



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

Reportable

CASE NO: 16586/2024

In the matter between:

**WINGFIELD MOTORS (PTY) LTD
t/a BEST PRICE FOR MY CAR**

Appellant/Applicant

and

NATIONAL CONSUMER TRIBUNAL

First Respondent

NATIONAL CONSUMER COMMISSION

Second Respondent

**WESTBANK, A DIVISION OF FIRSTRAND
BANK LTD**

Third Respondent

SHAD MARITZ

Fourth Respondent

Neutral citation: *Wingfield Motors (Pty) Ltd v National Consumer Tribunal
and Others* (Case no 16586/2024) [2025] ZAWCHC 381 (26-08-2025)

Coram: **NUKU J and O'BRIEN AJ**

Heard: **12 June 2025**

Delivered: **26 August 2025**

Summary: Consumer Protection Act 68 of 2008 – appeal and/ or review in terms of section 59(3) and 148(2) – whether this Court has jurisdiction to hear the review – section 1 of PAJA defining the court to include the High Court within whose area of jurisdiction the party whose rights have been affected is domiciled or ordinarily resident or the adverse effect of the administrative action was, is or will be experienced – grounds of appeal same as the grounds of review – appeal and/ or review dismissed

ORDER

The appeal and the review are dismissed with costs.

JUDGMENT

NUKU J and O'BRIEN AJ

Introduction and factual background

[1] This is an appeal and/or an application for the review and setting aside of the decision made by the first respondent, the National Consumer Tribunal (Tribunal), on 23 May 2024. The appeal has been brought in terms of section 148(2), read with section 59(3), of the National Credit Act, 34 of 2005 (NCA), and the review has been brought in terms of the same provisions, read together with the provisions of the Promotion of Administrative Justice Act 3 of 2000 (PAJA).

[2] The appellant/applicant is Wingfield Motors Proprietary Limited (Wingfield), a private company duly registered under the company laws of the Republic of

South Africa. Wingfield specialises in buying and selling used motor vehicles, trading as Best Price For My Car at various locations, including the corner of Jakes Gerwel and Milton Drive, Goodwood, Western Cape Province.

[3] The first respondent is the Tribunal, an adjudicative body established under section 26 of the NCA with jurisdiction throughout the entire country. Its offices are situated on the Ground Floor, Block B, Lakefield Office Park, 272 West Avenue, at the corner of West and Lenchen North, Centurion, Gauteng Province.

[4] The second respondent is the National Consumer Commission (NCC), a regulatory authority established under section 85 of the Consumer Protection Act 68 of 2008 (CPA). The NCC's primary role is to protect consumer interests and to provide accessible, transparent, and effective redress for consumers. Its offices are located at Block C, South African Bureau of Standards Campus, 01 Dr Lategan Road, Groenkloof, Gauteng Province. Only the NCC opposes the appeal and/or review.

[5] The third respondent is Wesbank Limited, a division of FirstRand Bank Limited (FirstRand Bank), a bank duly registered under the relevant banking and company laws of the Republic of South Africa, with its registered office situated at 1 Empire Road, Fairlands, Johannesburg, Gauteng Province. FirstRand Bank provided credit to the fourth respondent for the purchase of the motor vehicle, described more fully below and which is the subject of the appeal and/or review.

[6] The fourth respondent is Mr. Shad Maritz (the Consumer). He purchased a motor vehicle described as a 2017 Ford Focus RS 2.3 EcoBoost (vehicle) from Wingfield on 22 January 2021, financed by FirstRand Bank.

[7] The vehicle was intended for the Consumer's son, who had seen it advertised. The papers filed by Wingfield further describe the vehicle as a relatively small and light hatchback, equipped with a powerful engine that produces about 257 kW of horsepower, which is why it is referred to as a hot hatchback.

[8] Before purchasing the vehicle, the Consumer's son test drove it twice, on 18 and 21 January 2021. Additionally, Wingfield had sent the vehicle to a company called Dekra N1 City (Dekra) for assessment and a report on its condition.

[9] According to Wingfield, Dekra's assessment involved an experienced technician test driving the vehicle to check for faults. However, the assessment did not include a full diagnostic test.

[10] Having completed the assessment in the manner described above, Dekra issued a report that did not reflect any meaningful faults with the vehicle, other than it being dirty and having a scratch on the front bumper paintwork.

[11] When the Customer collected the vehicle on 22 January 2021, it had an odometer reading of 42,960. Three days later, on 25 January 2021, the Customer called Wingfield to report a burning smell coming from the rear wheel. The Customer also said that the vehicle's clutch 'did not feel right'.

