



PROTECTION OF ONLINE CONSUMERS FOR ELECTRONIC TRANSACTIONS IN TANZANIA.

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Abstract

Tanzania is not an island isolated from the impacts of ICT development. Despite the good that comes with ICT development it is associated with side effects that tend to be thorn to the countries development and its subscribers. The main subscribers of the ICT development are the e-consumers who tend to be Tanzanians transacting using the cyber platform. Electronic Transaction has been booming since the late 20th century to date, bringing lots of aspiration benefits to e-consumers and Tanzanians economy at great rate. The development came with shortcomings that led to passing of an Acts of the parliament to deter the problems. The enacted Acts of parliament do not carter for the deterrence of the new challenges that affect the e-consumers that come with rapid development of the ICT.

The author tends to address the matter by focusing on a comparative analysis approach between Tanzania and United Kingdom (UK) laws. This approach will bring into a positive result to be recommend on for respective authorities to act upon towards intensifying the protection of e-consumers engaging in transaction.

Keywords: *e-consumers, e-transaction, consumers protection, consumers' rights, defective goods, Information and Communication Technology (ICT), Tanzania and United Kingdom (UK).*

A. Introduction

E-transaction can be defined as the use of electronic networks to exchange information, products, services and payments for commercial and communication purposes between individuals and businesses, between business themselves, between individuals themselves, within government or between the public and the government and between business and

government.¹E-transaction involves e-consumers who hire goods or services² or use the cyberspace to purchase goods and services offered by the supplier³ for the purpose of using them in their domestic use, in production or manufacture of any goods or articles for sale⁴. E-transaction involves the use of the cyberspace in ensuring that e-consumers get ordered goods and services upon accepting offers, in whose consumers rights is an issue of discussion that needs protection⁵.

In Tanzania electronic transaction has brought a great booming in the economy and with constitutional actions of protecting e-consumers had to be taken into consideration by enacting different legislations aimed protecting e-consumers' rights and deterring perpetrators from infringing their rights. Tanzanian laws have enacted laws creating a conducive environment for e-consumers to transact with suppliers in consideration of their rights. The legal system has enabled establishment of an institutional framework to ensure that the rights of e-consumers are protected. Despite the success of establishing a legal and institutional system, they not fully developed carter the challenges that come with the rapid development of Information and Communication Technology.

There is other jurisdiction with well manifested legal and institutional framework that we are going to embark on, in order to have great influence with a positive aim in intensifying strength in the current legal and institutional framework in Tanzania.

The article will begin with giving the history of consumer protection within the countries of study, a comparative analysis in the legal and institutional system followed by its findings, a conclusion plus recommendation of the author as follows:

¹ Uganda Law Reform Commission: A Study Report on Electronic Transactions Law: Law Com Publications No 10 of 2004

² McQuoid-Mason, Consumer Law in South Africa, Chapter 1, pg. 1.

³ Section 3 of the Electronic Transaction Act Cap No 442 of 2022.

⁴ The Fair Completion Act [Cap 414 RE 2002].

⁵ Glen A Bloom and Thomas J Denholm, *Research on the internet*, Paper presented at the sixtyninth Annual General Meeting of Patent and Trade Mark Institute of Canada September 14-16.

A. Historical background of consumer protection.

Since the era of Middle Ages United Kingdom has been in the edge of protecting consumer's rights. Though, immediately after the Second World War between 1948 to 1973 the number of legislations was passed for the aim of regulating anti-monopoly in business and trade. Most of these statutes based on safeguarding consumers against restrictive trade practice. For instance, the Fair Trading Act of 1973 covered consumer protection in business. In ensuring that there is effective enforcement of Act two mechanisms were established. First the Director General of Fair Trading and the second is the Consumer Protection Advisory Committees.

In 1961 the United Kingdom Parliament enacted the consumer Protection Act that empowered the executive to enact regulations regarding the standard of products in order to reduce the risk of personal injury from defective products and goods.

In 1987 the United Kingdom Parliament again passed the Consumer Protection Act whereby the main objective is to make provisions with respect to the liability of persons for damage caused by defective products.

The Consumer Act is divided into five parts and four schedules whereby part one deals with product liability, two deals with consumer safety, part three deals with misleading price indication, part four deals with enforcement mechanism of parts two and three and five deals with miscellaneous and supplemental provisions.

Generally, stakeholders involved in protecting consumers in United Kingdom includes the central and local government, government agencies, government sponsored bodies, trade associations and European institutions and policies. For instance, these institutions include the Department of Trade and Industry (DTI) which deals with consumer protection in employment, science, trade, company and business growth. Also, there are National

Consumer Council (NCC) whose task is to represents interest of consumers before the government and issue advice on consumer protection policy through issuance of various publications of reports and journals.

