IN THE NATIONAL CONSUMER TRIBUNAL
HELD IN CENTURION

Case number: **NCT-326491-2024-75(1)(b)**

In the matter between:

FREDERICKA ALBERTA SCHOLTZ **FIRST APPLICANT**

JUAN MATTHEUS SCHOLTZ **SECOND APPLICANT**

and

ROOT X AFRICA AUCTIONEERS CC **RESPONDENT**

Coram:

Ms Z Ntuli: Presiding Tribunal member
Dr A Potwana: Tribunal member
Mr S Hockey: Tribunal member

Date of hearing: 9 July 2025 (virtually via the MS Teams platform)
Date of judgment: 9 December 2025

JUDGMENT AND REASONS

THE PARTIES

1. The first applicant is Fredericka Alberta Scholtz (the first applicant), a consumer as defined in section 1 of the Consumer Protection Act 68 of 2008 (the CPA).

2. The second applicant is Juan Mattheus Scholtz (the second applicant), a consumer as defined in section 1 of the CPA.

3. At the hearing, the first and second applicants (the applicants) were represented by Adv. DK Ilse instructed by Trudie Broekman Attorneys.

4. The respondent is Root X Auctioneers CC (the respondent), a close corporation incorporated in terms of the company laws of the Republic of South Africa under registration number

2007/180369/23. The respondent is a supplier, as defined in section 1 of the CPA. At the hearing, the respondent was represented by Adv. D Prinsloo instructed by Geyser Attorneys.

TERMINOLOGY

5. A reference to a section in this judgment refers to a section in the CPA. A reference to a regulation refers to the CPA Regulations, 2011 (the regulations)[1]. A reference to a rule in this judgment refers to the Rules of the Tribunal[2].

APPLICATION TYPE

6. The applicants referred this matter to the National Consumer Tribunal (the Tribunal) in terms of section 75(1)(b). The applicants initially referred their complaint to the National Consumer Commission (the NCC), which issued a non-referral notice. If the NCC issues a notice of non-referral, section 75(1)(b) allows a complainant to refer the complaint directly to the Tribunal, with leave of the Tribunal.

ISSUE TO BE DECIDED

7. The Tribunal must decide whether the respondent engaged in prohibited conduct and whether the relief sought should be granted if the Tribunal finds in favour of the applicants.

RELIEF SOUGHT

8. On the Form Tl.r30A, the applicants state that they seek an order (a) declaring the auction and sale to be illegal and invalid, and consequently that no charges were payable by the applicants to the respondent, (b) that the respondent refund the deposit, commission and other expenses and Value Added Tax (VAT) of R1,207,458.80, (c) that interest on the said amount at the prescribed legal rate be paid by the respondent from the date of payment, which is 25 June 2022, (d) that the respondent pay the legal costs incurred by the applicants in relation to the complaint on the attorney and own client scale, and (e) that the maximum administrative fine be imposed on the respondent.

BACKGROUND

9. This matter stems from an auction for the Ba Batle Game Lodge (the game farm) conducted by

1 Published under Government Notice R293 in Government Gazette 34180 of 1 April 2011.

2 Published under GN 789 in GG 30225 on 28 August 2007 as amended by GN 428 in GG 34405 on 29 June 2011, GN R203 in GG 38557 on 13 March 2015, and GN 157 in GG 39663 on 4 February 2016.

the first respondent on 25 June 2022 (the auction) in which the second applicant made a successful bid of R6.6 million. After the conclusion of the bidding process, the second applicant requested that the first applicant pay the deposit, which consisted of R1,229,250 (10% of the purchase price), the auctioneer's commission (7.5% of the purchase price), and VAT (collectively, the deposit). The second applicant did not sign the sale agreement. Instead, the first applicant signed it, despite not being listed, in the absence of the requisite authorisation documents.

10. The applicants learned after the bid that a dam depicted in a photograph, which was part of the bidder's pack for the auction, was not on the game farm but on a neighbouring farm. As a result of this alleged misrepresentation, the applicants cancelled the sale agreement and demanded a refund of the deposit paid, which was refused. The applicants allege that the respondent conducted the auction in contravention of the CPA and thereby engaged in prohibited conduct. They contend that the respondent violated several provisions of the CPA, the associated regulations, and the Rules of Auction.

