

# AN OVERVIEW OF THE LEGAL POSITION AND STATUS OF CONSUMER PROTECTION LAWS ON INDUSTRIAL PROCESSED FOOD IN TANZANIA

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## ABSTRACT

In this article the author is focusing on the position and status of consumer protection laws on Industrial Processed Food in Tanzania taking into account that in reality the consumer is all the time the end user and very weak compared to the counterparts who is stronger and used to take advantage to mislead in order to win the market. The increase of demand of the industrial processed food in the market now days results to the increase of risks to consumer since the target of supplier or manufacturer is always to monopolise the market and earn profit through taking an advantage of the gap of law existing in case the food processed being sold in the market is substandard. And cause injuries to consumer It is the concern by the author that the increase on demand of industrial processed food in the market by consumer must go together with intervention of the government through modification of our laws which will harmonise the risk.

The Consumer protection laws which must be derived from the constitution must provide to consumer among other rights, the rights to satisfy basic needs, right to safety, right to be informed, right to choose, right to be heard, right to redress, right to a health environment.

**Keywords:** Status of the law- protection of consumer-on industrial processed food – Tanzania

## INTRODUCTION

Consumer protection aims at protecting rights of consumers in businesses arena.<sup>i</sup> It obliges producers to avail to consumers relevant information about products at pre contractual stage, to use fair and reasonable terms and practices, to refrain from producing and supplying shoddy products, and to resolve consumers' complaints timely and adequately.<sup>ii</sup> The law plays an important role of protecting consumers from vices which are associated with purchase and consumption of unsafe, defective or substandard products <sup>iii</sup> The protection is of essence in maintenance of peace and order in a society since every person is a consumer. As law is coercive in nature, its enactment and enforcement depend on the institution with coercive apparatuses.<sup>iv</sup> The government has the power to enact the new laws related to the advancement of science and technology in order to protect the consumer from facing danger as the result of consuming dangerous industrial processed food. In order for the consumer to be protected there should be the effective enactment and enforcement of the law. Indeed, the enactment and enforcement of consumer are determined by conditions of the state in regard to political social and economic era.

### *The historical background of the concept of consumer protection.*

In the year of 1945, after the Second World War, the concept of consumer protection gained momentum in various parts of the world. As technology advanced, advertisements grew through the use of new methods of selling and buying of products such as industrial processed food. This advancement exposed consumers to new hazards which were not experienced before.<sup>v</sup> In the marketplace presumed by the commercial speech doctrine, consumers pay attention to and rationally and deliberately process information presented in advertising communications. They then use this information to make informed purchase decisions.<sup>vi</sup> Provided the information is not false, misleading, or deceptive, unrestricted access to product information should contribute positively to the free market. Unfortunately, these assumptions do not reflect food advertising today in at least three critical ways: (1) many campaigns are designed to persuade implicitly and specifically bypass rational consideration of product information, (2) messages presented in advertising for nutrient-poor foods provide information about these products and the benefits of consuming them that can mislead children, and (3) children and adolescents do not have the cognitive capacity to rationally consider advertising

appeals and reject those not in their long-term interest or the self-regulatory abilities to resist the immediate temptation of the highly palatable foods typically promoted.<sup>vii</sup>

In order to protect consumers, the movement of consumerism emerged. This movement emphasized on promoting and protecting consumers' rights through organized movements to fight against dishonest business activities such as shoddy products, exorbitant pricing, unfair contractual terms and bait advertising.<sup>viii</sup> The movement of consumerism influenced states and other institutions to take proactive measures towards consumer protection. In the United Kingdom, for example, Parliament strengthened consumers' contractual rights by passing more consumer protection laws such as the Unfair Contract Terms Act,<sup>ix</sup> the Sale of Goods Act,<sup>x</sup> the Supply of Goods and Services Act<sup>xi</sup> and the Consumer Protection Act.<sup>xii</sup>

In the United States of America, on March 15 1962, President John F. Kennedy made a speech to the Congress in defense of consumers by saying that consumers by definition include all of us. They are the largest economic group, affecting and affected by almost every public and private economic decision. Two-thirds of all spending in the economy is by consumers. But they are the only important group in the economies who are not effectively organized, whose views are not often heard.<sup>xiii</sup> President Kennedy categorically pointed out that the technological development has made markets to become impersonal; a trend which has made consumer's choice to be influenced by mass advertising utilizing highly developed arts of persuasion. As a result, a consumer is subjected to a dilemma as to whether products meet the required standards of safety, quality and efficacy. In order to shield the consumer against such anomaly, he urged his government to take additional legislative and administrative measures. The measures to be taken were to protect the basic consumers' rights. In that speech, he emphasized on consumers' rights such as right to safety, right to information, right to choose and right to be heard.<sup>xiv</sup> At the international level, the need of consumers' protection gained prominence within the United Nations (UN). In 1985, the UN adopted Guidelines for Consumer Protection.<sup>xv</sup> The Guidelines call upon the Member States to take reasonable steps to achieve or maintain adequate protection for their population through consumer protection initiatives in terms of policies, laws, regulations, rules and procedures. The Guidelines have also set principles which are considered as models for protecting consumers of industrial proceeds food. Some of these principles include; fair and equitable treatment, disclosure and transparency, education and awareness, protection of privacy, and adequate dispute resolution.<sup>xvi</sup>

In Tanzania, the development of consumer protection, like elsewhere, has been influenced by its political and economic history. Before effective colonial rule in 1885, Tanzanian societies were engaged in subsistence production, mainly of foodstuffs with little surplus. What was produced was for immediate consumption. The little surplus obtained was traded for basic items which someone failed to produce for himself. The little trade which existed was in the form of barter system. In it, surplus foodstuffs were exchanged for items such as salt, craft articles and clothes. As the traded surplus goods were of the same quality as those produced and self-consumed, the plight of consumers having bought substandard goods was an uncommon event. Trade, at that time was based on reciprocity; as such, the need of having a defined mechanism of consumer protection was not necessary.<sup>xvii</sup>

