

AN EXAMINATION ON THE ROLE OF FAIR COMPETITION COMMISSION (FCC) IN THE IMPLEMENTATION AND ENFORCEMENT OF CONSUMER PROTECTION LAWS IN TANZANIA

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ABSTRACT

This study is centered on examining the role of the Fair Competition Commission (FCC) in the implementation and enforcement of Tanzania consumer protection laws and the main focus is on the role of Fair Competition Commission. Thus the aim of this study is to examine and make analysis on the role of consumer protection laws in protecting consumers against counterfeit products. The study aimed examines the laws which are responsible on consumer protection in Tanzania and provides for the tests on whether the laws which govern consumer protection are ineffective or effective and them provides for the way forward. The study provides for the introduction on the consumer protection and genesis from the international law. The role of international law in protecting the rights of consumer in the world and how it affect the implementation and enactment of the domestic law with regards to consumer protection. The examination also based on the jurisprudence behind the enactment of the consumer protection laws and how it is measured and regarded as one the rights of the person with regards to the protection of the right to life of an individual. Then this research examines the need to have consumer protection and provide for the way forward.

INTRODUCTION

Consumer protection is a phenomenon that is associated with the growth of markets as the medium for economic growth.ⁱ Economic theory posits markets as the forum where sellers meet buyers, or rather, where suppliers generally meet consumers of goods and services.ⁱⁱ While the suppliers of goods and services invites for the attention of buyers, generates a competitive scenario and leaves to their own devices, suppliers also do tend to employ every trick possible, positive and negative, to win the buyers' attention.ⁱⁱⁱ

Consumer protection is a concept which was adopted by states which have large industries and the thought was that there is a need to protect the consumers against the manufacturer, to the point that the manufacturer will produce the required products with the required quality.^{iv} Thus this concept was adopted by the court after the increase of manufacturer products and the increase in market demands.

Due to the development of the society there were principles developed regarding the protection of consumer and the market. One of the principles was caveat emptor. The principle incorporates the principle of individualism and individual autonomy in the market.^v The principle was developed in the case of *Chandelor v Lopus*,^{vi} which is regarded as the origin of the doctrine of consumer protection under the common law. The caveat emptor principle requires buyers to be aware and make the purchasing decision at their own risk.^{vii} It has been a debate that the principle worked under the assumption that both sellers and buyers had equal bargaining power and that it was not the obligation of the seller to furnish information to consumers. The principle placed consumers at a disadvantage with little protection in case of grievances.^{viii} As the society continued to develop the principles regarding the protection of consumers continued also continued to develop.

Tanzania has experienced the enactment of new laws and establishment of various regulatory mechanisms with the aim to protect the right of consumers against counterfeit products from the manufacturers and suppliers. The enactment of Tanzania Fair Competition Act,^{ix} the Standard Act of 2009, and the Tanzania Food, Drugs and Cosmetics Act of 2003, all these laws

came and establish the regulatory authorities, which at large came to tackle the issue of counterfeit products.

The laws in Tanzania further establish authorities mandated to protect rights of consumers of goods. These include the Fair Competition Commission (FCC), Fair Competition Tribunal (FCT), National Consumer Advocacy Council (NCAC), Tanzania Food and Drugs Authority (TFDA), Tanzania Bureau of Standards (TBS), Tanzania Revenue Authority (TRA), Energy and Water Utilities Regulatory Authority (EWURA), Consumer Consultative Council, Government Chemist Laboratory Agency, Weights and Measures Agency (WMA), and several other government authorities. Additionally, the police and courts all over the country deal with cases and disputes concerning consumer rights and counterfeit products.

These government agencies aimed at prohibiting and stopping the manufacture and importation of counterfeit products into the Tanzanian market. For example Part III, Para 15 to 21 of the Fair Competition Act, 2003^x stipulates that misleading or deceptive conducts against consumers shall be prohibited and part VIII Para 48 stipulates on the necessity of product with safety and product information to consumers. This provision is complimented with the Constitution of The United Republic of Tanzania Article 18 (2) which provides for “freedom of expression”, meaning that citizens have the right to be informed on all state matters that have an impact into their lives.^{xi} Part IV Para 22 of the Act provides for the right to redress, meaning consumers have the right to compensation for unsatisfactory goods or services, subject to hearing.^{xii} In a bigger view the FCC was in one hand established to see to it consumers receive quality products and not counterfeit products, which will later dissatisfy them.

CONSUMER AND CONSUMER PROTECTION

Until today there is no universally acceptable definition of a consumer. Most of the scholars and authorities are divided when it comes to the meaning of the word “consumer”. 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 purposes.^{xiii} In Tanzania term Consumer is defined under section

2 of the Fair Competition Act,^{xiv} 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.

The concept of consumer protection is defined to mean all those measures that serve to protect the consumer's interest in goods and services.^{xv} The concept of consumer protection includes both a preventive and a remedial aspect.

