and low fuel causes the injectors to overheat, damaging the nozzles, and the function of the injectors. This then also caused the damage to the cylinder head. The mechanic's opinion is that "damage to the engine was caused by the injectors not operating at peak performance." The mechanic does not specify whether there was in fact fuel in the tanks, and whether there was any other reason why fuel may not reach the injectors.

[17] Although Mr Scheepers's affidavit suggests that the auto-electrician and mechanic were requested to inspect and report in April, correspondence in the record between Mr Visser and the Motor Industry Ombudsman suggests that the reports were only requested after the fact, when the Ombudsman asked for a response to Ms Ndlovu's complaint. This is relevant in the evaluation of evidence, since the reports were not contemporaneous, and it is not clear what the authors of the reports had regard to before producing the reports. It is also not clear whether the authors of the reports were in fact the people who inspected the truck.

[18] Mr Scheepers's affidavit does not deal with the various issues which Ms Ndlovu had with the truck after the end of the first month, and before April. He states that the finance institution (which has the same address as Edan, and which referred Ms Ndlovu to Edan) attached and removed the truck and sold it at auction.

[19] Mr Scheepers alleges that the truck was sold "voetstoots", but no signed copy of the terms and conditions page of the agreement is annexed. Ms Ndlovu did not annex any copy of the terms and conditions page, while Edan included an unsigned version. According to Mr Scheepers the damage to the vehicle was due to Ms Ndlovu's negligence because she did not keep it properly supplied with fuel.

[20] At the hearing of the matter, Ms Ndlovu represented Sbuyile, with the assistance of an interpreter, and did not give further evidence. In fact, the interpreter asked the Tribunal whether evidence was going to be under oath, and was told that it would not be. Mr Visser testified on Edan's behalf, after an application was made for oral evidence to be admitted.

[21] Ms Ndlovu's "address" to the Tribunal was substantially the same as what she had stated in her affidavits. She added that the driver told her on the first day it was used to haul a load that the truck was not roadworthy because the engine was "fitting". This is consistent with the text messages annexed to her affidavit. Ms Ndlovu lost the contract for carrying coal because the truck was always breaking down. She stated that when she went physically to Edan, they laughed at her saying she was complaining about a truck breaking down when she did not put in diesel. However, she had pictures showing that the gauge never showed that the truck was out of diesel. According to Ms Ndlovu she obtained a report which was annexed to her affidavit, saying that the truck ought not to have been sold to her as it was a write-off. It seems she was referring to some text messages from a mechanic which are annexed to the affidavit, rather than a written report.

[22] Mr Denton, who represented Edan at the Tribunal, submitted that Ms Ndlovu had made statements that were not supported by the papers and sought leave to call Mr Visser. On analysis of the papers, even though the record is not provided to us in the format it ought to have been provided in, it is clear that the only thing Ms Ndlovu said that is not supported by her papers is that people at Edan laughed at her for complaining about a truck that breaks down when she does not put in diesel.

[23] According to Mr Denton, Ms Ndlovu could not have made the submissions she made regarding the vehicle because she was not an expert. He called Mr Visser on the basis that he is an expert. The Tribunal then specified that Mr Visser could only testify on the facts as no expert report was given.

[24] Mr Visser testified that Ms Ndlovu took the second truck because of the price. He made much of the fact that it cost ten to fifteen percent of the price of a new truck (without providing any substantiation for the price of a new truck) and could not be expected to do the same job. He did not know where the truck had been obtained from. According to him it was in good condition when it was sold to Ms Ndlovu and had a "certificate of fitness". He could not recall any malfunction before it left Edan's yard but said it could have been a "minor fault". It is unclear how Mr Visser could testify that it was in good condition if he did not remember whether there was any malfunction at the time of delivery.

[25] Mr Visser then testified in detail, providing new evidence for the first time, about the truck. He provided no evidence in support of what he said. According to him most of the complaints were "running out of fuel". That is inconsistent with Mr Scheepers's affidavit. He testified that the truck has two fuel tanks of 600 litres each and that if the fuel price was R20 a litre then R1000 would be only 50 litres. He suggested that the truck consumed two litres per kilometre. Mr Visser said that "we" looked in the tank and saw no fuel four times. However, it does not appear that it was Mr Visser who personally went out four times, in fact, he states it was employees from the workshop who went out. Nor do the papers support the conclusion that anybody looked in the tanks each time. This was an inference which Mr Visser presented as fact. He then testified about how the truck

should be started if it had run out of fuel and suggested that Ms Ndlovu and her driver did not know this and therefore had caused the damage. It is unclear why this was not conveyed to them the first time the problem occurred, if that was the cause of the problem.

