THE EFFECTIVENESS OF LEGAL REGIME AND CHALLENGES IN PROTECTION OF CONSUMER RIGHTS IN UGANDA

BY

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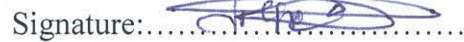
DECLARATION

I, Nalwetaago Irene undersigned declare that this dissertation entitled "the effectiveness of legal regime and challenges in protection of consumer rights in Uganda" is my own original compilation and has never been presented to any organization or institution of higher learning either as a paper or for any academic award.

Signature:

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Date: 21/7/2016.

APPROVAL

"I confirm that the work reported in this dissertation was carried out by the candidate under my/our supervision".

Signature:..............................

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Date: 21/07/2016

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DEDICATION

I dedicate to my daughters Nanteza Peace, SSempijja James, Nakyeyune Jovia and Namubiru Tendo who have encouraged me to pursue my studies and finish up.

LIST OF STATUES

1. The Advocates Act 267
2. The Constitution of the Republic of Uganda 1995
3. The Advocates (Remuneration and Taxation of Costs) Rules
4. Mental Treatment Act, Cap. 279.
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9. Civil Procedure Act, Cap. 71

ABSTRACT

A consumer protection framework generally includes the introduction of greater transparency and awareness about the goods and services, promotion of competition in the marketplace, prevention of fraud, education of customers, and elimination of unfair practices.

Consumer protection frameworks in the financial service industry are evolving as products become more complex and a greater number of people rely on financial services. An effective consumer protection framework includes three complementary aspects. First, it includes laws and regulations governing relations between service providers and users and ensuring fairness, transparency and recourse rights.

Consumer protection and financial literacy can contribute to improved efficiency, transparency, competition, and access in retail financial markets by reducing information asymmetries and power imbalances between providers and users of financial services. Financial consumer protection has gained significance in policy debates, especially since the onset of the financial crisis in 2008. This paper presents the results of a survey on consumer protection regulations in 1 country.

Qualitative research is used in several academic disciplines, including political science, sociology, education and psychology. According to Peshkin (200:134) in Patton, it usually serves one or more of a set of four purposes: description, interpretation and evaluation of a hypothesis or problem.

The findings indicate that although consumer protection legislation is in place in the majority of countries, these do not necessarily address the issues specific to financial services. There is some evidence that enforcement powers and monitoring capacity are limited in many countries, obstructing the effective implementation of the existing regulations. Furthermore, independent third party dispute resolution mechanisms are not widespread. The paper also compiles comprehensive information on laws and regulations relevant for consumer protection and discusses a number of challenges related to empirical analyses of financial consumer protection to enable cross-country comparison.

CHAPTER ONE

CONSUMER RIGHTS AND THE RELATED LITERATURE

1.0 Introduction

Consumer protection, in the broader sense, refers to the laws and regulations that ensure fair interaction between service providers and consumers. Government intervention and regulation in the area of consumer protection are justified on the basis of inherent information asymmetries and power imbalances in markets, with producers or service providers having more information about the product or service than the consumers[1]. A consumer protection framework generally includes the introduction of greater transparency and awareness about the goods and services, promotion of competition in the marketplace, prevention of fraud, education of customers, and elimination of unfair practices.

Consumer protection frameworks in the financial service industry are evolving as products become more complex and a greater number of people rely on financial services. An effective consumer protection framework includes three complementary aspects. First, it includes laws and regulations governing relations between service providers and users and ensuring fairness, transparency and recourse rights. Second, it requires an effective enforcement mechanism including dispute resolution. Third, it includes promotion of financial literacy and capability by helping users of financial services to acquire the necessary knowledge and skills to manage their finances.

A trademark means a sign or mark or combination of signs or marks capable of being represented graphically and capable of distinguishing goods or services of one undertaking from those of another undertaking. A sign or mark includes any word, symbol, design, slogan, logo, sound, smell, colour, brand label, name, signature, letter, numeral or any combination of these capable of being represented graphically.[2]

A trademark protects goods whereas a service mark protects services. There are different types of marks: a service mark for example IAA & AAR, a collective mark for example Mukwano, a

[1] Gokhale (2009), Reuters (2009), and Reille (2009).
[2] Section 1 of the Trademarks Act 17/2010.

certification mark eg UNBS, a defensive mark, an associated mark and well known marks eg Philips.

The recent crisis highlighted shortcomings in the existing consumer protection frameworks in high income countries and prompted a number of broad-ranging reforms. The crisis also made apparent the low levels of financial capability among users of financial services in developed countries. Lack of effective disclosure and the existence of deceptive advertising on the provider's side, and failure to understand financial products on the user's side contributed to the collapse of the sub-prime mortgage market in the Uganda. However, the problem is not limited to developed markets with highly complex products. In emerging markets, the challenge in this area is even greater.

Most countries have witnessed an unprecedented expansion of the financial services industry in the decade preceding the crisis. Hundreds of millions of people opened bank accounts, started transferring payments electronically and took out consumer loans. In most cases, the development of the retail financial services industry preceded the development of consumer protection legislation. Bosnia and Herzegovina, Morocco and some states in India saw indebtedness rise sharply among microfinance borrowers in 2009, threatening sustainability of these markets. Continued progress in expanding financial access requires introduction of basic protections for the clients of financial services. Knowing that their rights are effectively protected may bring in new customers to the financial sector, and encourage the uptake of new

In accordance with section 5(a) and (b) of the Law Reform Commission Act, the Commission has reviewed, at the request of the Ministry for Consumer Protection, some aspects of the consumer protection laws[3] with a view to proposing reforms to the current legislative framework[4].

[3] Aspects of Consumer protection laws considered are: Consumer Protection Act No. 11 of 1991, Consumer Protection (Price and Supplies Control) Act No. 12 of 1998, Essential Commodities Act No. 8 of 1991, the Fair Trading Act No. 26 of 1979, Hire Purchase and Credit Sale Act No. 6 of 1964, Prices and Consumer Protection Advisory Committee Act No. 57 of 1983

[4] During debates in the National Assembly on the Appropriation (2010) Bill, it was pointed out that the current legislation in the field of consumer protection is not in line with the new business environment. There is a need to completely overhaul the existing legal framework and to come up with a modern and updated one that would assist in effectively protecting the rights of the consumers whilst promoting business facilitation.

Government has reasserted in its 2010-2015 Government Program its commitment to an in-depth and complete review of all the legislations governing consumer protection and rights, and the strengthening of the Consumer Protection Unit with a view to creating confident consumers[5].

This review stems from the need to examine today's consumer laws to ensure they remain relevant and effective in a rapidly changing local and global marketplace. Developments such as trade liberalization, globalization, and the advent of the Internet and e-commerce are changing the very nature of the way consumers and businesses interact[6]. Consumers face rapidly changing markets, increased reliance on technology and a faster pace of innovation, all of which pose a significant challenge in ensuring that regulation can keep pace. Hence the need for strategies to enhance consumer confidence in a dynamic market environment.

The current law has been reviewed from an international and comparative perspective. At global and regional levels, there have been various initiatives for the protection of consumer interests[7]. We have examined the UN Guidelines for Consumer Protection[8], which provide a framework for Governments to use in elaborating consumer protection policies and legislation[9]. We have also paid heed to the standards and policy strategies evolved by the European Union[10] and other regional organizations[11], the OECD Committee on Consumer Policy[12], and Consumers International[13].

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[5] In the Government 2010-2015 Program, it is announced [at paragraphs 299 & 300]: Government will carry out an in-depth and complete review of all the legislations governing consumer protection and rights, with a view to bringing them in line with the new business environment prevailing and to make them readily understandable and accessible to the population.

[6] The globalization of financial markets and liberalization of trade, the growing interdependence among countries, the emergence of borderless economic spaces and de-regulation in many areas of economic activity have transformed the world economy, and are creating new dynamics in the functioning of the international markets that directly affect the consumer.

[7] As to international initiatives, vide S. Lovetski, *Les Sources Internationales du Droit de la Protection des Consommateurs* [Mémoire Maîtrise en Droit International, Université du Québec à Montréal, 2008].

[8] The UN General Assembly adopted by consensus on 9 April 1985 (General Assembly resolution 39/248) the Guidelines for Consumer Protection; these guidelines were amended in 1999 to incorporate sustainable consumption.

[9] Vide UNCTAD, *Manual on Consumer Protection* (2004).