The previous subsistence economy was gradually transformed into production of cheap raw materials and a market for industrial goods from Europe. Such transformation led to emergence of the consumer class which consisted of Europeans, Asians and Africans. This fact made the colonial administration to take some initiatives to protect interests of consumers. The protection of consumers was done through enactment of various pieces of legislation which protected the consumers. such as the Native Foodstuffs Ordinance,<sup>xviii</sup>

After independence the establishment of private businesses, protection of consumers which was previously in the hands of the state and its enterprises reverted to the private producers. The State left the private led economy to regulate its own conducts including protection of consumers. Consumers were left to negotiate better terms on their own. The non-interference from the state can be compared with the concept of business self-regulation and inbuilt mechanism during the early stages of capitalism. At that time, the state took deliberate steps not to protect consumers on the justification of protecting freedom of contract. The state feared its involvement in protection of consumers might have killed the capitalist industries which were still in their infancy. In Tanzania, from mid-1980's, the main focus was to create legislative and policy environment to attract private businesses and investments. Presence of stringent legislative intervention to protect consumers could have discouraged new infant private enterprises of producing the industrial processed food.

## THE STATUS OF THE LAWS GOVERNING PROTECTION OF CONSUMER OF INDUSTRIAL PROCESSED FOOD IN TANZANIA

The rights for protection of consumer in Tanzania are guaranteed by the Tanzanian Constitution as the supreme law through different articles which resulted to the enactment of different legislations. These articles include the one which guaranteed the right to life which is absolute right.<sup>xix</sup> Also right to be informed,<sup>xx</sup> though not an absolute right. This right helps the consumer to be in position to be make informed choices and decision of the goods and services available in the market. And at the same time be protected against unfair trading practices of their stronger counterparts. given information about the goods and services they consume.

In looking to the principles of law on Protection of industrial Processed food in Tanzania, it appears that all are scattered on various pieces of legislations, and even the regulatory mandate are also scattered in corresponding legislations. The relevant consumer protection legislations include the following; the Fair Competition Act,<sup>xxi</sup> the Sale of Contract Act,<sup>xxii</sup> the sale of Goods Act,<sup>xxiii</sup> the Energy and Water Utilities Regulatory Authority Act,<sup>xxiv</sup> the Weights and Measures Act,<sup>xxv</sup> the Standards Measure Act,<sup>xxvi</sup> and the Tanzanian Foods, Drugs and Cosmetics Act<sup>xxvii</sup> Despite all mentioned, the Fair Competition Act remains as the major legislation despite different amendment until to date which was enacted by the parliament on 1983 after repeal of the Price Control Act, 1973 in order to introduce market based economy in the country, followed by the enactment of the Fair Trade Practices Act in order to oversee the functioning of the market based economy. In addition to the institutions under the Fair Competition Act, the named laws have created regulatory bodies which acts as consumer protection bodies within the respective sectors. The consumer protection laws can be classified into international level and national level.

### *International Legal Framework*

- The United Nations Guidelines for Consumer Protection

The United Nations Guidelines for Consumer Protection are a valuable set of principles that set out the main characteristics of effective consumer protection legislation, enforcement institutions and redress systems. Furthermore, the Guidelines assist interested Member States in formulating and enforcing domestic and regional laws, rules and regulations that are suitable to their economic, social and environmental circumstances; they also help promote

international enforcement cooperation among Member States and encourage the sharing of experiences in consumer protection. Consumer protection evolved around social, political and economic principles developed from medieval era to modern times. The concept emerged as a means of maintaining peace and order in the society. Such maintenance came as a result of harmonization of conflicting interests in a class society between producers and consumers. Consumer has several rights such as; Right to safety the consumers have the right to enjoy accurate security and safety from service and products which directly manufactured sold or supplied from, manufacturers or retailers. Manufacturer or retailers are supposed to make sure that their products or services are safe and should not be hazardous to the health of ultimate consumers. Having that situation, it renders to a consumer to enjoy a right to life which is considered as a constitutional right. In case of injuries emanates from unsecured or unsafe products or service, consumer has to take measures towards such encroachment. Also, right to choose the consumers, also have the right to choose the products from manufacturers or retailers as regard that such products contain the prescribed quality in a competitive price; mostly such a right is successfully when subjected in precise and recognized information which attached to the container of goods particularly on the labels. For that being, such rights could be in utmost enforcement especially where there are standardized terms of sale as in case of any confusion arises to consumers in buying decisions. Having the standard terms of sale actually would let consumers to have freedom to choose what kind of goods could manage and access for his or her consumption.

The other right to the consumer is right to education. This right this means make them aware on the dangerous products that should endanger their health. For that being education is an important asset which will help them to realize the evils in the society and enable them to make better choices of goods which are in the marketplace. On other hands, consumers have to be educated about the regulatory and protection agencies towards their rights in the country. Furthermore, consumers are supposed to understand the basic consumer rights and obligations so as to make proper choice of goods, price as well as services provided for them. On the other hand, the Food and Agriculture Organization helps to regulates the rights and consumer obligations, instruments and ways of mandatory consumer protection, informing and improving consumer knowledge about their rights and duties, obligations of consumer associations and unions, extra-judicial settlement of consumer disputes, rights and obligations

of state authorities in the field of consumer protection and other issues of importance for the consumer protection related matters. Such obligation includes, consumer should know a complaint process such as how and where to lodge complaints, this should help consumers to enforce his or her rights encroached can act. Consumer also is responsible to ensure that the environment is safely and protected on products uses and services offers to. Consumer has an obligation to participate on boycott about illegally or fake products. Also, consumer further required to cooperate with other consumer groups like formation of consumer association that could help them in discussing various consumer interests as making to participate in making consumer policies.