[26] Mr Visser denied that Ms Ndlovu had asked him to replace the vehicle, although she has annexed a message to her affidavit in which she asked for replacement. Mr Visser repeated a number of times that Ms Ndlovu had failed to put in fuel and that is the cause of her woes. He said that if there was an air leak they would have replaced the pipe and if there were any breakdowns they would have attended to them but he was not aware of any. Later, Mr Visser finally seemed to remember the issue that arose on the first day, and said definitively that it was fixed.

[27] Ms Ndlovu put to Mr Visser that only one of the fuel tanks was functional, and he responded that sometimes they block off one of the tanks because people cannot afford to fill up both tanks. It is unclear whether this was done to Ms Ndlovu's truck. When she asked him whether it was possible that the battery was tested and both tanks filled, and two days later the batteries are flat and the tanks empty, he suggested that it was possible that the truck was not parked in a secure area and the fuel was stolen. He also stated that he was unaware of the problem that had occurred with the brakes when there was an air leak at the time delivery was taken, despite having remembered it at a later stage in his evidence in chief. He stated that if there is a pipe or wire that comes off, the truck operator must put it back and carry on with the load. This was a normal thing when operating a truck of that age. That was not Edan's job, because according to Mr Visser that was part of running the haulage business Ms Ndlovu was trying to start.

[28] On being asked whether it was advisable to sell a truck that needed that kind of attention and was that old to an inexperienced person, Mr Visser stated essentially that you get what you pay for. Having said that the truck is old and parts are brittle, and that a person would just need to replace pipes and wires and carry on with the load, he then said all one had to do was put in fuel and it would go. It is clear that Mr Visser's evidence was internally inconsistent, contradictory and inherently unreliable.

[29] The Tribunal found that Ms Ndlovu informed Edan of the purpose for which she had bought the truck, and relied on their expertise. She had been assured that it was in a good condition, but it malfunctioned from the outset, on the test drive and then within days of purchase. Taking into account the estimated cost of repairing the truck compared to its purchase price, the Tribunal found that it was reasonable to conclude that it was defective at the time of sale, as contemplated in s 53(1) of the CPA. Regardless of the fact that the truck was second hand and the very limited contractual warranty, the Tribunal found that s 55(2) applied and the applicant had the right to receive a truck of good quality, in good working order and free of defects. She did not. It was far below what could reasonably be expected and was unsuitable for purpose. The information about the truck's condition was not disclosed and the respondent, with its experience, ought to have given Ms Ndlovu accurate information to allow her to make an informed decision to purchase.

[30] The Tribunal found further that Ms Ndlovu was entitled by law to a six-month warranty³ and this overrode the one-month warranty contained in the contract. She was entitled to return the truck and receive a replacement or a refund. She did not get it.

[31] It is clear that, in the main, the Tribunal's findings were consistent with the evidence before it. The basis of the appeal is encapsulated in the heads of argument is that the Tribunal made a finding that the fuel tanks were dysfunctional, and that there was no evidence of that. In addition, the appellant contends that it was not shown by Ms Ndlovu that the defects complained about existed at the time that the Vehicle was purchased.

[32] The paragraph of the Tribunal's judgment and reasons to which the complaint of the appellant refers reads:

The truck posed a safety risk to the applicant, her driver, and other road users. Critical components, such as the fuel tank, cylinder head, injectors, and gearbox, were

³ In terms of s 56(2) of the CPA.

dysfunctional with prohibitive repair costs. The engine constantly overheated. Despite being second-hand, no information about the truck's condition was disclosed. With its extensive experience, the respondent ought to have acted better. The applicant was entitled to accurate information about the truck to make an informed decision when purchasing it.⁴

[33] The Tribunal therefore found far more than simply that the fuel tank was dysfunctional. In my view, excluding the fuel tank from the conclusion does not invalidate the Tribunal's conclusion. The evidence of Mr Visser actually confirmed that the truck was not in a condition that a person new to the business, or without relatively thorough mechanical knowledge and ability, would be able to operate. He conceded that there was a likelihood that there would be leaks and problems with pipes and wires, and that sometimes if there was a leak this could cause the brakes to lock while the truck was on the road, which is an obvious danger to road users. It is also clear that Mr Visser personally warranted to Ms Ndlovu that the truck was strong and in good condition.