Consumer protection is mainly concerned with laws and regulations that ensure fair interaction between service providers and consumers. Where it involves the government intervention in regulating the area of consumer protection are justified on the basis of inherent information asymmetries and power imbalances in markets, with producers or service providers having more information about the product or service than the consumers.^{xvi} The consumer protection legal framework mainly includes the introduction of greater transparency and awareness about the goods and services, promotion of competition in the marketplace, prevention of fraud, education of customers, and elimination of unfair practices.^{xvii}

THE LEGAL FRAMEWORK GOVERNING CONSUMER PROTECTION IN TANZANIA

The constitution of the United Republic of Tanzania^{xviii} does not clearly specify on the consumer protection in Tanzania. But Tanzania recognizes, enforces, implements and protects human rights under the Bill of Rights.^{xix} The constitution aims at protecting the life and welfare of its people that is why consumers are among the people who are protected by the constitution.^{xx} Another provision is Article 14 which explain on 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.^{xxi} These rights are direct associated with the protection of consumer in Tanzania.

The Fair Competition Act provides on the role of FCC which is established by the Fair Competition Act (herein referred as FCA)^{xxii} then the Act is discussed deeply. The FCA was enacted to protect and promote the welfare of the people of Tanzania as a whole by promoting and protecting effective competition in markets and preventing unfair and misleading market conduct throughout Tanzania so that to protect the consumers. The FCA was enacted to ensure that the interests of consumers are protected from possible healthily property hazard which can result from the presence of low quality goods and service in the market which can harm the consumers.^{xxiii} The law puts down mechanisms that enable consumers to take legal action against offending service providers, with the view of ensuring that consumers get their value for money and are compensated when the need arises.^{xxiv}

THE FAIR COMPETITION COMMISSION

Fair Competition Commission (FCC) is one of the agencies which protect the consumers where it is established under section 62 of the Fair Competition Act (FCA). FCC is an independent government agency aims at promoting, protecting and enhancing effective competition in trade and commerce and to protect consumers from unfair and misleading market conduct.^{xxv} The functions and duties of the FCC are provided under section 65 (1) which some of them are; to control, manage and efficiently perform the functions of the Commission under the Act, promote and enforce compliance with the Act, promote Public knowledge, awareness and understanding of the obligations, rights and remedies under the Act and the duties, functions and activities of the Commission, make available to consumers information and guidelines relating to the obligations Of Persons under the Act and the rights and remedies available to consumers under the Act, carry out inquiries studies and research into matters relating to competition and the Protection of the interests of consumers.

The main goal of the FCC is to increase efficiency in the production, distribution and supply of goods and service.^{xxvi} The Law under section 61 of the FCA provides for remedies to those who are aggrieved by the decisions of FCC to appeal to the Fair Competition Tribunal, except for consumer-related cases, which go to normal courts.^{xxvii} The roles of the FCC are divided into two categories which are enforcement and advocacy.

The first role is the enforcement which mandates the FCC with the role to make investigations into anticompetitive trade practices, and advocacy includes promotion competition and consumer protection by sitting in on any public inquiry or contributing to policy and legal reform.^{xxviii} Another important role is that the FCC is mandated with the power to engage themselves in the court proceedings, tribunals, regulatory authorities, government inquiries, commissions, committees and working groups for the purpose of observing the proceedings and making representations on matters relevant to its functions for the betterment of the consumer.^{xxix}

THE FAIR COMPETITION TRIBUNAL

In order to ensure that the justice is attained by the parties the Act established the Fair Competition Tribunal.^{xxx} The Fair Competition Tribunal is quasi-judicial bodies with the appellate jurisdiction to entertain all cases originating from regulatory authorities say the FCC, EWURA, TCRA and SUMATRA also decision by the Chief Inspector.^{xxxi} The good example is the case of *Tanzania Breweries Ltd Vs Serengeti Breweries Ltd and 2 others*,^{xxxii} where the FTC entertained the appeal from the FCC and held that the *Director of FCC may at any time be present and represent the commission in any appeal brought before the tribunal*. The Fair Competition Tribunal shall be headed by the Chairman who shall be a person holding the office of a Judge of the High Court appointed by the President after consultation with the Chief Justice, and shall serve part time; and six members appointed to serve part time by the President after consultation with the Attorney-General from candidates nominated by a Nomination Committee.^{xxxiii}

CHALLENGES FACING THE ROLE OF FCC IN THE IMPLEMENTATION AND PROTECTION OF CONSUMER PROTECTION LAW IN TANZANIA

One; the legal lacunae on the consumer protection laws in Tanzania, that the rights, interests and welfare of the consumers in Tanzania will be effectively protected if the consumer protection laws allow the consumers and other affected organization either in their personal capacity or through legal representation to lodge consumer cases before the court or tribunal. However the above contention cannot be attained because of the limitations as provided for by laws in place.