- **International Consumer Protection and Enforcement Network (ICPEN)**

This is an organization composed of consumer protection authorities from over 70 countries representing some 5 billion global citizen-consumers. Its aims at protecting consumers worldwide by encouraging and facilitating practical action among its members. This includes information sharing on market development and regulatory best practices and coordination to tackle market problems. The goal of the network is to generate and share information and intelligence on consumer protection issues; to share best practices in legislative and enforcement approaches to consumer protection; to take action to combat cross-border breaches of consumer protection laws; to facilitate effective cross border remedies; to identify and promote measures for effective consumer protection enforcement and to promote and encourage wider participation and cooperation with other consumer protection enforcement organization. ICPEN's activities cover issues related to consumer protection in the online environment, especially concerning e-commerce. The network provides consumers with information on how to avoid misleading or fraudulent e-commerce practices, how to protect themselves from technical vulnerabilities (viruses, spyware etc.) and how to resolve cross – border disputes related to online transactions.

### ***National Legal Framework***

In Tanzania, there are legal framework which aim at a protection of the consumers in food processed industrial such laws include the following.

- Fair Competition Act

It is an Act to promote and protect effective competition in trade and commerce, to protect consumers from unfair and misleading market conduct and to provide for other related matters for his money, and therefore needs to be supplied with goods or services worth his money, this act guarantees this right. The FCA which is the principal competition and consumer protection law in Tanzania, is an Act to protect and promote effective competition in trade and commerce, to protect consumers from unfair and misleading market conduct and to provide for other related matters. The primary purpose of the Act is to enhance the welfare of the people of Tanzania as a whole by promoting and protecting effective competition in markets. This is geared towards bringing about the following effects; Increase efficiency in production, distribution and supply of goods and services, Lower consumer prices and protect them, promote innovation and increase the rate of economic growth and maximize the efficient allocation of resources and protecting consumer. Furthermore, the Act has two sections namely encouraging competition and protecting consumers which put down mechanism that enable consumer to take legal action to seek redress and ensuring consumer get their compensated when they get mistreated in the market.

The law provided for Anti-competitive agreement as follows; agreement which are anti-competitive but can be allowed if they bring more benefit than the losses they cause to competition. However, the law further under the provision of section 8, provide that a person shall not make or give effect to an agreement if the object, effect or likely effect of the agreement is to appreciably prevent, restrict or distort competition. These agreements are known as Vertical Agreements. They are basically agreements between undertakings that operate on different levels of the manufacture- distribution chain and do not compete with each other. And for example, it includes manufacturer and its suppliers, customers or both. As far as competition law is concern the Fair Competition Act make this agreement an offence under section 8(7) which state that;

*“Any person who intentionally or negligently acts in contravention of the provisions of this section, commits an offence under this Act”.*



However, the law gives a lenient interpretation that the agreement is only prohibited if it has negative effect to the competition that to say if such agreement distorts, prevent or restrict competition. As per section 8(4) of The Fair Competition Law which state that;

*“For the purpose of this section, in determining whether the effect or likely effect of an agreement is to appreciably prevent, restrict or distort competition, the fact that similar agreements are widespread in a market affected by the agreement shall be taken into the account.”*

According to this provision the negative impact on the competition is determined by the rule of reason. However, the commission will establish the harm caused by the proposed agreements on competition, consumers and the economy and weight the harm against the projected benefit resulting from the agreement. If the benefit outweighs the harm the commission will heavily depend on the cost-benefit analysis results and the economic arguments advanced by both the applicant and the commission’s economists for and against the proposed agreements.

A good example is the case of ***Serengeti Breweries Ltd Vs Tanzania Breweries Limited***. In this case it was alleged that, the respondent was entering into branding agreements with bar owners which excluded the complainant in the market. Such agreements fall within the category of vertical agreements since they are entered into between the manufacturer and retailers. These agreements apply the rule of reasoning hence Fair Competition Commission held that,

*“From the provision of section 8(1) of the Fair Competition Act, 2003 it is clear that the branding agreements whether in writing or oral, which the respondent (TBL) has entered into with the bar owners had object the effect or likely effect of preventing, restricting and distorting competition in the Tanzania beer market. The agreements amount to exclusive dealing. The agreements in this case are restrictive vertical practices since they are agreements between parties who are in a vertical relation.”*

According to section 60 of the Fair Competition Act, it requires the commission to impose fine to a person not less than five percent of his annual turnover and not exceeding ten percent of his annual turnover. The section it criminalizes cartels by imposed fine to those violators of the law who distorts, prevent and restrict competition in the marketing. By the virtue of section

9(1) of the Fair Competition Act it provides agreements which are prohibited irrespective of their effect on competition and also this agreement can be referred as horizontal agreement or prohibition per se. Such agreement includes; Price fixing between competitors, a collective boycott by competitors, Collusive bidding or tendering.

- The Law of Contract Act, Cap. 345 R.E 2019

A contract is a lawfully binding agreement which identifies and governs the obligations and rights of the parties to the agreement. A contract will be legally enforceable if it meets the requirement of the law, In Tanzania, those legal requirements are provided for under the Law of Contract Act. All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void, this is provided under Section 10 of the Law of Contract Act, it also requires any contract to be made in writing or in the presence of witnesses or any law relating to the registration of documents. Not all contracts would be one-way. Business-to-Business would, of course, be outside the one-way realm (for one, it's not clear which way the one-way would go). They are mutually binding, if only because the right to recover under the contract is practically valuable. Consumer-to-consumer contracts are also not one-way. It might be that some transactions are in effect no-way contracts, practically unenforceable either way. importantly, if the business breaches the contract consumers usually suffer a large enough loss to justify the pursuit of contract remedies.