11. According to the applicants, the respondent acted contrary to the CPA by failing to include the sale agreement in the bidders' pack, making the auction subject to an unfair disclaimer, knowingly misrepresenting the value, structure, and composition of the game farm by including a dam in the advertisement of the auction, failing to record the identity of all bidders and that the first applicant signed the sale agreement without authorisation. The applicants further contend that the respondent did not allow a reasonable time to inspect the farm before commencement of the auction, delayed the auction to enable a specific person to participate, by allowing a bid placed telephonically by a person whose name did not appear on the bidders' register, and received a fee before both parties signed the sale agreement, contrary to regulation 24(b).

12. The respondent opposes the application, contending that the applicants acted in their capacity as directors on behalf of Mothiflo (Pty) Ltd (Mothiflo), a company registered under number 2011/116970/07. The respondent submits that the sale agreement was concluded between Mothiflo, represented by the first applicant, and Riverside (Pty) Ltd (Riverside). The respondent submits that Mothiflo, a juristic person exceeding the statutory threshold, does not qualify as a consumer. In its view, the application is fatally defective, and the relief sought is incompetent in the absence of Riverside as a party to these proceedings.

THE APPLICANT'S SUBMISSIONS AT THE HEARING

13. At the hearing, the applicants emphasised the purpose and significance of regulating auctions under the CPA, asserting that before the CPA, auctions were regulated solely under the common law. The applicants submitted that this left an unsatisfactory gap in consumer

protection, which section 45 was specifically designed to address. They argued that they are consumers and that the respondent is a supplier as defined in section 1. The applicants asserted that section 45 applies to auctions as the protections under section 55 do not apply to goods bought on auction, stating that section 45 was enacted to ensure transparency, fair and honest dealing in all auctions, and to protect the interests of bidders who rely on the accuracy of representations made by auctioneers.

14. The applicants alleged contraventions of regulations 28(5), 26(2), 26(3), 24(m) and 20(12), and in the alternative, section 41(1)(a). They argued that these contraventions, considered individually and collectively, rendered the auction process unlawful. In relation to regulation 28(5), the respondent allegedly failed to provide a reasonable opportunity to inspect the game farm before the auction. Although the bidders' pack indicated that viewing would be allowed an hour before the auction commenced, their ability to conduct any meaningful inspection was frustrated. Mr Dirk Pienaar told them the person designated to accompany them around the property was unavailable and that, in the meantime, he could only show them the building. Moreover, hunting activities were taking place on the farm, making it unsafe and impractical to conduct a proper viewing. The respondent's suggestion that they could have made an appointment to inspect the farm earlier did not resolve the issue, as on the day of the auction, they were not afforded sufficient access or time to conduct a reasonable inspection. The applicants, therefore, proceeded on the assumption that the respondent's representations about the farm were truthful. The applicants submitted that compliance with regulation 28(5) is peremptory.

15. The applicants further submitted that the respondent failed to comply with the bidder-registration requirements imposed by regulation 26(2) and the requirements of Chapter 1 of the regulations in terms of the Financial Intelligence Centre Act, 2001, published in Notice No. R.1595 in Gazette No. 24176 of 20 December 2002 (the FICA Regulations). The second applicant was not required to produce any identity or FICA documents and was not formally registered as a bidder. Similarly, a certain Mr R Cronje, who allegedly participated by telephone, was neither registered nor required to submit any FICA documentation. The applicants argued that this failure was compounded by non-compliance with regulation 26(3), as the respondent did not obtain a letter of authorisation to confirm if bids were being placed on behalf of a juristic person.

16. Regarding regulation 24(m), the applicants contended that the respondent knowingly misrepresented the farm by depicting a photograph of the farm showing a dam in the bidders' pack. The explanation that this photograph had been sourced by one of the respondent's officials from a Facebook page without an intent to mislead was, in the applicants' view, irrelevant. On the day of the auction, the respondent knew or ought reasonably to have known that the farm did not have a dam and was obliged to correct any misapprehension. The

applicants submitted that section 4(5) prohibits any representation unless there are reasonable grounds for believing it to be true. Further, section 41(1)(a) prohibits any false or misleading representation, regardless of intent.