[10] Vide, for instance, EU *Green Paper on the Review of the Consumer Acquis* (2007), EU *Consumer Policy Strategy 2007-2013*, the 2008 *Proposal for a Directive of the European Parliament and of the Council on Consumer Rights* [COM(2008) 614/3]

[11] In 1973, the Parliament Assembly of the Council of Europe adopted a Consumer Protection Charter [Resolution 543(1973)]. Its Committee of Ministers has also issued recommendations to Member States on various consumer issues.

1.1 Background of the study

A distinct class of legal specialists other than judges first emerged in Greco-Roman civilization, and, as with the law itself, the main contribution was from Rome in the period from 200 BCE to 600 ce. In the early stages of both Greece and Rome, as later among the German tribes who overran the Roman Empire, there was a prejudice against the idea of specialists in law being generally available for a fee. The assumption was that the citizen knew the customary law and would apply it in transactions or in litigation personally with advice from kinsmen. As the law became more complex, men prominent in public life usually patricians found it necessary to acquire legal knowledge, and some acquired reputations as experts. Often they spent periods serving as magistrates and in Rome as priests of the official religion, having special powers in matters of family law. Among the German tribes, noble experts were allowed to assist in litigation, not in a partisan fashion but as interpreters (Vorsprecher) for those who wished to present a case but felt uncomfortable doing so themselves. The peculiar system of development of early Roman law, by annual edict and by the extension of trial formulas, gave the Roman patrician legal expert an influential position. He became the jurisconsult, the first nonofficial lawyer to be regarded with social approbation, but he owed this partly to the fact that he did not attempt to act as an advocate at trial a function left to the separate class of orators and was prohibited from receiving fees.

The legal profession is in the midst of a dramatic transformation, and it is not leading the rapid change that is occurring in the world. Legal futurists and commentators cite many factors effecting this change that were in play long before the collapse of the global economy in late 2007. They also agree that once the economy improves, the profession will not return to pre-recession prosperity. Patrick Lamb, who writes and speaks about the change taking place in the profession in the ABA Journal's "The New Normal" blog, observes that lawyers suffer from an incredible lack of interest in understanding the forces that are changing the foundation of the profession. To succeed in this new reality, attorneys need to keep abreast of the changes so that

[12] Vide, for instance, the 1999 Guidelines for Consumer Protection in e-commerce, the 2003 Report on Consumers in the Online Marketplace, the 2006 Report on Effectiveness of Enforcement Regimes, and the 2007 Recommendation on Consumer Dispute Resolution and Redress.
[13] In particular, Model Law for Africa: Protecting the African Consumer (1996).

they are prepared to assist, counsel, and advise their clients. Lawyers also must be aware of these challenges so they can take advantage of the opportunities for those prepared for what lies ahead.

Contrary to conventional understanding, there were antecedents of a legal profession outside Europe prior to the spreading of such ideas through European colonialism. In China, for example, there was a long history of unofficial legal advisers often young men preparing to take imperial examinations for official appointment who assisted merchants and other laymen in the preparation of legal documents, including those needed to commence litigation. Although operating in the shadow of an imperial legal code that prohibited the instigation of litigation, these quasi-lawyers also enjoyed a fair measure of tolerance from officialdom, which suggests that at least some of them may have served a useful purpose.

In regards to leagal profession, four years ago, The Economist ran an article entitled: "Law Firms: A less gilded future"[14]. The piece painted a bleak picture of the legal profession. It mentioned that, according to the annual survey by the National Law Journal, the 250 biggest U.S. law firms in 2009 shed more than 9,500 lawyers. In recounting the collapse of the big American IP firm Howrey in the midst of the 2009 recession, the article proposed that a downward trend was beginning to hit the profession and was likely here to stay. Increased competition for market share; plummeting profits; clients' determination to keep their bills down. Those were mere symptoms of a graver malady.

This pessimistic view has been echoed by legal commentators, scholars and lawyers. One only has to look at the shelf at the local bookstore, where the titles of the books on the legal profession speak volumes: The Lawyer Bubble, Declining Prospects, The American Legal Profession in Crisis, Failing Law Schools, The End of Lawyers, The Vanishing American Lawyer[15],

The Destruction of Young Lawyers, The Betrayed Profession, The Lost Lawyer The assault on the legal profession and its way of doing business has two facets the first internal, the second

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[14] *The Economist* (May 5, 2011).

[15] Steven J. Harper, *The Lawyer Bubble, Declining Prospects* (2013); Michael Trotter, *Declining* Prosects (2012); James E. Moliterno, *The American Legal Profession in Crisis: Resistance and Response to Change* (2012); Richard Susskind, *The End of Lawyers* (2010), Thomas Morgan, *The Vanishing American Lawyer* (2010); Douglas Litowitz, *The Destruction of Young Lawyers: Beyond One L* (2006); Sol M. Linowitz & Martin Mayer, *The Betrayed Profession: Lawyering at the End of the Twentieth Century* (1994); Anthony Kronman, *The Lost Lawyer: Failing Ideals of the Legal Profession* (1993).

external. The assault on the legal profession and its way of doing business has two facets the first internal, the second external.

Internal Concerns; Let me first turn to internal concerns. Discontent within the legal profession runs deep. A fair share of the blame is laid at the feet of big law firms. As one Canadian commentator says, "most law firms around the world still practice law the way it has been practiced for centuries; a labour-intensive endeavor carried out by high-priced personnel billing by the hour. Protected by legislated monopolies, law firms have been allowed to grow complacent, fat and inefficient"[16]. And the law firms have only gotten bigger. In 1960, the largest American law firm had 169 lawyers.

External Concerns; from concerns within the legal profession, let me turn to voices of concern from outside the profession. Sometimes the criticism is gentle the mild contempt of the jokes about lawyers that turn on motifs of self-importance and greed. Other criticisms are more substantive. The main one is that justice is no longer accessible. Lawyer fees are too expensive. Court proceedings are too complicated and too long. Going to court is a last resort, critics say. Point me to other experts that will help us deal with the matter more efficiently, they demand.

Statistics support the view that accessing the justice system with the help of a legal professional is increasingly unaffordable to most people. Nearly 12 million Canadians will experience at least one legal problem in a given three-year period, yet few will have the resources to solve them. According to an American study from a few years ago, as much as 70%-90% of legal needs in society go unmet[17]

The sad truth is that around the world, the legal profession and the courts are often not fulfilling the expectations of consumers of legal services. Legal systems everywhere are experiencing an access to justice crisis that cries out for innovative solutions. Legal aid funding and coverage is not available for most people and problems, and the cost of legal services and length of proceedings is steadily increasing.

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[16] Mitchell Kowalski, *Avoiding Extinction: Reimagining Legal Services for the 21st Century* (2012), at p. xiii.

[17] Russell Engler, "Connecting Self-Representation to Civil Gideon: What Existing Data Reveal about when Counsel is Most Needed" (2010) 37 *Fordham Urban L.J.* 37, at p. 40 (citing Legal Services Corporation, *Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low Income Americans*, updated report (Washington, D.C.: Legal Services Corporation, September 2009).

Fulfilling the public's expectations for justice in a phrase, providing "access to justice" is vital. It is vital to providing the justice to which every person is entitled. Statistics show that people who get legal assistance in dealing with their legal problems are much more likely to achieve better results than those who do not[18]. As servants of justice, lawyers have a duty to help solve the access to justice crisis that plagues our legal systems. It is vital to the rule of law. And finally, it is vital to the future of the profession. If the legal profession fails to meet the demands of the public for prompt and affordable justice, people in search of justice will go elsewhere, rendering the legal profession increasingly irrelevant.

1.2 Problem statement

Consumer protection and financial literacy can contribute to improved efficiency, transparency, competition, and access in retail financial markets by reducing information asymmetries and power imbalances between providers and users of financial services. Financial consumer protection has gained significance in policy debates, especially since the onset of the financial crisis in 2008.

One theory suggests that better consumer protection, including effective disclosure, fair treatment and reliable dispute resolution, would encourage greater use of financial services and lead to greater access to credit. This effect, however would only apply to the previously underserved groups. For the already-served groups the impact may be the opposite, where greater transparency on the available products, for example a credit card with high rates and fees, would induce clients to reduce the use of services. At the country level, the result on financial access in terms of the number of individuals served may be positive, negative or neutral.