- The Sale of Goods Act, Cap.214 of 2022

The Sale of Goods Act regulates commercial transactions and not consumer transactions, and therefore it can be said that, the Sale of Goods Act was not meant to protect consumers, since commercial transactions although may include consumer transactions, the two concepts are very different. Under the Act, the term buyer is defined as a person who buys or agrees to buy goods. The definition of the term is narrow and insufficient to include the consumer, and in the current social economic settings it is important to include the consumer since the majority of the buyer in day-to-day transactions are consumers.

Also under the Act, when a seller breaches a condition which is severable in a contract, the Act requires the buyer to treat the breach of such a condition as a breach of a warrant, and such buyer is required not to treat the said contract as breached, while under the law of contract, the

breach of a condition requires any party to that contract to treat it as a breach of contract. The distinction between a warranty and a condition as stipulated under the Act, is another vital area that may bring confusion to consumers, it becomes a problem for most Tanzanian consumer to distinguish between a warrant and condition due to their nature of some goods and also advancement in science and technology and also normal purchases don't have warranties and conditions.

There is also the application of the buyer beware principle, a principle that requires the consumer to buy with his eyes open and bargain with the supplier on the assumption that they are of equal strength. There are instances that bargaining is not even possible, example, in standard form contract, and regarding the fact that most of the consumers are ignorant and some products may be very complicated that it makes it difficult for such consumers to inspect them. However, the principle may be limited by the Sale of goods Act on implied warranties. In today's market service consumers are as many as goods consumers, the Act covers transactional goods only, so transactions in services are left out, the failure of having such Act has a negative impact on consumer transaction that involve services and consumer protection in general.

### ***The Regulatory Framework Institution***

The introduction of regulatory institution in Tanzania was due to the purpose make sure there is well coordinated and supervised food processing business operations to help the free market operate free from rough plays. Especially this was important in order to prevent and rework on the improper free market forces and keep safe the interest of consumers. The government therefore had to establish several regulatory bodies for this specific reason. These have however, in the course of doing their core functions, raised a number of challenges in regard to powers and functions which has been a source of high cost either due to duplicative roles or crosscutting responsibilities and fees imposed by different regulatory bodies over same food processing business compliance requirements.

- Business Registration and Licensing Agency

BRELA is a product of section 3 of the Executive Agencies Act<sup>xxviii</sup> and was formally launched in 1999.<sup>xxix</sup> This agency is also mandated with registering business names by the Business Names (Registration) Act.<sup>xxx</sup> It is an agency under the Ministry responsible for trade and investment and mainly responsible for administration of business registration and licensing of

class A business category. BRELA is essentially for registering business names defined under it to include; any name or style under which any business is carried out on be it partnership or otherwise. Also, sole trader, single individual two or more individuals or corporations who have entered into a partnership with the view to carry business for profit may register their business name, this includes all abbreviation names. The Act also applies to nominees, where a firm, individual, or corporation having a place within Tanzania carries on the business wholly or partially as nominee or trustees of or for another person or persons or another corporation or acts as general agent for any foreign firm, the first mentioned firm, individual or corporation must register in the manner provided in this Act.

Agency was established with its headquarters at Dar es Salaam, where previously people had to travel from over to country for registration reasons but of recent, the agency has launched an online registration and payment system which has made it easy for registration of business and corporations. When responding a question in an interview with media, the BRELA CEO Mr. Frank Kanyusi admitted that “currently, in order to start a food processing business, one is required to visit a number of institutions to obtain necessary documents. To ease the starting of a business process there is a need for other institution like TRA to be streamed lined and access BRELA service. He proposed a legal and regulatory framework review to suit the reforms and initiatives that the Agency is undertaking and also to eliminate the current bureaucracy in formalization of a business in the country. it has to be noted that once the company is incorporated it does not start the business on the spot, it has to obtain other clearances from the TRA, Business Licensing authorities and Regulatory authorities, if required. Formalization of a business is like a big set with several subsets within it, registration of company and business name being one of them”.<sup>xxxii</sup> He believes there is an urgent need to relook on current legal system administering food processing business in Tanzania as this would impact the future business development of Tanzania.

- The National Environment Management Council

NEMC is established under the Environmental Management Act,<sup>xxxii</sup> to perform the environmental enforcement and monitoring environmental impact statements, research and awareness raising. This Act provides a legal and institutional framework for the sustainable management of the environment; it outlines the principles for management<sup>xxxiii</sup>, impact and risk assessment; it provides for; the prevention and control of pollution and waste management; it

establishes environmental quality standards, compliance and enforcement; and provides for implementation of the National Environment Policy<sup>xxxiv</sup> and for all issues relating to the environment and health.<sup>xxxv</sup>

Further NEMC is empowered to do the EIA for different types processing and manufacturing sector. It also issues permit or license for project under any other law for EIA. The Minister has powers to recommend a reject, suspension of a permit or license issued for any project or denial of either of them for lack of qualifications under this Act<sup>xxxvi</sup> NEMC is under section 18 (2) empowered to conduct out surveys to assist in management and preservation of the environment.<sup>xxxvii</sup> NEMC has the mandate facilitation role of carrying scientific research to prepare management plans for environmental protected areas as per section 48.<sup>xxxviii</sup> Under section 55 of the Act requires the NEMC to issue guidelines and preparing measures for the conservation of water sources. The Council is required under section 108 of the Act to study the current capacity for effective integrated pollution prevention and control and align with the technological development and techniques for reducing pollution of the environment due to various ways. The Council is also tasked with the duty to gather and do thorough analysis of information regarding environment and natural resources, also to disseminate them to the public and private users. The commission studies the population and development issues and how they have impact on environments. This role is granted under section 173 of the Act, the meaning of it is to help the government have accurate data which will help them arrive at fair environmental decision. A central environmental information system is established within the Council with the reason of observations and management purposes.<sup>xxxix</sup> Section 177 of the Act gives NEMC the mandate; to conduct surveys on the state of the environment and to research and make forecast on the environmental changes and other studies that may contribute towards the formulation of policies and preparation of actions and strategies with regard to environmental conservation and management.