In the early years of 21st century Tanzania had already transformed into open market economy that was intensified further by the introduction e-transaction. Though a new thing, e-consumers and other stakeholders took charge and benefited from the ICT development. One of the most essential stakeholders took apparent measures in ensuring e-consumers have a conducive environment to operate by enacting legislation and passing policies. Though despite the development still they have not been able to catch grip of the rapid rate of development with hurdles it comes with.

B. Institutions framework on protecting consumers in Tanzania

There are several institutions that directly or indirectly deals with consumer protection these includes the Fair Competition Commission, Fair Competition Tribunal, Tanzania Bureau of Standard and National Consumer Advocacy Council. These institutions are discussed hereunder;

1. Fair Competition Commission

This is institution is a corporate body mandate by the Fair Competition Act⁶ to protect consumers. The FCC was established under section 62(1)⁷ as an independent cooperate body with its own seal, right to sue or be sued, hold and dispose a property on its own will.⁸ The FCA⁹ has mandated the Commission to perform the following functions;

⁶ Act No 8 of 2003

⁷ Fair Competition Act No 8 of 2003

⁸ *Idem*, Section 62 (3) (a) to (d).

⁹ *Idem*, section 65 (2) (a) to (m).

- a) Develop and promote Policies for enhancing consumer welfare.
- b) Promote and enforce the compliance of FCA No. 8 of 2003 by the goods providers.
- c) Promote Public knowledge, awareness and understanding of the obligations, rights and remedies in case a consumer incurs damages and also on the duties, functions and activities of the Commission with an aim making the public aware on the authority responsible to attend their complaints.
- d) Make available to consumers information and guidelines relating to the obligations of Persons, rights and remedies available to consumers in respect to the FCA No. 8 of 2003.
- e) Carry out inquiries studies and research into matters relating to the protection of the interests of consumers.
- f) Participate in deliberations and proceedings of government, government commissions, regulatory authorities and other bodies in relation to consumer welfares.
- g) Make representations to government, government commissions, regulatory authorities and other bodies on matters related to competition and consumer welfare;
- h) Consult with consumer bodies, regulatory authorities, business organizations and other interested persons within and outside the country.

2. Fair Competition Tribunal

The Tribunal¹⁰ was established independent body to handle appeals from the Commission¹¹ and other authorities with obligations of protecting consumers.¹² Any decision that it makes it shall be with the aim of protecting the consumer's rights, welfare and interest in relation to the impact caused by deferred goods supplied to him/her.¹³ The tribunal's decision (i.e. judgment and

¹⁰Section 2 of the Fair Competition Act No. 8 of 2003.

¹¹*Idem*, Section 61 (3) and 85 (1) (a)

¹²*Idem*, Section 85 (1) (c).

¹³*Idem*, Section 61 (7) (a) and (b).

orders) shall be executed by parties to the dispute in same manner as if a decision was provided by the High court of Tanzania.¹⁴

3. Tanzania Bureau of Standard

Bureau¹⁵ was established in 1975 as the National Standard Institute¹⁶ and later in 2009 it was re-established as TBS¹⁷, with an aim of enabling safety of goods and the production of goods that are of good quality without defect.¹⁸ The corporate body also provides resources for calling out inspections, sampling and testing of locally manufactured and imported commodities with a view to determining whether the commodities comply with the Standards Act No. 2 of 2009 or any other legislations dealing with standards relevant to those commodities and also ensuring there is no defect in the said products.¹⁹

4. National Consumer Advocacy Council

The Council was established²⁰ to function for the benefit and the interest of the consumers by,²¹

- a) Representing the interests of consumers by making submissions to, providing views and information to and consulting with the Commission, regulatory authorities and government ministries
- b) Receiving and disseminating information and views on matters of interest to consumers.
- c) Establishing regional and sector consumer committees and consult with them.
- d) Consulting with industry, government and other consumer groups on matters of interest to consumers.

¹⁴*Idem*, Section 84 (1) and (2).

¹⁵Section 2 of the Standards Act No.3 of 2009.

¹⁶ Section 3 (1) of the Standards Act No.3 of 1975 (NB: though it has already been repealed).

¹⁷Section 3 (1) of the Standards Act No.3 of 2009.

¹⁸*Idem*, Section 49 (a).

¹⁹*Idem*, Section 49 (k).

²⁰Section 92 (1) the Fair Competition Act No. 8 of 2003.

²¹*Idem*, Section 93 (1) (a) to (d).