Two; Procedural Technicalities on Consumer Protection Cases, Tanzania has tried much to protect the interest and welfare of consumers. However regardless of the establishment of the legal institutions to determine consumer's cases, this study has discovered some procedural technicalities which in one way or another challenge the competence and impartiality of the institutions in promoting consumer protection. The good example is the problem declaring and naming the FCC as one and only body entrusted with power to hear, determine and making decision on all matters of non-compliance and consumers protection as per section 75^{xxxiv} which provides that The Commission shall establish one or more divisions which shall be responsible for investigation and compliance in respect to matters on restrictive trade practice.

Three; Lack of consumer protection Act, Tanzania has a number of laws which protect consumers and their interest against counterfeit products and other fake products. The study further discovered that most of the laws governing interest and welfare of consumers are divided and affect only a specific category or sector. With regard to statutory provisions on consumer protection this study has discovered that consumer protection is highly in need due to the increase of acts which tend to deprive consumer rights and interests such as presence of counterfeit goods, adulterated good in the market , still there is no clear enacted statutory provision which aims at protecting consumers in Tanzania.

RECOMMENDATIONS

One the 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. Consumer protection is one of the controversial areas which need special attention thus having a single legislation will help to carter the problem.

Two, the 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 so as to increase awareness on their statutory rights as consumers. The consumer education must begin in the lower level of primary education to university level. The introduction of the consumer protection curriculum will help to create awareness to the society.

Three the 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 counterfeit products in all regions in Tanzania.

CONCLUSION

Enforcement of the consumer rights guaranteed under the statutes in Tanzania is one of the great challenges when looking at the jurisdiction of the Fair Competition Tribunal to hear and decide matters with regards to consumer grievances. The law confers such power to the Fair Competition Tribunal on all matters relating to the basic consumer rights while there are no sufficient resources to support legal mobilization. Ultimately this impinges access to the justice by poor consumers. In addition there is high level of ignorance over consumer rights among the public. Lack of effective complaint procedures and independent monitoring body to supervise the conducts of manufacturers and service providers provides opportunity to the service providers and manufacturers to violate consumer rights. Finally, this study has

observed that enforcement of the rights of consumers is hindered by economic situation of the government and the individuals. The government fails to fulfil its obligations and promises due to economic problems.

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ENDNOTES

ⁱDr.R.W.Tenga, (2009) *Consumer Protection Model and the Tanzania Legal Compliance Framework – With Some Reference to the Communications Sector*. At p. 1

ⁱⁱ Ibid

ⁱⁱⁱ ibid

^{iv} Ibid p. 2

^v Dr. Mwenegoha T, (2015) *The Development of Consumer Protection Laws in Tanzania for Electronic Consumer Contracts*, PhD Thesis, Bond University, at pg 44. Also see Susan S Silbey, ‘Who Speaks For the Consumer? Nader’s No Access to Law and Best’s When Consumers Complain’ (1984) 9 *Law and Social Inquiry* 429, 429.

^{vi} (1603) 79 ER 3, In this case, a goldsmith sold a stone to the plaintiff purporting it to be a rare Bezar stone. Bezar stone was found in the stomachs and intestines of goats and was believed to have medicinal value. The buyer later claimed that the stone was not Bezar stone. The court held against the plaintiff as there was not enough evidence of a written warrant. The court was of the view that the goldsmith had merely affirmed and not warranted the character of the stone. Also see Alan M Weinberger, 'Let the Buyer Be Well Informed? Doubting the Demise of Caveat Emptor' (1996) 55 *Maryland Law Review* 387, 390-2.

^{vii} *Ibid* Mwenegoha at p. 45.

^{viii} *Ibid*

^{ix} Fair Competition Act of 2003, which repealed and replace the Fair Trade Practices Act of 1994.

^x Act No 8 of 2003.

^{xi} The Constitution of the United Republic of Tanzania of 1977 (as amended from time to time).

^{xii} Fair Competition Act of 2003.

^{xiii} B.A Garner; **Black's Law Dictionary** 8th Edition (St Paul Minnesota: West Publishing Co. Ltd.), p, 316

^{xiv} Act No. 8 of 2003

^{xv} Mpaka C (1992) **Consumer Protection**. Oxford University Press. Nairobi. At page 2

^{xvi} *Ibid*

^{xvii} Section 7 of the FCA, Act No 3 of 2003

^{xviii} 1977

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

^{xx} *Ibid*, Article 13 (4)

^{xxi} *Ibid*

^{xxii} Fair Competition Act No. 8 of 2003.

^{xxiii} *Ibid*, Section 38

^{xxiv} *Ibid*, Section 45

^{xxv} Section 62 of the FCA

^{xxvi} *Ibid*

^{xxvii} *Ibid*, Section 61 (1)

^{xxviii} *Ibid*, Section 71 (1)

^{xxix} *Ibid*, Section 61 (3)

^{xxx} *Ibid* Section 83 (1)

^{xxxi} *Ibid*, Section 85 (1) (c)

^{xxxii} Tribunal Appeal No 4 of 2010

^{xxxiii} *Ibid*, Section 83 (2)

^{xxxiv} Section 75 of the FCA Act No 3 of 2003