[34] As far as the second complaint is confirmed, that it was not shown by Ms Ndlovu that the other defects existed at the time the vehicle was purchased, it is my view that the inference made by the Tribunal that there were serious defects at the time of purchase is consistent with the evidence. It is also consistent with the failure of Edan to explain how, if they had fitted the truck with new tyres before delivery as claimed, it then had two flat tyres within days of delivery. In fact, the entire sequence of events, together with Mr Visser's evidence that the truck was old and would be expected to have problems with pipes and wires, supports the finding that the truck was defective within the meaning of the section before delivery.

[35] The submission that Ms Ndlovu had not shown that the defects existed at the time of purchase raised the question at the hearing of the appeal regarding where the onus lay in Tribunal proceedings. This was a question counsel was unable to answer. Both counsel who appeared before us were strangely unfamiliar with the content of the relevant

⁴ At para 44 of the judgment and reasons.

legislation and with any applicable judgments. It appeared to us that there had been an unfortunate lack of preparation.

[36] Mr Prinsloo, who appeared for Edan, referred the court in his reply to s 117 of the CPA, which provides that the standard of proof in the Tribunal is on a balance of probabilities. This of course does not determine where the onus lies. Mr Prinsloo also referred the court to an unreported judgment, *Toyota Randburg (a division of Motus Group Ltd) v Ndlovu and Another*,⁵ ("Toyota") which was made available to us after the hearing. In that judgment, by a Full Bench of the Gauteng Division,⁶ the issue of onus on an applicant before the Tribunal was specifically dealt with. The court found that, where the purchaser shows that problems with the vehicle arose very shortly after delivery, the onus was on the appellant (the supplier of the vehicle) to rebut the conclusion that there was a defect, and to prove that the issues arose from the purchaser's negligence.⁷ The onus on the purchaser is to demonstrate that there were problems, not to show the cause of the problems.⁸ This is consistent too with Edan's contention that Ms Ndlovu is not an expert and could not prove what the cause of the problems were.

[37] In *Motus Corporation (Pty) Ltd v Wentzel*,⁹ referred to in the *Toyota* decision, the Supreme Court of Appeal found that the complaints of Ms Wentzel did not amount to defects as defined and therefore that she had not made out a case for the relief she was seeking. If they were defects, she had not brought to the attention of the supplier that they had not been resolved after the supplier had repaired them. It is for that reason that her claim was found to be wanting. That case is entirely distinguishable to this.

⁵ [2024] ZAGPPHC 591 (20 June 2024).

⁶ It is unclear why that matter served before a full bench and this one before a full court, but that is not relevant for purposes of this judgment.

⁷ Paragraph 46.

⁸ Paragraph 43.

⁹ [2021] 3 All SA 98 (SCA).

CONTRAVENTIONS OF THE CPA AND REMEDY

[38] As a result of its factual findings, the Tribunal found that Edan contravened sections 40(1)(a) to (c), 40(2), 41(1)(a) and (b), 48(1)(c), 51(1)(a)(i) and (ii), 51(1)(b)(i),(ii) and (iii), 55(2)(a), (b) and (c), read with 56(1), and 56(2)(a) and (b) of the CPA. It declared these contraventions prohibited conduct and ordered Edan to repay R316 250 to Sbuyile within 30 business days.

[39] Prohibited conducted is defined in s 1 of the CPA as “an act or omission in contravention of this Act”. The import of the declaration is that, in terms of s 150 of the NCA, the Tribunal has the power to make an appropriate order in relation to prohibited conduct. The declaration in context is simply a confirmation that Edan has contravened certain sections of the CPA and that the Tribunal then has the power to make an appropriate order to give effect to Sbuyile’s rights in terms of the CPA.

[40] Section 40 of the CPA is headed “Unconscionable conduct” and provides:

- (1) A supplier or an agent of the supplier must not use physical force against a consumer, coercion, undue influence, pressure, duress or harassment, unfair tactics or any similar conduct, in connection with any –
 - (a) marketing of any goods or services;
 - (b) supply of goods or services to a consumer;
 - (c) negotiation, conclusion, execution or enforcement of an agreement to supply any goods or services to a consumer;
 - (d) demand for, or collection of, payment for goods or services by a consumer; or
 - (e) recovery of goods from a consumer.
- (2) In addition to any conduct contemplated in subsection (1), it is unconscionable for a supplier knowingly to take advantage of the fact that a consumer was substantially unable to protect the consumer’s own interests because of physical or mental disability, illiteracy, ignorance, inability to understand the language of an agreement, or any other factor.
- (3) Section 51 applies to any court proceedings concerning this section.