17. The applicants also alleged a contravention of regulation 20(12) in that the auction was advertised as involving a "deceased estate" when it was not. The applicants submitted that the use of this wording was clearly calculated to attract interest and that no adequate explanation had been offered for its inclusion. Based on these contraventions, the applicants argued that any bids made at the auction were invalid. The applicants submitted that, in terms of section 150(i), the Tribunal is empowered to cure such non-compliance by nullifying the transaction and ordering a refund. In addition, if the Tribunal finds a contravention of section 41(1)(a), section 51(3) renders a transaction void where false, misleading, or deceptive representations induce it. The applicants contended that a refund was accordingly due to the first applicant.

18. The applicants further argued that the respondent offered no substantive defence, but merely attempted to avoid liability by claiming that the applicants had acted in their capacities as directors of an undisclosed juristic person. They submitted, however, that there was no evidence that they acted under any mandate from such a juristic person. The applicants insisted that the alleged contravention warranted relief in the form of a refund and that any refund should be made to the person who had made the payment. The applicants rejected the contention that the second applicant lacked locus standi, asserting that the second applicant had been granted leave to refer the matter to the Tribunal and that the respondent had not appealed such an order.

THE RESPONDENT'S SUBMISSIONS AT THE HEARING

19. The respondent argued that the Tribunal lacked jurisdiction to entertain the second applicant's complaint because no notice of non-referral had been issued to him by the NCC. Relying on Lewis Stores (Pty) Ltd v Summit Financial Partners (Pty) Ltd[3] (the Lewis case) and Subrayen v FCA South Africa (Pty) Ltd and Others,[4] the respondent contended that jurisdiction and locus standi are a prerequisite that must be satisfied afresh and cannot be assumed. The respondent also challenged the locus standi of the first applicant, asserting that she had not participated in the auction, and by her own account, no agreement had been concluded with her.

20. The respondent asserted that on the applicants' version, they purported to cancel the sale agreement after they discovered that the property did not have a dam. Such cancellation was addressed to Riverside, the seller, and not to the respondent. The agreement with Riverside

[3] (314/2020) [2021] ZASCA 91; 2022 (1) SA 377 (SCA) (25 June 2021).
[4] (NCT/214406/2022/75(1)(b)) [2022] ZANCT 62 (12 December 2022).

was the basis for the payment made. The Tribunal had already dismissed Riverside's joinder on the basis that the sale was a once-off transaction. In the respondent's view, the applicants' further claim that the payment was made sine causa only reinforced the absence of a lawful basis for recovery against it.

21. According to the respondent, section 45 had no application to the first applicant as she did not participate in the bidding process. The respondent contended that it is incumbent upon a claimant to demonstrate precisely how a provision of the CPA applies to the facts of a particular case, rather than invoking it in an abstract manner. Regarding the payment in issue, the respondent argued that the applicants had failed to demonstrate that either of them personally paid the deposit. The respondent asserts that the payment was made by an entity known as Property Biz, and any refund would therefore have to be directed to that entity.

22. The respondent maintained that a contractual relationship, if any, existed between Riverside and the purchaser and not between the respondent and the applicants. The respondent stated that it acted merely as a conduit for payment for the benefit of Riverside. The respondent submitted that the applicants, therefore, cannot request an order to cancel an agreement that does not exist or that is alleged to have been cancelled through their letter of 5 September 2022. Further, the money that the applicants seek to be refunded was paid in trust for the benefit of a third party, not the respondent.

23. The respondent further argued that the regulations relied upon by the applicants apply specifically to auctions, in which case the first applicant would be excluded. It also challenged the status of the applicants as consumers. The respondent emphasised that the first applicant was at the auction but did not bid, and the second applicant made a successful bid but did not sign the agreement. The respondent also averred that the fact that the second applicant requested the first applicant to pay the deposit and allowed her to sign the agreement is indicative of their submission that the applicants were acting as directors of Mothiflo with the intention of transferring the property into the company. The respondent further argued that the above jurisdictional facts were dispositive of the entire application.

24. The respondent submitted that, in the alternative and only if the Tribunal were to find jurisdiction, it denies that it contravened any of the CPA's provisions, the regulations or the Auction Rules. During the game farm inspection, the respondent argued that the applicants could have arranged to view the farm by appointment earlier if they believed an hour was insufficient for viewing, but they failed to do so. The respondent admitted that the bidders' pack contained a photograph depicting a dam but contended that this was an innocent error made without intent to mislead or deceive. The respondent stated that it used the photograph obtained from Facebook with the seller's permission.