Another possible outcome, at least on the credit side, is better loan repayment and lower nonperforming loans, as consumers are able to better evaluate available options and avoid taking loans they are not able to repay. However, country-level data on non-performing loans is unreliable and often driven by a number of macroeconomic and institutional factors that are difficult to control for.

[18] Action Committee on Access to Justice in Civil and Family Matters, p. 4.

1.3 Purpose

The general purpose of the research is to the effectiveness of legal regime and challenges in protection of consumer rights in Uganda

1.4 Objectivities

1. To examine the effectiveness of legal regime on protection of consumer rights.
2. To examine the current perceptions of the legal profession as a whole among dissatisfied consumers?
3. To examine the participants describe the conditions in which the unsatisfactory legal services were provided?

1.5 Research question

1. What is the effectiveness of legal regime on protection of consumer rights?
2. What are the current perceptions of the legal profession as a whole among dissatisfied consumers?
3. What are the participants describe the conditions in which the unsatisfactory legal services were provided?

1.6 Scope

The research was done in Kampala capital city which lies within the Kingdom of Buganda, in Central Uganda. The study was limited to effectiveness of legal regime and challenges in protection of consumer rights in Uganda which will therefore be covered within a period of 4 month April 2016-July 2016.

1.7 Theoretical framework

As indicated above, the task of this study was construed on effectiveness of legal regime and challenges in protection of consumer rights in Uganda.

A theoretical framework needed to be adopted for predicting when traders will comply with the law. That is a complex issue on which sociologists, psychologists and others have made contributions. In this study an economic perspective is adopted, predicated on the assumption that traders comply with the law when the costs that they will incur if their unlawful act is detected and pursued will exceed the benefits that will accrue from the unlawful act. In other words, the adverse consequences to which a particular enforcement policy option gives rise have to be compared with the traders' likely benefits from contraventions as well as the chance of escaping detection and enforcement procedures altogether.[19]

The costs generated by the policy option. Although the focus is on the primary administrative costs of using the particular enforcement device, the study also takes account of "secondary" costs which arise as a consequence of such use. These include, importantly, what might be called "error costs", the adverse consequences to particular individuals and to society more generally if the processes generate some inappropriate condemnations and sanctions. These are important because some processes, notably those involved in criminal justice systems, involve more elaborate procedures for reducing such errors than others, for example, administrative processes[20].

Ideally, data would have been obtained both to concretise the predictions on the relative effectiveness of different policy options and to test them. So, for example, the evidence might reveal that the administrative costs of one particular option are low compared with those of another. Then it may have been possible to find data on the levels of compliance as between systems using or not using a particular policy option, attempting to control for all other influences on the compliance rate. However, as has been mentioned above, limits in terms both of resources and of time meant that such quantitative analysis was not possible. It was decided, therefore, to proceed on the basis of an intuitive appraisal of the relative costs and benefits of different options, fortified by such data as could be made available. In addition, it was felt that interviews in the case-studies could be used to judge the plausibility of the intuitive appraisals and, more importantly, to seek the subjective opinions of officials working in the systems on the effectiveness predictions. As is indicated in the relevant sections of the report, only a very

[19] Paras. 158-163
[20] Paras. 164-170

limited amount of useful data was obtained, but the interviews were very valuable in channelling ideas on the relative effectiveness of the policy options.

1.8 Methodology

Methodology utilized qualitative in nature as, according to Leedy[21], this methodology is aimed at description. By utilizing qualitative methodologies the research is able to evaluate both formal and normative aspects of political activity. Qualitative research is used in several academic disciplines, including political science, sociology, education and psychology. According to Peshkin (200:134) in Patton, it usually serves one or more of a set of four purposes: description, interpretation and evaluation of a hypothesis or problem.

According to QSR (a, 2011:115), qualitative research "is used to gain insight into people's attitudes, behaviors, value systems, concerns, motivations, aspirations, culture or lifestyles." QSR continues to explain qualitative research as a method of making informed decisions in both business and politics.

This study utilized a descriptive approach as it was necessary to observe and describe the challenges of creating the appropriate laws in regards to legal profession. Thus the researcher utilized a descriptive approach so as to be able to assess the effectiveness of legal regime on consumer rights. The descriptive approach may be considered as inductive, according to Rhodes (1995:44) as conclusions are drawn from repeated observations that is letting facts speak for themselves.

1.8.1 Reliability of the instrument

Reliability is the measure of the degree to a research instrument yields consistent results after repeated trials. According to Christensen (1988), reliability of the questionnaire, the researcher employed the methods of expert judgment and pretest in order to test and improve the reliability of the questionnaire.

[21] Established on 2001:148

1.8.2 Data gathering procedures

According to Krishnaswami (2002:197) data are facts, figure and other relevant materials. past and present that serve as bases for the study and analysis. He further states that data may be classified into primary and secondary sources. The researcher will obtain an introductory letter from the School of law of Kampala International University Kampala, Uganda, which he will present to the heads of legal institutions, heads of government ministries and authorities and leaders of Non Governmental Organizations which will involve in the study. The researcher therefore will develop rapport, sought for consent and appointments with respective respondents to obtain the information.

1.8.3 Ethical considerations

To ensure that ethics is practiced in the course of the study as well as utmost confidentiality for the respondent and the data provided by them, the following will be done, (1) Coding of questionnaire (2) The respondent will be requested to sign the informed consent ;(3) Authors mentions in the study will acknowledge within the text;(4) finding will be presented in a generalized manner.

1.9 Significance of the Study

This study is significant because the findings could assist policy makers make informed policy decisions that could help promote consumer rights in Uganda.

The findings of the study will also fill the intellectual and information gaps about the legal criteria adopted while enhancing a legal regime.

The findings could be invaluable in guiding policy implementers to promote consumer rights and regulations in Uganda

Finally, this study will be carried out in partial requirements for the award of bachelors of laws degree of Kampala international university which will enable the researcher obtain the degree.

1.10 Limitations of the study

The researcher expected some challenges during the study. Poor attitude of some respondents will be one of such. For example the officers in respective departments were skeptical about responding to some questions. Some information was regarded confidential and therefore bringing difficulty in accessing it. However, the researcher built rapport and explained fully the purpose of the study, which convinced the respondents to give the confidential information.

The researcher also met some financial challenges. The process of data collection took a period of 3-4 weeks, which means that the researcher was incurring transport and other support costs. However, the researcher intended to operate on minimal expenditure. The researcher did not get the respondents in time as planned. Some of the respondents did not respect time and appointments. Also the research faced the challenge of poor roads which were brought about the heavy floods that were evident in the region. This affected the transport system the researcher was using at that time.

1.11 Chapterization

This study was arranged as follows: Chapter one covers the introduction, general background, problem statement, objectives of the study and the literature review and methodology that guided the study and chapterization.

1.12 Literature review

1.12.1 Consumer rights, and how does the legal system protect them

Rights are the counterparts of obligations. A right in your hands is only meaningful to the extent that it creates an enforceable obligation on someone else to do something. A good example is the "right to silence". It takes effect as an obligation imposed on the court not to draw adverse inferences from the silence of the accused. Other rights operate in a similar way.

The obligation in each case arises and is enforced through the legal system. The source of the right and the corresponding obligation might be in a contractual agreement, or it might be in a statute; it might arise elsewhere at general law.

In each case, the right is enforceable according to its terms through a legal process. The force component of the enforcement is intimately supplied by the police power of the state.

It follows that rights in this legal sense have no coherent existence outside the context of a legal system.

If the question in the specimen paper is approached on this basis, the examination candidate must evaluate the efficiency of the legal system in enforcing the consumer's legal rights.

The question requires the candidate to consider whether:

Consumers are aware of their rights and the remedies available to them, or have access to adequate advice about those matters;

Consumers can access legal remedies without prohibitive cost;

Remedies can in practice be exercised against the recalcitrant supplier.

1.12.2 Duties of Providers and Consumers[22]

18 (I) At any time before payment is made for any goods **u** (whether sold as new or used) a provider shall, in addition to the requirements of any other enactment relating to the packaging, labelling or description of goods, provide to the consumer, verbally or in writing in the English language, all information concerning the goods being sold.

(2) The information referred to in subsection (1) is-

(a) where applicable, the origin, price in the currency of Jamaica, care, terms, components, proper use, weight, size, instructions for assembly and installation of the goods; and

(6) where chargeable, the professional fees of the provider in respect of the goods.