[12] Mr Dale Pheiffer (Mr Pheiffer), a general manager employed by Wingfield, advised the Customer to take the vehicle to Barloworld Ford N1 City (Barloworld Ford) for assessment. This was because, according to Mr Pheiffer, the vehicle was still under warranty and a maintenance plan.

[13] The Customer did not take the vehicle for assessment immediately but did so on 2 March 2021. This, according to the affidavit filed by the NCC, was the first available date that Barloworld Ford could assess the vehicle. According to Wingfield, the vehicle travelled a further 2,346 kilometres during the intervening period, which equates to an average of about 59 kilometres per day. Wingfield considers this to be excessive by normal standards.

[14] Barloworld Ford assessed the vehicle and issued an estimate dated 8 March 2021. The estimate includes a section on labour and consumables, which contains the following inscription:

‘F- CLUTCH FAULTY

C- RR GEARBOX AND TRANSFER CASE, ASSESSED CLUTCH AND FLYWHEEL, CLUTCH BURNT AND FLYWHEEL BURNT, EXCESSIVE PLAY ON CLUTCH KIT’

[15] The total estimated costs to repair the damage to the clutch and flywheel amounted to approximately R62,218.19. These costs were not covered by the manufacturer’s warranty, and so Barloworld Ford required payment from the Customer before carrying out the repairs. The Customer looked to Wingfield to cover these costs, but Wingfield refused to do so.

[16] Given the short period within which the defects to the clutch and flywheel manifested, the Customer was also unwilling to pay for the repairs to the vehicle. On 31 March 2021, his attorneys wrote to Wingfield offering to return the vehicle in exchange for a refund of the purchase price.

[17] Wingfield’s initial response to the tender for the return of the vehicle is not apparent from the papers. During July 2021, the Customer lodged a complaint with the Motor Industry Ombudsman of South Africa (MOISA). MOISA assessed the complaint alongside Wingfield’s response and concluded that it could not support the Customer’s expectations. According to MOISA:

‘[I]t must be noted that clutches are wear and tear frictional items and that neither the manufacturer nor the dealership has control over the driving style of the said vehicle. As per the estimate from the Ford dealership, which also indicated that the warranty will not cover the costs of repair, the MOISA cannot enforce their warranty parameters. As can be seen, there are burn marks on the pressure plate.’

[18] The record shows that there were further engagements between Wingfield and the Customer after MOISA's ruling. Evidence suggests that Wingfield was at some point willing to accept the vehicle back and issue a refund to the Customer. However, there was a disagreement regarding the basis on which Wingfield was prepared to refund the Customer.

[19] Wingfield's proposal regarding the refund was to return the monies received from Firstrand Bank as well as the deposit paid by the Customer. In turn, FirstRand Bank would reimburse the Customer all the instalments paid. The Customer, for his part, would pay R32,595.60 for usage, calculated at R4.60 per kilometre driven, plus an additional R27,149 for depreciation.

[20] The Customer accepted responsibility for usage but not for depreciation. Wingfield and the Customer reached a deadlock, and the Customer submitted a complaint to the NCC under section 71(1) of the CPA.

[21] The NCC investigated the complaint under section 72 of the CPA and subsequently referred it to the Tribunal under section 73(2)(b) of the CPA, claiming that Wingfield had violated the provisions of section 55(2)(a) to (c), 56(2)(a) and (b), and 13(1)(a) and (b) of the CPA.

[22] The referral by the NCC was accompanied by an affidavit sworn by its Deputy Commissioner, Mr Tshezi Mabuza (Mr Mabuza), to which the NCC's

report was attached. The NCC report, in turn, referenced the estimate that had been prepared by Barloworld Ford mentioned above.

[23] Wingfield opposed the proceedings before the Tribunal and submitted an answering affidavit sworn by Mr. Pheffer, who stated, among other things, that he had shown pictures of the clutch to Wingfield's technicians and Mr. Johan White (Mr. White), a former Ford dealer principal, who all found no signs of damage to the clutch plate and that the flywheel and pressure plate showed no signs of burn marks. Relying on the findings made by the MOISA, Mr. Pheffer stated that the visible marks on the flywheel and clutch did not render the vehicle unsuitable for its intended purpose nor did they detract from the expected quality.

[24] The NCC submitted its reply papers, after which the matter proceeded to an oral hearing, where Wingfield was represented by counsel.

