

CASE FILE NUMBER: CONS/17/07/2024/00910/BM

**IN THE MATTER BEFORE THE BOARD  
OF THE COMPETITION AND CONSUMER  
PROTECTION COMMISSION**

**BETWEEN**

**Mr. Likando Mwendabai**

**COMPLAINANT**

**AND**

**Lusaka Vehicle Diagnostic  
Booths and Auto Spares Limited  
T/A Lusaka Vehicle Diagnosis**

**RESPONDENT**

**BEFORE:**

**Commissioner Angela Kafunda  
Commissioner Sikambala M. Musune  
Commissioner Derrick Sikombe  
Commissioner Onesmus Mudenda  
Commissioner Bishop Dr. Wilfred Chiyesu  
Commissioner Pelmel H. Bonda**

**- Chairperson  
- Vice Chairperson  
- Member  
- Member  
- Member  
- Member**

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**DECISION**

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Below is a summary of the facts and findings presented by the Competition and Consumer Protection Commission ("the Commission") to the Board of the Commission following investigations carried out in the above case.

**Introduction and Relevant Background**

***It was submitted that:***

1. On 16<sup>th</sup> July 2024, the Competition and Consumer Protection Commission ("the Commission") received a complaint from Mr. Likando Mwendabai ("the Complainant") against Lusaka Vehicle Diagnostic Booths and Auto Spares Limited T/A Lusaka Vehicle Diagnosis ("the Respondent"). Specifically, the Complainant alleged that on 15<sup>th</sup> March 2024, he paid K13,900.00 to the Respondent for panel beating and spray-painting services of his BMW X3 motor vehicle, which also included the supply and installation of a complete tailgate with lights (Receipt No. 707). The Complainant alleged that the Respondent

agreed to perform the work upon receiving at least 75% of the quoted amount of K17,900.00 (Quotation No. 875), which he paid.

2. The Complainant alleged that the Respondent did not adequately repair his motor vehicle. The Complainant cited poor workmanship by the Respondent. The Complainant specifically alleged that the Respondent left several holes in the car body after panel-beating; they did not properly align the tailgate and it thereby failed to close properly; they failed to secure the rear bumper properly as it was almost falling off; they did not properly straighten the front fender; they did not properly fit the rear light; the car door seals had no sitting; and that they also did a poor job painting the vehicle as it had a matte finish that did not match the rest of the car. The Complainant alleged that he immediately engaged the Respondent on his concerns, however, they refused to redo the work claiming that they had properly repaired his vehicle. The Complainant further alleged that although the Respondent had quoted to supply and install a complete tailgate with lights, they supplied a tailgate without lights, and he thereby had to purchase all the required lights himself. The Complainant therefore demanded that the Respondent refunds him the K13,900.00 that he paid them.

### **Legal Contravention and Assessment Tests**

#### **Legal Contravention**

##### ***It was submitted that:***

3. The alleged conduct appeared to have contravened Section 49(5) of the Competition and Consumer Protection Act No. 24 of 2010, as amended by Act No. 21 of 2023 ("the Act").

4. Section 49(5) of the Act states that:

*"A person or an enterprise shall supply a service to a consumer with reasonable care and skill or within a reasonable time or, if a specific time was agreed, within a reasonable period around the agreed time".*

5. Section 49(6) of the Act states that:

*"A person who, or an enterprise which, contravenes subsection (5) is liable to pay the Commission a fine not exceeding ten percent of that person's or enterprise's annual turnover".*

6. Section 49(7) of the Act states that:

*“In addition to the penalty under subsection (6), a person or an enterprise shall, within fourteen days of the provision of the service concerned, refund the consumer the money paid for the service; or perform the service to a reasonable standard.”*

### **Assessment Tests**

***For the purposes of proving the violation of Section 49(5) of the Act, the following assessment tests were used:***

***It was submitted that:***

7. Whether the Complainant was a consumer;
8. Whether the Respondent was a “person” or “enterprise”;
9. Whether the Respondent supplied a particular service to the Complainant as consumer; and
10. Whether the Respondent supplied a service to the consumer with reasonable care and skill in the said supply; or within a reasonable time or; if a specific time was agreed, within a reasonable period around the agreed time.

### **Investigations Conducted**

***It was submitted that:***

11. The Commission duly served the Notice of Investigation (“NoI”) and accompanying letter on the Respondent on 14<sup>th</sup> August 2024. On 4<sup>th</sup> February 2025, the Commission submitted the Complainant’s motor vehicle to CFAO Mobility – Top Gear Motors for assessment.

### **Findings**

#### **The Parties**

#### **The Complainant**

***It was submitted that:***

12. The Complainant was Mr. Likando Mwendabai, a resident of Lusaka. Section 2 of the Act defines a consumer as, *“any person who purchases or offers to purchase goods or services otherwise than for the purpose of re-sale, but does not include a person who purchases goods or services for the purpose of using the*

goods or services in the production and manufacture of any other goods for sale, or the provision of another service for remuneration". Therefore, the Complainant was a consumer as envisaged under the Act as he paid the Respondent for panel beating and spray-painting services for his personal motor vehicle.<sup>1</sup>

### **The Respondent**

#### ***It was submitted that:***

13. The Respondent was Lusaka Vehicle Diagnostic Booths and Auto Spares Limited T/A Lusaka Vehicle Diagnosis who operate from Plot No. 7725/24, House No. 6 Chipanama Road, Woodlands, Lusaka. A search of the Zambia Revenue Authority ("ZRA") online database revealed that the Respondent's Tax Payer Identification Number (TPIN) 2498103815, as captured on the invoice and quotation issued to the Complainant, belongs to the Respondent.<sup>2</sup> A search of the Patents and Companies Registration Agency ("PACRA") online database revealed that the Respondent was a registered company with registration number 120210015553.<sup>3</sup> Section 2 of the Act defined an "enterprise" as, "*a firm, partnership, joint-venture, corporation, company, association and other juridical persons, which engage in commercial activities, and includes their branches, subsidiaries, affiliates or other entities, directly or indirectly, controlled by them.*" In view of the above definition, the Respondent was an enterprise as envisaged under the Act as they were a company engaged in commercial activities of providing maintenance and repair services of motor vehicles to members of the public.

### **Submissions from the Respondent**

#### ***It was submitted that:***

14. On 26<sup>th</sup> August 2024, Muya and Company Legal Practitioners submitted that they acknowledged receipt of the Commission's NoI and that they had been retained to act on behalf of the Respondent in this matter. Muya and Company Legal Practitioners further submitted that they were reviewing the matter and that they would respond in due course.<sup>4</sup>

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<sup>1</sup> Receipt No. 707 dated 15<sup>th</sup> March 2024

<sup>2</sup> The Respondent's tax payer search at <https://portal.zra.org.zm/searchTaxpayer#!> on 17<sup>th</sup> September 2025

<sup>3</sup> The Respondent's PACRA printout

<sup>4</sup> Letter from the Respondent's legal representatives - Muya and Company Legal Practitioners dated 26<sup>th</sup> August 2024

### **Further Submissions from the Respondent<sup>5</sup>**

***It was submitted that:***

15. On 2<sup>nd</sup> September 2024, Muya and Company Legal Practitioners submitted that the Respondent, had denied the allegations raised against them as they were neither true nor an accurate representation of the actual works done on the Complainant's motor vehicle. Muya and Company Legal Practitioners submitted that the Respondent informed them that after agreeing on the works to be done on the vehicle at the cost of K13,900.00 as per quotation, the vehicle was consequently worked on.
16. Muya and Company Legal Practitioners submitted that before the works could be completed, the Complainant cited some minor defects and requested for some works to be redone, for which the defects were fully addressed and worked on. Muya and Company Legal Practitioners submitted that it would be of interest for the Commission to note that the Respondent went over and above the Complainant's requests; nonetheless, no further charges were brought by them despite the additional works performed.
17. Muya and Company Legal Practitioners submitted that the Respondent had shared pictures of the motor vehicle before the works were performed and after the works were completed in which the pictures showed that diligent work was performed by the Respondent, to the market standard of a badly damaged vehicle, as it was.
18. Muya and Company Legal Practitioners submitted that they hastened to state that the Complainant was alive to the fact that his motor vehicle was not brand new as it had dents and scratches in various places. Muya and Company Legal Practitioners submitted that the Respondent therefore performed their duties to the best of their standards; though, it had been observed that the Complainant's standard was one which spoke to a showroom vehicle which was almost impossible in the panel beating trade and industry.
19. Muya and Company Legal Practitioners further submitted that as they had alluded to above, the aforementioned allegations against the Respondent were only raised after the vehicle had been collected and accepted by the Complainant in the state that it was, and days had gone by. Muya and Company Legal Practitioners further submitted that the Respondent failed to appreciate the

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<sup>5</sup> Letter from the Respondent's legal representatives - Muya and Company Legal Practitioners dated 2<sup>nd</sup> September 2024

complaints by the Complainant because he had been discontented with the immediate outcome of the vehicle, he could have left it with them for correctional works to be performed.

20. Muya and Company Legal Practitioners submitted that the Commission could note that the Respondent prided themselves in ensuring that they performed their services to a professional standard and was further committed to ensuring fair trade practices and relationships with all their customers including the Complainant herein.
21. Muya and Company Legal Practitioners submitted that in light of the above, the Commission should note that they had perused through the provisions of the Competition and Consumer Protection Act No. 24 of 2010 as amended, specifically Section 49, and could state with certainty that the Respondent did not abrogate the said provision of the Law.
22. Muya and Company Legal Practitioners submitted that they believed that the law as cited also sought to protect traders and business owners such as the Respondent, and in this instance, they beseeched the Commission not to entertain a malevolent Complainant such as this simply meant to bring the name of the Respondent into public disrepute. Muya and Company Legal Practitioners finally advised that the Commission should contact their counsel if it sought further details.

