

**IN THE MATTER BEFORE THE BOARD
OF THE COMPETITION AND CONSUMER
PROTECTION COMMISSION**

BETWEEN

Ms. Monda Konayuma

COMPLAINANT

AND

Radian Stores Retail Limited

RESPONDENT

BEFORE:

Commissioner Angela Kafunda	- Chairperson
Commissioner Stanford Mtamira	- Member
Commissioner Emmanuel M. Mwanakatwe	- Member
Commissioner Sikambala M. Musune	- Member
Commissioner Derrick Sikombe	- Member

DECISION

1. Below is a summary of the facts and findings presented by the Commission to the Board of the Commission following investigations carried out in the above case.

Introduction and Relevant Background

It was submitted that:

2. On 8th February, 2023 the Competition and Consumer Protection Commission (“the Commission”) received a complaint from Ms. Monda Konayuma (“the Complainant”) against Radian Stores Retail Limited (“the Respondent”). Specifically, the Complainant, holder of National Registration Card number 19XXXX/XX/1 alleged that on 8th January, 2022 she purchased a solar water pump worth K10,925.00 which was inclusive of a control box; and the kit had a one-year warranty. The Complainant alleged that the pump and the control box worked until early December, 2022. The Complainant alleged that when the pump and control box stopped working, she informed the Respondent and in response they tried to repair them but ended up replacing them. The Complainant alleged that after the pump and the control box were replaced, they only worked for a period of six weeks as they stopped working on 23rd January, 2023. The

Complainant alleged that when she informed the Respondent of the development, they sent a technician to assess the pump and that after the assessment was done, it was discovered that its motor had broken down. The Complainant alleged that the Respondent informed her that the pump could not be repaired and that she needed to purchase a new one. The Complainant was therefore demanding for a refund of 50% of the purchase price as the replacement pump only worked for a period of six weeks.

Legal Contravention and Assessment Tests

Legal Contravention

It was submitted that:

3. The alleged conduct appeared to be in contravention of Section 49(1) of the Competition and Consumer Protection Act No. 24 of 2010 (“the Act”).
4. Section 49(1) of the Act stated that; “A person or an enterprise shall not supply a consumer with goods that are defective, not fit for the purpose for which they are normally used or for the purpose that the consumer indicated to the person or the enterprise”.
5. Section 49(3) of the Act stated that; “A person who, or an enterprise which, contravenes subsection (1), shall (a) within seven days of the supply of the goods concerned, refund the consumer the price paid for the goods; or (b) if practicable and if the consumer so chooses, replace the goods with goods which are free from defect and are fit for the purpose for which they are normally used or the purpose that the consumer indicated to the person or the enterprise.”

Assessment Tests

It was submitted that:

For the purpose of Section 49(1) of the Act, the following assessment tests were used;

6. Whether Radian Stores Retail Limited was a “person” or an “enterprise”.
7. Whether Radian Stores Retail Limited supplied a consumer with goods that were defective, goods that were not fit for the purpose for which they were normally used or for the purpose that the consumer indicated to the person or the enterprise.

Investigations Conducted

It was submitted that:

8. The Respondent was duly served the Notice of Investigation (NoI) and its accompanying letter on 6th March, 2023. The Commission also submitted the Complainant's control box and pump to the Department of Electrical and Electronic Engineering of the School of Engineering at the University of Zambia for them to be assessed.

Findings

The Parties

The Complainant

It was submitted that:

9. The Complainant was Ms. Monda Konayuma, a resident of Lusaka. Section 2 of the Act defined a consumer as, "*any person who purchases or offers to purchase goods or services otherwise than for the purpose of re-sale, but does not include a person who purchases goods or services for the purpose of using the goods or services in the production and manufacture of any other goods for sale, or the provision of another service for remuneration.*"¹ In view of the above definition, the Complainant was a consumer as envisaged under the Act as she purchased a water pump from the Respondent for her personal use and not for resale.