25. The respondent averred that the bidders' pack accurately described the game farm under the description of the property in Item 7, and that the photograph should be viewed in that context. The respondent also argued that the absence of the dam as part of the game farm is not material. The respondent also denied that the description of the sale as involving a "deceased estate" was misleading. The respondent stated that the property belonged to Riverside and that the director of Riverside was deceased. Further, the respondent argued that the advertisement clearly identified Riverside as the seller.

26. The respondent concluded that the applicants had disavowed any participation in the auction and thus could not simultaneously assert consumer status. The respondent emphasised that the first applicant expressly stated that she was not the purchaser, which, according to the respondent, breaks any continuity necessary to establish her as a consumer. The second applicant, lacking a notice of non-referral, was in any event not entitled to approach the Tribunal directly.

APPLICABLE SECTIONS OF THE CPA

27. In terms of section 1, a "consumer" in relation to particular goods or services means (a) a person to whom those goods or services are generally marketed by the supplier; (b) a person who has entered into a transaction with the supplier in the normal course of business, unless the transaction is exempt under section 5(2) or 5(3); (c) if the context allows, a person who uses the goods or receives the services, even if they were not part of the transaction; and (d) a franchisee under a franchise agreement, to the extent stated in section 5(6)(b) to (e).

28. According to section 1, a 'transaction'' means (a) in respect of a person acting in the ordinary course of business (i) an agreement between or among that person and one or more other persons for the supply or potential supply of any goods or services in exchange for consideration; or (ii) the supply by that person of any goods to or at the direction of a consumer for consideration; or (iii) the performance by, or at the direction of, that person of any services for or at the direction of a consumer for consideration; or (b) an interaction contemplated in section 5(6), irrespective of whether it falls within paragraph (a).

29. Section 1 further defines a "consumer agreement'' to mean an agreement between a supplier and a consumer other than a franchise agreement, and a "supplier" to mean a person who markets any goods or services.

30. Section 3(1)(d) states that the purpose of the CPA is to promote and advance the social and economic welfare of consumers in South Africa by protecting them from unconscionable, unfair,

unreasonable, unjust, or otherwise improper trade practices and deceptive, misleading, unfair, or fraudulent conduct.

31. Section 4(2) states that in any matter brought before the Tribunal under the CPA, the Tribunal must promote the spirit and purpose of the CPA and make appropriate orders to give practical effect to the consumer's right of access to redress, including any order provided for in the CPA and any innovative order that better advances, protects, promotes, and assures that the consumers realise their rights under the CPA.

32. Section 41(1) states that in relation to the marketing of any goods or services, a supplier must not, by words or conduct (a) directly or indirectly express or imply a false, misleading, or deceptive representation concerning a material fact to a consumer, (b) use exaggeration, innuendo or ambiguity as to a material fact, or fail to disclose a material fact if that failure amounts to a deception; or (c) fail to correct an apparent misapprehension on the part of a consumer, amounting to a false, misleading or deceptive representation, or permit or require any other person to do so on behalf of the supplier.

33. Section 45 regulates auctions and provides:

> "(1) In this section, 'auction' includes a sale in execution of or pursuant to a court order, to the extent that the order contemplates that the sale is to be conducted by an auction.
> (2) When goods are put up for sale by auction in lots, each lot is, unless there is evidence to the contrary, regarded to be the subject of a separate transaction.
> (3) A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in any other customary manner, and until that announcement is made, a bid may be retracted.
> (4) Notice must be given in advance that a sale by auction is subject to—
> (a) a reserved or upset price; or
> (b) a right to bid by or on behalf of the owner or auctioneer, in which case the owner or auctioneer, or any one person on behalf of the owner or auctioneer, as the case may be, may bid at the auction.
> (5) Unless notice is given in advance that a sale by auction is subject to a right to bid by or on behalf of the owner or auctioneer—
> (a) the owner or auctioneer must not bid or employ any person to bid at the sale;
> (b) the auctioneer must not knowingly accept any bid from a person contemplated in paragraph (a); and
> (c) the consumer may approach a court to declare the transaction fraudulent, if this subsection has been violated.

(6) The Minister may prescribe requirements to be complied with by an auctioneer, or different categories of auctioneer, in respect of—

(a) the conduct of an auction;

(b) the records to be maintained with respect to property placed for auction; and

(c) the sale of any such property by auction."