[41] It is clear from Mr Visser's own version that Edan acted in a manner that falls foul of s 40(2), in that he knew that the truck was not suitable for a person with no mechanical knowledge and new to the industry, and did not tell her, instead representing that it was a good option for her, thus taking advantage of her "ignorance". Even if this Court were to find that none of the other findings of the Tribunal were justified, that on its own is unconscionable and prohibited conduct, and must give rise to relief for Sbuyile.

[42] Mr Visser's conduct also constitutes unfair tactics in marketing, as he recommended the truck to Ms Ndlovu, knowing what she required and what her limitations were, but represented to her that it was a good option. It can also be interpreted as unfair tactics in supplying goods to a consumer. The manner in which the contract was concluded, to which Edan provides no alternative to Ms Ndlovu, also gives the impression of "unfair tactics". In those circumstances the finding that Edan's conduct was also unconscionable under s 40(1)(a) - (c) cannot be faulted.

[43] Section 41(1)(a) and (b) provides that the supplier must not, by words and conduct, make a misrepresentation regarding a material fact to a consumer,¹⁰ or "use exaggeration, innuendo or ambiguity as to a material fact, or fail to disclose a material fact if that failure amounts to a deception."¹¹ It is clear that by telling Ms Ndlovu that the truck was "very strong and in good condition", in the context of this case, Mr Visser and therefore Edan fell foul of these provisions, and the Tribunal's finding should not be disturbed.

[44] In s 48(1)(c), the CPA provides that a supplier must not require a consumer to waive any rights, assume any obligation or waive supplier liability on unfair, unreasonable, or unjust terms. The Tribunal does not explain which part of Edan's conduct falls foul of this provision. In terms of s 48(2), a term or condition is unfair, unreasonable or unjust if, amongst other things, "the consumer relied upon a false, misleading or deceptive representation, as contemplated in section 41 or a statement of opinion provided by or on

¹⁰ S 41(1)(a).

¹¹ S 41(1)(b).

behalf of the supplier to the detriment of the consumer”.¹² The facts set out above clearly bring the matter within the bounds of this provision, and there is no basis on which to disturb the Tribunal’s finding in this regard.

[45] Section 51 deals with prohibited transactions, agreements, terms or conditions. The subsections which Edan was found to have contravened prohibit an agreement or a term or condition that has the general purpose or effect to defeat the purposes and policy of the CPA,¹³ or mislead or deceive the consumer;¹⁴ or to purport to deprive a consumer of their rights¹⁵ or avoid a supplier’s obligation in terms of the CPA, or to override one of its provisions. The actions of Edan identified above fit into these categories for the reasons already identified earlier, and the imposition of a one month warranty seeks to avoid the obligation of a six-month warranty imposed by section 56(2). Edan’s reliance on the voetstoets clause in its standard terms and conditions to the extent that it seeks to rely on it to escape the obligations imposed by the CPA. The remaining contraventions of the CPA set out below would also fall into this category.

[46] Section 55 protects the consumers right to “safe, good quality goods”. The Tribunal found that Edan had fallen foul of subsections 55(2)(a), (b) and (c), which provide that the consumer has a right to receive goods “reasonably suitable” for their intended purpose,¹⁶ are good quality, in working order and do not have defects,¹⁷ and “will be usable and durable for a reasonable period of time” in the relevant circumstances.¹⁸ The only exception to these rights is if s 55(6) applies, which is when the consumer has been informed specifically of the condition of the goods and has accepted the goods in that condition expressly.

¹² S 48(2)(c)

¹³ S 51(1)(a)(i).

¹⁴ S 51(1)(a)(ii)

¹⁵ S 51(1)(b)(i).

¹⁶ S 55(2)(a).

¹⁷ S 55(2)(b).

¹⁸ S 55(2)(c).

[47] It is clear that the exception in s 55(6) does not apply. In my estimation of the evidence, it is also clear that Mr Visser knew that the truck was not “reasonably suitable” for the purpose for which he knew it was being purchased, and that the truck’s condition on delivery was already not such that it would be usable and durable for a reasonable time. Whether there were “defects” (as defined in s 53(1)(a)) apart from the questionable condition does not change anything. In any event, as I have set out in paragraph 24 above, the Tribunal properly concluded that there were defects, as defined, at the time of delivery.