The Respondent

It was submitted that:

10. The Respondent was Radian Stores Retail Limited located at Radian Retail Park Plot No. 8357 Great North Road, Lusaka. The Respondent's nature of business was the supply of electrical appliances to the public. The Respondent was a registered company with Registration No. 120100083981 with the Patents and Companies Registration Agency (PACRA).² According to the Act, an "enterprise" meant "*a firm, partnership, joint-venture, corporation, company, association and other juridical persons, which engage in commercial activities, and includes their branches, subsidiaries, affiliates or other entities, directly or indirectly, controlled by them*". The Respondent was an enterprise as envisaged under the Act as they

¹ Competition and Consumer Protection Act No. 24 of 2010.

² Patents and Companies Registration Agency (PACRA) search on 27th April, 2023.

were a company that engaged in commercial activities of supplying retail services to the public.³

Submissions from the Respondent⁴

It was submitted that:

11. In a letter dated 7th March, 2023 the Respondent through their Executive Director – Mr. Zakir Mulla submitted that this case had three events. The Respondent submitted that the Complainant bought the said product (Solar Water Pump and Control Box) on 8th January, 2022 from their Retail Park branch. The Respondent submitted that the first time the said fault (of not pumping water) was reported to them was on 31st October, 2022 (after 9 months and 23 days from the purchase date). The Respondent submitted that they took immediate action and picked the pump on 1st November, 2022 (next day). The Respondent submitted that after completion of the assessment, they found that the motor was damaged, and they decided to replace the Complainant's pump with a new one. The Respondent submitted that they replaced the pump with a new one on 4th November, 2022. (The Respondent submitted that they wanted the Commission to note that replaced products carried the warranty from the purchase date and not the replacement date).
12. The Respondent submitted that the second time the Complainant reported that the control box was not working was on 5th December, 2022 (after 1 month of the pump's replacement). The Respondent submitted that they replaced the Complainant's control box with a new one.
13. The Respondent submitted that the third time the Complainant reported that the pump was not working was on 23rd January, 2023 (18 days after the expiry of the warranty). The Respondent submitted that for the sake of consumer relations, they decided to assess the product. The Respondent submitted that upon assessing the pump, their technician found that the connection was the problem in that the pump was being disconnected manually directly from the connectors every time after use. The Respondent submitted that this had caused two pumps and a control box to get damaged. The Respondent submitted that despite this product being out of warranty, they thought of helping the Complainant by giving her a 10% discount if she wanted to purchase another pump, but the Complainant wanted a 50% refund even after using the said product for one year which was not possible. The Respondent submitted that both pumps and control box got damaged due to poor and improper connections. The Respondent submitted that

³ Complainant's Receipt dated 8th January, 2022.

⁴ Respondent's Letter to the Commission dated 7th March 2023

they still tried to assist the Complainant in the best way possible. The Respondent submitted that they wanted the Commission to note that when it was reported for the third time, the warranty period of one year had already elapsed.

Third Party Submissions

Submissions from The University of Zambia⁵

Technical Assessment Report from the Department of Electrical and Electronic Engineering of the School of Engineering at the University of Zambia (“UNZA”) dated 24th April, 2023.

Physical Inspection

It was submitted that:

14. UNZA submitted that the controller was physically checked for any blown out or damaged components.
15. UNZA submitted that the water pump-motor was also physically checked and inspected.

Technical Assessment

It was submitted that:

16. The technical experts undertook the following steps:

a. Procedure

It was submitted that:

- UNZA submitted that the water pump was decoupled from the 72 volts DC motor assembly.
- UNZA submitted that the three units, namely, the water pump controller, the water pump and the motor assembly were tested separately.
- UNZA submitted that the voltage on the pump controller output terminals were measured with and without the water motor assembly connected.
- UNZA submitted that the motor windings resistances were also measured.