#### **Review of the Respondent's Quotation<sup>6</sup>**

##### ***It was submitted that:***

23. A review of the Respondent's quotation revealed that the Complainant was issued a quotation valued at a total of K17,900.00. It was further revealed that the Respondent's quotation comprised of the supply and installation of a complete tailgate with lights valued at K7,000.00, backlights valued at K1,900.00 and labour for the panel beating and spray painting valued at a total of K9,000.00.

#### **Review of the Respondent's Receipt<sup>7</sup>**

##### ***It was submitted that:***

24. A review of the Respondent's receipt revealed that on 15<sup>th</sup> March 2024, the Complainant paid K13,900.00 to the Respondent for panel beating and spray

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<sup>6</sup> Quotation No. 875 dated 14<sup>th</sup> March 2024

<sup>7</sup> Receipt No. 707 dated 15<sup>th</sup> March 2024

painting works on his BMW motor vehicle (Plate number: BXJ XXX7). It was further revealed that an amount of K3,000.00 was captured to have been the balance remaining on the Complainant's payment.

### **Review of the Complainant's Photos of the Motor Vehicle before and after the accident<sup>8</sup>**

#### ***It was submitted that:***

25. The Commission conducted a review of the photos of the Complainant's motor vehicle, before and after the accident occurred. It was revealed that the body of the vehicle was in a good condition before the accident as it did not have any visible defects, as shown in **Figure 1** below.

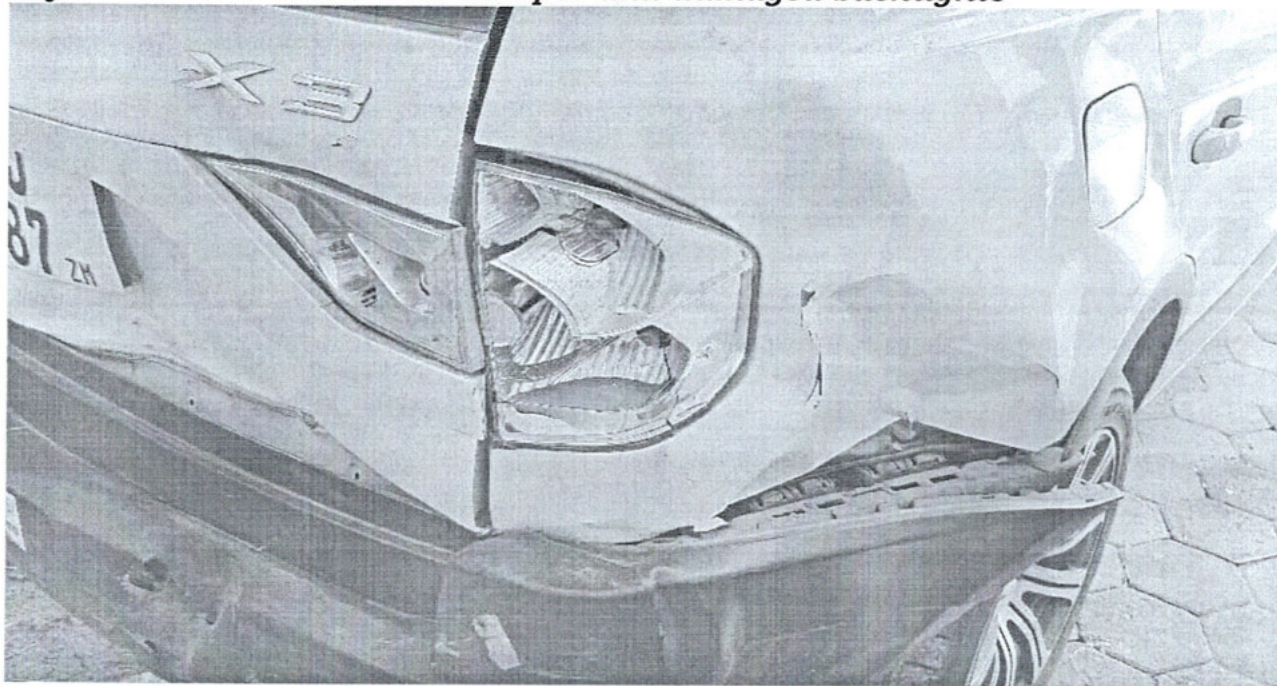
**Figure 1: Photos the appearance of the motor vehicle before the accident**



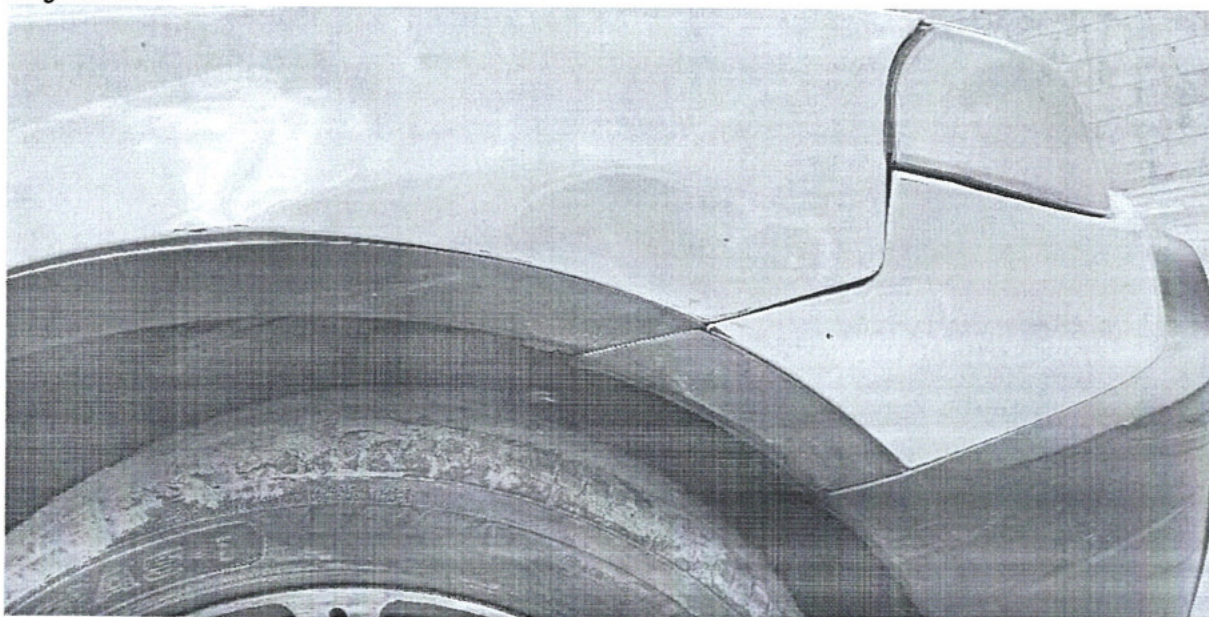
26. It was further revealed that after the accident, the vehicle was mainly damaged on the right side. It was revealed that the right back side of the vehicle was deformed with a loose rear bumper and damaged backlights. It was further revealed that the right front fender was also slightly deformed after the accident, as shown in **Figure 2** and **Figure 3** below.

<sup>8</sup> The Complainant's photos of the vehicle before and after the accident

**Figure 2: Photo of the right back of the vehicle after the accident – showing the extent of the damage on the right back side of the vehicle which was deformed with a loose rear bumper and damaged backlights**



**Figure 3: Photo of the right front side of the vehicle after the accident - showing the extent of the damage on the front fender which was slightly deformed**



## **Inspection of the Complainant's Motor Vehicle<sup>9</sup>**

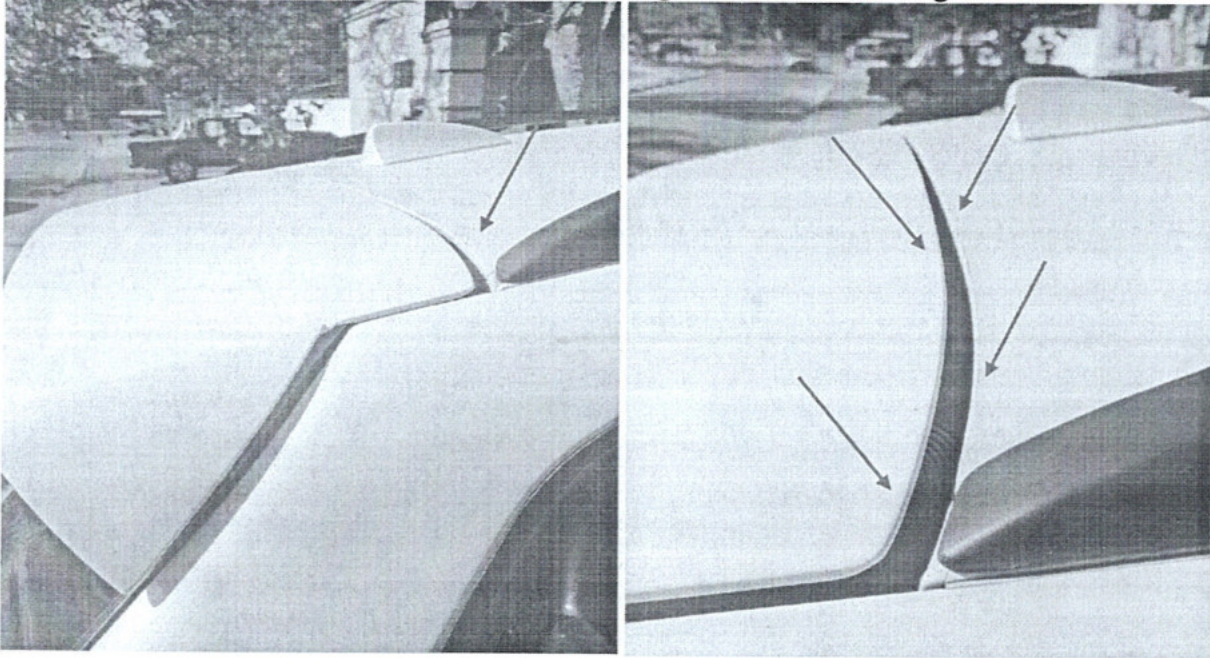
### ***It was submitted that:***

27. On 27<sup>th</sup> August 2024, the Commission conducted a physical inspection of the Complainant's vehicle from the Commission's offices in order to assess the panel beating and spray painting works done by the Respondent. It was found that the tailgate was not properly installed to perfectly align with the body of the vehicle as there was a big gap left on the top part of the vehicle. The Commission further noted that this gap was big enough to allow water and dust to enter inside the vehicle.
28. It was further observed that the tailgate could not lock and unlock properly as it could not be opened from the outside. It was further observed that the part that was repainted by the Respondent did not match the rest of the vehicle, as it had a matte finish whilst the rest of the body had a glossy/shiny finish. It was observed that the right-rear light was not fitted properly as there were gaps left. It was further observed that there were some holes left in the body of the vehicle following the panel beating works done, that were visible from the inside. It was observed that the rear bumper was not secured properly as it had a crack and it was a bit loose. It was also observed that the front right fender was not properly installed or straightened to fit properly as there were gaps left between the fender and the body.

