

CHALLENGES OF CONSUMER PROTECTION IN E-COMMERCE IN TANZANIA

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ABSTRACT

World of business has changed dramatically in the recent times. Before the introduction of the internet and electronic commerce, transactions were carried out face to face and in juxtaposition, and in some instances by postal services. Nevertheless, the internet has come up a faster, and in some occasions more resourceful way of carrying out business, now businesses can offer their products and services to individuals in locations which they would hitherto have been unable to. Now, an individual can buy goods from different locations with just a touch of a button. This is an illustration of the enormous advantages which online businesses have brought to the business world. In those circumstance consumers cannot be left at the mercy of the unfaithful business men who would take advantage of innocent consumer by delivering to them counterfeit and substandard goods. A look at law that protect consumer in e-commerce is inevitable.

INTRODUCTION

A consumer is “any person or a group of people, in most cases a disorganized group, educated or uneducated, poor or rich, child or adult who purchases goods and or services unthinkingly for the express purpose of using same to satisfy personal or family needs and as end user of those goods or that service”ⁱ. The Black’s Law Dictionary defines “consumer” as a person who buys goods or services for personal, family, or household use, with no intention of resale; a

natural person who uses products for personal rather than business purposesⁱⁱ. In the case of *Aronberg etal Vs. Federal Commission (FTC)*ⁱⁱⁱ consumer were seen as “that vast multitude which includes the ignorant, the unthinking and credulous, who, in making purchases do not stop to analyze but too often are governed by appearance and general impressions.”

In Tanzania term Consumer is defined under section 2 of the Fair Competition Act,^{iv} *to mean includes any person who purchases or offers to purchase goods or services otherwise than for the purpose of resale but does not include a person who purchases any goods or services for the purpose of using them in the production or manufacture of any goods or articles for sale.* By the virtue of the above definitions the term consumer is defined according to the place, amount and obligations between the consumer and the producer.

Consumer protection means safeguarding the interest and rights of consumers. In other words, it refers to the measures adopted for the protection of consumers from unscrupulous and unethical malpractices by the business and to provide them speedy redressal of their grievances. It is defined to mean all those measures that serve to protect the consumer’s interest in goods and services.^v On line business transactions as it is often times referred to as E-commerce, online shopping or e-business, is “the use of electronic transmission medium (telecommunication to engage in exchange, including buying and selling of products and services requiring transportation, either physically or digitally, from location to location.”^{vi} E-commerce relates to buying and selling of information, products and services via computer networks, i.e. it is a means of transacting business electronically through Internet. In other words, it is a means of conducting business/ trading /marketing online. Most of the transactions, since beginning of internet was online consumer shopping on the web. An e-commerce transaction can be defined as “the sale or purchase of goods or services, conducted over computer networks by methods specifically designed for the purpose of receiving or placing of orders”^{vii}

CONSUMER PROTECTION LAWS IN TANZANIA

Consumer protection in Tanzania is not a novel concept. It has been there since independence though in a fragmented legal framework. The government through different institutions and

using different laws has been protecting consumers. The constitution of the United Republic of Tanzania^{viii} lays foundation and recognizes, enforces, implements and protects human rights under the Bill of Rights.^{ix} The constitution protects the life and welfare of its people. Consumers are among the people who are protected by the constitution.^x Article 14 explains the right to live and to protection of life which is in line with the provision of Article 18 that provides for the right to freedom of opinion, expression and expression of his ideas.^{xi} These rights are direct associated with the protection of consumer in Tanzania. Other legislation such The Penal Code, Cap 16 (R.E.2002), The Merchandise Marks Act The Price Control Act 1973, The Regulation of Prices Act 1973, The Standards Act The sale of Goods Act, Ordinance No.18 of 1932, Cap.214 (R.E.2002), The Weights and Measures Act, Act: No. 20 of 1982. Cap. 340 (R.E. 2002),The Fair Competition Act to mention but a few are responsible for consumer protection. However these laws do not offer adequate protection to consumers who purchases goods in online markets.

IMPACT OF INTERNET IN E-COMMERCE

Since the mid-1990s, e-commerce has become an important feature in commercial activities throughout the world. The number of internet users around Tanzania has been steadily growing and this growth has provided the impetus and the opportunities for global and regional E-Commerce^{xii}. However hurdles to e-commerce do still exist notably in an international context for consumers.^{xiii} The consumer as a buyer, user, user of goods sold online is the party whose position is weak are often the victims of fraudulent businesses. Consumers are at greater risks where “the legal framework does not provide adequate safeguards to create an environment of trust for e-business transactions to take place”^{xiv} particularly with regard to protection against counterfeit and substandard goods. Generally speaking, trust between consumer and supplier or retailer is a bigger issue online than it is offline.^{xv} Transactions such as the sale of goods via the internet (online shop) are vulnerable to violations of consumer rights as there is no meeting between consumers and businesses at the time of transaction. From the start of the incompatibility of the goods received by the buyer, fraudulent guise of electronic transactions which asked consumers to transfer funds first before the goods are shipped without the use of

service facilities such as joint account, up to the difficulties of consumers suing for businesses who conduct business with the transaction mechanism electronics because of the lack of regulation governing e-commerce transactions related to consumer protection in the event goods are counterfeited and or substandard. Protection of consumer in on line transactions against substandard and counterfeited goods in Tanzania is one of the great challenges need to be immediately addressed. There is no specific law that clearly addresses on line transactions in view of protecting consumers against substandard and counterfeited goods. Eventually this leads to violation of consumer rights in the e-markets. In addition there is high level of unfamiliarity over consumer rights among the public particularly those engaged in on line business transactions. Lack of effective identification of businessmen and complaint procedures and independent monitoring body to supervise the conducts of manufacturers and businessmen in online business provides opportunity to them to violate consumer rights.