(3) Where a provider refuses or fails to comply with subsection **(1)** he shall, notwithstanding anything to the contrary in the warranty document, be responsible for any damage done to the goods by the consumer that can be directly attributed to the consumer's lack of information.

(4) **A** provider who contravenes subsection **(1)** commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding two hundred thousand dollars.

19.-(1) A consumer shall at all times be entitled to check the weight, volume or other measurement of any goods that he may **goods.** be purchasing where the weight, volume or other measurement of the good materially affects or determines the price thereof. (2) For the purposes of subsection **(I),** any provider of any good that is sold by reference to its weight, volume or other measurement shall provide appropriate measurement standards in accordance with the Weights and Measures Act for use by the c consumer at the time of purchase.

(3) A provider commits an offence if in selling or purporting to sell any goods by weight or other measurement or by number, he delivers or causes to be delivered to the consumer, a lesser quantity than that purported to be supplied or that corresponds with the price charged.

[22] Part IV

CHAPTER TWO

LEGAL REGIME ON PROTECTION OF CONSUMER RIGHTS

2.1 Institutional framework

Uganda's economy until very recently has been highly regulated. When competition was not deliberately and negatively interfered with, it was "encouraged" rather haphazardly. Competition[23] was dealt with usually in the context of other legislation and not directly. Therefore, one can hardly talk of an institutional framework for competition[24]. Rather, it is more meaningful to call it a series of sectoral arrangements. In addition, and perhaps to be fair to the authorities of the day, the majority of firms in Uganda are small family-controlled entities, making the need for an enforceable competition regime perhaps less obvious.

In the past, phenomena such as mergers, takeovers, monopolies and price cartels were rare and, even when they did occur, their possible harmful effects were not considered to be serious by the authorities. Following deregulation in recent years, the government has, mostly by default, taken the sectoral approach, but curiously only for those sectors where control[25] by government or its agents is still considered of paramount importance. This led to the formation of various sectoral authorities and commissions, like the National Drug Authority (NDA), Uganda Communications Commission (UCC) and Uganda Insurance Commission (UIC) among other sectoral regulatory agencies.

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[23] Competition may be defined as an effort by two or more parties to ensure the custom of a third party by offering the most favourable terms. A competitive market is one in which a large number of sellers and buyers vie or compete for identical products or commodities, deal with each other freely, and retain the right of entry into and of exit from the market.

[24] Under an ongoing law review process in Uganda, an institutional framework has been mooted that would cover business-related laws including competition law in a more comprehensive manner. The Ministry of Tourism, Trade and Industry (MTTI) has drafted a competition law scheduled to be tabled before Parliament in 2003.

[25] Sectors like arms manufacturing and importation, trade in drugs and the utilities sectors are still considered a responsibility of the state and therefore should not be left entirely to the private sector. Semi-autonomous publicly funded bodies oversee these sectors.

2.2 Sectoral set-up

As noted above, sectors where deregulation was instituted are those considered important in regard to anticompetitive activities and actions of unscrupulous firms and persons that could be injurious to the economy and to individual consumers. This would be particularly dangerous in areas where one, two or three firms may be operating, raising the prospect of price-fixing, attempts to undermine competition through hostile takeovers and creation of virtual monopolies etc. Through agencies like the UCC, the government has prescribed safeguards and some infrastructure. The framework covers licensing, supervision, regulation and surveillance. The agencies have investigative powers as well as powers to discipline, handle consumer complaints and to arbitrate in disputes involving firms. The agencies enjoy a large measure of operational and financial autonomy, although they are still under the oversight of a Minister responsible to Cabinet and have ultimately to account to Parliament through the relevant Minister.

In addition, there are intra-sectoral councils and associations like the Pharmaceuticals Council and Association, Law Society and Council, Medical Doctors Council and Association and the Broadcasting Council with powers to set or advise on operational and ethical standards and a code of conduct; powers to investigate members (individuals or companies) and either directly take or recommend disciplinary action. In this respect, this voluntary sector association may act on its own or at the request of or in concert with the sector agency or government.

2.3 Competition regulation

As far as can be established, there is currently no law or set of laws in Uganda that addresses the exclusive subject of competition in business. Private monopolies are not normally subjected to any restrictions or control, but in certain sectors such as financial and insurance there are certain rules at least.

2.3.1 Institutional framework for consumer protection

The primary purpose of consumer protection regulation is to protect consumers, thus ultimately a sound institutional framework for consumer protection must be developed simultaneously. Public agencies can and should be established for the control and enforcement of effective

regulation, as well as to enable and document the public discourse, and raise public awareness of their rights.

2.3.2 Key points to consider

Distinct roles: The institutional framework for the defence of the consumer can serve two distinct purposes: the enforcement of existing regulation(s) on the one hand, and consultative activities for future regulatory on the other. Different countries have adopted different approaches to the division of these roles, but it should be carefully considered that entrusting one entity with a dual mandate could cause complications and generate confusion and possible conflicts of interest. For example, entrusting a financial services regulator with prudential as well as consumer protection mandates could cause the latter issue to be treated as the less important of the two duties. Such potential conflict may be still more acute were a financial services regulator to be entrusted with industry promotion (such as financial inclusion initiatives) as well as consumer protection.

Independence: A consumer protection regulator should consider all the necessary means to guarantee the independence and integrity of consumer protection institutions. Independence should also be assured with regard to suppliers (through publishing and applying transparent procurement protocols), and also from the government itself and other public institutions. Indeed, it is likely that the mandate of other state bodies will enter into conflict with the interest of the consumer, such as the promotion of trade or the promotion of foreign investment for instance. Consideration of these issues should include reflections on:

Appropriate standards on conflicts of interest for board members

2.4 Budget autonomy

i. Enforcement institutions (Consumer protection agency)
ii. Coordination between other public administrations on consumer rights enforcement
iii. Market surveillance and control and product testing
iv. Registration and issuance of licences for certain type of activities
v. Consumer advisory councils or committees

Their function is to set up consultative mechanisms to be an instrument for proposing reform for government policies on consumer protection. They could be composed of either industry stakeholder representatives and consumer representatives sitting together or consumer representatives sitting as a separate body with technical advisers. Their function would be to:

Consider data on consumer abuses and consumer protection enforcement, and make proposals for improvement through regulation, legislation and good practice

Organise awareness raising activities for the consumers.

2.5 The challenge of utilities regulation

Principal utilities include water, energy, public transport, telecommunications & post and sanitation. These services present certain common characteristics which allow for a common analysis regarding consumer protection strategies.

They are structured as 'natural monopolies', that is businesses structured as a network whereby:

The 'barrier to entry' – and the high initial investment are such that it is virtually impossible for small actors to compete with the monopoly or quasi-monopoly industry leader.

2.5.1 Institutional issues:

The lawmaker should regulate the structure of utilities markets; the law-making process should imply a public debate (whether direct or indirect, via representatives).

2.5.2 Key decision points include:

Licensing of the actors (public, private, ownership structure, technical capacity etc).

The representation of consumers vis-a-vis the management of utilities and regulatory authorities (ie regular consultation with consumer associations or community representation in the monitoring of service providers).

How to protect the interests of those consumers unserved by fixed networks; government has (or should have) responsibility for all, not just those served by a network of pipes or wires.

2.6 Access and price

The issue of access to utilities is perhaps the most difficult to articulate in the form of a regulation.

Contrary to most consumer protection issues, access concerns those contracts that are not enacted, or the 'non-consumer'. The lawmaker therefore can opt to consider the issues as a policy and set up incentives to serve the underserved; or the lawmaker can take the position that water is a right, and penalize the non-delivery of services. Or a combination of both approaches can be adopted. Some consumer advocates, such as Namibia Legal Aid, have taken the position that failure to provide water and sanitation services by Namibia Water Company is a violation of the country's Constitution. The South African constitution has similar provisions for a range of vital services, and yet many municipalities fail to deliver these services comprehensively. However, a system based on judicial challenge comes up against the reality that development of infrastructure can take a very long time as physical systems have to be constructed.

The lawmaker can decide whether to regulate the tariffs of utilities, connection charges and procedures and the relevant taxation regime – VAT in particular taking in consideration the issues of sustainability on the one hand, and access on the other hand.

Considering the monopolies and parastatals of utilities markets, and therefore the absence of bargaining power on the consumer side, the lawmaker might consider unfair contract terms to be even more egregious than in the general contract law regulation.