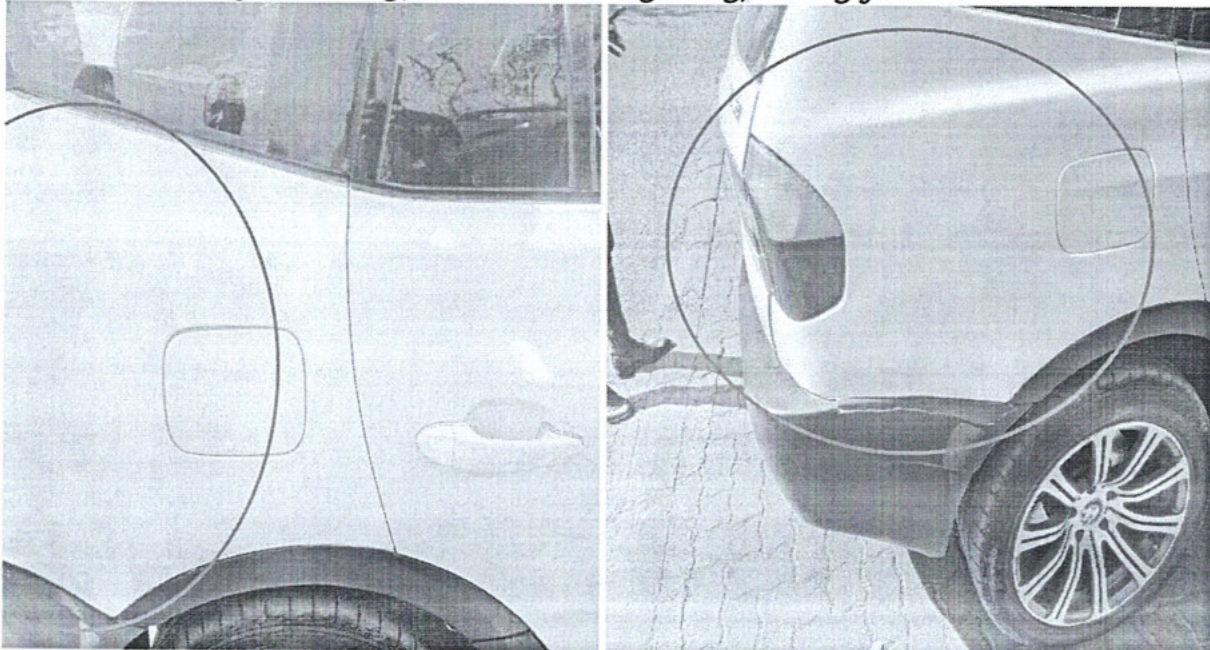
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<sup>9</sup> The Commission's physical inspection of the vehicle conducted on 27<sup>th</sup> August 2024, through its officers Mr. Bright Mwelwa, the case officer and Ms. Inonge Mulozi, the Provincial Investigator - Lusaka

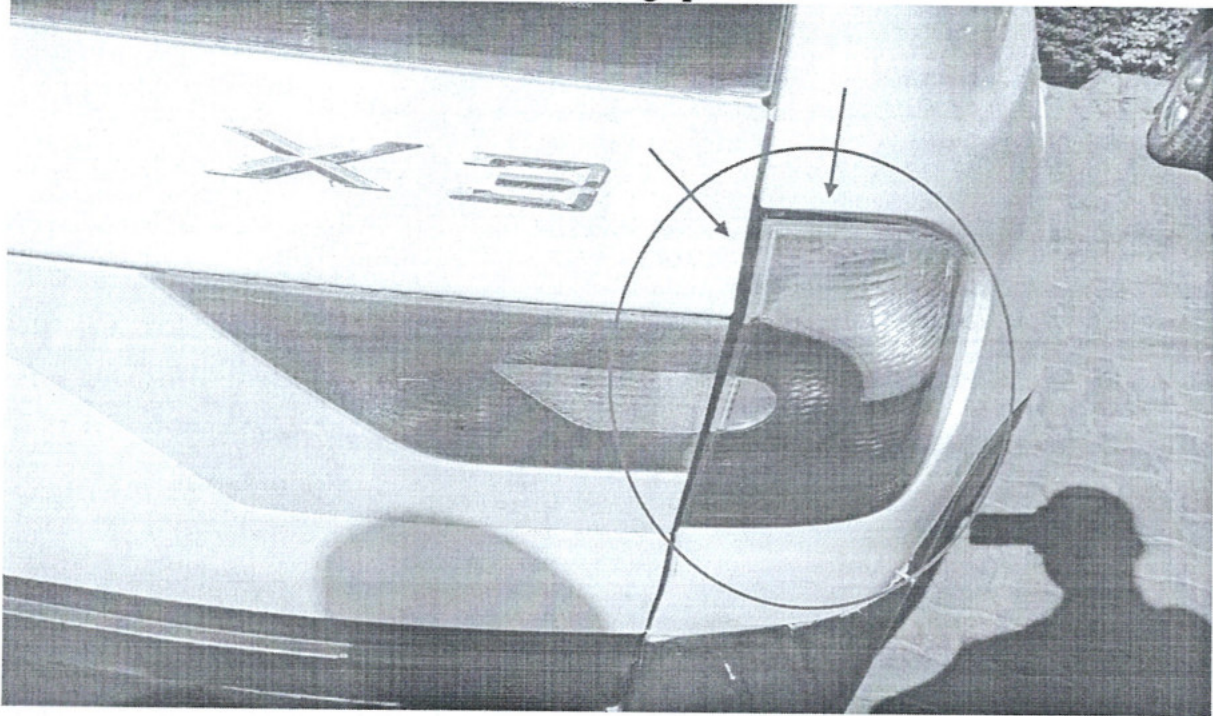
**Figure 4: Photos of the top part of the vehicle showing a misaligned tailgate with a big gap between the tailgate and the body**



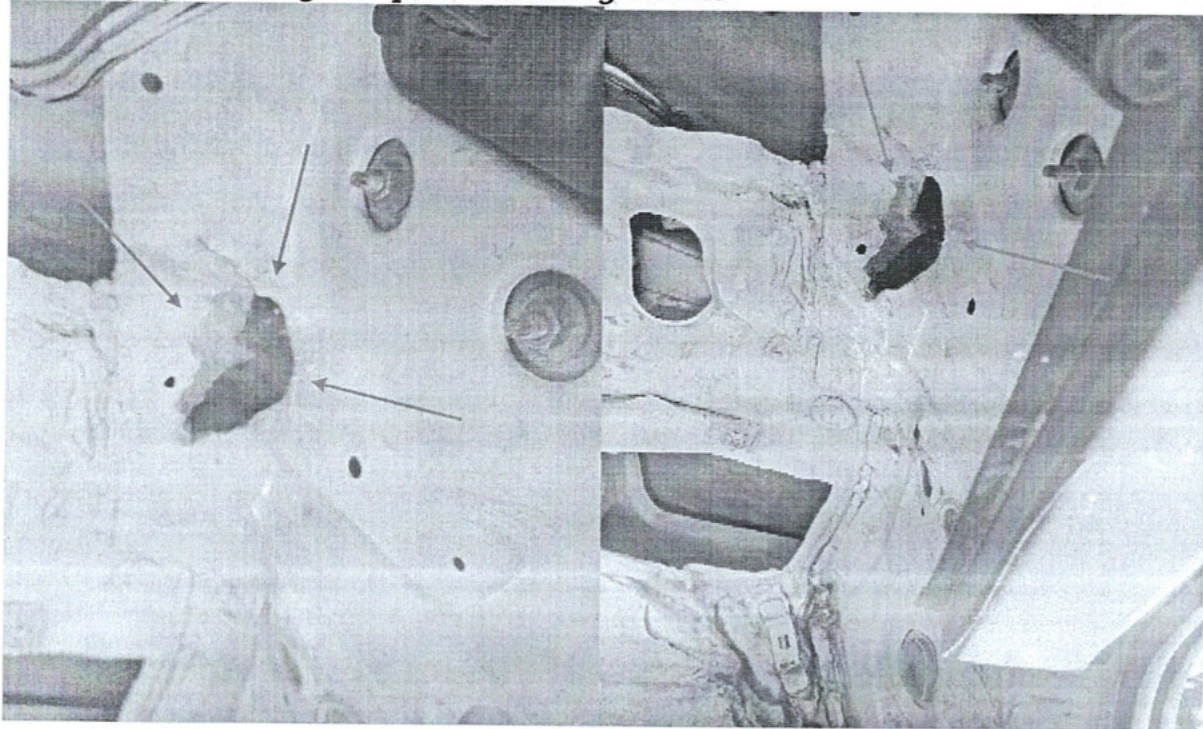
**Figure 5: Photos of the right back side of the vehicle showing the differences in appearance between the repainted part, with a matte finish, and the rest of the body, which had a glossy/shiny finish**