34. Section 48(1)(c)(iii) provides that a supplier must not require a consumer, or other person to whom any goods or services are supplied at the direction of the consumer, to waive any liability of the supplier.

35. Section 49(4) requires that the fact, nature, and effect of the provision or notice of this nature be drawn to the consumer's attention in a conspicuous manner likely to attract an ordinarily alert consumer, and before the consumer enters into the transaction or agreement, begins the activity, gains access to the facility, or is required or expected to offer consideration.

36. Regulation 20(12) states that an auction may not be advertised as a "deceased auction" or use similar wording implying insolvency unless (a) at least 75 percent of the items or lots in the auction are being offered pursuant to an order of the Master of the High Court; (b) the items or lots were clearly not purchased or attained for resale at auction; and (c) the advertising contains the order number of the Master of the High Court.

37. Regulation 26(1) requires that an auctioneer must, for every auction, have a bidders' record to record the identity of all bidders at an auction. Regulation 26(2) states that, subject to regulation 30(2), the auctioneer must ensure that every prospective bidder must, before the commencement of an auction, register their identity in the bidder's record, and such registration must with the necessary changes, meet the FICA regulations, in respect of establishment and verification of identity, and sign that entry.

38. Regulation 28(5) states that the auctioneer must afford consumers a reasonable period of time and opportunity to inspect the goods on offer prior to the commencement of an auction. No fee may be charged for such opportunity, but an auctioneer may (a) refuse or restrict access to such goods if the consumer, after gaining access in any way, acts unlawfully or in contravention of the applicable rules of auction; (b) require the consumer to adhere to or submit to any security measures reasonably applicable in the circumstances.

39. Section 75 (1)(b) provides that if the Commission issues a notice of non-referral in response to a complaint, other than on the grounds contemplated in section 116, the complainant concerned may refer the matter directly to the Tribunal, with leave of the Tribunal.

CONSIDERATION OF THE MERITS

40. In determining this matter, we considered whether the applicants have locus standi to bring the complaint before the Tribunal, whether the respondent's conduct contravened the impugned provisions of the CPA, whether the relief sought should be granted, whether a costs order is justified, and whether an administrative fine ought to be imposed.

41. A direct referral of this nature may only be made by a complainant after the NCC issues a notice of non-referral. The CPA limits the right of referral to the "complainant concerned", being the person who initially lodged the complaint with the NCC. The NCC Complaint Form only reflects the first applicant as the complainant. In these circumstances, the second applicant is not entitled to approach the Tribunal directly. His direct referral falls to be dismissed.

42. The granting of leave to refer does not preclude the Tribunal from considering a locus standi issue when raised.[5] The nature and effect of leave to refer applications were crystallised in the Lewis case as interlocutory and procedural, with no final effect. The jurisdictional issues were also highlighted in paragraph 20 of the leave to refer judgment issued on 30 January 2025, as requiring proper ventilation before the Tribunal. The Tribunal must determine its competence before deciding the merits of a case.

43. The respondent maintained that the applicants acted for Mothiflo. Based on the record, no juristic person lodged a complaint with NCC. The basis for the NCC's reference to a juristic person is not apparent. The notice of non-referral does not refer to Mothiflo. Consistent with the Complaint Form, the notice of non-referral identifies the first applicant as the complainant. Although the applicants accept that they are directors of Mothiflo, they deny acting on its behalf when lodging the complaint. Thus, Mothiflo is also not entitled to refer the complaint directly to the Tribunal.

44. On the evidence before us, the respondent is a supplier because it marketed the auction goods for sale, and an auctioneer because it provides auctioneer services in the ordinary course and was responsible for conducting the auction. On the definition of consumers, the applicants qualify as persons to whom the auctioned goods were marketed. Participation in an auction or the existence of a valid agreement is not a prerequisite to consumer status. The protections of the CPA extend to users or beneficiaries of goods or services. As a consumer, the first applicant is therefore entitled to its consumer rights under the CPA.

[5] Subrayen v FCA South Africa (Pty) Ltd and Others (NCT/214406/2022/75(1)(b)) [2022] ZANCT 62 (12 December 2022), at paragraph 35.