⁵ Technical Assessment Report from the Department of Electrical and Electronic Engineering of the School of Engineering at the University of Zambia (“UNZA”) dated 24th April, 2023.

b. Observations

It was submitted that:

- UNZA submitted that after the physical inspection on the controller, it was observed that the controller was in good condition i.e., no blown out or damaged components.
- UNZA submitted that the output voltages on the controller were measured, and the following were the readings:
 - Without the water pump and motor at stand still (solar water pump not rotating);
Between W and V = 8.6 V a.c
Between W and U = 8.6 V a.c
Between U and V = 8.6 V a.c
 - With the water pump-motor assembly and motor at stand still (solar water pump not rotating); and
Between W and V = 8.6 V a.c
Between W and U = 8.6 V a.c
Between U and V = 8.6 V a.c
 - The motor winding resistances were found to be.
Between W and V = 0.36 Ω
Between W and U = 0.36 Ω
Between U and V = 0.36 Ω
- UNZA submitted that after physical inspections on the pump, it was observed that the motor that was coupled to the water pump had its screws tampered with, suggesting that the motor had been opened before.
- UNZA submitted that another observation that was made on the motor was that the rotor (rotating part of the motor) was stiff (not freely able to rotate). This suggested that when the motor was opened, the rotor was not properly aligned thus making it difficult to rotate.
- UNZA submitted that it was also observed that the earthing cable was not connected to the casing of the motor.

- UNZA submitted that the cable installed from the water pump controller to the motor was of substandard quality.

Assessment Conclusion

It was submitted that:

17. UNZA submitted that from their observations, it could be concluded that the water pump-motor assembly that was replaced by the Respondent after the first one malfunctioned was not a brand-new solar pump. The water pump-motor assembly exhibited signs of having been tampered with by the Respondent.
18. UNZA submitted that the voltages that were recorded as shown above were supposed to be increasing as the motor picked speed. This was not the case as the motor was not fully able to rotate. The controller was shutting down thus bringing the voltage to zero after sensing a fault on the motor.
19. UNZA submitted that the winding resistances that were measured with the ohmmeter showed that the motor windings were okay, indicating that there were no short circuits.
20. UNZA submitted that the 3-core by 2.5mm² cable that was used to connect the motor pump assembly from the controller was of poor quality. The electrical joint connection lacked a splicing kit⁶. This cable was procured by the Complainant and her electrician to install. However, this could not have had an effect on the stiffness of the motor.

Submissions to the Report

It was submitted that:

21. After the Preliminary Report was approved, it was duly served on the Respondent and Complainant on 12th June, 2023 and 13th June, 2023, respectively, for them to make their submissions.

Submissions from the Respondent⁷

It was submitted that:

22. In a letter dated 14th June, 2023, the Respondent through their Executive Manager – Mr. Zakir Mulla submitted that as mentioned in their previous response

⁶ Splicing kits are used to establish a connection between two cables, Cable splicing is used to create one cable from two different cables.

⁷ Respondent Letter to the Commission dated 14th June, 2023.

dated 7th March, 2023, they had replaced the Complainant's pump with a new one and not a second-hand pump to honour their warranty terms and conditions. The Respondent submitted that they clearly denied the allegation stated in the technical assessment report from the Department of Electrical and Electronic Engineering of the School of Engineering at the University of Zambia ("UNZA") dated 24th April, 2023 of replacing the Complainant's pump with second-hand pump. The Respondent submitted that after replacing the brand-new control box on 5th December, 2022 since the product was still carrying a 1-year warranty, the Complainant had used the pump for 11 weeks 3 days successfully after the replacement and reported to them that the pump was not working on 23rd January, 2023 which was 15 days from the expiry of the warranty. The Respondent submitted that they had received the complaint after the expiry date, and as such they were not supposed to assess the product for free but for the sake of customer relations, they assessed it for free and found that the pump had gotten damaged. The Respondent submitted that they never opened or tampered with the replacement pump. The Respondent submitted that they were not sure if the Complainant had taken the pump to any third-party technician to assess it. The Respondent submitted that they denied the allegations of having tampered with the pump as stated in the technical assessment report from UNZA dated 24th April, 2023. The Respondent submitted that they were in no position to assist the Complainant any further as the warranty had expired and the matter was reported to them after 15 days of the warranty expiry date.

Commission's Position

It was submitted that:

23. Despite the initial warranty period coming to an end 15 days before the Complainant reported the matter to the Respondent, it is evident that the Respondent supplied to the Complainant a defective product as the pump was not able to pump water.
24. With regards to the Complainant engaging a third-party, there is no evidence to show that she engaged another party, but rather engaged the Respondent in order for them to redress her based on the warranty that came with the product.