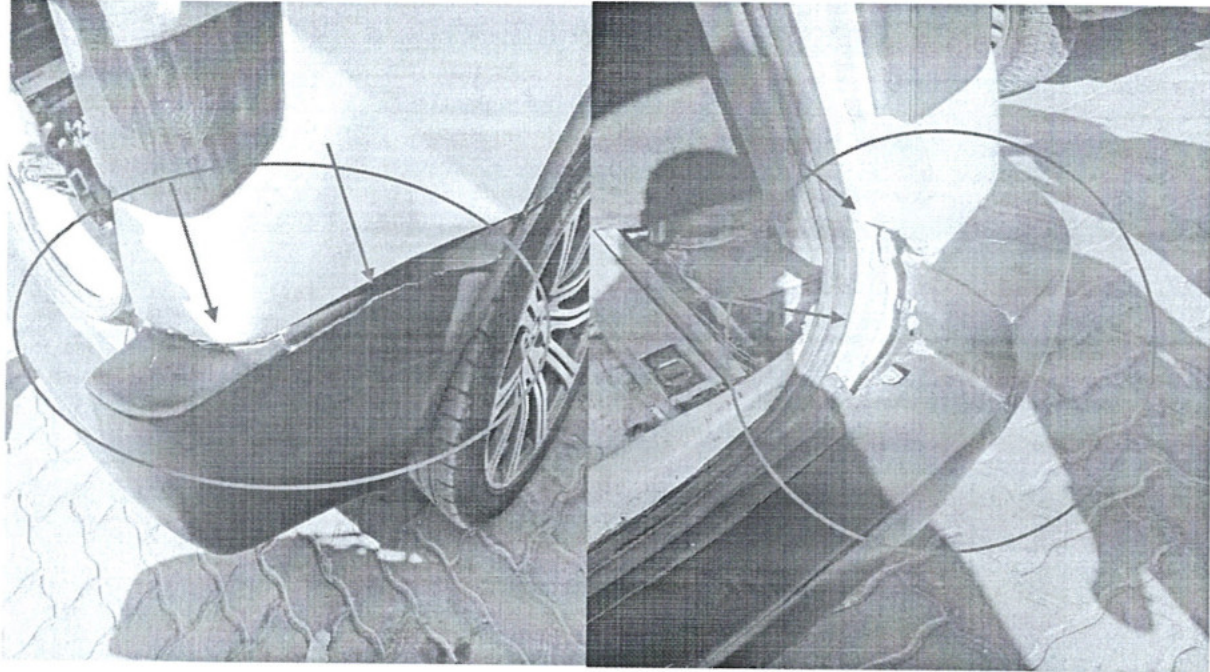
**Figure 6: Photo of the right back side of the vehicle showing the right-rear light not fitted properly as there were gaps**



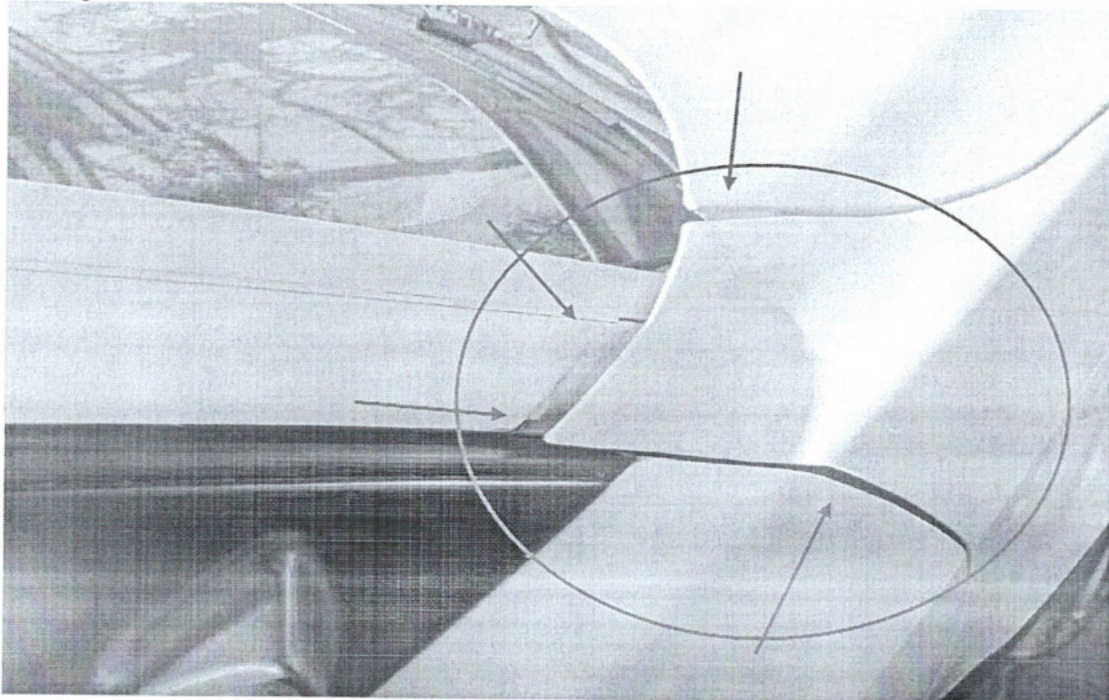
**Figure 7: Photos of the inside of the vehicle showing some of the holes that were left following the panel beating works**



**Figure 8: Photos of the crack on the rear bumper which was also a bit loose**



**Figure 9: Photo of the right front fender not properly installed/straightened to fit properly as there were gaps left between the fender and the body**



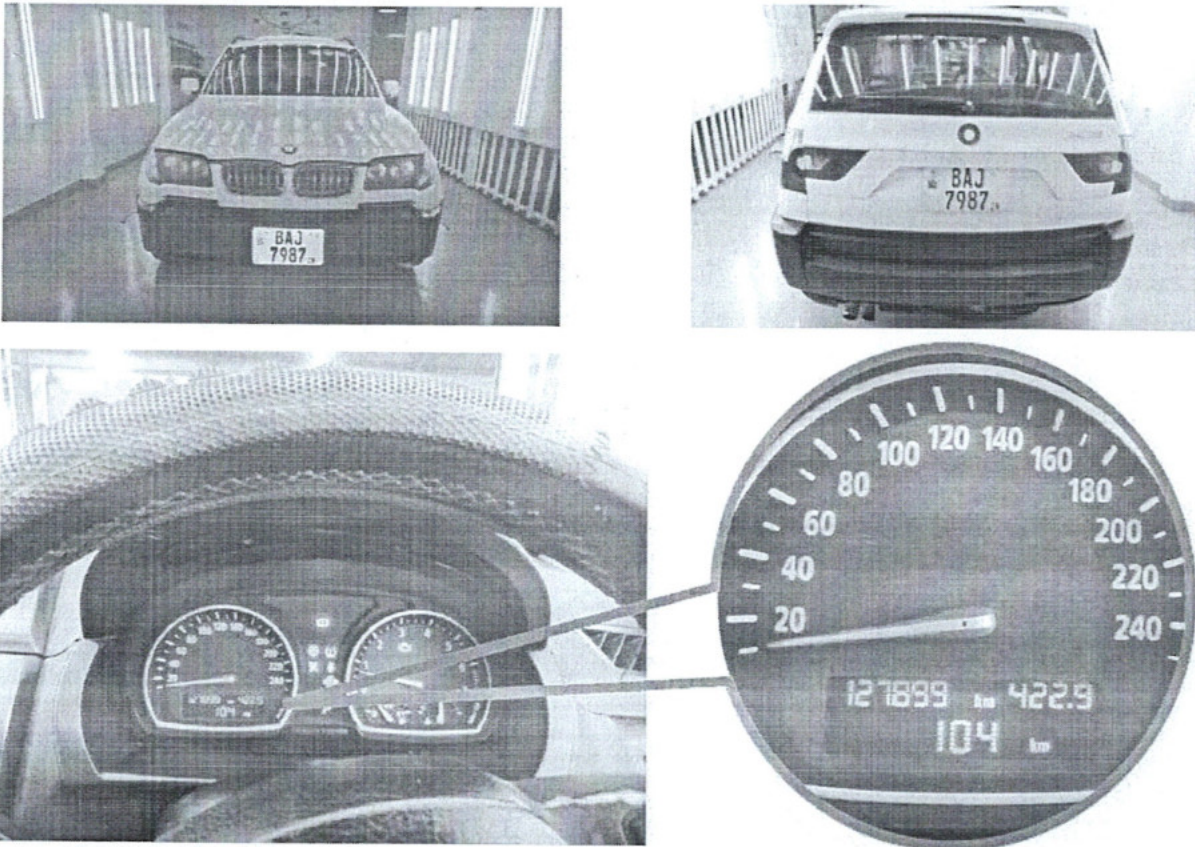
### Third-Party Submissions

#### Submissions from the CFAO Mobility – Top Gear Motors<sup>10</sup>

*It was submitted that:*

29. CFAO Mobility – Top Gear Motors (“the Independent Assessor”) submitted that the Commission requested them to assess the quality of autobody and paint repair work on a BMW X3 motor vehicle with the following details:
- Model : BMW X3 2.5i
  - Registration : BAJ 7987
  - Odometer Reading: 127,899KM
30. The Independent Assessor submitted that the vehicle was inspected from their Top Gear facility and that the area of inspection based on the accident damage shared by the Commission was;
- a) Right front – Right front fender
  - b) Right rear – Right rear fender, Back door (tail gate) and Bumper.