[25] The Tribunal issued a decision that, among other things, found Wingfield in breach of section 55(2)(a) to (c) of the CPA, ordered it to refund the purchase price paid by the Customer, and imposed an administrative penalty of R50,000.00.

[26] Dissatisfied with the Tribunal's decision, Wingfield approaches this court, exercising its statutory right to appeal or review. Wingfield relies on the same grounds for its appeal and review, which we set out below.

[27] The NCC opposes the appeal and/or review on various grounds that we outline below. Some of these grounds were pleaded, while others were only raised during the argument. These include (a) this Court's lack of jurisdiction to hear the appeal and/or review, (b) procedural irregularities affecting the appeal, (c) whether it is competent to pursue an appeal and review of the Tribunal's decision

simultaneously, (d) the introduction of new evidence on appeal and/or review, and (e) the merits of the appeal and review.

Issues for determination

[28] Building on the above, the issues that this Court must determine are as follows:

28.1 whether this Court has the requisite jurisdiction to hear the appeal and/or the review.

28.2 procedural irregularities relating to:

28.2.1 whether it is permissible to lodge an appeal against the Tribunal's decision by way of a notice of motion.

28.2.2 whether the appeal had lapsed.

28.2.3 whether it is permissible to appeal and review the Tribunal's decision simultaneously.

28.2.4 whether it is permissible for Wingfield to introduce evidence on appeal or review; and

28.4 whether any of the grounds of appeal and/or review have merit.

[29] Before addressing these issues, we find it necessary to outline the cases pleaded by Wingfield and the NCC in some detail.

Wingfield's pleaded case

[30] Wingfield begins by acknowledging that there is little precedent regarding the required form of the appeal, whether it should be narrow or wide. It also highlights the lack of clarity about the relevant formal requirements and timeframes, and requests condonation if those requirements have not been met.

[31] The core of Wingfield's appeal is the alleged failure of the NCC or the Consumer to provide evidence that satisfies the requirements of section 55(2) of the CPA, which states, in the relevant part, as follows:

'Except to the extent contemplated in subsection (6), every consumer has a right to receive goods that-

- (a) Are reasonably suitable for the purpose for which they are generally intended;
- (b) Are of good quality, in good working order and free of any defects;
- (c) Will be usable 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 at their supply.'

[32] Wingfield separately discusses the Tribunal's findings regarding the breach of section 55(2)(b), as well as sections 55(2)(a) and (c), and we follow the same approach in outlining its pleaded case. We first set out Wingfield's case regarding the breach of section 55(2)(b).

[33] Wingfield criticises the Tribunal for its conclusion that 'the only inference to be drawn was that the vehicle's defects and other damages must have been present at the time of its purchase', asserting that this was not supported by any evidence.

[34] Dealing with what the Tribunal referred to as evidence in its decision, Wingfield describes this as purported evidence and states that it is 'notable that there is a distinct lack of actual evidence that the defects (the faulty clutch and the burn marks on the flywheel) were indeed present when the vehicle was sold.' Wingfield supports this statement by pointing out that the defects were only identified approximately six weeks after the vehicle had been sold and after it had been driven for an additional 2346 kilometres.

[35] Wingfield further alleges that the Tribunal was mistaken in stating that it was an 'undisputed fact that the flywheel and clutch experienced problems within three days after purchase'. It points out that what the Customer reported three

days after the sale was a smell coming from the rear wheel and a clutch that didn't feel right, and that there could be various explanations for these issues, including overheated brakes and/or an overheated clutch caused by the vehicle being driven hard.

[36] To emphasise its point about the lack of evidence presented to the Tribunal, Wingfield states that, at that stage, it was uncertain whether (a) a defect existed, (b) the extent of any defect, or (c) the defect was present at the time of the vehicle's purchase. Wingfield contends that establishing these factors could only be achieved through expert evidence, which was not presented to the Tribunal. Regarding the estimate submitted by Barloworld Ford, Wingfield criticises this evidence, stating that it was hearsay, not given under oath, and lacked context from any other evidence. At best, Wingfield contends, the estimate only indicates the existence of defects six weeks after the vehicle was purchased.

[37] Wingfield criticises the Tribunal for relying on inferential reasoning, arguing that the panel that heard the case lacked technical expertise in motor vehicle clutches and flywheels. This, Wingfield contends, is merely impermissible speculation by the Tribunal.

[38] Turning to the breaches of section 55(2)(1) and (c), Wingfield begins with a warning that an important consideration in this context is that these subsections are qualified by phrases such as 'reasonably suitable for the purpose for which they are generally intended', and that one must 'have regard to the use to which they would normally be put and to all the surrounding circumstances of their supply'.