45. The game farm was auctioned on 25 June 2022, at which the second applicant emerged as the highest bidder. The first applicant, the respondent, and Riverside signed the agreement. Clause 16.1 permits the purchaser to nominate a nominee by written notice to the seller. In terms of clauses 16.4.4 and 16.4.5, once accepted, all references to the purchaser in the agreement refer to the nominee, who is bound thereby. The first applicant replaced the second applicant. All parties agreed. The first applicant signed the sale agreement as a nominee and thereafter paid the deposit to the respondent. Based on the evidence, the contractual arrangement in place pursuant to the auction is with the first applicant.

46. This case relates to the promotion of goods and services by the respondent and the resulting transaction, which fall within the scope of application as provided in section 5(1). Auctions are strictly regulated under section 45 to ensure fair and honest dealing, especially since goods sold at an auction are excluded from the protections in section 55. Auctions are therefore not exempt from the CPA, and core provisions, such as sections 41, 48, 49, and 51, may apply depending on the facts of each case. Regulations 18 to 33 regulate auctions, including mandatory and general advertising requirements.

47. It is common cause that the respondent publicly advertised the auction, including on Facebook, Landbou Weekblad and Mogol Pos. Undoubtedly, the purpose of the advertisements was to generate interest in the auction and to induce and persuade prospective bidders to attend, bid on the property, and attempt to purchase it.[6] The respondent included the words “Bestrowe Boedel”, meaning deceased estate, in the advertisement for the game farm. At all relevant times, the respondent knew that the game farm belonged to Riverside and was neither a deceased nor an insolvent estate. The advertisement was not only inaccurate but also false, deceptive, and misleading. No reasonable explanation was given for this. We find that the respondent contravened regulations 20(1) and 20(12).

48. The respondent also included a photograph depicting a dam in the bidders’ pack, which created the impression that the dam formed part of the game farm. The first applicant and her husband were misled by this mistaken belief into purchasing the game farm. They later discovered, on 26 June 2022, that the dam belonged to a neighbouring farm. On 27 June 2022, she queried this and moved to cancel the agreement. It turned out there is a lease arrangement between the owner of the game farm and the one at the adjacent farm. The respondent was aware of the dam's ownership but failed to disclose it. The failure to do so rendered the representation false, deceptive, and misleading.

[6] Auction Alliance (Pty) Ltd v Netluk Boerdery CC and Another (2011/10152) [2011] ZAGPJHC 87 (3 August 2011), at paragraph 11.

49. The respondent argued that the absence of a dam could not, on its own, be material to justify cancellation of an agreement. In our view, the inclusion of the photograph was material as it induced the applicants' decision to purchase the farm. The first applicant stated that if she had known there was no dam, she would not have proceeded to sign the agreement, or if she did, it would have been on different terms. The presence of a dam is a material fact directly influencing the value and commercial viability. Thus, misrepresentation is material when a person is induced to act to their detriment, irrespective of intent.

50. In Sim Road Investments CC v Morgan Air Cargo (Pty) Ltd[7] (the Sim Road case) the court held that (fraudulent) misrepresentation induced the purchaser to acquire property, and exclusion clauses were ineffective; the purchaser was entitled to rescind and recover monies paid. Unlike the Sim Road case, the CPA does not require intent or fault on the part of the supplier to attract liability. It focuses on the effect of the conduct rather than the state of mind of the supplier. Thus, any material misrepresentation, regardless of intent, entitles the consumer to cancellation. We find that the respondent engaged in false, deceptive, and misleading misrepresentation in contravention of section 41(1)(a). Section 51(3) renders such a transaction, condition, or term void to the extent that it contravenes the CPA.

51. The disclaimer in the bidders' pack, stating that neither the respondent nor the seller is liable for errors or omissions, whether due to negligence or otherwise, is contrary to the CPA. Specifically, the disclaimer constitutes an unfair, unreasonable, and unjust term or condition in contravention of section 48(1)(c)(iii), and 48(2)(a)(c) and (d). The respondent did not dispute that it contravened section 49(4), which requires that the fact, nature, and effect of such a provision be drawn to the consumer's attention conspicuously before entering the transaction or offering consideration.

52. The respondent failed to afford bidders a reasonable opportunity to inspect the game farm before the commencement of the auction. While it may be suggested that the applicants could have requested an earlier inspection by appointment if one hour was considered insufficient, no such option was communicated to them. This does not detract from the respondent's failure to show the applicants the game farm when they arrived an hour before the auction. No reasonable explanation was advanced for this conduct. The respondent's casual approach to this peremptory requirement demonstrates a lack of appreciation of the seriousness of the breach. We accordingly find that the respondent contravened regulation 28(5).