The main challenge for the lawmaker will be creativity in establishing regulatory and redress mechanisms which:

Are a strong incentive for extension and improvement of services

Allow for the regrouping and representation of consumers

Are manageable in terms of administration of justice.

2.7 Quality

Finally, perhaps the most obvious regulation item is the definition of quality. Critical issues will be:

Whether to regulate directly the quality of service, (including extent and reliability) or to rely on licensing mechanisms for the providers.

Quality of product, eg the establishment of norms and standards for drinking water quality.

The establishment of independent bodies to monitor and control quality.

2.8 Financial services

Financial services provide a particularly challenging area for consumer rights advocates due to the diversity of institutions which offer financial services, varying capacities and jurisdictions of regulators and the complexity of the services themselves.

Generally speaking, consumer advocates should strive to establish consistent and frequent dialogues with the Central Bank or other applicable financial services regulator. A complication arises when dealing with non-regulated financial service providers, such as non-government organisations which are delivering microfinance services to the poor, or revolving savings and loan associations such as SACCOs (which may or may not be regulated).

In those instances, consumer advocates should also look for allies within the financial services, like trade associations and networks of microfinance associations. For example, National counsel, which profess to adhere to six principles of client protection. Further, the international donors and investors who are signatories of the Responsible Investing Campaign can also be called upon for assistance and collaborative efforts to protect the consumer.

2.9 Access to redress

Redress mechanisms are at the core of the consumer protection regulation. Not all redress issues however are contained in consumer protection law. Civil procedure and other sectorial legislative codes must be utilised in many cases.

There are numerous indicators available to measure access to justice in a given territory. The IFC Doing Business report, for instance, provides annual comparisons regarding numerous issues, including some related to access to justice. The "contract enforcement" indicators take into account the number of procedures, the delays and the cost involved in the enforcement of a contract.

2.10 Analysis of the regulation

Traditional/customary judicial institutions: traditional dispute resolution mechanisms are sometimes in place locally and present several solid advantages to handle small consumer claims at a local scale. That said, any move in this direction needs to be accompanied by efforts to train traditional authorities with consumer protection laws and principles, as well as standards of fairness in the procedure.

Small claims procedures: a simple idea is to introduce a simplified process for small claim procedures, in order to reduce costs and delays, while still using the same courts and magistrates.

ADR: in some countries mechanisms are invented, which do not utilise existing courts, in order to alleviate procedural delays and costs and look for conciliations.

This may have the advantage of extending jurisdiction to state-provided services that might otherwise be largely exempt:

Ombudsmen: they are government or semi-government bodies. Their decisions are usually not binding, but rather in the form of mediation, weighted by their moral and technical authority. Their mandate can be larger than the strict application of the law, to also include a position to enforce industry standards and procedures in the public and private sectors.

Statute-based tribunals: they can provide simplified procedures and specific industry knowledge; they may be attached to state regulators as in infrastructure.

Chambers of Commerce, which have been used with success in financial services dispute resolution (in particular in Peru).

Class action: the rationale of class action is to consolidate individual claims, which might not ordinarily be brought individually due to the smaller sums involved and to lower judicial expenditures while providing the consumer with a powerful tool to aggregate and act as a group plaintiff.

Standing requirements: An alternative to class action mechanisms is the modification of judicial 'standing' requirements, so as to order the recognition of consumer associations, which do not meet direct standing requirements (meaning that the consumer organisation did not directly experience harm), to represent consumers in court. This is a powerful tool for consumer associations as they can use their resources and expert knowledge directly to promote the enforcement of rights and the amelioration of jurisprudence.

Effective legal aid: an effective legal aid system to support judicial costs is an important element to the introduction of actions in justice from the consumers.

Legal aid mechanisms can be established by NGOs, and consumer advocates should explore whether local law faculties could be interested in establishing law student and faculty-assisted consumer protection legal aid.

CHAPTER THREE

CONSUMER PROTECTION RIGHT AND A POLICY

3.0 Introduction

The Uganda constitution Guidelines for Consumer Protection, adopted in 1995, propose a list of objectives described as 'legitimate needs': right to be heard; right to information; right to safety; right to choose; right to consumer education; right to consumer redress; freedom to form consumer groups; promotion of sustainable consumption patterns; and promotion of economic interests of consumers. Several of these objectives appear to have their origins in human rights, such as the right to safety for instance, which echoes the Universal Declaration of Human Rights' Security of Person. The freedom to form consumer groups and availability of redress can be traced both to political freedom, as well as to the right to access to justice.

The consumer advocate should therefore consider and evaluate the relative importance of these multiple objectives for the consumer in their own country.

3.1 Trade Policy Overview

Uganda operates in a relatively free-market environment after the pursuance of an economic reform agenda in the late 1980s through the 1990s to date aimed at generally boosting the national economy, reducing government involvement in business and encouraging private sector development. Further, to correct the imbalances in the factor allocation system, the reform agenda aims to encourage export diversification and restore the credibility of the fiscal and monetary policies. Trade and foreign exchange liberalisation has played a major part in this context, with the dismantling of market monopolies of parastatal bodies being a significantly bold step. Further to this, the easing of restrictive regulatory measures has consolidated the liberalisation process. As a result, there has been increased economic activity and broadening of the tax base.

The government levies the following major taxes on business entities in addition to customs duty and a 2 percent import commission which apply only to imported goods: income tax including corporate tax, withholding tax and rental income tax; value added tax (VAT); excise duty on certain products and sales

Although tax collection and administration has certainly improved since the formation of the Uganda Revenue Authority (URA), there is a perception that there is still too much discretion with the authorities leading to corruption that can only serve to undermine competition by making law-abiding behavior unattractive.

Uganda extends tariff preferences only to countries in the COMESA group and to Kenya and Tanzania under the East African Community Treaty. Nearly 800 products are covered by these arrangements. Uganda has been on the fast track in regard to intra-COMESA trade tariff reduction. In a clear sign that the country may not be ready to face competition from imports, a scheduled zerolevel tariff regime on qualifying COMESA goods by 2000 was met by resistance and protests from local manufacturers who asked the government to go slow on tariff reductions. The local business community argued that their counterparts in the COMESA region would not reciprocate, which would have a negative impact on the country's tax revenue.

Tax exemptions that are given at the discretion of the Minister of Finance have in the past been a major source of distortion. Government has come under pressure to stop giving tax waivers. Although the practice is relatively uncommon, it is possible to obtain a waiver. In order to minimise misuse of the waiver, even government departments have to pay taxes and provisions for such taxes are made in their departmental budgets.

The Ugandan Government has been very active as a shareholder and manager in many service and manufacturing enterprises ever since the creation of the Uganda Development Corporation in 1952. By the time serious divestiture started in the early 1990s, it had at least 40 parastatal bodies involved in processing and manufacturing alone. In the majority of these cases, the managers were government agents often indirectly appointed by the government. Government has today divested its stake from all facets of business where it was previously involved.

The Uganda government with its economic policy reform agenda divorced itself from business and concentrated on policy formulation and monitoring. The Ministry of Tourism, Trade and Industry is mainly involved with policy formulation and monitoring, while the Uganda Investment Authority deals with registration of applicants for major investments in manufacturing and other sectors and general investment promotion.

The industrial sector of Uganda is still small but growing steadily and is now almost completely dominated by the private sector, both local and foreign. The sector is dominated by processing industries using agricultural produce, coffee, textiles, sugar, beer, leather and tobacco being the major ones.

3.2 Competition Policy and Law in Uganda

Competition has been defined as a situation where anybody who wants to buy or sell has a choice of possible suppliers and customers.[26] Competition has also been defined as a market situation in which companies or sellers strive freely and independently and in their own interests to attract customers with a view to achieving specific economic goals, e.g. sales, profit or market shares.

Competition policy, on the other hand, is designed to prevent actions that are not ethical-performance related and which therefore offer no benefits to consumers. These actions include agreements between two actors or obstacles that prevent other actors from participating in the market or use of coercion.

In spite of the many market-oriented reforms that have taken place in Uganda, the country does not have a policy on competition. Nor does it have a comprehensive law to regulate competition. Yet market-oriented reforms can be sustained in the long run only if competition, which would result from these reforms, is protected and consolidated by legislation and suitable policies.

There is no general regulatory body or authority or Government agency in place to regulate anticompetitive practices. There are, however, a number of sectoral regulatory agencies established to protect consumers from and to prevent anticompetitive practices in certain sectors as we shall see in the following paragraphs.