Submissions from the Complainant

It was submitted that:

25. In an email dated 19th June, 2023, the Complainant submitted that the report was alright, except that she wanted to bring to the Commission's attention that the Respondent's submission in paragraph 12 was the other way round. The

Complainant submitted that the Respondent's technician advised and showed her how to be switching off the pump by disconnecting the cables attached to the solar panels instead of from the bottom on the control box. The Complainant submitted that the Respondent's technician checked all the cables and confirmed during their meeting when she visited their offices the first time.⁸

26. During a telephone conversation with the Commission on 5th July, 2023, the Complainant submitted that she had not submitted the pump to any other party for fixing other than to the Respondent.⁹

Further submissions from the Respondent¹⁰

It was submitted that:

27. During a meeting at the Respondent's Head Office on 18th July, 2023, the Respondent through their technician Mr. Maxwell Kunuwenda submitted that when the Complainant's second pump stopped working, he and Ms. Mercy Musonda went to the Complainant's premises to assess the pump. Mr. Kunuwenda submitted that they assessed the pump by putting it in a bucket of water in the presence of the Complainant and that after its failure to pump the water in the bucket, he was able to deduce without opening it up that it was the motor that had a problem, and as such the pump was never opened.
28. Mr. Kunuwenda submitted that after the assessment, the Complainant asked them to carry the pump with them as she had planned on purchasing a new pump from them at a discounted rate. Mr. Kunuwenda submitted that when the Complainant engaged the Respondent's management team, she was informed that they could only give her a 15% discount as they had already given her a new replacement pump and the warranty had run out. Mr. Kunuwenda submitted that he believed that the pump became defective because it was being overworked due to the fact that it did not have a water level sensor and as such, despite the water tank being full, the pump was constantly run until it was manually switched off. Mr. Kunuwenda submitted that from their first engagement with the Complainant, they had asked her to purchase a floater switch that would enable the pump to go on and off automatically.

⁸ Complainant's Email to the Commission dated 19th June, 2023.

⁹ Telephone Conversation between the Commission and the Complainant on 5th July, 2023.

¹⁰ Meeting between the Commission and the Respondent at the Respondent's Head Office on 18th July, 2023.

Relevant Findings

It was submitted that:

29. The Commission established that on 8th January, 2022 the Complainant purchased a solar water pump worth K10,925.00 which was inclusive of a control box; and had a one-year warranty.¹¹
30. The Commission established that late in 2022, the Complainant's water pump stopped functioning of which it was replaced with a different water pump by the Respondent, but the replacement pump also stopped working in January, 2023.
31. The Commission through the Technical Assessment Report from UNZA established that the rotor (rotating part of the motor) was stiff (not freely able to rotate) suggesting that when the motor was opened, the rotor was not properly aligned thus making it difficult to rotate and pump water.¹²
32. The Commission through the Technical Assessment Report from UNZA established that voltages that were recorded as shown above were supposed to be increasing as the motor picked speed. This was not the case as the motor was not fully able to rotate. The controller was shutting down thus bringing the voltage to zero after sensing a fault on the motor.¹³
33. The Commission through the Technical Assessment Report from UNZA established that the winding resistances that were measured with the ohmmeter showed that the motor windings were okay, indicating that there were no short circuits.¹⁴
34. The Commission through the Technical Assessment Report from UNZA established that the 3-core by 2.5mm² cable that was used to connect the motor pump assembly from the controller was of poor quality. The electrical joint connection lacked a splicing kit. However, this could not have had an effect on the stiffness of the motor.¹⁵

¹¹ Complainant's Receipt dated 8th January, 2022.

¹² Technical Assessment Report from the Department of Electrical and Electronic Engineering of the School of Engineering at the University of Zambia ("UNZA") dated 24th April, 2023.

¹³ Technical Assessment Report from the Department of Electrical and Electronic Engineering of the School of Engineering at the University of Zambia ("UNZA") dated 24th April, 2023.

¹⁴ Technical Assessment Report from the Department of Electrical and Electronic Engineering of the School of Engineering at the University of Zambia ("UNZA") dated 24th April, 2023.