**Figure 10: Photos of the vehicle as received by the Independent Assessor**

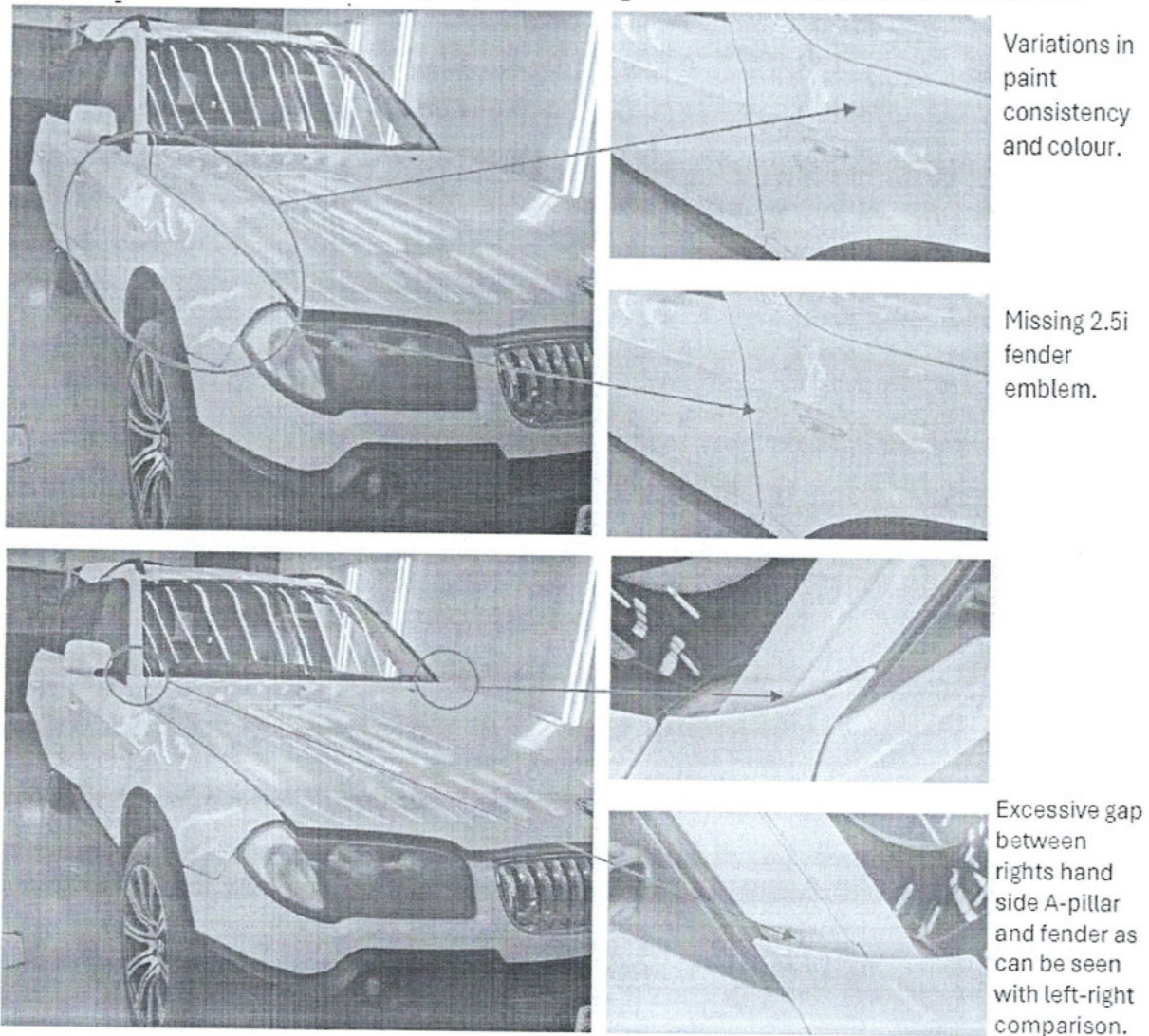


<sup>10</sup> Inspection Report from CFAO Mobility – Top Gear Motors dated 12<sup>th</sup> February 2025

### Findings of the inspection

31. The Independent Assessor submitted that:
- i. Right front fender was repaired with various concerns, such as, variations in paint consistency and colour, a missing 2.5i fender emblem, excessive gap between right hand side A-pillar and fender, excessive right front door to fender misalignment. (See **Figure 11** below)

**Figure 11: Photos of the right fender repaired with various concerns**





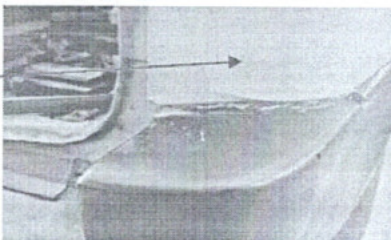
Excessive right front door to fender misalignment.

- ii. Right rear outside: Deformation of the right rear fender; right rear door to right rear fender misalignment; right rear fender to tail lamp misalignment; right rear area on the bumper cracked and separating.

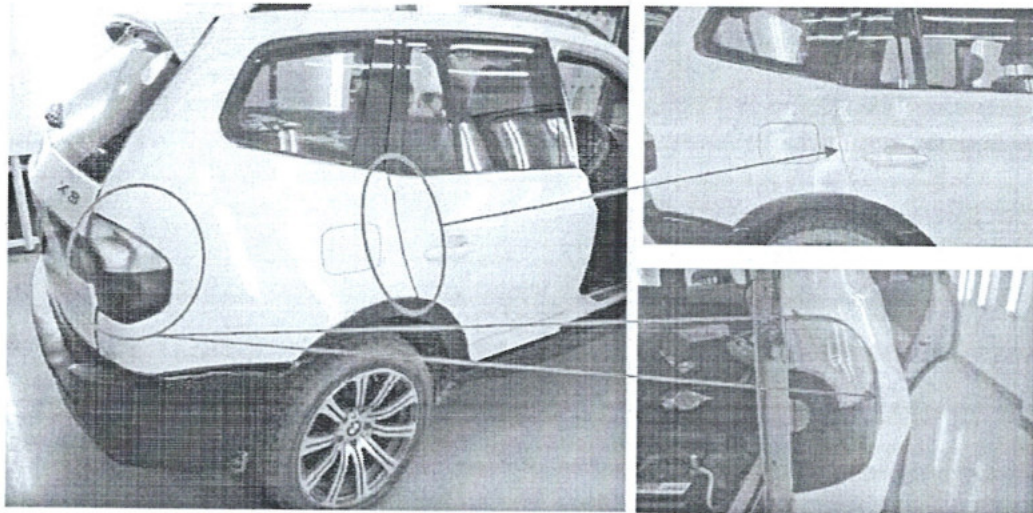
**Figure 12: Photos of the vehicle's right rear outside**



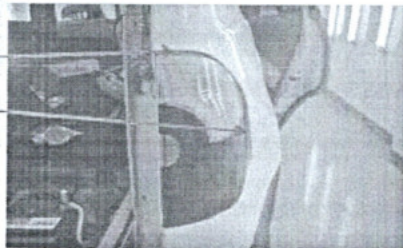
Deformation of right rear fender.



Poor repair and variation in paint colour.



Right rear door to right rear fender mis-alignment.



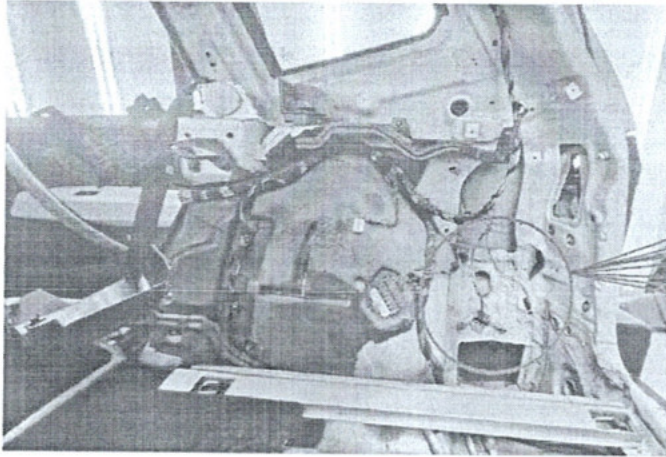
Right rear fender to tail lamp mis-alignment.



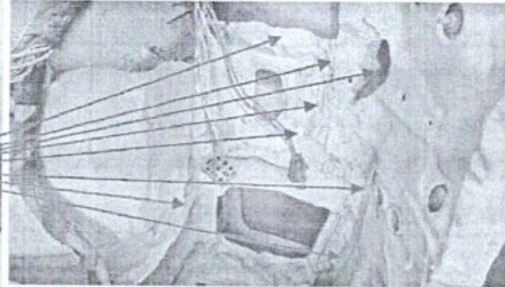
Right rear area on bumper cracked and separating.

- iii. Right rear inside: Deformation and separation of inner panels; Inner view of panel indicating pieces of wire welded to the fender and body filler used - causing deformation of right rear fender; Deformation and separation of inner panels.