C. Institutional framework on protecting e-consumers in United Kingdom (UK)

In UK there is an institution that directly or indirectly deals with consumer protection. The institution is;

1. Competition and Marketing Authority

Prior to the establishment of the Competition and Marketing Authority cooperate body existed as a Competition Commission and Office of Fair Trade²² but in 1st April 2014 function of both cooperate body were unified and obligated to one cooperate body known as Competition and Marketing Authority,²³ which aims at promoting and protecting consumer by working with its partners to promote compliance and understanding of the law, and empowering consumers to make informed choices.²⁴

D. Legal framework in protection of e-consumers in United Kingdom (UK).

United Kingdom is debatably one of the most developed countries in the world and one that take serious in protecting e-consumers and their rights when transacting in the cyberspace. Most notably United Kingdom specifically England follows the common law country legal system and Tanzania does so, therefore making it possible for Tanzania to learn possible measures to be adopted in protecting online consumers in online transactions.

The relevant legislations include; Consumer Protection Act,²⁵ Unfair Contract Terms Act,²⁶ other laws include Distance Selling Directive,²⁷ Consumer Protection (Distance Selling) Regulation²⁸ and Consumer Purchase Directive.²⁹

1. Consumer Protection Act

²² Section 26 Enterprise and Regulatory Form Act of 2014 C.24

²³ *Idem* Section 25 (1)

²⁴ *Ibid*

²⁵ 1987 Cap 43

²⁶ 1977 Cap 50

²⁷ Directive 97/7/EC

²⁸ 2000

²⁹ Directive 1999/44/EC

Consumer Protection Act of 1987³⁰ is the main Act that protects consumers in UK. The Act does not contain specific provision that states its objectives however the same can be found in the preamble of the Act which are to make provisions, “with respect to the liability of persons for damage caused by defective products among other things.”³¹ The Act applies to a number of activities including agriculture, electronic and goods.³² Defect in a product in respect to the Act can only be determined if the safety of the product is not such as persons generally are entitled to expect, and for those purpose safety in relation to product shall include safety with respect to product comprised in that product and safety in the context of risks of damage to property, as well as in the context of risks of death or personal injury.³³

The Act has also provided for specific defenses in any civil procedure against the defendant in relation to the supply of defective goods, in that he/she shall show,³⁴

- a) That the defect is attributable to compliance with any requirement imposed by or under any enactment or with any Community obligation.
- b) That the person proceeded against did not at any time supply the product to another.
- c) That the following conditions are satisfied, that is to say,
 - i. That the only supply of the product to another by the person proceeded against was otherwise than in the course of a business of that person.
 - ii. That section 2(2) above does not apply to that person or applies to him by virtue only of things done otherwise than with a view to profit.
- d) That the defect did not exist in the product at the relevant time.
- e) That the state of scientific and technical knowledge at the relevant time was not such that a producer of products of the same description as the product in question might be

³⁰ Cap 43

³¹ Preamble of the Consumer Protection Act 1987

³² The Consumer Protection Act 1987 *section 1*

³³ *Idem*, *section 3(1)*.

³⁴ *Idem*, *section 4*

expected to have discovered the defect if it had existed in his products while they were under his control;

- f) That the defect,
 - i. Constituted a defect in a product ("the subsequent product") in which the product in question had been comprised.
 - ii. Was wholly attributable to the design of the subsequent product or to compliance by the producer of the product in question with instructions given by the producer of the subsequent product.

In case damages are caused whole or partly by a defect product, any person listed below shall be liable jointly (i.e., if only the two or more persons liable for same damage)³⁵ or not,³⁶

- a) The producer of the product.
- b) Any person who, by putting his name on the product or using a trade mark or other distinguishing mark in relation to the product, has held himself out to be the producer of the product.
- c) Any person who has imported the product into a member State from a place outside the member States in order, in the course of any business of his, to supply it to another.

Though the persons mentioned above can be liable for the damage in respect to defect products, only if the,³⁷

- a) The person who suffered the damage requests the supplier to identify one or more of the persons (whether still in existence /not) to whom subsection (2) above applies in relation to the product.

³⁵Section 2 (5) of the Consumer Protection Act 1987.

³⁶*Idem*, Section 2(3) (a), (b) and (c).

³⁷Section 2 (3) (a), (b) and (c) of the Consumer Protection Act 1987.

- b) That request is made within a reasonable period after the damage occurs and at a time when it is not reasonably practicable for the person making the request to identify all those persons.
- c) The supplier fails, within a reasonable period after receiving the request, either to comply with the request or to identify the person who supplied the product to him.

For consumer safety the Act under Part two impose liability to any supplier of goods and services where the goods fail to comply with the general safety requirement.³⁸ A person shall be guilty of an offence if he or she,³⁹

- a) Supplies any consumer goods which fail to comply with the general safety requirement.
- b) Offers or agrees to supply any such goods.
- c) Exposes or possesses any such goods for supply.

In respect to the Act “damage” faced by the plaintiff means death or personal injury or any loss of or damage to any property (including land). A person shall not be liable in respect of any defect in a product for the loss of or any damage to the product itself or for the loss of or any damage to the whole or any part of any product which has been supplied with the product in question comprised in it.⁴⁰

A person shall not be liable for defective products in case any loss of or damage to any property which, at the time of loss or damaged, was not,⁴¹

- a) Of a description of property ordinarily intended for private use, occupation or consumption.
- b) Intended by the person suffering the loss or damage mainly for his own private use, occupation or consumption.