[48] This means that the implied warranty of quality provided for in s 56(1) of the CPA was also contravened.

[49] There is, therefore, no basis on which the Tribunal’s declaration of prohibited conduct should be disturbed. The majority of the Tribunal’s findings of contravention also should be upheld. As I have said, it would have been sufficient to find that one of the findings of contravention was proper, to dismiss the appeal. Since I have found that the Tribunal’s findings were in the main supported by the evidence, the outcome should be obvious.

[50] Edan made no submissions regarding the remedy ordered by the Tribunal. The only basis of its appeal was whether the findings of contraventions and declaration of prohibited conduct were properly made. In those circumstances we do not interfere with the remedy.

OTHER ISSUES

[51] It is necessary to comment also on some procedural issues, particularly as they are relevant to the costs order.

[52] Rule 49 of the Uniform Rules of Court deals with Full Court appeals. Although it is titled “Civil Appeals from the High Court”, it is clear from the context and from subrules 16 and 17 that it applies to any civil appeal that is heard by a Full Court. Rule 49(4) of provides:

Every notice of appeal and cross-appeal shall state –

(a) what part of the judgment or order is appealed against; and

(b) the particular respect in which the variation of the judgment or order is sought.

[53] The subrule was amended in 2013, before which it required an appellant also to include the grounds on which the appeal was founded in its notice of appeal. Edan was therefore not required to list its grounds of appeal in its notice of appeal and it did not do so.

[54] It is unusual that an appeal comes before the Full Court with no leave being given. Usually the requirement of leave acts as a filter to ensure that judicial resources are not expended on issues which do not require the attention of three judges. Generally only an appeal that has some prospects of success or which has some other compelling reason to justify it being entertained would be heard. Another function served by an application and the grant of leave is that the grounds of the appeal are provided, both for the Court’s benefit and that of the respondent. In this situation, where there is no application for leave and the notice of appeal does not include the grounds of appeal, the grounds or basis of the appeal ought to be properly and clearly set out in the appellant’s heads. In this case the grounds of appeal only emerge near the end of Edan’s heads of argument, and Edan’s counsel, when asked near the beginning of his submissions what the grounds of appeal were, was unable to articulate them clearly. This is less than an ideal situation.

[55] In addition, counsel was not able to clearly link the findings of the Tribunal with the basis on which it was contended that the Tribunal erred. The impression was created that counsel was not familiar at all with the contents of the CPA.

[56] Finally, the condition of the “file” on Caselines (the online platform on which the case documents were uploaded) was entirely unsatisfactory. Not only did the record consist of repetitions and of documents incorrectly labelled, the physical bundles were uploaded as whole bundles, without separating each document for ease of navigation as required. Edan’s representatives were informed, by means of a note on Caselines, that they did not comply with the requirements, and their attention was drawn to a notice from the office of the Deputy Judge President that the appeals were not exempt from indexing requirements and should be struck if there was no compliance. The legal practitioners ignored this.

[57] The court would have been entitled to strike the matter on that basis alone, and the failure of counsel to have properly prepared, and to have properly assisted the court, again would have justified a decision by this court not to deal with the matter.

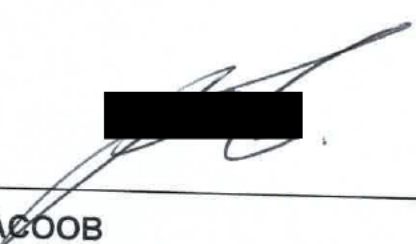
[58] However, this would have caused further prejudice to Sbuyile, who has been waiting for some years for the relief ordered by the Tribunal. It is on that basis that the matter has been entertained and dealt with.

CONCLUSION

[59] The failure on more than one level of Edan’s legal representatives to properly assist the court, justifies the court showing its displeasure by means of a costs order. For this reason, costs are ordered on an attorney and client scale.

[61] The following order is granted:

The appeal is dismissed, with costs on an attorney and client scale.




S YACOOB
JUDGE OF THE HIGH COURT
GAUTENG JOHANNESBURG

HEARING

DATE OF HEARING : 26 NOVEMBER 2025
DATE OF JUDGMENT : 13 APRIL 2026

APPEARANCES

FOR THE APPELLANT: Mr J Prinsloo
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FOR THE THIRD RESPONDENT: Ms M Sangweni of Enhle Ngwane Attorneys