Among the challenges NEMC currently face is inadequate capacity required for day-to-day environmental research and discharging its day-to-day activities. This has been said to a reason of poor service delivery; for example, long period and bureaucracy in issuing certificates of EIA.<sup>xl</sup> It has been noted that EIA process in some projects is signed and issued at the headquarter alone which disappoints investment. In turn this has made some project stop

waiting commencement of operation or stop waiting approval of EIA before they are permitted to operate.

- Tanzania Revenue Authority

TRA is established by section 4 of the Tanzania revenue Act.<sup>xli</sup> TRA is responsible for administering tax assessment and collection on behalf of the government as provided under section 51.<sup>xlii</sup> The Income Tax Act,<sup>xliii</sup> lays down the way TRA would be executing its roles and how to enforce it<sup>xliv</sup>. TRA is given powers to issues TIN and under Fourth schedule Tax Administrations Act specifies the transactions for which a TIN is required.<sup>xlv</sup> After incorporation or registration of a business you then require to immediately register with the TRA to obtain TIN which will be required to process license of the business for which the entity is established. Then you will need to register for VAT if the business taxable turnover exceeds, or you believe the business will exceed, the turnover prescribed in the regulations.<sup>xlvi</sup> In Tanzania, they have been several tax reforms which has resulted into well commendable in terms of design. The regular legal adjustments and amendments, to improve revenues and attract more investors has created some gaps in tax laws and tax regime generally. There has been a practical inconsistency in policy and regulation applications. One of the examples that was given was that “importers of flat rolled products of iron (H.S. Code 7208) have continued to be subject to indicative price of USD 800/ton even when the price in the world market ranged between USD 320-420/ton. Before domestic production of iron picks up, imported iron will continue to be one of the key inputs for the industrialization process and growth of the construction sector in Tanzania. Accordingly, careful application of import policies is imperative. TRA should find flexible, realistic and effective approach to determining indicative prices in order to arrive at a dutiable value, which enhances competitiveness among domestic industries”<sup>xlvii</sup> This has in itself created a room for unfair decisions and corruption practices due to lapses that has increased bureaucracy with the authority.

- Tanzania Bureau of Standards

TBS established by the Standards Act under section 3<sup>xlviii</sup> to execute the roles stipulated under section 4.<sup>xlix</sup> These activities include undertaking activities that ensure measures and maintain quality control of products of all descriptions and promotion of standards in industry and commerce. This Act provides for the standardization of the specifications of commodities and

services, the re-establishment of the TBS and an improvement in the provisions for the functions, management and control of the Bureau, as well as repealing the Standards Act'.<sup>1</sup>

The TBS sets standards and acts as a member of ISO providing International Standards to companies. The Agency certifies the imports and new company's products introduced into the market for a fee. The Act confers powers on the Bureau of Standards to issue a license for standard marks. Any mark approved by the Bureau for any commodity or for the manufacture, production, processing or treatment of any commodity will be a standard mark in respect of it and TBS may, in like manner, cancel or amend that mark.<sup>li</sup>

In discharging its duties, TBS is required to maintain a working relationship with other authority established by or operating under any written law and especially those which have functions similar to those vested on it or relating to industrial or commercial standards as required by provisions of section 4(2).<sup>lii</sup> Interestingly, standards set by TBS prevail over other standards set by any other authorities as provided by section 4(3) of the Act.<sup>liii</sup> The law further provides ministers with related functions as regard to standards consult each other before any regulations is made the power which seem not exercised as required. The following regulations seem to interfere or overlaps with that of the TBS. "Regulations can be made on matters in respect of payable fees, levies and other charges; their amounts; and the persons who shall be liable for their payment. The Standards (Tested Products) Regulations<sup>liv</sup> under regulation 3 provide that the TBS has the mandate to issue a tested product certificate in respect of a product which complies with the appropriate requirement as defined by the Bureau. Regulation 4 requires manufactures and dealers of a product to apply for the certificate.<sup>lv</sup> The application must be accompanied by a fee and inspection charges. Regulation 7 requires TBS to make inspections regularly without giving notice to ensure that conditions of the certificate are being complied with.<sup>lvi</sup> The Standards (Certification) Regulation<sup>lvii</sup>, provide for regulating the licenses granted to applicants. They require applicants to apply for a standard mark or marks for commodity or process manufactured or treatment of any commodity. Regulation 3 prohibits application of a standard mark to any commodity or process unless the holder has been granted a license. Regulation 4 requires that license applications be accompanied with the prescribed fee".<sup>lviii</sup>

- The Government Chemist Laboratory Authority

GCLA was established in accordance with the Executive Agencies Act<sup>lix</sup> through the Executive Agencies (Government Chemist Laboratory Agency-GCLA) (Establishment) Order.<sup>lx</sup> In September 2016 transformed again into GCLA after Parliament to enact Government Chemist Laboratory Authority Act.<sup>lxi</sup> The purpose of it being quality results, affordable testing and analytical tests, professional services to the public and private institutions and the general public on food, drugs, industrial and consumer chemicals and forensic sciences services (that include but not limited to DNA and toxicology).<sup>lxii</sup> GCLA is given the power similar to that of the TBS to ensure that any chemical producer complies with the GMP and does the EIA prior to business operations, the role that is also performed by NEMC. The GCLA is also empowered to issue a license for producing, transporting, importing, exporting, storing and dealing in chemicals for a prescribed fee.