³⁸*Idem*, Part II from section 10

³⁹*Idem*, section 10

⁴⁰*Idem*, section 5(1) and (2)

⁴¹*Idem*, section 3(3)

Damages shall not be awarded to any person by virtue of liability of defective products, in respect of any loss of or damage to any property if the amount which would fall to be so awarded to that person, if any liability for interest does not exceed £275.⁴² In determining who has suffered any loss of or damage to property and when any such loss or damage occurred, the loss or damage shall be regarded as having occurred at the earliest time at which a person with an interest in the property had knowledge of the material facts about the loss or damage.⁴³ A person's knowledge includes knowledge which he or she might reasonably have expected to acquire either from,

- a) Facts observable or ascertainable by him.
- b) Facts ascertainable by him with the help of appropriate PART I of the Act (liability) expert advice which it is reasonable for him to seek; but a person shall not be taken by virtue of this subsection to have knowledge of a fact ascertainable by him only with the help of expert advice unless he has failed to take all reasonable steps to obtain (and, where appropriate, to act on) that advice.⁴⁴

Further the material facts about any loss of or damage to any property are such facts about the loss or damage as would lead a reasonable person with an interest to the property, to consider the loss or damage sufficiently serious to justify institution of proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment.⁴⁵

2. The General Product Safety (Consumer Protection) Regulations

⁴² Section 5(4) of the Consumer Protection Act of 1987

⁴³ *Idem*, section 5(5)

⁴⁴ Section 5(7) of the Consumer Protection Act of 1987

⁴⁵ *Idem* section 5(6)

3. The General Product Safety (Consumer Protection) Regulations⁴⁶ was enacted with an aim of protecting consumers in the by assuring consumers with the proper required safety of goods and services to be transacted to e-consumers for consumption. This has been set clear by the said Regulations by assuring that,
- a) No producer shall place a product on the market unless the product is a safe product.
 - b) No producer shall offer or agree to place a product on the market or expose or possess a product for placing on the market unless the product is a safe product.
 - c) No producer shall offer or agree to supply a product or expose or possess a product for supply unless the product is a safe product.
 - d) No producer shall supply a product unless the product is a safe product.

The laws in Tanzania should focus on making the e-environment conducive for e-consumer to transact freely by amending the legislations to operate in the country without any negative implication. Though the Regulations have generally provided protection for consumer with specifically specifying it basis of consumer protection i.e., e-consumers or offline consumers.

4. Distance Selling Directive

Distance Selling Directive⁴⁷ provides explicit for the protection of consumers in the electronic commerce. It aims at bringing uniformity in laws among the European member states including UK regarding protection of consumers in distance contracts.⁴⁸ However, the Directive is silent on explicit protection of consumers who purchase and transact online.⁴⁹ In addition there is the absence of provisions as to whether the directive applies to digital content.⁵⁰ The Directive has well provided for protection of e-consumers transacting in the cyberspace with an aim of setting

⁴⁶ The General Product Safety (Consumer Protection) Regulations of 2005.

⁴⁷ Directive 97/7/EC

⁴⁸ Seth. K. Computers Internet and New Technology Laws: A Comprehensive reference work with special focus on development in India. (1st Edition). New Delhi: LexisNexis, pp. 107

⁴⁹ *Ibid*

⁵⁰ Hans Schulte-Nolke. and Adreas Borger. Distance Selling Directive 97/7

guidance for other European nations to follow. Though this the follow up and making reference of the said directive towards regulating e-commerce and assuring protection of consumers against defective good, is not to be adhered by the European countries but also by the African countries. On which prior to the enactment of the said laws they should also consider norms and customs derived from their respective constitution and society at large.

5. Consumer Purchase Directive

The Consumer Purchase Directive⁵¹ aims at protecting consumer of goods and services among other things to include online consumers.⁵² The Directive is said to be similar to the Consumer Protection Act.⁵³

It may be noted that consumers are in a particularly weak position because as a matter of fact they are less informed and less skilled than a professional and they often have very little negotiating power if any.⁵⁴ Consumer protection is a field in which community wide and harmonized regulation is particularly necessary especially taking into account that B2C relations including those related to electronic commerce very often have a cross border character, and the consumer must be consistently protected against the use of unfair terms. The Directive is said to have enforced the enactment of the Consumer Protective Act in England that plays a greater role towards regulating the protection of consumer in different sectors within the country. Though this should set an example for the African Union to enact a convention that will regulate the protection of consumer not in aviation sector but also in other sectors that contribute to the growth of the country's GDP and enjoyment of e-consumers rights, interest and welfare.