3.3 Power Sector

Before the enactment of the Electricity Act, 1999, the Uganda Electricity Board (UEB), a body corporate established by the Uganda Electricity Act, was in charge of generation, transmission, distribution and supply of electricity. UEB would in addition make and recover charges for electricity, construct, evict and maintain power lines, acquire land and set prices for electricity.

[26] Defined by John Black. Oxford Dictionary of Economics – 2nd Edition 2002.

This scenario changed with the enactment of the Electricity Act, 1999. This Act established the Electricity Regulatory Authority (ERA) whose main functions are to issue licences for generation, transmission, distribution, sale of electricity and consumer complaint handling. The ERA also ensures that companies issued with licences do abide by the conditions of their licences, which may be revoked in case of continued non-compliance. Under section 126 of this Act, the Minister is empowered to form successor companies that may assume all the duties and functions of the Uganda Electricity Board, which will eventually be dissolved.

Consequently, three companies have been formed to take over the functions of UEB. These are Uganda Electricity Generation Company Ltd, Uganda Electricity

Transmission Company Ltd, and Uganda Electricity Distribution Company Ltd. These companies have no competitors yet but plans are underway to totally divert them to private operators. This will eventually create competition, which may result in better services for the consumers.

3.4 Telecom

The Communications Act, 1997, provides for the restructuring of the communications industry in Uganda. The Act establishes the Uganda Communications Commission and provides for its functions. It also provides for the incorporation of Uganda Telecom Ltd and Uganda Post Limited. The Act also liberalises and introduces competition in the industry. Competition has been introduced in the telecom sector5 through regulating and licensing competitive operators to achieve rapid network expansion, standardisation as well as operation of competitively priced quality services. Under section 57 of the Act, the Commission is mandated to encourage fair competition. Anticompetitive activities are prohibited.

Under the Act, the Commission may, of its own accord, investigate any activities which may breach fair competition, or the Commission can be alerted by any person by lodging a complaint which may constitute grounds for investigation. As a result of liberalisation of the communications sector, there are a number of players in the market and hence greater competition, which has resulted into better services to consumers. Currently, there are three major telephone companies offering both mobile and fixed lines. These include Uganda Telecom Ltd, Mobile Telephone Network (MTN) and Celtel Uganda Ltd. There are also many Radio

stations licensed by the Commission, which offer a wide range of radio services to the consumers. There are also many firms offering postal services Consumers are protected where the operators are not allowed to deny access or service to a customer except for delinquency of payment of dues or for any just cause. Operators are required to provide equal opportunity for access to the same type of services to all customers in a given area at more or less the same tariff, limiting variations to available or appropriate technologies required to serve specific subscribers.

3.5 Transport

There are a number of laws under this sector; Airport Services Charges Act 6, 1965, Ferries Act, Cap 350, Inland Water Transport (control) Act, Cap 348, Motor Vehicles Insurance (Third Party Risks) Statute No 5, 1991, Passports Act, No.6, 1982, Roads Act, Cap 345, Traffic and Road Safety Statute No.1, 1992, Uganda Air Cargo Corporation Statute No. 18, 1994, Uganda Railways Corporation Statute No. 13, 1992 and Vessels (Registration) Act Cap 349. The sector was liberalised in some aspects, for example, the Uganda Transport Company was privatised and many individuals now own buses and minibuses and vehicle owners and the drivers are now organised in an association called Uganda Tax Operators and Drivers Association (UTODA), which regulates their activities, sets fares and enforces discipline among the members. Government monopoly in air transport was liberalised and now there are a number of operators that include the East African Airline, Kenya Airways, Eagle Aviation, Africa One, etc. Government monopoly is still maintained as far as railway transport is concerned.

3.6 Financial Services

There are two major statutes that regulate the banking institutions. These are the Bank of Uganda Statute, 1993 and the Financial Institutions Statute, 1993. Fair competition can exist in the area of financial services as long as the actors acquire a licence and abide by the laws regulating the running of financial institutions. The Bank of Uganda Statute, 1993, makes provisions for regulating the issuing of legal tenders and maintaining a sound financial structure. The Central bank is established under the same statute to supervise, regulate, control and discipline all financial institutions, insurance companies and pension funds, as stipulated in section 5(j) of the statute. In its dealings with financial institutions, the central bank controls unfair trade practices by seeking their cooperation in order to maintain adequate and reasonable banking services for

the public. There is fair competition in the financial sector as long as one fulfils the entry requirements and runs the institution according to the set regulations.

In Uganda, the role of the central bank has been felt by the public in the form of closure and liquidation of banks that have failed to meet the required standards.

In some cases the directors of defunct institutions have been prosecuted[27] and personal property attached[28] to pay for mishandling customers' finances. The standards set by the central bank are uniform, whereby there is no discrimination between one financial institution and another. This ensures a level ground that is necessary to motivate new entrants into the market.

The Financial Institutions Statute, 1993[29], (FIS) deals with financial institutions extensively and includes cooperative societies, credit institutions and building societies. The regulation of financial institutions by the central bank is provided for in broader terms in the FIS.

The FIS is currently under review. The review is intended to increase capital requirements for a company to operate as a financial institution. The proposed amendment also intends to make it illegal for close relatives of owners to own more than a certain percentage of shares in a financial institution.

The central bank issues a licence to a company proposing to transact banking, building societies, or credit institutions business. There are stringent conditions[30] to be satisfied before a licence can be issued and these relate to the capacity to carry on business, and the competence and integrity of the proposed management .The central bank may revoke[31] the licence where the institution is carrying on business in a manner that is detrimental to the interests of consumers.

The role played by micro-finance institutions in promoting competition cannot be ignored. There are a number of such institutions operating in Uganda registered as non-governmental organisations. The beneficiaries of these services are usually poor people who are organised in small groups registered as members with various micro-finance institutions. There is no law in

[27] For instance Dr. Sulaiman Kigunddu former Director defunct Greenland bank served a sentence of six months in Luzira upper prison.
[28] The property of proprietors of the Defunct International Credit Bank was attached.
[29] To be referred to as the FIS hereinafter.
[30] Section 6 (1) FIS
[31] Section 11(f)

place yet to licence or regulate the running of these institutions. As a result, some of them charge very high interest rates on their loans. However, now there is a bill before Parliament to regulate the licensing and running of micro-finance institutions.

3.7 Health Services

In Uganda, health services are provided by both government and private entities and persons through government-owned hospitals and dispensaries and the private sector through private hospitals, clinics, nursing homes and maternity homes respectively. The provision of drugs is mainly done by private pharmacies and drug shops, which are scattered all over the country, but mostly concentrated in urban centres.

There are a number of statutes in place to regulate practitioners, namely Medical and Dental Practitioners Statute, 1996, Allied Health professional Statute, 1996, Nurses and Midwives Act, 1996, Pharmacy and Drugs Act, 1970, National Medical Stores Statute, 1993 and the National Drug Policy and Authority Statute, 1983. The main objective of these laws is to protect consumers of health services from unscrupulous or unqualified medical personnel. For instance, the Medical and Dental Practitioners Statute governs the activities of medical and dental Practitioners. It has established a Medical and Dental Practitioners Council which has the duty[32] of monitoring and exercising general supervision, controlling medical and dental standards and enforcing medical and dental ethics. The Statute allows medical and dental practitioners to engage in private practice on fulfilment of certain conditions. Practitioners employed in government health facilities are not barred from running private clinics. Therefore, there is fair competition as far as provision of health services is concerned.

3.8 Civic Amenities

Preservation of Amenities Act Cap 31 requires a local authority to serve a notice on owner or occupier of any premises, requiring him at his own expense to paint the walls or roof, which, in the opinion of the local authority are unsightly. The local council may order an occupier of premises to remove temporary structures which disfigure the neighbourhood. An occupier who refuses to abide by the notice can be taken to court and the court may order him or her to abide.

[32] Section 4.

3.9 Copyright

Copyright is the exclusive right to do and to authorise others to do certain acts in relation to literary, dramatic and musical works, artistic works, sound recordings, films, broadcasts, cable programmes and published editions of works.[33]

Requirements for protection

The right of protection to the work is only applicable where the work is original and is reduced in material form.

The word original was defined in the case of University of *London Press Ltd v University Tutorial Press Ltd (1916) 2 ch 601* to mean that it should not demand original or inventive thought, and that the work should not be copied but originate from the author.