[39] Wingfield emphasises the importance of the qualifying phrases mentioned above, noting that not all defects identified after the purchase date amount to

breaches of sections 55(2)(a) and (c). It states that this is especially relevant when a customer buys a used motor vehicle, as a reasonable person would expect ongoing maintenance needs for such a vehicle. It also highlights that the CPA's provisions do not cover damage caused to the goods by the customer's unreasonable use.

[40] Wingfield contends that the Tribunal made an error in accepting that the damage to the vehicle could not have been caused by driver error within three days or 200 kilometres of use. Wingfield suggests that this mistake stems from the Tribunal assuming that the extent of the damage reported by the Customer three days after the sale was the same as that diagnosed six weeks later, after the vehicle had been driven for approximately 2,346 kilometres.

[41] Wingfield also criticises the Tribunal for disregarding the evidence from an independent specialist that Wingfield submitted. According to Wingfield, the specialist's evidence showed that a flywheel could last up to 150,000 kilometres if the vehicle is driven normally. However, it could also fail before reaching 100 kilometres if the vehicle is used as a sports car.

[42] Wingfield argues that when the Tribunal encounters a factual dispute between Wingfield's independent specialist's evidence and that of the Customer, such a dispute cannot be resolved without oral evidence and/or cross-examination. It further contends that the Tribunal's failure to exercise its inquisitorial powers to request more detailed expert evidence was an error. According to Wingfield, the need for the Tribunal to invoke its inquisitorial powers to seek additional evidence was heightened by the extensive mileage the vehicle had covered in a short period.

[43] The deponent to Wingfield's founding affidavit states that it has been established that the Customer continued using the vehicle after the decision by the Tribunal. He also references two traffic fines issued to the driver of the vehicle on 9 December 2023 and 5 March 2024, where the driver was travelling at speeds of 90 to 94 and 100 to 104 kilometres per hour, respectively, in excess of the speed limit of 80 kilometres per hour. He further states that he attended the Customer's premises on 10 July 2024, and upon inspecting the vehicle, he ascertained that its odometer reading was approximately 67000 kilometres, which would mean that the vehicle has been driven for approximately 24,000 kilometres since its purchase. Having regard to all of this, Wingfield infers that the defects could not have been severe.

[44] Turning to the review, the deponent to Wingfield's founding affidavit states that the review is based on the same grounds of appeal. Having said that, he then lists the provisions of PAJA that Wingfield relies on, namely that:

- 44.1 the hearing was procedurally unfair, as contemplated in section 6(2)(c);
- 44.2 the Tribunal was materially influenced by an error of law, as contemplated in section 6(2)(d);
- 44.3 the Tribunal's judgment was arbitrary and/or capricious, as contemplated in section 6(3)(iv);
- 44.4 the Tribunal's judgment was not rationally connected with the reasons given by it, as contemplated in section 6(2)(f)(ii)(dd);
- 44.5 the Tribunal took irrelevant considerations into account and ignored relevant considerations, as contemplated in section 6(2)(e)(iii); and/or

44.6 the Tribunal's conclusion was not rationally connected to the reasons given by it, as contemplated in section 6(2)(f)(cc);

The case pleaded by the NCC

[45] As has already been stated, the NCC opposes both the appeal and the review. NCC's first ground for opposition raises the issue of this Court's jurisdiction to hear either the appeal or the review. It contends that this Court lacks such jurisdiction because the offices of the Tribunal are situated in Centurion, Pretoria, Gauteng Province, and are therefore outside the territorial area of jurisdiction of this Court.

[46] The second ground concerns an objection to introducing new evidence on appeal or review without prior permission from this Court.

[47] The third ground relates solely to the appeal, claiming that it has lapsed because it was filed after the deadline specified by the Uniform Rules of Court.

[48] On the merits of the review, the NCC states that its case before the Tribunal concerning the faults in the flywheel and clutch was based on the estimate by Barloworld Ford, which indicated that the clutch and the flywheel required replacement at a cost of approximately R62,218.19, and that this was within the period of six months after the purchase of the vehicle.