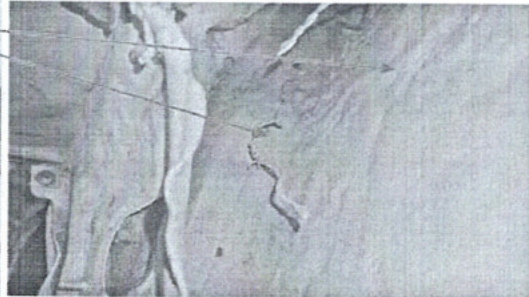
**Figure 13: Photos of the vehicle's right rear inside**



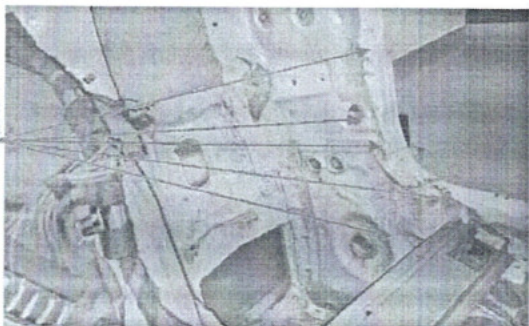
Deformation and separation of inner panels



Inner view of panel indicating pieces of wire welded to the fender and body filler used. Causing deformation of right rear fender.



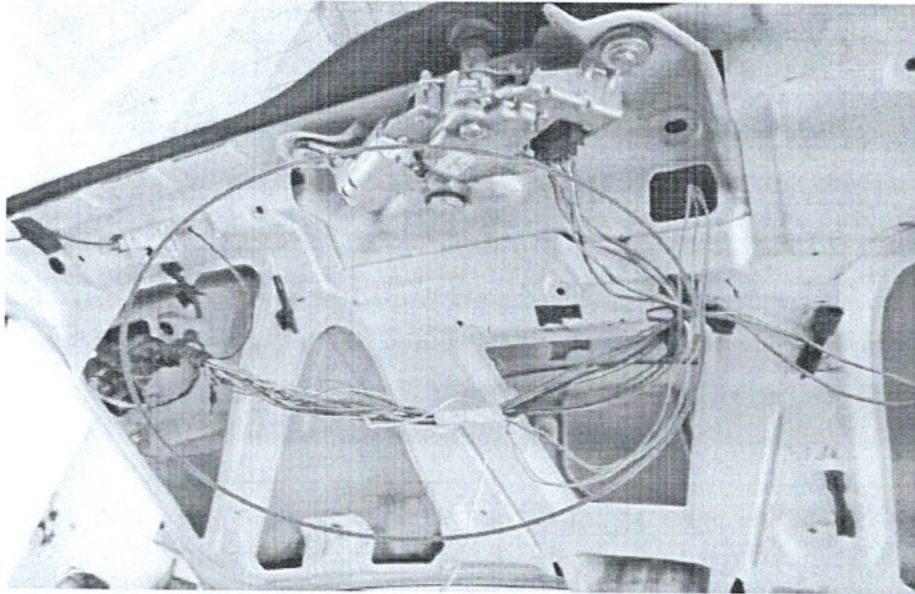
Deformation and separation of inner panels



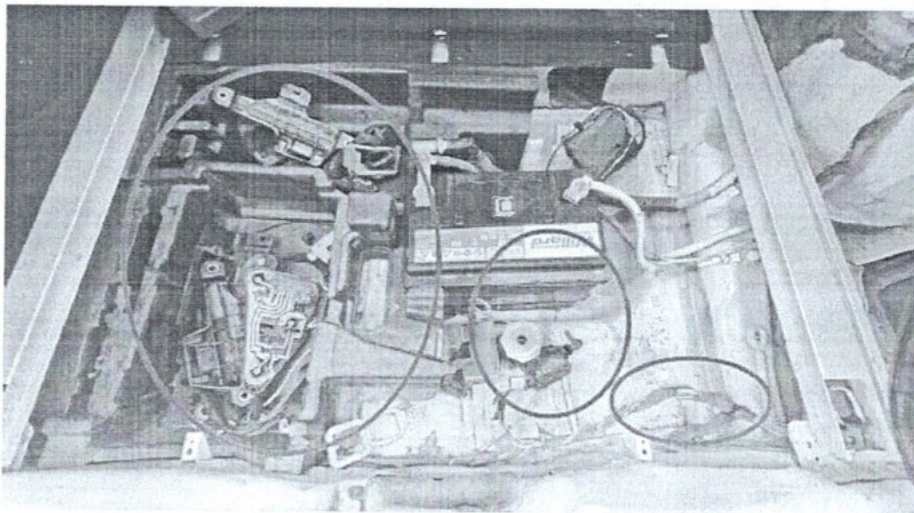
- iv. Additional items: Open and unsecured wiring in back door (tail gate); unsecured wiring and components in luggage compartment; faded right rear tail lamps; broken spare wheel cover; missing BMW emblem; paint

colour variations; over spray on roof rack; variation of paint texture on roof panel; over spray on window washer nozzle.

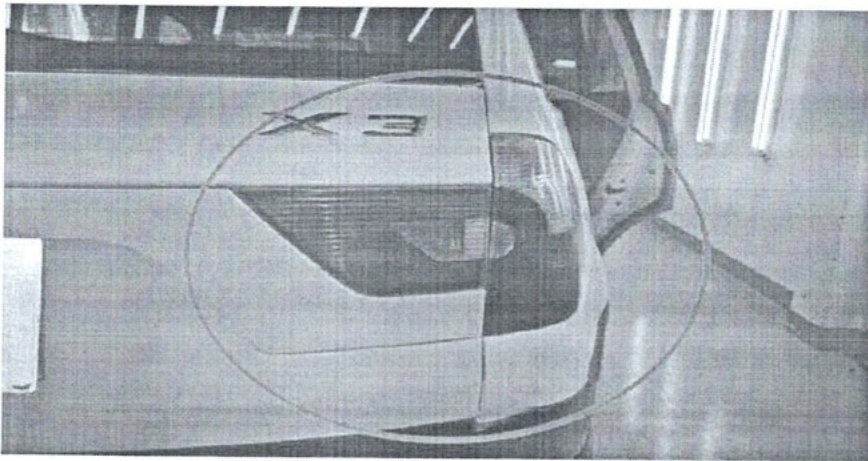
**Figure 14: Photos of the various additional faults identified**



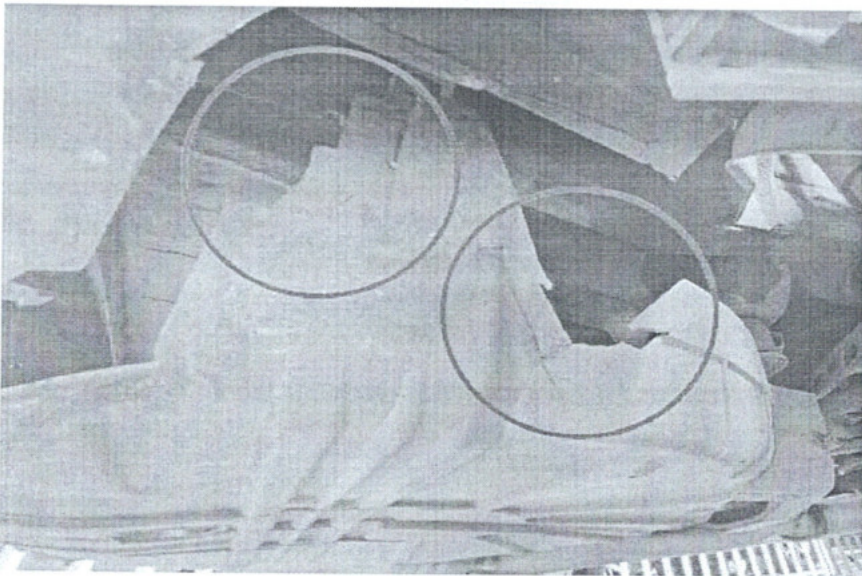
Open and unsecured wiring in back door(tail gate)



Unsecured wiring and components in luggage compartment well.



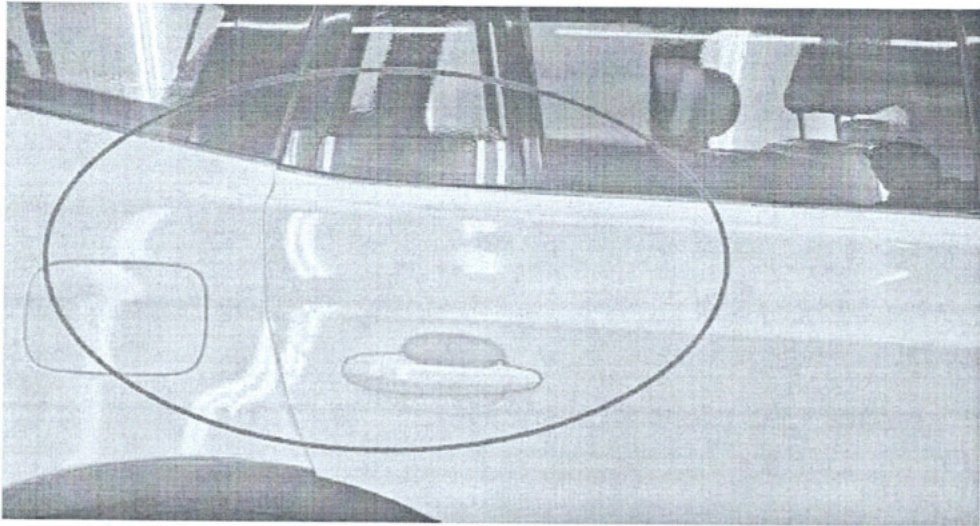
Faded right rear tail lamps.