Copyright work is further considered original when the author has exercised the right kind of labour, skill, or effort otherwise known as 'intellectual creation' in producing the work (see the case of *Ladbroke v William Hill (1964) ALLER 465 at 469.*

The requirement of reducing the work in material form is essential in that ideas per se are not protected but the expression of the ideas (Section 6 of the copyright & Neighbouring Rights Act and Article 9:2 of the TRIPS Agreement.)

The duration of protection granted for copyright varies with the nature of work however, general protection is for the life time of the author and fifty years after the death of the author. (Section 13 of the copyright & Neighbouring Rights Act.)

Legislation provides for the protection not only of the creators of intellectual work but also the auxiliaries (performers, producers of phonograms and broadcasting organizations). The auxiliaries help in the dissemination of such works in respect of their own rights and these are rights related to or "neighbouring on" copyright.

The terms related and neighbouring rights are used interchangeably however, it means the same thing. In the international conventions the term related right is used and in Uganda's legislation, the term neighbouring right is used.

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[33] *Halsbury's Laws of England* (vol.9) 4th edition Para. 3 pg 10

CHAPTER FOUR

ENFORCING INTELLECTUAL PROPERTY RIGHTS IN UGANDA

4.1 Introduction

The presentation briefly covers the various Intellectual Property Rights generally but narrows the scope of enforcement to only Trademarks, Patents and Copyrights. It entails the requirements for registration and protection, rights acquired and legal remedies available in cases of infringement of those rights. What amounts to infringement of Trademarks, Patents and Copyright works is elaborated.

Consumer protection can also be treated as an extension of criminal law, considering commercial torts such as the manufacture and marketing of inherently dangerous products (eg exploding ovens, defective automobiles, or harmful pharmaceuticals), which can inherently damage the social order.

Consumer protection is also implied in the contract process, and in how the parties to a contract frame their agreements. In common law countries, for example, there is an implied obligation of 'good faith and fair dealing' in every contract. This means that it is assumed that each party to the contract will do everything in its power to honour the terms of the agreement and respect the other party's rights.

CP can also be thought of as a civil or human rights issue: the right for consumers to organise themselves, to have access to information and public services, such as water, sanitation and electricity, and to defend their interests.

Consumer protection, finally, might also be a political objective, a framework for public policies in favour of the consumer. This section briefly discusses the social objective of a strong consumer protection regulatory framework.

4.2 Intellectual property

Intellectual property very broadly means the legal rights which result from various intellectual activities. These include rights relating to[34]:-

Trademark, service marks, commercial names and designations.

- Invention in all fields of human endeavor (patents).
- Industrial designs.
- Scientific discoveries.
- Literary, artistic and scientific works (copyright)
- Performances of performing artists, producers of phonograms and broadcasters (neighbouring rights).
- Protection against unfair competition.
- Trade secrets.

A trademark protects goods whereas a service mark protects services. There are different types of marks: a service mark eg IAA & AAR, a collective mark eg Mukwano, a certification mark eg UNBS, a defensive mark, an associated mark and well known marks eg Philips. The formal requirements for a trademark to be eligible for registration are;

It must be distinctive in order to enable registration under part A and capable of distinguishing goods and services to enable registration under part B. In otherwords, it should not be deceptive (misleading). Registration under part A requires the element of distinctiveness which is acquired through use eg Uganda Waragi while registration under part B requires the element of capability of distinguishing which is inherent eg Coca cola & Pepsi cola, Shell and Total.[35]

It must not be descriptive. It is descriptive if it describes the nature or identity of the goods or services for which it is used.

It must relate to particular goods or services. This is the rationale for classification, for example registration may be under part A or B as provided in the Trademarks Act. Once these formal

[34] *WIPO Intellectual Property Handbook* (2004)2nd edition ,Geneva pg 3

[35] *Section 4 (1) & (2) respectively of the Trademarks Act, 2010*

requirements have been met by the intended applicant, an application in the prescribed form is then lodged with the Registrar of Trademarks for registration in either part A or B of the register. Section 9 & 10 of the Trademarks Act provides for details of the requirement of distinctiveness and capability of distinguishing respectively.

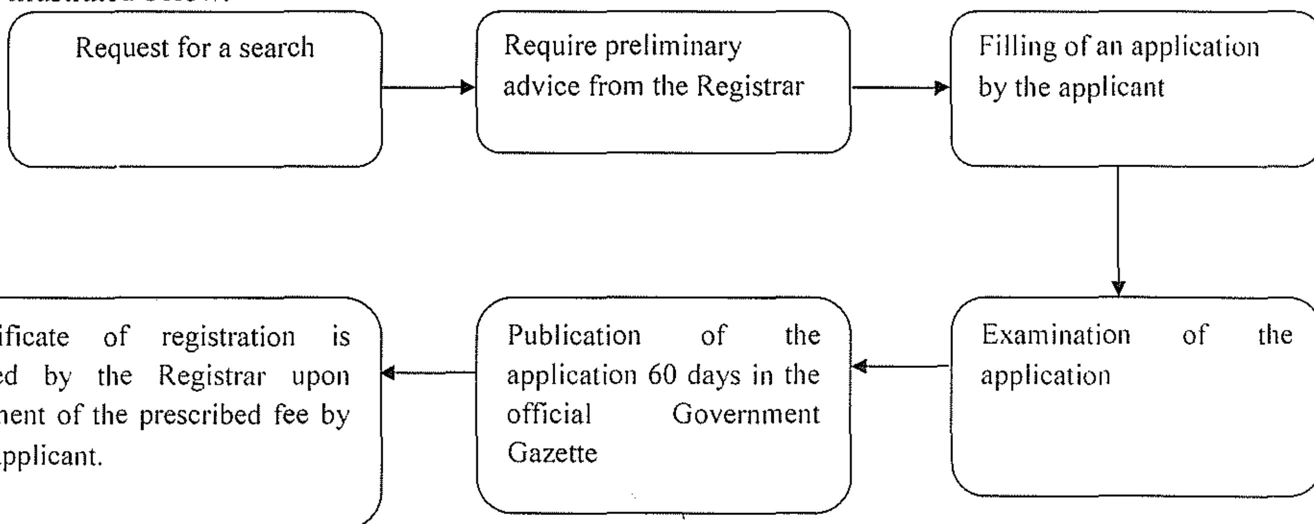
The kinds of trademarks not eligible for registration are the trademarks or parts thereof, the use of which would be:

- Likely to deceive consumers for example the mark Panasonic and panasonik in respect of identical goods and services;
- Contrary to law for example counterfeit products;
- Contrary to morality for example a picture of people enjoying beer including a Muslim ; and
- Any scandalous design.

These also form grounds upon which an application for registration of a trademark may be rejected by the Registrar.

4.3 Registration of a Trademark

Once the trademark is eligible for registration, the *Trademarks Rules SI 217-1* provides for procedural steps which must be complied with to enable domestic registration of a trademark as illustrated below:-



When the application has been opposed, a notice of opposition is filed and the grounds for opposition must be stated therein.

The party opposing registration has to file the notice of opposition with the Registrar of

Trademarks within sixty days (60) from the date of publication and upon payment of the prescribed fees.

The applicant is sent a copy of the opposition documents inorder to respond by way of a counter – statement within 30 days from the date of service by the opposing party. The counter-statement is then served upon the opposing party for any reply.

Finally, the matter is set for hearing and a decision is made by the Registrar.

Any party aggrieved by the decision of the Registrar has a right to appeal to the High Court.

Note. The parties have to be represented by an advocate.

When the application for registration has been accepted or the objection has been decided in favour of the applicant, the Registrar shall register the trademark in either part A or B of the register and maintain the register both manually and electronically. A trademark relating to goods or services shall be registered in respect of particular goods or services.

The Nice Agreement provides for various classes of goods and services under which applicants for a trademark may choose from to register goods or services

Regional Registration requires two procedures;

The first procedure is by an applicant lodging separate applications in the Industrial Property

Offices of all the states in which the applicant desires protection. Where an applicant intends to pursue this approach, he must appoint an agent to assist him carry out the process.

The second procedure is through filling a single application to ARIPO in which the applicant will designate the prospective countries where the applicant desires protection.

4.4 International Registration

This is effected through the World Intellectual Property Organisation (WIPO).

