































parliament or any other government body should not contradict with the constitution of the United Republic of Tanzania.<sup>61</sup> However the Constitution of the United Republic of Tanzania<sup>62</sup> provides the consumer protection indirect under;

Article 11<sup>63</sup> 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 14<sup>64</sup> 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

---

<sup>61</sup> Cap 2 of 1977

<sup>62</sup> *Ibid*

<sup>63</sup> The Constitution of the United Republic of Tanzania Act No 2 of 1977

<sup>64</sup> *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 TCRA<sup>65</sup> and enacting ETA<sup>66</sup>, Cybercrimes Act<sup>67</sup> and EPOCA<sup>68</sup>, 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.<sup>69</sup>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.<sup>70</sup>Also the Act under section 38<sup>71</sup> 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

---

<sup>65</sup> Section 4 (1) of the Tanzania Regulatory Authority Act of 2003

<sup>66</sup> Electronic Transactions Act Cap No 442 of 2022

<sup>67</sup> Cybercrimes Act of 2015

<sup>68</sup> Electronic Postal and Communications Act Cap No 306 of 2022

<sup>69</sup> See Preamble of the Fair Competition Act No 8 of 2003

<sup>70</sup> Part III and VI of the Fair Competition Act No 8 of 2003

<sup>71</sup> 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.<sup>72</sup>

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.<sup>73</sup> Standard form contract is an agreement created by one party that employ standardized, non-negotiated terms and conditions, usually in preprinted forms.<sup>74</sup> This kind of contract normally operate in the fulfilling an essential role in the mass distribution of goods.<sup>75</sup>

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 contract<sup>76</sup>. The said terms and conditions do not involve negotiations between the parties to the contract, though

---

<sup>72</sup>Section 42 Fair Competition Act No 8 of 2003

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

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

<sup>75</sup>Fair Competition Commission (FCC), “*Standard Form (Consumer Contracts) Regulations, 2014: A simple Guide to the Regulations*”, July 2017, Pg. 4.

<sup>76</sup>Regulation 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.<sup>77</sup>

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 2<sup>78</sup>, 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.<sup>79</sup>
- b) Frivolous or vexatious.<sup>80</sup>
- 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.<sup>81</sup>

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 SFC3<sup>82</sup> 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.<sup>83</sup> 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

---

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

<sup>78</sup>*Idem*, Regulation 28 (2) and first schedule.

<sup>79</sup>*Idem*, Regulation 28 (3).

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

<sup>81</sup>*Idem*, Regulation 28 (4).

<sup>82</sup>*Idem*, Regulation 29 (1) and first schedule.

<sup>83</sup>*Idem*, Regulation 29(2) and first schedule.

Tribunal.<sup>84</sup> 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.<sup>85</sup> Further the Electronic Transaction Act<sup>86</sup> provides that whenever a supplier want to transact goods or service online has to provide for necessary information which are,<sup>87</sup>

- 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,<sup>88</sup>

---

<sup>84</sup>*Idem*, Regulation 34.

<sup>85</sup> Cap No 442 of 2022

<sup>86</sup>*Ibid*

<sup>87</sup>*Idem*, Section 28 (1) (a) to (f).

<sup>88</sup>*Idem*, Section28 (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 days<sup>89</sup> 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.<sup>90</sup>

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

---

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

<sup>90</sup>Section 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.<sup>91</sup>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.<sup>92</sup> 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.<sup>93</sup> 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 defects<sup>94</sup>.
- b) Ensuring an appropriate environment for adoption of relevant regional and international legal instruments to support cooperation in addressing ICT issues.<sup>95</sup>

The said policy was formulated after the revision of the previous National Policy and legislatives include Cyber Crime Act<sup>96</sup> 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 strength the trust between a suppliers and electronic consumers transacting through the cyber space.

---

<sup>91</sup>National Information and Communication Technology Policy of 2016, Pg. 1

<sup>92</sup>*Idem*, Pg. 9 and 10

<sup>93</sup>*Idem*, Pg. 25.

<sup>94</sup>National Information and Communication Technology Policy of 2016, Pg. 27.

<sup>95</sup>*Idem*, Pg. 24.

<sup>96</sup> 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 Institute<sup>97</sup> with an aim to regulate the standard of goods produced by different producers.<sup>98</sup> 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 2009<sup>99</sup> the aim of the Act is provide for the promotion of the standardization of specification of commodities and services.<sup>100</sup> The Act has define the term standard as a set of rules or conditions, approved, prescribed or recommended by the Bureau,<sup>101</sup> 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

---

<sup>97</sup>Section 3 of the Standards Act of 1975.

<sup>98</sup> See the Preamble of Standards Act of 1975.

<sup>99</sup> See the Preamble of the Standards Act, 2009

<sup>100</sup>*Ibid*

<sup>101</sup> 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 Tanzania<sup>102</sup> 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

---

<sup>102</sup> 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.



### **ACKNOWLEDGEMENT**

I wish to express my heartfelt appreciation to those who have in one way or another made it possible for this work to be completed successfully. It is very difficult and almost impossible to mention all by names, but this should by no means be deemed to be a lack of appreciation for their moral, economically, and material supports which they accorded to me. To them all I owe my genuine gratefulness.

I am grateful to God for giving me life, strength and ability which enable me to complete this article. However, Mr. Samwel Mbilinyi, deserves special mention for his inspirational guidance which had always re-kindled my wish to finish this work. To him I am deeply indebted.

Lastly, I deeply extend special gratitude to my mother and my brother Juma Ally for their timeless and tireless prayer for me and their continuous support both financial and morally, without whom it could have been difficult to attain this stage.

May the Almighty God reward all the acknowledged person abundantly.

## REFERENCES

- 1) Constitution of the United Republic of Tanzania Act No 2 of 1977
- 2) Consumer Rights Act of 2015
- 3) Cyber Crime Act of 2015
- 4) Directive 1999/44/EC
- 5) Electronic Postal and Communications Act Cap No 306 of 2022
- 6) Electronic Transactions Act Cap No 442 of 2022
- 7) Enterprise and Regulatory Form Act of 2014 C.24
- 8) Fair Competition Act No 8 of 2003.
- 9) Fair Competition Act, (Cap 285), 2003, the Standard Form (Consumer Contracts) Regulations, G.N. No. 305, 2014.
- 10) General Product Safety (Consumer Protection) Regulations of 2005.
- 11) National Information and Communication Technology Policy of 2016.
- 12) Standards Act 2009.
- 13) Tanzania Regulatory Authority Act of 2003.
- 14) D. Campbell and S. Woodley (eds.). E-Commerce Law & Jurisdiction. Kluwer Law International. Printed in the Netherlands. 2003.
- 15) Seth. K. Computers Internet and New Technology Laws: A Comprehensive reference work with special focus on development in India. (1<sup>st</sup> Edition). New Delhi: LexisNexis.
- 16) Hans Schulte-Nolke and Adreas Borger. Distance Selling Directive 97/7

- 17) Uganda Law Reform Commission: A Study Report on Electronic Transactions Law: Law  
Com Publications No 10 of 2004.
- 18) Glen A. Bloom and Thomas J Denholm, Research on the internet, Paper presented at the  
sixty-ninth Annual General Meeting of Patent and Trade Mark Institute of Canada  
September 14-16.

© GSJ