[7] Sim Road Investments CC v Morgan Air Cargo (Pty) Ltd (024/10) [2011] ZASCA 81 (27 May 2011), at paragraph 26.

53. The respondent failed to record the identity of all bidders properly and to register them as required by regulations 26(1) and 26(2). It did not dispute that the second applicant was not required to provide proof of identity or proof of residence. There is no evidence that the identities of all bidders, including the telephone bidder, were verified in accordance with the FICA requirements. This non-compliance poses a high risk of illegal or ghost bidding, which the CPA seeks to prevent. Notably, there were only three bidders, yet compliance was not achieved. The respondent therefore contravened regulations 26(1) and 26(2).

54. The panel found that the remaining allegations were unsubstantiated. In particular, it was not established that the auction was delayed to enable the participation of another person, that the respondent knowingly misrepresented the value, structure, or composition of the game farm by including the photograph depicting the dam, or that the respondent allocated fees before the first applicant and the seller concluded the agreement. The sale agreement was signed by the first applicant on 26 June 2022 and by Riverside on 27 June 2022. In the circumstances, no contraventions of regulations 21(2)(f), 24(m), or 24(b) were established. The first applicant cannot rely on regulation 26(3) without conceding that she acted on behalf of a company, as alleged.

55. The first applicant has proved, on a balance of probabilities, that the respondent contravened sections 41(1)(a) read with 51(3), 48(1)(c)(iii), 48(2)(a), (d) and (d) and 49(4), as well as regulations 20(1), 20(12), 26(1), 26(2), and 28(5). The panel is persuaded that these contraventions constitute prohibited conduct. The respondent's conduct shows a blatant disregard for the CPA and the purpose for which it was enacted.

THE RELIEF SOUGHT BY THE APPLICANTS

56. In terms of section 150(i) of the National Credit Act 34 of 2005 (the NCA), read with section 4(2)(b)(ii), the Tribunal may make orders giving effect to a consumer right, including innovative orders. Such orders must be "appropriate" and must better advance, protect, promote, and assure the realisation of consumer rights. The rights at issue are the right to fair and honest dealing and the right to fair, just, and reasonable terms. The repayment relief the applicant seeks is not explicitly provided under the contravened provisions, but the finding of prohibited conduct justifies the repayment of the deposit paid by the first applicant for the game farm. The repayment must be made to the bank account nominated by the first applicant, as it was the first applicant who made the payment on 25 June 2022.

57. It is noted that an extensive period has elapsed since 25 June 2022, when the first applicant paid the deposit towards purchasing the game farm. Despite communicating the cancellation, the first applicant has still not received the deposit back. The information available is that the

game farm was sold to another buyer by the respondent in October 2022. It is thus justifiable that the amount be paid with interest in terms of the Prescribed Rate of Interest Act 55 of 1975, calculated from 25 June 2022 until final payment by the respondent.

58. The applicant sought an order that the Tribunal impose an administrative fine on the respondent. The Tribunal is satisfied that the nature of the respondent's contraventions warrants the imposition of an administrative fine as a punitive measure. A vital purpose of the CPA is to protect consumers from unscrupulous dealings. The respondent's contraventions are undoubtedly the type of conduct the CPA seeks to prohibit. In terms of section 112(2), the Tribunal has discretion to impose an administrative fine not exceeding the greater of 10% of the respondent's annual turnover during the preceding financial year or R1 000 000.00 (one million rand). Section 112(3) prescribes the factors the Tribunal is required to consider in determining an appropriate administrative fine. No submissions were made by the applicants towards these factors. These factors are outlined and considered under the separate subheadings that follow.

<u>The nature, duration, gravity, and extent of the contravention</u>

58.1 The respondent committed numerous serious contraventions and infringed consumer rights protected under the CPA while benefiting financially. The respondent's conduct undermined the basic safeguards enacted to regulate auctions. The respondent also undermined its own auction rules. The respondent conducts auctions in the ordinary course and should be aware of the consequences of non-compliance with the legal requirements.