[49] The NCC referred to the answering affidavit submitted by Wingfield to the Tribunal, in which Wingfield, according to the NCC, stated that:

49.1 the customer was sold a used vehicle and was aware that he was not purchasing a new motor vehicle;

- 49.2 if there were defects on the vehicle that Wingfield was definitely unaware of;
- 49.3 Wingfield admits that the Customer contacted it to complain about a smell emanating from the rear wheel and that the clutch did not “feel right”;
- 49.4 Wingfield admits that the quotation from Barloworld Ford found that the clutch was faulty;
- 49.5 Wingfield admits that there were some burn marks on the flywheel and clutch, which Wingfield contends were normal wear and tear; and
- 49.6 Wingfield submits that the Customer could not expect the same quality from a pre-owned high-performance motor vehicle as from a brand new one.

[50] The evidence presented by the NCC, when taken together with Wingfield's response, according to the NCC, justifies the inference that the Tribunal correctly concluded that the defects must have existed at the time the vehicle was sold to the Customer, and therefore the Tribunal's decision is not affected by any irregularity that would warrant its review or setting aside.

[51] In response to Wingfield's complaint that the Tribunal ignored the evidence presented by its independent expert, the NCC contends that Wingfield provided no such evidence; furthermore, even if such evidence had been presented, it was not relevant to the issue of implied warranty referred to in section 56 of the CPA.

[52] Wingfield's reliance on Johan White's evidence (Mr White) as an allegedly independent expert was criticised because Mr White, a manager employed by Wingfield, cannot be considered independent. His seven years' experience as a principal dealer, it was contended, does not qualify him to give expert opinion in this case. Considering all these points, it was contended that the Tribunal's rejection of Mr White's evidence was justified.

[53] The NCC also emphasised that this case concerns Wingfield's failure to act as required by section 56 of the CPA, which, in the relevant part, states that:

'56 Implied warranty of quality

- (1) ...
- (2) within six months after the delivery of any goods to a consumer, the consumer may return the goods to the supplier, without penalty and at the supplier's risk and expense, if the goods fail to satisfy the requirements and standards contemplated in section 55, and the supplier must, at the direction of the customer, either –
 - (a) repair or replace the failed, unsafe or defective goods; or
 - (b) refund to the consumer the price paid by the consumer, for the goods.'

Wingfield's Reply

[54] Not expecting the issue of jurisdiction to be contentious, Wingfield had not addressed it adequately in its founding papers and was compelled to do so in its response. It did so by referencing section 1 of PAJA, which grants jurisdiction to any High Court in South Africa where the affected party is domiciled or ordinarily resident, and/or where the adverse effect of the administrative action is, was, or will be experienced.

[55] Wingfield stated that this Court has jurisdiction because its principal place of business and registered address are within this Court's area of jurisdiction. Additionally, the subject matter of the review is located within this jurisdiction, and the Consumer also resides within this Court's jurisdiction.

[56] Wingfield's response to the objection about introducing new evidence was that it was permissible because the appeal is a so-called wide appeal, which allows any new notional evidence. It distinguished the authority relied upon by the NCC on the basis that it only applies in respect of appeals from one court to another. Lastly, it was stated that, in any event, there are exceptional circumstances justifying the admission of the new evidence.

[57] Wingfield's replying affidavit did not address the NCC's reference to the answering affidavit that Wingfield had submitted to the Tribunal, as detailed in para [50] above. The deponent to Wingfield's replying affidavit only stated that:

'[T]he contents of these paragraphs are seemingly a synopsis of some of the issues that served before the Tribunal. It is not necessary to deal with it again herein, save to repeat what I had already stated in the founding affidavit.'

[58] Wingfield disclaimed any reliance on Mr White as the independent expert whose evidence was ignored by the Tribunal. However, it did not specify who the expert was that the Tribunal disregarded.

[59] In response to the lapse of the appeal, Wingfield suggested that the NCC was also uncertain about the legal position regarding which rules and/or time periods apply in relation to appeals from the Tribunal. It stated that such uncertainty justified this Court granting condonation for any procedural lapses.

[60] Having outlined the case presented by each of the parties, we now turn to consider the issues in dispute, beginning with the issue of jurisdiction.

Does this Court have jurisdiction to hear the appeal and/or review?

[61] The NCC accepted that this Court would have jurisdiction to review if the review was based on PAJA. However, the NCC argued that the present review is not based on PAJA but is a so-called statutory review.

[62] This argument was based on the idea that there are primarily five types of administrative law reviews, each with its distinct requirements regarding jurisdiction. These are (a) reviews in terms of PAJA, (b) reviews in terms of section 33 of the Constitution of the Republic of South Africa, 1996 (Constitution), (c) special statutory reviews, (d) reviews based on the principle of legality, and (e) reviews in terms of the common law. For this proposition, the NCC relied on a decision of the Gauteng Division of the High Court, Pretoria in *Kwinana*¹ where that court stated that:

‘There are five primary routes for administrative law review: PAJA, section 33 of the Constitution, special statutory review, the principle of legality, and the common law.’

