



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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National Credit Regulator v National Consumer Tribunal and Others and Similar Matters
(667/2023) [2025] ZASCA 132 (12 September 2025).

Today the Supreme Court of Appeal (SCA) handed down judgment in which it dismissed three consolidated appeals.

The matter arose from the practice of including ‘on the road’ (OTR) fees in motor vehicle finance agreements and whether such fees contravened sections 100, 101 and 102 of the National Credit Act 34 of 2005 (NCA). The central legal issue in this appeal was whether the OTR fees are permissible fees or charges which may be levied on consumers when the respondent credit providers namely BMW Financial Services, Volkswagen Financial Services and Mercedes-Benz Financial Services grant finance for the purchase of motor vehicles on credit. If not, then the credit providers, have contravened s 102 of the Act.

The appellant in all three appeals is the National Credit Regulator (the Regulator). The National Consumer Tribunal (the Tribunal) is the first respondent in each of the appeals. Volkswagen, BMW Financial Services South Africa (Pty) Ltd (BMW), and Mercedes-Benz Financial Services South Africa (Pty) Ltd (Mercedes-Benz) are, respectively, the second respondents in their respective appeals.

The Regulator appealed against the orders of the majority of the Full Court of the Gauteng Division of the High Court, Pretoria (the Full Court). The majority found that the credit providers did not charge consumers the OTR fees. They merely financed the purchase of motor vehicles on credit, the purchase price of which included the OTR fees agreed upon between the consumer and motor vehicle dealers (the dealers). With the leave of the Full Court, the Regulator launched the present appeal.

When consumers purchased vehicles through dealers, OTR fees were added to the purchase price. These are composite fees for various services provided by motor vehicle dealers. They

include, among other things, costs for services such as conducting a pre-delivery inspection, obtaining roadworthy certificates, licensing the vehicle, acquiring license plates, delivery, fuel, and fees charged by the Financial Sector Conduct Authority. The Regulator determined that the credit providers had contravened certain provisions of the Act, particularly sections 100, 101 and 102, by charging the OTR fees.

If consumers opted for finance and their application for credit is approved, the credit providers paid the dealer and entered into credit agreements with consumers which stipulates that the total balance is payable in monthly instalments over an agreed term. This agreement is regulated under the NCA.

During various periods in 2017, the Regulator conducted investigations into the practice of charging the OTR fees in the motor retail industry. The Regulator issued compliance notices against the credit providers, alleging that by including OTR fees in the financed amount they had unlawfully imposed charges not permitted under sections 100 to 102 of the Act. The Regulator's compliance notices prompted the credit providers' applications to the Tribunal for orders to review and set them aside. Their applications were submitted separately on different dates to the Tribunal and were thus considered by different panels of the Tribunal.

The litigation history was lengthy. Before the National Consumer Tribunal, BMW and Mercedes-Benz succeeded in having the compliance notices set aside on the basis that OTR fees were charged by dealers rather than credit providers. In any case, the Tribunal concluded that vehicle dealers are not prohibited from charging OTR fees, nor is charging them unlawful in any way Volkswagen fared differently; the Tribunal held, among other things, that the OTR fees are credit fees or charges prohibited by section 100(1)(a) of the Act and that those fees are not credit fees that can be included in the principal debt deferred in terms of an instalment agreement according to section 102(1) of the Act. It concluded that Volkswagen charged the OTR fees in contravention of the Act. The Tribunal thus dismissed Volkswagen's application but amended the terms of the Regulator's compliance notice in certain respects.

On appeal to the Gauteng Division of the High Court, the majority held in favour of all three credit providers, finding that the credit providers did not charge consumers the OTR fees separately when these fees and services were included in the credit agreements. These fees, according to the majority, are negotiated between the dealers and consumers. Credit providers only financed the principal debt, which, according to the majority, included the purchase price and other extras, such as OTR fees and additional services. A minority of the Full Court disagreed, reasoning that the cost of credit includes, among other things, the price and value of items contemplated in section 102. This constitutes the 'principal debt'. Once the dealer charges the consumer the OTR fees, they should not be imposed on the consumer, as this is prohibited by section 100. The Regulator was granted leave to appeal to the SCA.

In the SCA, the Regulator argued that sections 101 and 102 contain closed lists of charges that credit providers may lawfully impose, and that OTR fees, not being listed, were impermissible. The credit providers maintained that they did not determine the fees and merely financed amounts agreed between dealers and consumers.

In its analysis of the legal issues the SCA, per Makgoka JA, held that section 102(1)(a)-(f) contains a closed list of charges that a credit provider may impose on a consumer in a credit agreement. These are typical charges associated with the cost of credit that a dealer would impose on a consumer. The SCA further held that what section 102(1) prohibits is the addition of *similar charges* to the amount deferred in the credit agreement. The provision does not purport to regulate any other costs that the consumer and the credit provider may agree upon in a credit agreement.

The SCA concluded that section 102(1) does not prohibit a credit provider from financing an agreement between a consumer and a dealer that contains items not listed in the provision. However, when requested to do so, it bears the responsibility to ensure that the provisions of such an agreement comply with the Act. The SCA furthermore stressed that transparency is essential. To that end this judgment has the following consequences:

- (a) OTR fees to be added to the purchase price must be specified, and the credit provider must clearly state the nature and cost of each item.
- (b) Consumers must be asked whether they prefer to pay cash for OTR fees or to have them financed as part of the amount deferred.
- (c) To ensure an informed choice in this regard, consumers must be told of the difference between: (i) the cash price of the OTR fees; and (ii) the total cost of the fees, including interest and all other charges, if they are to form part of the principal debt to be financed in terms of the instalment agreement. Consumers must be given a choice whether to pay OTR fees in cash or have them financed, and must be clearly informed of both the cash cost and the total financed cost including interest.

In all the circumstances, the SCA concluded that the appeals must fail. This conclusion means that consequently, the Regulator's cross-appeal against Volkswagen for the repayment of the OTR fees must fail and that it is unnecessary to consider BMW's selective enforcement argument, as it was predicated on the Regulator's appeal succeeding.

On the issue of costs, the Court reaffirmed that organs of state pursuing public interest litigation should not ordinarily be ordered to pay costs. It therefore set aside the costs orders made by the Full Court against the Regulator, and replaced them with an order that each party should bear its own costs.

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