⁵¹ Directive 1999/44/EC

⁵² Seth. K. Computers Internet and New Technology Laws: A Comprehensive reference work with special focus on development in India. (1st Edition). New Delhi: LexisNexis, Pg 109

⁵³ 1986

⁵⁴ D. Campbell and S. Woodley (eds.). E-Commerce Law & Jurisdiction. Kluwer Law International. Printed in the Netherlands. (2003). Pg 271.

6. Consumer Rights Act of 2015

The Act aimed at protecting consumers by providing consumers rights whereby every contract to supply goods is to be treated as including a term that the quality of the goods is satisfactory.⁵⁵

Further the quality of goods includes their state and condition and the following aspects (among others) are in appropriate cases aspects of the quality of goods;⁵⁶

- a) Fitness for all the purposes for which goods of that kind are usually supplied.
- b) Appearance and finish.
- c) freedom from minor defects
- d) Safety.
- e) Durability.

Therefore, the law protects consumers by emphasize suppliers of goods and services to provide consumers with goods and services of good quality that also contain terms that are conducive for consumer to comply.

E. Legal framework in protection of e-consumers in Tanzania

In Tanzania there are policies and laws that govern protection of consumer of goods and services which includes; National Informational and Communications Technology of 2003, ICT Policy of 2016, the Constitution of the United Republic of Tanzania⁵⁷ Fair Competition Act,⁵⁸ the Standard Act,⁵⁹ and Electronic Transactions Act,⁶⁰

1. Constitution of the United Republic of Tanzania Cap 2 of 1977

In Tanzania Constitution is the mother law of the country. As mother law constitution of the United Republic of Tanzania act as guideline for the other law which will be enacted by the

⁵⁵ Section 9(1) of the Consumer Rights Act of 2015

⁵⁶ *Idem*, section 9(3)

⁵⁷ Act No 2 of 1977

⁵⁸ Act No 8 of 2003

⁵⁹ Act of 2009

⁶⁰ Cap No 442 of 2022

parliament or any other government body should not contradict with the constitution of the United Republic of Tanzania.⁶¹ However the Constitution of the United Republic of Tanzania⁶² provides the consumer protection indirect under;

Article 11⁶³ which provide for the right to education whereby a consumer has the right to education that will empower him to take informed and confident choice of goods and services.

Article 14⁶⁴ provides for the right to life whereby a consumer has the right to be protected from unsafe goods and services, unsafe goods can lead to the destruction of property, injury and even death.

The Constitution of the United Republic of Tanzania Cap 2 of 1977 has provided ways forward and blueprints that the legislative should adhere in the enactment and formulation of legislation with proper legal forums to be enforced towards finding solutions that will comply with the rights, interest and welfare in the course of e-transacting goods and services without defect. The aim of constitutional provisions is to improve the safety, trust and good of a good standard and quality of the goods and services to be transacted in the cyber space, though this has been different for the past years to presence for no legislation has been enacted with detail and fully cover for e-consumer protection of Tanzanian netizens within the country and outside.

2. National Information Communication Technology Policy 2003

An assessment of development of technology and its impact, the NICTP of 1997 and the laws enacted respect to the policy did not create conducive environment for consumers to conduct e-business. The policy NICTP of 2003 was formulated to coordinate mechanisms and harmonize strategies which enable different sectors to work together and also some of the aims were to

⁶¹ Cap 2 of 1977

⁶² *Ibid*

⁶³ The Constitution of the United Republic of Tanzania Act No 2 of 1977

⁶⁴ *Ibid*

change the Tanzanian society into knowledge-based society and to adopt a knowledge-based economy.

The said policy was formulated with the purpose of realizing the challenges that were faced by the laws that were enacted prior to the formulation of this policy i.e., Tanzania Communications Act of 1993. In spite of the rapid development of ICT and introduction new challenges that were not reviewed by the respective ministries and legislation at large, the policy had provided for proper legal forum to cater for already reviewed challenges by formulating TCRA⁶⁵ and enacting ETA⁶⁶, Cybercrimes Act⁶⁷ and EPOCA⁶⁸, though they did not create e-environment conducive for e-commerce that is free from defective goods and services with embed negative impacts to the nation and public for example death decrease of GDP due to loss of human resources and decrease of revenue.