<u>Any loss or damage suffered as a result of the contravention</u>

58.2 The first applicant has still not received the R1,207,458.80 she paid as a deposit, including the respondent's commission, for a property of which she and her husband have neither possession nor ownership. Since June 25, 2022, the first applicant has been deprived of any financial benefit or interest derived from those funds. The first applicant also incurred legal costs in pursuing the resolution of this matter, which were a direct result of the respondent's unlawful conduct.

<u>The behaviour of the respondent</u>

58.3 The respondent blatantly disregarded consumer rights and the legislation enacted to protect consumers. It sought to rely on technicalities without providing a reasonable explanation for its conduct and demonstrated little or no appreciation for the seriousness thereof. Notwithstanding that the game farm was sold to another buyer approximately four months after the auction, the respondent continued to withhold the first applicant's deposit. Such conduct is contrary to both the letter and the spirit of the CPA.

The market circumstances in which the contravention took place

58.4 Auction sales are rapid in nature and operate on a voetstoots basis, requiring auctioneers to be highly transparent regarding the goods and to afford adequate inspection to prevent deceptive and misleading practices. Proper registration and verification of bidders are essential, as auctions are susceptible to price manipulation and other illegal activities. The CPA framework aims to protect consumers through full disclosure and fair, transparent processes. The respondent undermined these fundamental tenets.

The level of profit derived from the contravention

58.5 The precise level of profit derived by the respondent from the respondent's conduct is unknown.

The degree to which the respondent has co-operated with the National Consumer Commission and the Tribunal

58.6 There is no evidence before the Tribunal that the respondent failed to co-operate with the NCC or the Tribunal in the finalisation of this matter.

Whether the respondent has previously been found in contravention of the CPA

58.7 There is no evidence of any prior investigations or enforcement proceedings instituted against the respondent.

59. We have found that the respondent engaged in prohibited conduct, obliging it to exercise its powers to convey a clear and strong message that such conduct will not be tolerated. The

applicant placed no evidence before the Tribunal regarding the respondent's annual turnover. We may nonetheless impose a fine capped at R1 million. We find an administrative fine of R250,000.00 to be appropriate.

60. The first applicant seeks costs on the attorney and own client scale. In terms of s 147(2)(b) read with rule 25(4), the Tribunal may make a costs order. In NCC v Univision & Others,[8] it was held that costs should follow the result in favour of a successful complainant. The first applicant suffered prejudice in pursuing justice in this matter. However, we find no reason to depart from the prescribed party-and-party scale. The taxation of the bill of costs must follow the High Court tariffs, unless the parties agree otherwise.

ORDER

61. Accordingly, the Tribunal makes the following order:

61.1 The application brought by the second applicant is dismissed;

61.2 As for the application brought by the first applicant:

61.2.1 The respondent has contravened sections 41(1)(a) read with 51(3), 48(1)(c)(iii), 48(2)(a), (d) and (d) and 49(4), and regulations 20(1), 20(12), 26(1), 26(2), and 28(5);

61.2.2 The contraventions of the respondent listed above are declared prohibited conduct;

61.2.3 The respondent is to, within 30 business days of issuing this judgment, pay into the first respondent's nominated bank account R1,207,458.80 and interest thereon calculated in terms of the Prescribed Rate of Interest Act No. 55 of 1975 from the date on which the applicant made payment to the respondent to the date of the respondent's final payment;

61.2.4 The respondent is to, within 30 business days of issuing this judgment, pay an administrative fine of R250,000.00 into the National Revenue Fund referred to in section 213 of the Constitution of South Africa, 1996, using the following bank account details:

[8] (618/2017) [2018] ZASCA 44 (28 March 2018) paragraph 19.

Bank: Nedbank
Account Holder: Department of Trade, Industry and Competition
Account type: Current Account
Branch Name: Telecoms and Fiscal
Branch code: 198765
Account number: 126 884 7941
Reference: NCT-326491-2024-75(1)(b) and the name of the person or business making the payment; and

61.2.5 The respondent is to pay the first applicant's legal costs on a party and party scale to be taxed on tariff B applicable in the High Court in the absence of an agreement between the parties.

[SIGNED]
Ms Z. Ntuli
Presiding Member

Tribunal members Dr A Potwana and Mr S Hockey concur.

Authorised for issue by The National Consumer Tribunal

National Consumer Tribunal
Ground Floor, Building B
Lakefield Office Park
272 West Avenue, Centurion, 0157
www.thenct.org.za

national consumer tribunal