“GCLA, is a central laboratory analyzing samples and exhibits related to forensic sciences in order to facilitate forensic investigations and hence assurance of justice and rule of law, samples related to agricultural and industrial produce to ascertain safety and quality, samples related to paternity or sex identification in order to address society concerns and samples related to environmental and occupational health for the protection of health and the environment”.<sup>lxiii</sup>

GCLA was founded in 1895 during the German colonization with H. VonWissman as the German to Tanganyika. It has come a long way from its beginnings of conducting researches on tropical diseases under the Chief Secretary's Office and thereafter to the Ministry of Health just after the 1st World War. Since independence of Tanganyika, GCLA has continued to operate as a department within the Ministry of health till 1999 when it changed its status to Government Chemist Laboratory Agency. The current status of GCLA being Government Chemist Laboratory Authority was acquired in 2016 when the Parliament of the URT enacted the law to establish the Authority.<sup>lxiv</sup> According to its establishing Act, the laboratory results issued by the GCLA are final and conclusive as they are generated from specialized equipment for laboratory analysis such as Liquid Chromatography Mass Spectrometer (LC-MS/MS) triple quadrant,



“Inductively Coupled Plasma Optical Emission Spectrometer (ICP-OES), Energy Dispersive X Ray Fluorescence (ED-XRF), Polymerase Chain Reaction (PCR), Real time Polymerase Chain Reaction, Genetic analyzer, On-Site Analysis (OSA4), Gas Chromatography Mass Spectrometer (GC-MS/MS), Gas Chromatography (GC), Ultraviolet-Visible Spectrophotometer (UV-VIS) and Atomic Absorption Spectrometer (AAS)”<sup>lxv</sup>

Furthermore, GCLA is ISO 9001:2008 certified and ISO 17025:2015 Accredited and hence the results generated are nationally and internationally recognized. In addition, GCLA being the sole regulator of industrial and consumer chemicals and human DNA technology in the country is hereby committed to ensure that, chemicals are used in a manner that minimize adverse effects to health and the environment, also the human DNA technology and the respective results are used only for the intended purposes to safeguard human dignity. The long-term experiences have resulted to establishment of a competent Authority which has high quality professional staff, trust within and outside the Government and is able to provide check and balances to assist decision-making for any conflicting issues which require laboratory analysis<sup>lxvi</sup>

- The Weights and Measures Agency

The WMA is an Executive Agency, responsible for fair trade transactions through certification of weights and measures. It is the main and only agency in Tanzania for administration of weights and measures as under powers granted under the Weights and Measures Act.<sup>lxvii</sup> Since 1999 and in pursuance to the Executive Agencies Act,<sup>lxviii</sup> the WMA came in to replace the former Directorate of Weights and Measures under the Ministry of Industry and Trade. The move was part of the Civil Service Reform Program CSRP to increase efficiency and effectiveness of public service delivery. WMA which was established by the Executive Agencies Act<sup>lxix</sup> and the Weights and Measures Act<sup>lxx</sup> gives it mandate to provide protection to consumers in relation to legal metrological control which includes legal control of measuring instruments, metrological supervision and metrological expertise in trade, health, safety and environment. This Act reviews the previous laws on weights and measures and provides for the introduction of the SI and related matters. In the wording of section 11-(1), it is provided that:

“unless otherwise permitted by this Act, every contract, bargain, sale or deal made, whereby any work, goods, wares, merchandise or other thing is or are to be, or is or are done, sold, delivered, carried, measured, computed, paid for or agreed by weight or measure, shall be made and had according to one of the relevant units of measurement specified in the First, Second, Third, Fourth, Sixth, Seventh and Eighth Schedule to this Act or to some multiple thereof..”

The provision above sets different units for different measurements to be used in daily transactions to control competitive and protect the consumers against untrustworthy business entities and individuals. The Minister is empowered by section 9 to procure and cause to be maintained standard equipment, which he may from time to time determine as being proper and necessary for the verification of standards of weights and measures. The duties of an assize have been clearly stated under section 16 as “to carry out verification of weights, measures, weighing and measuring instruments; to care for and maintain any working standards which may be entrusted to his care; to keep records and make such reports as the Commissioner may require, to give effect to the directions of the Commissioner; and generally, to exercise such other powers and duties as may be conferred or imposed by this or any other Act or by regulations made under the Act”.<sup>lxxi</sup>

This specific section gives power and mandate to the minister in power to make rules on standards machinery to verify standards of weights and measurements, the reason is as said earlier to protect the consumers and facilitate competitive grounds for all businesses within the same industry. The Commissioner for Weights and Measures has been given power of setting standards as per section 15, he also makes verifications of all weights, measures, weighing, or measuring instruments used or intended to be used for trade in the United Republic.<sup>lxxii</sup> Certification is done by way of inspection calibration and verification. The Agency performs an advisory role on the proper use, care and custody of weights and measures. The law permits the WMA to delegate its functions to other institutions. “The WMA’s main function is to protect consumers by putting in place systems to regulate legal metrological control which includes legal control of measuring instruments, metrological supervision and metrological expertise in trade, health, safety and the environment. Its specific roles include; protecting consumers in the course of transactions against consequences arising from trade, safety, health and environment in relation to legal metrology; approving measuring instruments to be used in

public or private transactions in trade, safety, health and environment sectors; controlling the use of measuring instruments in public and private transactions, including pre-packaging of products; and providing information on Legal Metrology in general and ensuring that legal metrology measurement standards are traceable to national and International measurement standards.

In the course of undertaking its roles, the WMA is also required to liaise with regional and international organizations with similar objectives.

## **CONCLUSION**

The protection of consumer of industrial processed food in Tanzania is faced with a number of weaknesses in the existing laws, policy, and regulations. Such as increase of numbers of laws and regulations governing the industrial processed food and at the end it become difficult to keep up all the standards and solve the increase of high demand and rise of inflation and loses which affect food industry, ignorance of the law and their rights and obligations, violation of their rights by the operators that is caused by actions done by the operators, the burden of taxation by the government imposed on consumers by the government (the value added tax). Since most consumers lack knowledge on the fact that they do pay tax, they end up placing the burden of blames to the operators or suppliers of the services for high tariffs. After a though analysis of the findings below are the recommendations for the researcher.