[63] Relying on the decision of the Constitutional Court in *Baloyi*², it was argued that jurisdiction is determined based on the case pleaded by a litigant. The pleadings in this matter, it was contended, clearly show that the review is brought under sections 59(3) and 148(2)(a) of the NCA. The reference to the provisions of PAJA was necessary because section 148(2) does not specify the grounds for review. In such cases, the grounds are found in PAJA, but this does not convert a statutory review into one under PAJA. The final submission was that the only

¹ *Yakhe Kwinana v The Chairperson of the Disciplinary Inquiry instituted by the South African Institute of Chartered Accountants and Another*, case no: 2023-019726 at para 53

² *Baloyi v Public Protector and Others* 2022 (3) SA 321 (CC) at para [33]

court with jurisdiction over the review in this matter is the Gauteng Division of the High Court, Pretoria, due to the location of the Tribunal's offices.

[64] Wingfield persisted with the argument raised in its pleadings, relying on the provisions of section 1 of PAJA that this Court has jurisdiction because it is the court within whose area of jurisdiction the party whose rights have been affected is domiciled or ordinarily resident or the adverse effect of the administrative action was, is or will be experienced.

[65] Wingfield argued that, in any event, this court has jurisdiction under section 21(1) of the Superior Courts Act, 10 of 2013, as well as at common law. Reference was made to the *causae continentia* principle, which dictates that where one court has jurisdiction over part of the cause of action, considerations of convenience, justice, and good sense justify its exercising jurisdiction over the entire cause of action. Additionally, the fact that the sale of the vehicle was concluded within the area of jurisdiction of this Court, it was submitted, confers jurisdiction on this Court. In support thereof, this Court was referred to the decision of this Court in *Van Wyk t/a Skydive Mossel Bay v UPS SCS South Africa (Pty) Ltd*³ (*Van Wyk*).

[66] The objection to this Court's jurisdiction can be swiftly addressed. The NCC's reliance on *Kwinana* is misplaced because, in the same passage relied upon by the NCC and after listing the five pathways for reviews, the court states 'The first four paths relate to the review of an administrative action (as per section 1 of PAJA)...'.

[67] It follows from the above passage that statutory review contemplated in section 148(2) of the NCA relates to the review of an administrative action as

³ 1 All SA 857 (WCC)

defined in section 1 of PAJA. Consequently, Wingfield's review pertains to the review of an administrative action as defined in section 1 of PAJA.

[68] As submitted on behalf of Wingfield, section 1 of PAJA also defines a court to include a High Court where the party whose rights have been affected is domiciled or ordinarily resident, or where the adverse effect of the administrative action was, is, or will be experienced. There is no doubt that the adverse effects of the Tribunal decision are felt or will be felt by Wingfield within this Court's jurisdiction. Wingfield also conducts business within this Court's jurisdiction.

[69] If the legislature had intended to limit the jurisdiction of the High Court to the area where the Tribunal has offices, it would have legislated accordingly. The fact that a decision of the Tribunal is an administrative action implies that jurisdiction must be determined in terms of PAJA.

[70] The suggestion by the NCC that different requirements for jurisdiction exist for the various pathways of administrative law reviews conflicts with the Constitutional Court decision in *Fuel Retailers Association*⁴, where the court, dealing with a review under section 36 of the Environmental Conservation Act 73 of 1989—which also did not specify grounds of review—stated that ‘the cause of action for the judicial review of administrative action now ordinarily arises from PAJA and not from the common law as in the past.’ Clearly, if Wingfield's cause of action now ordinarily arises from PAJA, it follows that the jurisdiction of a court must also ordinarily arise from PAJA. The NCC's objection to the jurisdiction of this Court is without merit. We turn next to the objections based on procedural irregularities.

Procedural irregularities

⁴ *Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province and Others* 2007 (6) SA 4 at para [37]

[71] The NCC raised four procedural complaints. The first concerns the initiation of an appeal via a notice of motion. This was not pleaded by the NCC, but was raised for the first time in its heads of argument. The NCC submitted that section 148(2)(b) of the NCA does not envisage an appeal in the form of an affidavit. For that reason, it was argued on behalf of the NCC that an appeal under section 148(2)(b) of the NCA should be initiated by way of a notice of appeal outlining the grounds of appeal, rather than by way of a notice of motion supported by an affidavit. In this regard the NCC relied on a decision of the Gauteng Division of the High Court, Gauteng, Johannesburg in *Stenersen*.⁵

[72] Wingfield, understandably, had not addressed this issue in its heads of argument as they were filed before NCC's heads of argument were delivered. It attempted to address the issue by referring to the divergence of approaches to statutory appeals within the context of appeals under the Community Schemes Ombud Services Act, 9 of 2011.