WAY FORWARD

The following are recommended as the way forward on what should be done in order to enhance consumer protection in fighting substandard and counterfeited products in online markets in Tanzania.

a. Enactment of the Consumer Protection Act

The absence of the single consumer protection Act poses great challenge to the whole concept of consumer protection in Tanzania. Even though there are some of the laws which deal with the protection of consumers in Tanzania but these alone are not sufficient to protect consumer's interest in online business transactions. Consumer protection is one of the pivotal areas to the livelihood of man which need special attention thus having a single legislation will help to carter the problem. Extra measures and efforts need to be exerted so as to come up with system of protecting consumers when they are facing the market against substandard products. Thus apart from the sectorial regulatory laws existing the government should enact one law that will deal with consumer protection in generally and not according to sectors.

b. Enactment of Laws Specifically for Electronic Business Transactions

Enactment of laws to provide for the use, security, facilitation and regulation of electronic communication and transactions will not only encourage the use of electronic transactions but will make it safer for consumer against substandard goods. The law should make provisions for consumer protection in online transactions with respect to the information that must be provided by the business providers. A supplier offering goods or services for sale, for hire or for exchange by way of an electronic transaction must make the vital information available to consumers on the web site where such goods or services are offered. Such information includes its full name and legal status; its physical address and telephone number; its web site address and e-mail address; membership of any self-regulatory or accreditation bodies to which that supplier belongs or subscribes and the contact details of that body; any code of conduct to which that supplier subscribes and how the consumer may access that code of conduct electronically; in the case of a legal person, its registration number, the names of its office bearers and its place of registration; the physical address where that supplier will receive legal service of documents; a sufficient description of the main characteristics of the goods or services offered by that supplier to enable a consumer to make an informed decision on the proposed electronic transaction; the full price of the goods or services, including transport costs, taxes and any other fees or costs; the manner of payment; any terms of agreement, including any guarantees, that will apply to the transaction and how those terms may be accessed, stored and reproduced electronically by consumers; the time within which the goods will be dispatched or delivered or within which the services will be rendered; the manner and period within which consumers can access and maintain a full record of the transaction; the return, exchange and refund policy of that supplier; any alternative dispute resolution code to which that supplier subscribes and how the wording of that code may be accessed electronically by the consumer; the security procedures and privacy policy of that supplier in respect of payment, payment information and personal information; and where appropriate, the minimum duration of the agreement in the case of agreements for the supply of products or services to be performed on an ongoing basis or recurrently;

The law should further provide that the buyer may reject the goods if they are delivered of poor quality, and or if is of substandard quality the buyer may reject the goods. applying the law in

e-commerce context, the buyer should retain the right to return and reject the goods if upon examination he discovers that the goods are not in conformity with the contract for being of substandard quality.

The law should provide for the prohibition of electronic fraud, deceit in all electronic transactions in all on line business transactions in the country and for other related matters. The law should thus seek to specifically criminalize sale of substandard goods or fraud perpetrated through electronic means. The possible effect of this on consumer protection in online transactions is that it creates a deterrent effect for possible electronic fraud and deceit from perpetrators. The law should criminalize phishing and spamming, both practices form a vital part of the concern which consumers frequently have with respect to the protection of their identity and information while conducting business online.

c. Provision of Consumer Education to the People

One of the duties of the FCC is to provide consumer education to the people. There should be introduced more mechanisms of education to consumers in on line transactions so as to increase awareness on their statutory rights as consumers. The consumer education must be at all levels. Beginning from primary education to higher learning. The introduction of the consumer protection curriculum will help to create awareness to the society. This will help in doing away on reliance on the doctrine that ignorance of the law does not afford any excuse while the service providers and businessmen are unfairly benefiting from the low level of education of the consumers.

d. Establishment of the an Independent Agency to Enforce Consumer Law

The government should establish the organ which will oversee all the matters with relation to consumer and give them a national wide jurisdiction and the office in every region and district so that to cover all the substandard products in online market. Again there should be introduced special agencies or government bodies to monitor the implementation of the consumer protection laws in Tanzania and promotion of consumers' rights. Establishment of consumer

complaint portal would be a valuable addition to The Tanzania Consumer Consultative Council which have no powers to represent consumers in the court of law which now do not have other than advocacy powers. Also instead of having Consumer Consultative in every regulatory such as EWURA-CCC, TCRA-CCC and SUMATRA-CCC, thus there should be only one consumer consultative council which will operate in online so that to receive and determine consumers complaints as reported from all angles within the country.

CONCLUSION

As with all commercial platforms, e-commerce it is essential to be viewed and examined in order to align with the social, economic, legal, and political framework within which it exists. The law which provides for consumer rights and particularly consumer protection in on line transaction against substandard goods is insufficient despite the fact that most of the consumer protection laws recognize the importance of consumer rights and interests. There is a need to reform our laws to align with the present situation in order to protect consumer against any malpractice in online business transactions.

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ⁱⁱⁱ 132F.2d 165(7th cir. 1942)

^{iv} Act No. 8 of 2003

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^{vi}Greenstein, Marilyn and Todd M. Feinman, *Electronic Commerce: Security, Risk Management and Control*. USA: McGraw-Hill Companies, Inc., 2000.

^{vii}(see <http://stats.oecd.org/glossary/detail.asp?ID=4721>).

^{viii} 1977

^{ix} Part III of the URT Constitution of 1977

^x *Ibid*, Article 13 (4)

^{xi}*Ibid*

^{xii}Oreku G *etal.*,A Viewpoint of Tanzania E-Commerce and Implementation Barriers available at<https://www.researchgate.net/publication/271269086>

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