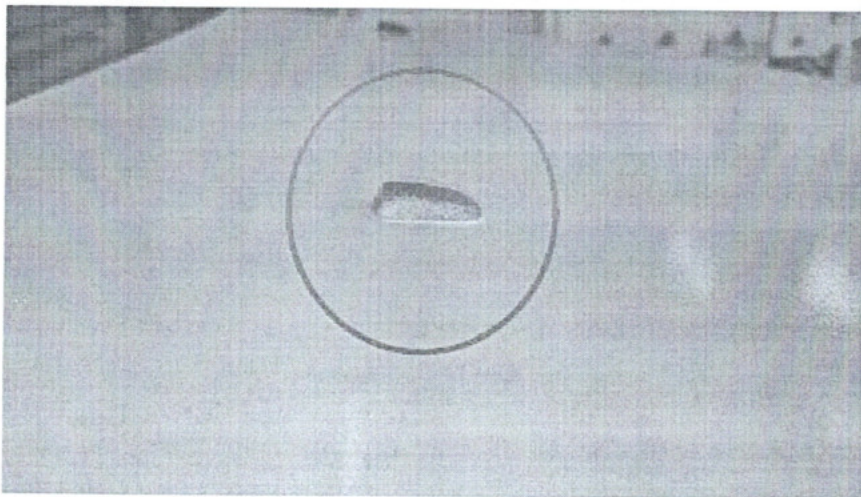
Broken spare wheel cover



Missing BMW emblem



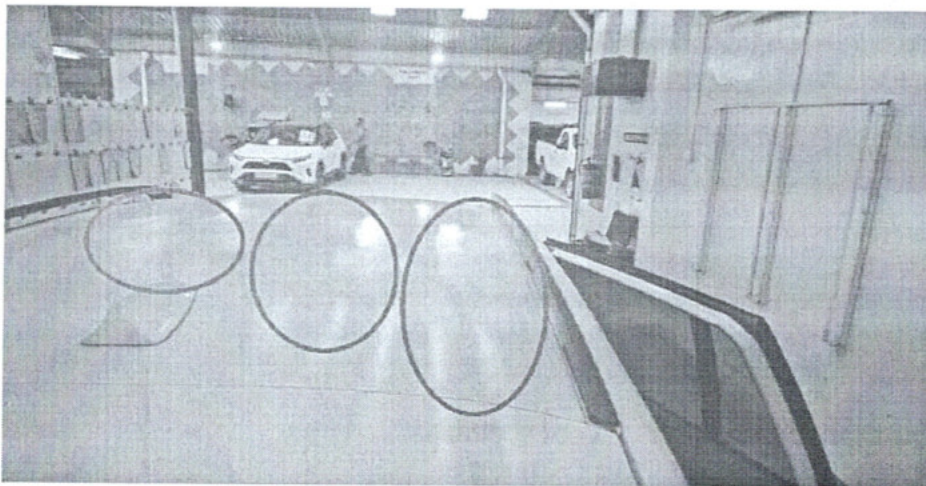
Paint colour variations



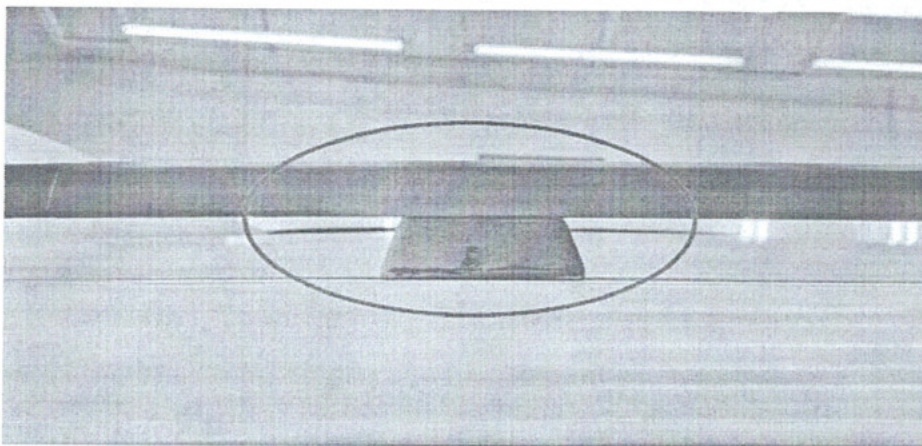
Over spray on window washer nozzle.



When measuring the paint thickness, measurement goes out of range.



Variation of paint texture on roof panel.



Over spray on roof rack

### Conclusion

32. The Independent Assessor submitted that:
- i. New components were not installed on the vehicle as required.
  - ii. There were excessive variations in paint texture and colour.
  - iii. The presence of unshielded and loose wiring posed a significant risk.
  - iv. The vehicle was not repaired to the manufacturer's standards.

## **Submissions to the Commission's Preliminary Report**

### ***It was submitted that:***

33. After the approval of the Preliminary Report, it was duly served on the Respondent and the Complainant on 29<sup>th</sup> October 2025 and 3<sup>rd</sup> November 2025, respectively, in order for them to make submissions to the report, if any. There were no submissions from the Respondent.

### **Submissions from the Complainant<sup>11</sup>**

#### ***It was submitted that:***

##### *Concern over receiving a timely or satisfactory resolution from the Respondent*

34. On 4<sup>th</sup> November 2025, the Complainant submitted that he appreciated the Commission's intervention and guidance, but he respectfully expressed his concern that taking the vehicle back to the same garage may not lead to a timely or satisfactory resolution. The Complainant submitted that the vehicle was previously kept at the garage for an extended period before any meaningful work began, and when the repairs were eventually completed, the outcome was still unsatisfactory.

##### *Commission's Position*

35. The Commission noted the Complainant's submissions on this matter.

##### *Expected period vehicle would be under repair*

36. The Complainant submitted that he would also be grateful if the Commission could kindly advise how long the vehicle would likely remain under repair should it be returned to the Respondent, considering the previous delays and the time it took before the works were commenced and completed.

##### *Commission's Position*

37. Section 49(7) of the Act states that:

*"In addition to the penalty under subsection (6), a person or an enterprise shall, within fourteen days of the provision of the service concerned, refund the consumer the money paid for the service; or perform the service to a reasonable standard."*

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<sup>11</sup> Complainant's letter to the Commission dated 4<sup>th</sup> November 2025

38. Therefore, the Respondent is expected to complete repairing the vehicle within fourteen (14) days of receiving the Commission's Board Decision.
39. Should the Respondent fail to complete the works within the stipulated time, the Commission will then proceed to apply for a Mandatory Order against the Respondent.

*The Complainant's view of a refund being a more appropriate and practical remedy*

40. The Complainant submitted that given the strained relationship and loss of confidence in the service provider, he was of the view that a refund would be a more appropriate and practical remedy. The Complainant submitted that this would enable him to engage a reputable garage to complete the necessary works without further delays or inconvenience.
41. The Complainant submitted that he was, therefore, respectfully requesting the Commission's consideration and guidance on his request for a refund as an alternative to returning the vehicle to the same garage.

*Commission's Position*

42. In Paragraphs 50 and 51 of the Preliminary report, the Commission determined that the most appropriate remedy was for the Respondent to reperform the tailgate installation, panel beating and spray-painting services to a reasonable standard. The Commission established that in delivering these services, the Respondent replaced certain parts of the vehicle, including the tail gate. Furthermore, the Commission was unable to verify the Complainant's allegations that the Respondent supplied and installed a tailgate without any lights and that the Complainant personally purchased and installed all the required lights, due to insufficient evidence. (Refer to Paragraphs 59 and 60 of this report)

**Relevant Findings**

***It was submitted that:***

43. The Commission established that on 15<sup>th</sup> March 2024, the Complainant paid K13,900.00 out of a total of K17,900.00 to the Respondent for panel beating and spray-painting services of his BMW X3 motor vehicle, which also included the supply and installation of a complete tailgate with lights.<sup>12</sup>

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<sup>12</sup> Quotation No. 875 dated 14<sup>th</sup> March 2024 and Receipt No. 707 dated 15<sup>th</sup> March 2024

44. The Commission established that the Complainant was quoted and paid for a “complete tailgate with lights.”<sup>13</sup> However, due to insufficient evidence, the Commission was unable to verify the Complainant’s allegations that the Respondent supplied and installed a tailgate without any lights and that he purchased all the required lights himself.
45. The Commission established that the right front fender was repaired with various concerns, such as, variations in the paint consistency and colour, a missing 2.5i fender emblem, an excessive gap between the right-hand side A-pillar and the fender, and an excessive right-front door to fender misalignment.<sup>14</sup>
46. The Commission established that the right-rear exterior of the vehicle exhibited deformation of the right-rear fender; a right-rear door to right-rear fender misalignment; a right-rear fender to tail lamp misalignment; as well as a cracked and separating section on the right-rear bumper.<sup>15</sup>
47. The Commission established that the right-rear interior of the vehicle exhibited deformation and separation of the inner panels; with an inner view of the panels indicating that pieces of wire were welded to the fender and body filler was used, causing the deformation of right-rear fender.<sup>16</sup>
48. The Commission further established that there was open and unsecured wiring in the back door (tail gate); unsecured wiring and loose components in luggage compartment; faded right-rear tail lamps; a broken spare wheel cover; a missing BMW emblem; a variation of paint texture on roof panel; and an overspray on the roof rack and window washer nozzle.<sup>17</sup>
49. The Commission further established that new components were not installed on the vehicle as required.<sup>18</sup>

### **Previous cases involving the Respondent**

#### ***It was submitted that:***

50. A review of the Respondent’s file revealed that there was no case against the Respondent in which they were found to have violated Section 49(5) of the Act.