[73] Since the matter was not raised in the NCC's papers, we consider that it is not properly before us, and therefore, it is not permissible for us to decide it. This view is based on our understanding that the court's role is to adjudicate disputes by applying legal principles to the evidence as presented by the parties.

[74] It has been repeatedly stated that the affidavits in motion proceedings serve as pleadings and evidence. It was open to the NCC to raise the dispute in its answering papers, but it chose not to. To now expect the court to decide on it in the abstract undermines the proper functioning of the court's system. We accordingly decline to determine the issue of the form which the appeal, under section 148 of the NCA, should take. Next, we consider the complaint relating to the lapsing of the appeal.

⁵ *Stenersen and Tulleken Administration CC v Linton Park Body Corporate and Another* 2020 (1) SA (GJ)

[75] Although this issue of the lapsing of the appeal had been raised in the papers filed by the NCC, it was not addressed by either party in their written submissions or during oral argument. The NCC was content to limit its submissions to arguments concerning the impermissibility of initiating an appeal by way of a notice of motion, as well as its objection to the simultaneous lodging of an appeal and review regarding the same decision. Considering this, we must accept that the NCC abandoned the challenge, making it unnecessary for us to decide on it. We, therefore, do not determine the issue and proceed to consider the objection against the simultaneous lodgement of an appeal and review.

[76] As outlined in the NCC's pleaded case, the objection to lodging an appeal and a review simultaneously was also not raised in the papers filed by the NCC. Based on the reasons behind our decision not to address the objection to initiating an appeal by way of a notice of motion, we believe it would be inappropriate for us to decide on an issue that was not pleaded. We, therefore, do not determine this objection as it is not properly before us. That leaves only the issue of the introduction of evidence on appeal, an issue we turn to next.

[77] Similarly, regarding the issue of the appeal lapsing, neither party addressed the objection to the introduction of evidence on appeal and/or review in their written or oral submissions. Assuming that the NCC decided to abandon the issue, we therefore do not decide it. That then leaves the merits of the appeal and/ or review.

The merits of the appeal and/ or review

[78] Wingfield relies on the same grounds for its appeal and review as previously stated. During arguments, Mr. Steenkamp, who represented

Wingfield, contended that, on the merits, Wingfield's case is based on three broad grounds: (a) the Tribunal erred in its interpretation of the CPA, (b) there was insufficient evidence before the Tribunal, and (c) the Tribunal erred in failing to exercise its inquisitorial powers to summon more evidence.

[79] On the interpretation of the provisions of CPA, the submission on behalf of Wingfield was that the Tribunal took a simplistic view of section 56 because the defects manifested within a six-month period referred to in that section. The submission was that section 56 should be read together with the qualifying phrases in section 55 to determine whether a defect falls within the parameters of what is 'reasonably entitled to expect in the circumstances.' It was submitted that the Tribunal's decision is, at best, ambiguous regarding the interpretation of the CPA provisions.

[80] Turning to the lack of sufficient evidence and the Tribunal's failure to exercise its inquisitorial powers to call for more evidence, Wingfield heavily relied on the decision of the Supreme Court of Appeal in *Motus*⁶ to support its argument that not every minor defect qualifies as a defect as defined.

[81] In evaluating the arguments put forward by Wingfield, it is important to note that there were certain issues with the vehicle on the third day after the Customer took delivery. These problems involved a smell coming from the rear and a clutch that did not feel right, as reported by the Customer.

[82] Approximately six weeks after delivery, the Customer took the vehicle to Barloworld Ford for an assessment, prompted by Wingfield. The assessment confirmed that the vehicle indeed had some issues with the clutch and flywheel.

⁶ *Motus Corporation (Pty) Ltd and Another v Wentzel* [2021] 3 All SA 98

The cost to repair the clutch and the flywheel, according to the estimate issued by Barloworld, would be over R62 000.