## **RECOMMENDATIONS**

### ***To the Government***

The government should promote the development of technology and encourage the protection of consumers of industrial processed food.

The government should review the taxes on food products and services due to developments, and the current socio-economic conditions in which food industrial processes which is no longer a luxury but rather a daily necessity. It's obvious that taxes affect consumers and majority consumers are not aware of this, hence puts the blame of high tariffs on the suppliers

and regulatory organs. Taxes need to be reduced, and the reduction will be a benefit to the government as it may increase consumer spending which will be an incentive for operators to invest more hence market expansion and more revenue for the government.

### ***To the legislature***

Amendment of laws that deals with consumers of industrial processed in order to give out a good remedy to the consumers. The enactment of Consumer protection law since existing laws are not specific and scattered with no but also clear provisions to ensure safety of a consumer with legal obligation and redress available in case of any breach.

The same law must have specific provision establishing the consumer councils and other authorities for the settlement of consumer disputes at local jurisdiction with limitation period to entertain the dispute as it happened to India where in 1986 there was establishment of the Consumer Protection Act, 1986 with the provisions giving the consumer the right to enforce remedies which were clearly stipulated adopted from British common law system

### ***To the Authority***

There should be establishing an independent body for consumer protection in industrial processed food sector which will be strong in protect and promote the right of the consumers.

There should be introduced special agencies or government bodies to monitor the implementation of the laws policy and regulation and to watch on international relation and trade towa5rd consumers.

Awareness has to be created among consumers as the majority of Tanzanian consumers seem ignorant of their rights and obligations and are not aware of the procedures to seek redress. Some are not even aware of the fact that they have an obligation to educate themselves on various aspects that may affect them. Consumer organizations, such as the consumer advocacy society and also the government through its respective organs should lead this role.

The Consumer Forums should also be given directions by the Parliaments with respect to their subject matter jurisdiction as it has been often observed that there is confusion with respect to matters which forums can decide because often the forums deny their jurisdiction stating that matters lie within the civil jurisdictions but the issue is not so.

The consumer rights should be made part of International Covenant on Economic, Social and Cultural Rights as even though the legislations differ, the principles based on which consumer legislations are based are applicable universally and shall remain same

### ***To the Judiciary***

Judges and magistrates should undergo specialized training on handling cases relating to protection of consumers of industrial processed food in order to equip themselves with the requisite knowledge and help the change of mindset especially on how to deal with cases of this nature.

The Act should be amended to empower Consumer Courts to publish the names of manufacturers, traders and dealers whose goods are found to be hazardous to public safety. This empowerment would work as a deterrent to the erring business community.

The lawyers should not be made part of all the matters. The courts after hearing the matter at first instance decide if the engagement of lawyer is necessary so as to avoid the stretching of the matter at length in trivial issues also. And if the complainant engages the lawyer, he should give the reason for the same to the forum. Further, adjournment should be given only in exceptional cases and not made a regular habit by the forum. The copy of the order should be made available online to the parties immediately after final hearing so that no time is wasted in filing the appeal.

### **ENDNOTES**

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<sup>i</sup>Mniwasa, EE, (2016) The Protection of Rights of Consumers of Goods in Tanzania: A law-based Approach, The African Journal of Finance and Management-Volume-25 No. 1, 2016:at p.37.

<sup>ii</sup> Nditi, N.N.N., "Consumer Protection Law and Practice: Its Relevance and Reality in a Developing Economy With Special Reference to Tanzania, PhD thesis, University of Dar es salaam, 1987. P 11

<sup>iii</sup> Damas D Ndumbaro, A Critical Assessment of the Law Related to Consumer and Consumer Protection in Tanzania: A Particular Emphasis on Food Law and Protection of Infants (LLM Dissertation, University of Dar es salaam, 2003). P 55

<sup>iv</sup> Bello, K.B., "Perspectives on Consumerism and Consumer Protection Act in Nigeria", 4(10) European Journal of Business and Management, 2012, p. 72, at pp. 72 - 3, available at [https://www.researchgate.net/publication/268436346\\_Perspectives\\_on\\_Consumerism\\_and\\_Consumer\\_Protection\\_Act\\_in\\_Nigeria](https://www.researchgate.net/publication/268436346_Perspectives_on_Consumerism_and_Consumer_Protection_Act_in_Nigeria) (accessed on 17 September 2023)

<sup>v</sup> Damas D Ndumbaro, A Critical Assessment of the Law Related to Consumer and Consumer Protection in Tanzania: A Particular Emphasis on Food Law and Protection of Infants (LLM Dissertation, University of Dar es salaam, 2003). P 55

<sup>vi</sup> Nditi, N.N.N., "Consumer Protection Law and Practice: Its Relevance and Reality in a Developing Economy With Special Reference to Tanzania, PhD thesis, University of Dar es salaam, 1987. P 45