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<sup>13</sup> Ibid

<sup>14</sup> Inspection Report from CFAO Mobility – Top Gear Motors dated 12<sup>th</sup> February 2025

<sup>15</sup> Ibid

<sup>16</sup> Ibid

<sup>17</sup> Ibid

<sup>18</sup> Ibid

## **Analysis of Conduct**

### ***It was submitted that:***

51. In analysing the case for possible violation of Section 49(5), the following assessment tests were used:

### ***Whether the Complainant was a consumer;***

#### ***It was submitted that:***

52. The Complainant was a consumer. Refer to paragraph 12 above.

### ***Whether the Respondent was a “person” or an “enterprise”;***

#### ***It was submitted that:***

53. The Respondent was an enterprise. Refer to paragraph 13 above.

### ***Whether the Respondent supplied a particular service to a Consumer;***

#### ***It was submitted that:***

54. The Act defines a “Service” as, “to include the sale of goods, where the goods are sold in conjunction with the rendering of a service”.<sup>19</sup> The Commission established that the Complainant paid the Respondent K13,900.00 for panel beating and spray-painting services on his BMW X3 motor vehicle, which also included the supply and installation of a complete tailgate with lights.<sup>20</sup>

### ***Whether the Respondent supplied a service to the consumer with reasonable care and skill or within a reasonable time or, if a specific time was agreed, within a reasonable period around the agreed time;***

#### ***It was submitted that:***

55. The assessment of Section 49(5) has more than one component and the analysis of the case under review will focus on the aspects of; “*whether the Respondent supplied a service to the Complainant with reasonable care and skill*”.

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<sup>19</sup> Competition and Consumer Protection Act No. 24 of 2010, as amended.

<sup>20</sup> Quotation No. 875 dated 14<sup>th</sup> March 2024 and Receipt No. 707 dated 15<sup>th</sup> March 2024

56. According to Black's Law Dictionary reasonable care is defined as, "*a test of liability for negligence, the degree of care that a prudent and competent person engaged in the same line of business or endeavour would exercise under similar circumstances*". The dictionary further defines reasonable skill as, "*such skill as ordinarily possessed and exercised by persons of common capacity engaged in the same business or employment*". Further, Black's Law Dictionary defines duty of care as, "*the duty to act with diligence and the prevailing standards for the locality for the kind of work performed and to use any special skills the actor has to perform the work*".<sup>21</sup> Duty of care is a legal obligation which is imposed on an individual, requiring adherence to the standard of reasonable care while performing any acts that could foreseeably harm others. The Commission, therefore, established that reasonable care and skill was such care and skill as an ordinarily prudent person or competent body would exercise under the conditions existing at the time an act was required to be performed.
57. In the case under review, the Commission established that on 15<sup>th</sup> March 2024, the Complainant paid K13,900.00 out of a total of K17,900.00 to the Respondent for panel beating and spray-painting services on his BMW X3 motor vehicle, which was also inclusive of the supply and installation of a complete tailgate with lights.<sup>22</sup> The Commission established that when the Complainant lodged the complaint with the Commission on 16<sup>th</sup> July 2024, the Respondent had already completed the works; however, not to the Complainant's expectations. The Complainant further alleged that although the Respondent had quoted to supply and install a complete tailgate with lights, they supplied a tailgate without lights, and he thereby had to purchase all the required lights himself.<sup>23</sup>
58. The Commission further established that the Respondent denied the Complainant's allegations in their response to the Commission's NoI.<sup>24</sup> The Commission, however, established that the right front fender was repaired with various concerns, such as, variations in the paint consistency and colour, a missing 2.5i fender emblem, an excessive gap between the right-hand side A-pillar and the fender, and an excessive right-front door to fender misalignment. The Commission established that the right-rear exterior of the vehicle exhibited deformation of the right-rear fender; a right-rear door to right-rear fender misalignment; a right-rear fender to tail lamp misalignment; as well as a cracked and separating section on the right-rear bumper.<sup>25</sup>

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<sup>21</sup> Black's Laws Dictionary, 7<sup>th</sup> Edition, 1999. p.204 and p.522

<sup>22</sup> Quotation No. 875 dated 14<sup>th</sup> March 2024 and Receipt No. 707 dated 15<sup>th</sup> March 2024

<sup>23</sup> Form IV 16<sup>th</sup> July 2024

<sup>24</sup> Letter from the Respondent's legal representatives - Muya and Company Legal Practitioners dated 2<sup>nd</sup> September 2024

<sup>25</sup> Inspection Report from CFAO Mobility – Top Gear Motors dated 12<sup>th</sup> February 2025

59. The Commission established that the right-rear interior of the vehicle exhibited deformation and separation of the inner panels; with an inner view of the panels indicating that pieces of wire were welded to the fender and body filler was used, causing the deformation of right-rear fender. The Commission further established that there was open and unsecured wiring in the back door (tail gate); unsecured wiring and loose components in luggage compartment; faded right-rear tail lamps; a broken spare wheel cover; a missing BMW emblem; a variation of paint texture on roof panel; and an overspray on the roof rack and window washer nozzle. The Commission additionally established that new components were not installed on the vehicle as required.<sup>26</sup> The Commission also established that the Respondent did not supply and install a complete tailgate as quoted, as the installation exhibited several concerns, including a malfunctioning locking system and loose cables. Based on the above, the Commission therefore, established that the Respondent executed the service to the Complainant with a lack of reasonable care and skill that a prudent and competent person engaged in the same line of business would be expected to meet under the circumstances. The Commission, therefore, established that the Respondent did not supply their service to the consumer with reasonable care and skill and hence was in violation of Section 49(5) of the Act.
60. Section 49(7) of the Act stipulates the remedies available to a consumer when an enterprise violates Section 49(5). Section 49(7) of the Act states that, "*a person or an enterprise shall, within fourteen days of the provision of the service concerned, refund the consumer the money paid for the service; or perform the service to a reasonable standard.*" In the case at hand, the Consumer demanded a full refund of K13,900.00 paid to the Respondent for the tailgate installation, panel beating and spray-painting services. However, the Commission established that in delivering the service, the Respondent replaced certain parts of the vehicle, even though it established that no new components were installed. For example, the Respondent sourced and installed the tail gate, while the Complainant complimented it by providing accessories such as the lights, as alleged by the Complainant. Furthermore, due to a lack of evidence, the Commission could not verify the Complainant's allegations that the Respondent supplied and installed a tailgate without any lights and that he purchased all the required lights himself.
61. As such, the Commission determined that the most appropriate remedy was for the Respondent to perform the tailgate installation, panel beating and spray-painting services to a reasonable standard.

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<sup>26</sup> Inspection Report from CFAO Mobility – Top Gear Motors dated 12<sup>th</sup> February 2025

### **Board Deliberation**

62. Having considered the facts, evidence and submissions in this case, the Board resolves that the Respondent engaged in unfair trading practices by failing to perform the tailgate installation, panel beating and spray-painting services on the Complainant's BMW X3 motor vehicle with reasonable care and skill, and hence violated Section 49(5) of the Act.

### **Board Determination**

63. The facts and evidence of this case have shown that the Respondent violated Section 49(5) of the Act by not performing the tailgate installation, panel beating and spray-painting services on the Complainant's BMW X3 motor vehicle with reasonable care and skill.

### **Board Directive**

64. The Board hereby directs that:
- (i) The Respondent pays a penalty of 0.5% of their annual turnover for violating Section 49(5) of the Act in accordance with Section 49(6) of the Act and the applicable cap in line with the Guidelines for Administration of Fines, 2019; *(See Appendix 1 for details)*
  - (ii) The Respondent submits their audited annual books of accounts for the year 2023 to the Commission for the calculation of the actual penalty within 30 days of receipt of the Commission's Board Decision in accordance with Section 58(1) of the Act; and
  - (iii) The Respondent reperforms the service of tailgate installation, panel beating and spray-painting of the Complainant's BMW X3 motor vehicle to a reasonable standard (to be inspected and certified by a neutral expert) within 14 days of receipt of the Commission's Board Decision in accordance with Section 49(7) of the Act.

*Note: any party aggrieved with this order or directive may, within thirty (30) days of receiving this order or directive, appeal to the Competition and Consumer Protection Tribunal (CCPT).*

**Dated this 16<sup>th</sup> February 2026**

*A. Mwendabai*

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**Chairperson**

**Competition and Consumer Protection Commission**

### **Appendix 1 - Calculation of Financial Penalty**

The Calculation of the recommended penalty was determined as follows-

- (a) ***The Competition and Consumer Protection Act No. 24 of 2010: Guidelines for Administration of Penalties 2019, sets a base of 0.5% for offences relating to Part VII of the Act with the following caps;***

<b>Offence</b>	<b>Starting Penalty</b>	<b>Maximum Penalty in Fee units</b>
Unfair trading practice  False or misleading representation  Price Display  Supply of defective and unsuitable goods and services  Section 49) except for Section 49(1)	0.5% of turnover	<ul style="list-style-type: none"> <li>• 3,333.33 for turnover upto 166,666.67</li> <li>• 33,333.33 for turnover above 166,666.67 upto 833,333.33</li> <li>• 133,333.33 for turnover above 833,333.33 upto 1,666,666.67</li> <li>• 233,333.33 for turnover above 1,666,666.67 upto 5,000,000</li> <li>• 500,000 for turnover above 5,000,000 upto 10,000,000</li> <li>• 666,666.67 for turnover above 10,000,000 upto 16,666,666.7</li> <li>ss</li> <li>• 1,666,666.67 for turnover above 16,666,666.7</li> </ul>
Display of Disclaimer	0.5% of turnover	100,000

- (b) The Competition and Consumer Protection Act No. 24 of 2010: Guidelines for Administration of Penalties 2019, further provides for additions as follows-

- (i) The starting point of a financial penalty will be a penalty of not less than 0.5% of annual turnover for first time offenders.

- (ii) (The starting point of a financial penalty for a repeat offender will be the previous penalty charged by the Commission.
- (iii) Thereafter, the Commission will be adding 10% of the penalty determined in step one above for each aggravating factor.

**(c) *Whether Lusaka Vehicle Diagnosis is a repeat offender under Section 49(5);***

The Commission's review of the case file for the Respondent shows that the Respondent is a first-time offender of this Provision of the Act. As such the fine is calculated as follows:

- (d) Starting with a baseline penalty of 0.5%.