[83] Even though Wingfield suggests that the Tribunal failed to properly interpret the provisions of sections 55 and 56 of the CPA, we did not understand Wingfield to be suggesting that a motor vehicle with a clutch and flywheel that requires replacement is reasonably suitable for the purposes for which they are generally intended, as contemplated in s 55(2)(a), or of good quality, in good working order, and free of any defects, as contemplated in s 55(2)(b), or will be usable 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, as contemplated in s 55(2)(c). Indeed, it can hardly be suggested that a motor vehicle that requires the replacement of a clutch and flywheel do not meet any of the requirements of s 55(2)(a) to (c).

[84] In an attempt to overcome the above-mentioned obstacle, Wingfield resorts to obfuscation. It initially suggests that the estimate by Wingfield is not evidence, despite never having challenged the estimate before. Instead, its stance was that it was not willing to pay for the repair costs, as required under section 56(a) of the CPA. Wingfield could have taken the vehicle for assessment if it disputed the estimate prepared by Barloworld Ford, but it never did.

[85] When it accepts the estimate, supposedly as a generous act towards the Tribunal, it criticises the same estimate for not having been tested through oral evidence and/or cross-examination. However, there was never a need to do so when Wingfield never provided evidence to dispute the findings by Barloworld Ford.

[86] Motus, in our view, is entirely distinguishable from the present case. The defects considered in Motus were (a) loose back panels of the vehicle, (b) a ticking sound when the engine was hot or after the car had been driven, and (c) a complaint that the air-conditioning was not blowing cool air. Regarding these defects, the footnotes to the judgment record that (a) it was difficult to identify what the complaint was about in respect of the loose back panels, (b) it was unclear whether the ticking sound was anything more than the sound of an engine cooling down, and (c) the job card made no mention of the air-conditioning not blowing cool air. Clearly, the issues in Motus required more investigation as they were not immediately obvious.

[87] The same cannot be said of a faulty clutch and flywheel. Once again, Wingfield did not suggest that a motor vehicle requiring the replacement of these parts is free of defects. The shift in stance was to question whether these defects existed at the time the vehicle was sold to the Customer. However, as the NCC points out, this approach overlooks the fact that Wingfield, under section 56(2)(a) of the CPA, was required to cover the costs of repairs. The provisions of section 56 are explicit; they apply to all goods without exception, and Wingfield's attempt to argue that section 56 does not apply to used goods is misplaced.

[88] It was Wingfield's intransigence that caused the Customer to tender the return of the goods. This was still within the six-month period specified in section 56. When Wingfield attempted to accept the return of the vehicle, it tried to penalise the Customer by claiming it was entitled to charge depreciation, alongside the statutorily permitted deduction for motor vehicle use based on the mileage travelled.

[89] To the extent that Wingfield claims that the defects in the clutch and the flywheel were caused by the manner of driving of the Customer or his son,

Wingfield did not present any evidence to support that claim but merely speculated. With the evidence pointing to the presence of the defects, it was for Wingfield to prove that vehicle goods had been altered after leaving its control. To overcome this obstacle, Wingfield shifts the responsibility to the Tribunal, suggesting that it was for it to prove that the defects were not due to the manner in which the vehicle was driven.

[90] The approach taken by Wingfield is detrimental to the very purpose of the CPA and the NCA. Wingfield could have easily settled this issue at the point when the Customer merely asked Wingfield to pay for the repairs. Wingfield refused despite the obligations imposed by section 56(2)(a) of the CPA.

[91] When the Customer resorted to tendering the return of the vehicle, as he is entitled to under section 56(2)(b) of the CPA, Wingfield would have none of that. But for the intervention of the NCC and the Tribunal, the Customer would have been left out in the cold. And that would have completely undermined the provisions of the CPA.

[92] None of the grounds of appeal and/or review have merit, and both should be dismissed with costs.

Conclusion

[93] To conclude, this court has the jurisdiction to hear this appeal and/or review. The review powers are derived from section 1 of PAJA, which defines a court to include a High Court situated where the effects of the administrative action will be felt. Once jurisdiction is established in respect of the review, that is the end of the enquiry in respect of the issue of jurisdiction.

[94] The procedural objections pleaded by the NCC were abandoned in favour of those that had not been pleaded. Consequently, we did not need to decide on the procedural objections that were abandoned. Similarly, we did not decide on the procedural objections that were not pleaded.

[95] None of the grounds for appeal and/or review has any merit, and both the appeal and the review cannot succeed.

Order

[96] As a result, we make the following order:

The appeal and/ or the review are dismissed with costs.



L G Nuku
Judge of the High Court



S C O'Brien AJ
Acting Judge of the High Court

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