- vii Harris JL, Brownell KD, Bargh JA. The food marketing defense model: integrating psychological research to protect youth and inform public policy. *Soc Issues Policy Rev.* 2009;3(1): p 211–271
- viii Nditi, N.N.N., “Consumer Protection Law and Practice: Its Relevance and Reality in a Developing Economy With Special Reference to Tanzania, PhD thesis, University of Dar es salaam, 1987. P 34
- ix 1977, Cap 50. It prohibited use of unfair and unreasonable terms to exclude or limit liability of producers
- x 1979, Cap 54. It replaced the 1893 Act and consolidated the requirement for description of goods, satisfactory quality and fitness for purposes. It has been replaced by the Consumer Rights Act, 2015.
- xi 1982, Cap 29. It required provision of products in a proper standard of workmanship.
- xii 1987, Cap 43. It introduced regime of strict liability for defective products. It has been replaced by the Consumer Rights Act, 2015.
- xiii Damas D Ndumbaro, A Critical Assessment of the Law Related to Consumer and Consumer Protection in Tanzania: A Particular Emphasis on Food Law and Protection of Infants (LLM Dissertation, University of Dar es salaam, 2003). P 55
- xiv Nditi, N.N.N., “Consumer Protection Law and Practice: Its Relevance and Reality in a Developing Economy With Special Reference to Tanzania, PhD thesis, University of Dar es salaam, 1987. P 45
- xv UNCTAD “Consumer Rights are a Cornerstone of Inclusive Development”, 2018, available at <https://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=1686> (accessed on 1<sup>st</sup> October 2023).
- xvi UNCTAD “Consumer Rights are a Cornerstone of Inclusive Development”, 2018, available at <https://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=1686> (accessed on 1<sup>st</sup> October 2023).
- xvii Damas D Ndumbaro, A Critical Assessment of the Law Related to Consumer and Consumer Protection in Tanzania: A Particular Emphasis on Food Law and Protection of Infants (LLM Dissertation, University of Dar es salaam, 2003). P 55
- xviii Damas D Ndumbaro, A Critical Assessment of the Law Related to Consumer and Consumer Protection in Tanzania: A Particular Emphasis on Food Law and Protection of Infants (LLM Dissertation, University of Dar es salaam, 2003). P 56
- xix Article 14 of the Constitution of the United Republic of Tanzania
- xx Article 18(d) *supra*
- xxi Act No. 8 of 2003
- xxii Cap 345 RE 2022
- xxiii Cap 214 RE 2022
- xxiv Cap 414 RE 2022
- xxv Cap 340 RE 2022
- xxvi Cap 130 RE 2022
- xxvii Act No 1 Of 2003
- xxviii Cap 245 R.E 2015
- xxix On 3rd December 1999
- xxx Cap 213 R.E 2002 as amended by the Business Laws (Miscellaneous Amendments) Act, no 3 of 2020
- xxxi <https://www.tanzaniainvest.com/economy/interview-frank-kanyusi-ceo-breala> and follow us on [www.twitter.com/tanzaniainvest](http://www.twitter.com/tanzaniainvest). Accessed on 2 September 2023.
- xxxii Act No. 20 of 2019
- xxxiii Act No. 20 of 2019
- xxxiv Act No. 20 of 2019
- xxxv Act No. 20 of 2019
- xxxvi Act No. 20 of 2019
- xxxvii Act No. 20 of 2019
- xxxviii Act No. 20 of 2019
- xxxix as per section 174 of the Act No. 20 of 2019.
- xl The National Environmental Research Agenda for Tanzania 2017 – 2022, pg. 5.
- xli Cap 399 R.E 2019
- xlii Cap 399 R.E 2019
- xliiii Cap 322 R.E 2008
- xliv Cap 322 R.E 2008
- xliv Section 22 of the Tax Administration Act No 10 of 2015
- xlvi Section 22 of the Tax Administration Act No 10 of 2015
- xlvii In addition to that the Blueprint also noted that as I quote “Following are some of areas of concern; Tax relief for promotion of domestic industries, there have been efforts to reduce or raise tax rates in order to promote some domestic industries. For instance, the raw material for making animal feed such as sardines, cow bones, cow

blood, and maize are exempted from VAT. However, cotton, sunflower, and soya meals (mashudu) which are also raw materials for animal feed production are subject to VAT. Nevertheless, both sets of raw materials have strong backward linkages to agriculture and part of the agro-process, which is one of the national priority sectors for industrialization. In addition, small-scale domestic processors do not have input VAT because they buy from small-scale farmers, who are VAT registered. This tends to reduce their competitive advantages in relation to those which procured from VAT firms. TRA should rationalize VAT treatment for raw materials with a view to promoting domestic industries and enhanced industrial inter-linkage and value addition. Application of Indicative Prices for Imports the application of indicative prices for imports has been a bone of contention among stakeholders.

<sup>xlviii</sup> Act No.2 of 2009

<sup>xlix</sup> Act No.2 of 2009

<sup>1</sup> 1Cap130 R.E 2002

<sup>li</sup> [http://www.tbs.go.tz/index.php/tbs/aboutus/questions\\_frequently\\_asked\\_about\\_tbs](http://www.tbs.go.tz/index.php/tbs/aboutus/questions_frequently_asked_about_tbs), (accessed on 29 June 2023)

<sup>lii</sup> Act No.2 of 2009

<sup>liii</sup> Act No.2 of 2009

<sup>liv</sup> Regulations 2009

<sup>lv</sup> Regulations 2009

<sup>lvi</sup> Regulations 2009

<sup>lvii</sup> Regulations 1981

<sup>lviii</sup> <https://www.foodbusinessafrica.com/2019/07/02/tanzania-harmonizes-regulatory-bodies-rolesforms-drug-authority/>, (accessed on 30 June 2023)

<sup>lix</sup> Act No. 30 of 1997

<sup>lx</sup> GN. 106 of 2000

<sup>lxi</sup> Section 4 Act No. 8, 2016

<sup>lxii</sup> Section 5 Act No. 8, 2016

<sup>lxiii</sup> <https://portal.gcla.go.tz/app>, (accessed 12 June 2023)

<sup>lxiv</sup> The Government Chemist Laboratory Authority Act, No. 8 of 2016.

<sup>lxv</sup> <https://portal.gcla.go.tz/app> (accessed 12 June 2023)

<sup>lxvi</sup> <https://portal.gcla.go.tz/app> (accessed 12 June 2023)

<sup>lxvii</sup> No.20 of 1982

<sup>lxviii</sup> Act No. 30 of 1997.

<sup>lxix</sup> Act No. 30 of 1997

<sup>lxx</sup> Cap 340 R.E 2002

<sup>lxxi</sup> Cap 340 R.E 2002

<sup>lxxii</sup> <https://www.wma.go.tz/publications/35>, (accessed 08 February 2023)