3. Fair Competition Act 2003

In its preamble the statute aims at achieving effective protection of consumers in commerce among other things.⁶⁹ The Act deals with protection of consumers of goods and services from certain trade practice that are misleading and deceptive conduct and unfair business practices.⁷⁰ Also the Act under section 38⁷¹ provide for the protection accessing compensation against injury and loss by supplier, the supplier or manufacturer has to make sure that the goods or services supplied or rendered respective to the consumer particular purpose are reasonably are reasonably fit for consumption. Further the Act provide for the protection against the supplier

⁶⁵ Section 4 (1) of the Tanzania Regulatory Authority Act of 2003

⁶⁶ Electronic Transactions Act Cap No 442 of 2022

⁶⁷ Cybercrimes Act of 2015

⁶⁸ Electronic Postal and Communications Act Cap No 306 of 2022

⁶⁹ See Preamble of the Fair Competition Act No 8 of 2003

⁷⁰ Part III and VI of the Fair Competition Act No 8 of 2003

⁷¹ Fair Competition Act No 8 of 2003

who fail to ensure that facilities or parts of the kind specified in the notice, were available at, or delivered from a place or places specified in the notice.⁷²

Therefore, the law protects consumer in general particular consumers who transact offline. However, this law is used as an alternative to solve or resolve (on appeal) matters brought before the court patterning online defective goods by referring to the provisions that cater to protecting consumers in general. Though the justice provided upon damages caused by defective goods and services issued to consumers who transact offline that is currently been made reference to when such act of the same conduct is being performed in the online platform in spite of different platform to where the transaction of goods and services has been conducted.

4. The Fair Competition Act, (Cap 285), 2003, the Standard Form (Consumer Contracts) Regulations, G.N. No. 305, 2014

The Regulations was enacted for the purpose to regulate standard form contracts. The Regulations applies to traditional and online Standard form consumer contract that involve business to consumer transactions.⁷³ Standard form contract is an agreement created by one party that employ standardized, non-negotiated terms and conditions, usually in preprinted forms.⁷⁴ This kind of contract normally operate in the fulfilling an essential role in the mass distribution of goods.⁷⁵

Contractual Business terms in the said contract are terms pre-established for multitude of contracts which goods supplier presents to the consumer upon conclusion of the contract⁷⁶. The said terms and conditions do not involve negotiations between the parties to the contract, though

⁷²Section 42 Fair Competition Act No 8 of 2003

⁷³Regulation 2 of the Fair Competition Act, (Cap 285), 2003, the Standard Form (Consumer Contracts) Regulations, G.N. No. 305, 2014.

⁷⁴Regulation 3 of the Fair Competition Act, (Cap 285), 2003, the Standard Form (Consumer Contracts) Regulations, G.N. No. 305, 2014.

⁷⁵Fair Competition Commission (FCC), "*Standard Form (Consumer Contracts) Regulations, 2014: A simple Guide to the Regulations*", July 2017, Pg. 4.

⁷⁶Regulation 3 of the Fair Competition Act, (Cap 285), 2003, the Standard Form (Consumer Contracts) Regulations, G.N. No. 305, 2014.

if occurs that they are negotiated then the said contractual terms will not constitute standard business terms. In a contract of supply of goods, the regulations have required the consumer to notify the producer or any other relevant authority for example FCC, TBS, TFDA etc. of the defect of goods and services within 14 days from the purchase date.⁷⁷

In case of any defect or damage arising from in the course using the supplied goods, a consumer is allowed to file a complaint to the Commission by lodging complaint form SFC 2⁷⁸, though in order for the complaint to be entertained it should not be of,

- a) A similar complaint or part of it is in pending before or verdict has already pronounced by any competent authority.⁷⁹
- b) Frivolous or vexatious.⁸⁰
- c) A matter that the Commission has no jurisdiction to and if happen the complaint will be returned to the complainant within 14 days from the date of receipt.⁸¹

In case the complaint can be entertained by the Commission, then the Commission will notify the producer of goods on the complaint raised against him/ her/it in accordance with form SFC3⁸² and a reply from the supplier or producer will made by filling form SFC4 within 7 days from the date of receipt. In respect to the reply made to the Commission the complaint will be determined with 21 days from the date of reply made by producer of goods.⁸³ After the determination of a complaint and verdict has already bi convey to the parties in dispute and it happens that the consumer is not satisfied with the decision of the commission, he or she will within 28 days make an appeal to the Fair Competition

⁷⁷Regulation 13 of the Fair Competition Act, (Cap 285), 2003, the Standard Form (Consumer Contracts) Regulations, G.N. No. 305, 2014.

⁷⁸*Idem*, Regulation 28 (2) and first schedule.

⁷⁹*Idem*, Regulation 28 (3).

⁸⁰Regulation 30 of the Fair Competition Act, (Cap 285), 2003, the Standard Form (Consumer Contracts) Regulations, G.N. No. 305, 2014.

⁸¹*Idem*, Regulation 28 (4).

⁸²*Idem*, Regulation 29 (1) and first schedule.

⁸³*Idem*, Regulation 29(2) and first schedule.

Tribunal.⁸⁴ The law has provided on the legal forum on how standard form contracts on good and services should be handled by the parties to it and redress attainment in case of damages from the breach of the terms and conditions of contracts like e-transacting defective goods. Though this has appeared to cause difficulties in solving problems that rise in the cause of e-transacting goods and services originating from other state jurisdictions due to unfamiliar terms and condition set to the products and the said contract not presented for certification before the Fair Competition Commission.