Upon registration, the owner of the trademark acquires the following rights;

- The owner enjoys exclusive rights to use the trademark in relation goods or services of which the trademark is registered subject to any limitations entered on the register. Protection of the trademark is for 7 years and when it expires, it is renewable every 10 years upon payment of a prescribed fee. (Section 21 of the Trademarks Act 2010).
- To distinguish goods and services from one undertaking to those of another.
- To institute legal action against those who infringe the exclusive rights.
- Protection of business reputation and good will.
- Protection of consumers from deception against counterfeits and inferior goods.

In case the above rights have been infringed upon, remedies are provided in the law. These include both criminal and civil remedies (Article 61 of the TRIPS Agreement). However, a person may not institute an action for an unregistered trademark to prevent or recover damages.[36]

Non registration of a trademark does not affect any legal action against a person for passing off the goods and services of another.[37]

Infringement of a trademark occurs when a person not being the owner of the trademark or authorized by the owner of the trademark uses the mark identical to or resembling it, as to be likely to deceive or cause confusion in the course of trade in relation to any goods of the same description where the use would result in a likelihood of confusion and in such a manner as to render the use of the mark likely to be taken as importing a reference to some person having the right as owner or as registered user of trademark or to goods with which that person is connected in the course of trade.

[36] Section 34 of the Trademarks Act.

[37] Section 35 of the Trademarks Act.

The test of infringement is likelihood of confusion. Likelihood of confusion is the probability that a reasonable consumer in the relevant market will be confused or deceived, and will believe that the infringers' goods or services come from, or is authorised by the actual owner.

Sections 71-78 and 80 of the Trademarks Act provides for criminal offences and penalties. Sections 79 and 81 of the Trademarks Act provides for civil remedies. These include: Injunctions (interim, temporary and permanent), Anton pillar orders, damages, account for profits, delivery up and costs of the suit.

An Injunction[38] is an order or decree by which a party to an action is required to do, or refrain from doing, a particular thing.

Seizure orders[39] (Anton pillar orders) is an interim search order which requires a person to admit another person to the premises for the purposes of preserving evidence which might be destroyed or concealed by the respondent.

A damage[40] is compensation or indemnity for a loss suffered by a person following a tort, breach of contract or breach of some statutory duty.

Account for profits is what would accrue as a benefit to the owner had it not been due to the respondents' unlawful action.

Delivery up[41] is an order by court to any person in possession of goods (which is the subject matter in issue before court) to deliver to the owner, or a person holding the goods on behalf of the owner, or to a named person.

4.5 Patents

Patents are granted for inventions. An invention is a solution to a specific problem in the field of technology. It may relate to a product or a process. (Section 7 of the Patents Act CAP 216 herein referred to as the Act.)

[38] Thomson Reuters, (2009) *Osborn's Concise Law Dictionary*, Eleventh Edition Sweet and Maxwell pg 226.
[39] *ibid* pg 371
[40] *ibid* pg 132
[41] *ibid* pg 139

For an invention to qualify for patentability, it must meet the following three conditions:

i. Novelty (new). Section 9 of the Act.
ii. Involve an inventive step (non obvious). Section 10 of the Act.
iii. Industrially applicable (useful). Section 11 of the Act.

In order for an invention to be eligible for patent protection, the applicant must ensure that the invention falls within the scope of patentable subject matter. (Article 27:1 of the WTO

Agreement on Trade – Related Aspects of Intellectual Property (TRIPS Agreement) and section 8 of the Act.)

The general rule is that patent protection shall be available for inventions in all fields of technology however, there are exceptions. Examples of fields of technology which may be excluded from the scope of patentable subject matter are provided in section 7(2) of the Act which includes the following:

i. Discoveries of material or substances already existing in nature;
ii. Scientific theories or mathematics methods;
iii. Plants and animals other than microorganisms and essentially biological processes for the production of plants and animals , other than non – biological and micro biological processes;
iv. Schemes, rules or methods, such as those for doing business, performing purely mental acts or playing games;
v. Methods of treatment for humans or animals , or diagnostic methods practiced on humans or animals (but not products for use in such methods); and
vi. Mere presentation of information.

The TRIPS Agreement further specifies that members may exclude from patent protection certain kinds of inventions, for instance inventions the commercial exploitation of which would contravene public order or morality. (Article 27:2 of the TRIPS Agreement)

A patent may be granted by either a national, regional or international office depending on the mode of application by the applicant.

Upon registration, the patent owner acquires the following rights as provided in section 25 of the Act;

Exclusive rights to exclude others from exploiting the patented invention unless authorised by the owner. Protection of patents is for 20 years.

To institute legal action for infringement. Infringement of an exclusive right involves the unauthorised exploitation of the patented invention by a third party. The patent owner has the onus to enforce the rights infringed upon in courts of law.

To make, import, offer for sale, sell and use the product.

To use the process and do any of the acts in (iii) above in respect to the product obtained directly by means of the process.

To assign or transfer by succession the application for a patent or the patent.

To establish infringement, the patent owner must prove the following:

The carrying out of a prohibited act, which is an act done by any person or a licensee in lieu of the acts specified in section 25 (1) of the Act exclusively for the patent owner subject to the provisions of sections 27, 28 and 37 on the scope of protection, limitation and licence contracts respectively.

The prohibited act must have been done after the publication of the patent application . or issuance of the patent where no early publication occurred;

The prohibited act must have been done in the country where the patent has been granted;

The prohibited act must be in relation to a product or process falling within the scope of a claim of the patent.

Once infringement is established, the remedies available to the successful party are an injunction, damages and any other civil remedy depending on the nature of the claim. (Section 26 (2) of the Act.)

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusions

Benefits of consumer protection and competition are many to promote a healthy and productive consumer market, entrepreneurship and innovation environment.

Consumer challenges can effectively be addressed through stakeholder engagements, partnerships at national, regional, bilateral and multilateral levels through sharing of experiences, expertise, mitigating mechanisms rapid alerts, capacity building and technical assistance facilitation.

Policy, legal and regulatory framework reform to address the consumer plight, consumer awareness, empowerment, information and outreach remains key to address the evolving global market trends, life styles and related challenges of scams, crime and fatalities.

The best policing, enforcement, cost effective and sustainable mechanism is consumer awareness and empowerment.

Uganda has no comprehensive law covering competition. However, in general, government and government agencies and functionaries are aware of the benefits fair competition can confer on the economy and on the consumer. From a situation of overregulation the economy has swung to one in which government is loath to intervene except in a few select sectors considered too sensitive to be left entirely to the vagaries of market forces.

Privatisation and liberalisation call for a certain level of discipline on the part of all players in the marketplace, but, except in a few restricted sectors, there are no benchmarks, no parameters and no monitoring processes or systems to ensure that discipline. Monitoring of competition is not synonymous with interference, but as the Ugandan economy continues to grow, publicly owned companies will become more and more important and successful small companies (and those no so small companies) will be targets for hostile takeovers.

The challenges affect consumers across the market irrespective of being literate or illiterate.

Consumers, scrupulous businesses and the country at large remain at a loss.

Effective consumer protection and competition frameworks are a perquisite in any liberalized environment.

Developments like the mergers and takeovers in the local beverages sector need rules and monitoring to protect the consumer and the economy generally and to enhance competition. At the moment, those rules and monitoring systems do not exist.

The subject of vertical restraints, which are generally classified as restrictive trade practices (RTPs), is controversial because most of the instances of their occurrence entail claims of efficiency gains. Businesses believed to be engaged in RTPs argue that their aim is removal of pricing distortions, optimized investment levels and avoidance of transaction costs. They insist that these must be offset against alleged anticompetitive consequences. The difficulty in evaluating these types of arrangements lies also in the fact that, while they arguably put restrictions on the firm's ability to compete freely, they may at the same time be efficiency enhancing.

5.2 Recommendations

Competition policy should be provided with a home under the supervision of the Ministry responsible for commerce and industry, similar to the Monopolies Commission in the UK or the Bundeskartellamt in Germany. It should be the responsibility of this new agency to put in place the benchmarks for proper conduct within the competition law and the mechanisms for monitoring and sanctions.

Uganda should speed up the process of enactment of a competition law, of course taking cognisance of similar developments underway within the COMESA framework as well the EAC during the soon-to-be concluded commercial law reform exercise.

There is an obvious absence of an independent law, which clearly defines government policy on consumer protection and competition, outlines the rights of the consumer, establishes an

institution or institutions specifically to handle consumer affairs and provides for an alternative dispute resolution system which would expedite redressal of consumer disputes. There is also a need to establish a competition authority or agency to specifically handle cases of anticompetitive practices.