5. Electronic Transactions Act 2022

This is the main Act which deals with online transactions, whereby the Act was enacted to provide for the legal recognition of electronic transaction include other related matters. These related matters include consumer protection.⁸⁵ Further the Electronic Transaction Act⁸⁶ provides that whenever a supplier want to transact goods or service online has to provide for necessary information which are,⁸⁷

- a) Full name, legal status and place of business.
- b) Contacts details including physical address, telephone and e-mail addresses.
- c) Full description of the goods or services offered.
- d) Prices of the goods or services.
- e) Information on the payment mechanisms that complies with other written laws and any other relevant information.

Though before any goods or service is ordered by consumers, suppliers are required to provide consumers with an opportunity to,⁸⁸

⁸⁴*Idem*, Regulation 34.

⁸⁵ Cap No 442 of 2022

⁸⁶*Ibid*

⁸⁷*Idem*, Section 28 (1) (a) to (f).

⁸⁸*Idem*, Section 28 (2) (a) (b) and (c).

- a) Review the entire electronic transaction.
- b) Correct any mistake.
- c) Withdraw from the transaction.

After a consumer reviews and corrects any mistake in the entire electronic transaction without withdrawing from the transaction, the supplier will execute the order with 30 days from s/he received the order. Upon a failed execution of an order made to the supplier, a consumer may cancel the agreement by giving a notifying the supplier within 7 days⁸⁹ and also the supplier is required by the Act to notify the consumer within 30 days for failing to execute the order on grounds that goods or services ordered are unavailable. In case there was any payment made by the consumer before the order was executed the supplier will be liable to refund the said payment.⁹⁰

Therefore, Act as covered for e-transactions in generally, though as a mother law governing e-transactions it has not elaborated on specific transactions of goods or services for example defective goods. The Act did not provide for procedures or mechanisms to be followed when defective goods or services are supplied to consumers as to,

- a) How consumers will cancel and return the said goods.
- b) What remedies are to be rewarded by the supplier to the consumer on damages faced by the consumer in respect to the supply of defective goods?
- c) What legal procedures are to be taken in case the supplier refuses a return of defective goods and to refund the consumer?
- d) What are the punishments for the supplier who transact defective good to the online consumer?

6. National Information Communication Technology Policy 2016

⁸⁹Section 29 (2) and 30 (1) of the Electronic Transactions Act Cap No 442 of 2022

⁹⁰Section 29 (1), (2) and (3) of the Electronic Transactions Act Cap No 442 of 2022

The Policy was formulated in respect to a revision of the NICTP 2003 in reference to the legislations that were enacted following its formulation and the impact of new ICT, in the performance of different social-economic and political activities like e-commerce, e-health, government etc. via e-communication and cyberspace platforms.⁹¹ The Policy has raised many challenges and one among the said challenge that seems to affect e-transaction due to the use of ICTs, is the existing legal framework that doesn't provide adequate safeguards to create an environment of trust for e-transactions to take place.⁹² The policy aims at accelerating socio-economic development with potentials to transform Tanzania into ICT driven middle-income economy and society. Though, this cannot be possible if some strategies were not set forth with an aim of assuring safety in transacting goods and services through the cyberspace.⁹³ Some of these strategies are,

- a) Ensuring that there is a framework for coordinating and promoting ICT safety basically in transaction of goods and services without defects⁹⁴.
- b) Ensuring an appropriate environment for adoption of relevant regional and international legal instruments to support cooperation in addressing ICT issues.⁹⁵

The said policy was formulated after the revision of the previous National Policy and legislatives include Cyber Crime Act⁹⁶ and ETA with an aim of creating environment conducive for consumer to operate and conclude their interest protect their right and welfare by ensuring that trust is created in the course of conducting e-transactions. The policy intends to emphasize the respective ministry and the parliament at large to create adequate legal regime that will strengthen the trust between a suppliers and electronic consumers transacting through the cyber space.

⁹¹National Information and Communication Technology Policy of 2016, Pg. 1

⁹²*Idem*, Pg. 9 and 10

⁹³*Idem*, Pg. 25.

⁹⁴National Information and Communication Technology Policy of 2016, Pg. 27.

⁹⁵*Idem*, Pg. 24.

⁹⁶ Cyber Crime Act of 2015

7. Standards Act 2009

Prior to the enactment of this Act there was the Standard Act 1975 which established the National Standards Institute⁹⁷ with an aim to regulate the standard of goods produced by different producers.⁹⁸ The law was encountered by various short falls in its scope implementation and enforceability because of that the Act was repealed following the enactment of Standard Act of 2009⁹⁹ the aim of the Act is provide for the promotion of the standardization of specification of commodities and services.¹⁰⁰ The Act has define the term standard as a set of rules or conditions, approved, prescribed or recommended by the Bureau,¹⁰¹ which relate to or govern the specification, code of practice, safety, trade description, sampling method, testing method or any other aspect, quality, nature or matter of relating to or connected with,

- a) The product or marketing of any commodity.
- b) Any component, raw material, machinery, instrument, apparatus or other thing whatsoever used, directly or indirectly, in the production or marketing of any commodity.

The Act re-established the Tanzania Bureau Standards as a corporate body with functions as follows (in respect of the study);

- a) To undertake measures for quality control of commodities, services and environment of all descriptions and to promote standardization in industry and trade.
- b) To provide for the testing of locally manufactured and imported commodities with a view to determining whether such commodities comply with the provisions of the Act or any other law dealing with standards relevant such commodities.

The Standards Act has covered for defective goods not in a précised manner since it has only provided for a general protection of consumer on defective goods by assuring safety and quality of goods produced by for the purpose of being consumed by the producer. Hence, further

⁹⁷Section 3 of the Standards Act of 1975.

⁹⁸ See the Preamble of Standards Act of 1975.

⁹⁹ See the Preamble of the Standards Act, 2009

¹⁰⁰*Ibid*

¹⁰¹ The term "Bureau" means the Tanzania Bureau of Standards established by section 3 of the Standards Act, 2009.

assurance on the safety of the goods and services to be e-transacted to e-consumer for consumption must be consider by comparing to the rapid development of ICT.

F. Findings of the approach

The absences of adequate laws in Tanzania that protect online consumers facilitate continuation of risks that associate with defective goods and service when consumers transact online.

Liability of defective goods, both mother laws with the mandate of protecting consumer in Tanzania and United Kingdom have tried to protect consumers against deferred goods and its impacts. Deferred goods in UK are addressed in a different way than in Tanzania for liability of damages is specifically directed to specific people who are to be liable and it has also addressed in what circumstances the respective people will be liable for the said damages. In Tanzania, the manner in which deferred goods are to be handled in respect to its impacts, is not addressed in any legislative i.e., ETA, 2022 as mother law of e-transaction and FCA, 2003 as mother law for the protection of consumers generally in all sectors. Thus, leaving a gap for suppliers of goods to advantageously manipulate their positions in the market by offering defective goods to online consumers.

Procedures and mechanism of determining defective goods, the Electronic Transactions Act has covered for e-transactions in generally, though as a mother law governing e-transactions it has not elaborated on specific transactions of goods or services for example defective goods. The Act has not provided for procedures or mechanisms to be followed when defective goods or services are supplied to consumers as to,

- a) How consumers will cancel and return the said goods.
- b) What remedies are to be rewarded by the supplier to the consumer on damages faced by the consumer in respect to the supply of defective goods?

- c) What legal procedures are to be taken in case the supplier refuses a return of defective goods and to refund the consumer?
- d) What punishment will supplier get?

The laws protecting consumers in UK have specifically provided for liability of defective goods and the circumstances that will be found liable in case they supply defective goods to their customers. However, the said laws have not provided for procedures and mechanisms for cancellation of defective goods.

The mother law in respect to protection of e-consumer, the Constitution of United Republic of Tanzania¹⁰² as a mother law of all laws in the country was supposed to provide for clear and conducive environment for the protection of e-consumers in respect to the development of ICT that the country has attained in the past year since the last amendment. The nature of any law is to be dynamic and not static the constitution has implemented less on protecting e-consumers and their rights, interest and welfare in the course of transactions. It has not incorporated whole and clearly effective provisions to guide respective laws by providing principles and guideline as to how consumers are to be protected. The constitution of countries that comply with the unification of UK have not provide for provisions that specifically have covered for the protection of consumers who are supplied with defective goods and services.

Standardization of goods, the Standards Act has generally provided for the protection of consumers against defective goods by ensuring the safety and good quality of goods supplied by the supplier. Though as a law regulating standard of products produce within the country and those imported in the country, it was supposed to specifically provide for provisions that are to regulate online defective goods and provide consequences when a person contravenes with the enacted provisions. In UK the Consumers Rights Act has assured the consumers with safety and

¹⁰² Cap 2 of 1977

goods of good quality without any defect. The Act also obligated suppliers of goods to supply goods that satisfy the uses interest.

G. Conclusion

The presiding discussion above has briefly given a comparative analysis and its findings on the legal and institutional system, that in one way or another aims at bringing a solution to the development of an intensified e-consumer protection engaged in e-transaction. Tanzania is a hotspot of development that no being can deny that has affected much its economy growth from low-income to lower-middle-income status in July 2020. This has also been possible due to current legal and institutional framework that has managed to attract more e-consumers to embark on e-transaction. Despite, the amendments of the laws still the roots of protecting e-consumers have not sunk in the core of a strong system like that of United Kingdom.



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