¹⁵ Technical Assessment Report from the Department of Electrical and Electronic Engineering of the School of Engineering at the University of Zambia ("UNZA") dated 24th April, 2023.

35. The Commission through its meeting with the Respondent's technician established that they replacement pump had not been opened after the Complainant reported its fault to the Respondent.¹⁶

Previous cases involving the Respondent.

It was submitted that:

36. At the 49th Board of Commissioners Meeting for Adjudication of cases held on 30th March, 2022 the Respondent was directed to refund the Complainant K6,280.00 for breach of Section 49(1) of the Act in a case by Mr. Paul Sakala.

Analysis of Conduct

It was submitted that:

37. In analysing the case for possible violation of Section 49(1), the following assessment tests were used;

Whether Radian Stores Retail Limited was a “person” or an “enterprise”;

It was submitted that:

38. The Respondent was an enterprise. Refer to paragraph 10 above.

Whether Radian Stores Retail Limited supplied a consumer with a water pump that was defective, not fit for the purpose for which it was normally used for or for the purpose that the consumer indicated to them.

It was submitted that:

39. The Act defined supply as, “*includes, in relation to goods, the supply, including resupply, by way of sale, exchange, lease, hire or hire purchase of the goods;*”¹⁷ The Commission established that on 8th January, 2022 the Complainant purchased a solar water pump worth K10,925.00 which was inclusive of a control box as evidenced by her receipt dated 8th January, 2022.¹⁸
40. The Eighth Edition of the Black's Law Dictionary defined a defective product as, “*containing an imperfection or shortcoming in a part essential to the product's safe operation*”.¹⁹

¹⁶ Meeting between the Commission and the Respondent at the Respondent's Head Office on 18th July, 2023.

¹⁷ Competition and Consumer Protection Act No. 24 of 2010

¹⁸ Complainant's Receipt dated 8th January, 2022.

¹⁹ Black's Law Dictionary, 8th Ed. (2004) p.1265

41. In the case under review, it was established that on 8th January, 2022 the Complainant purchased a solar water pump worth K10,925.00 which was inclusive of a control box; and had a one-year warranty.²⁰ However, later in 2022, the Complainant's water pump stopped functioning of which it was replaced with a different water pump by the Respondent, but the replacement pump also stopped working in January, 2023. It was established that the rotor (the rotating part of the motor) was stiff (that is, not freely able to rotate) suggesting that when the motor was opened, the rotor was not properly aligned thus making it difficult to rotate and pump water.²¹ From the voltages that were recorded as shown above it was established that they were supposed to be increasing as the motor picked speed. However, this was not the case as the motor was not fully able to rotate, and as such, the controller was shutting down thus bringing the voltage to zero after sensing a fault on the motor due to the stiffness of the rotor.²² In line with the aforementioned, the winding resistances that were measured with the ohmmeter showed that the motor windings were okay, indicating that there were no short circuits.²³ It was also established that the 3-core by 2.5mm² cable that was used to connect the motor pump assembly from the controller was of poor quality and the electrical joint connection lacked a splicing kit. However, this had no effect on the stiffness of the motor.²⁴ Based on the Respondent's submissions of the pump never having been opened, it was a clear indication that the pump developed a short coming that led to the misalignment of the rotor. As such, it was established that the Respondent had supplied the Complainant with a defective water pump as the rotor was stiff due to improper alignment thus making it difficult to rotate, hence violated Section 49(1) of the Act.

Board Deliberation

42. Having considered the facts, evidence and submissions in this case, the Board resolves that the Respondent engaged in unfair trading practices, hence breached Section 49(1) of the Act.

²⁰ Complainant's Receipt dated 8th January, 2022.

²¹ Technical Assessment Report from the Department of Electrical and Electronic Engineering of the School of Engineering at the University of Zambia ("UNZA") dated 24th April, 2023.

²² Technical Assessment Report from the Department of Electrical and Electronic Engineering of the School of Engineering at the University of Zambia ("UNZA") dated 24th April, 2023.

²³ Technical Assessment Report from the Department of Electrical and Electronic Engineering of the School of Engineering at the University of Zambia ("UNZA") dated 24th April, 2023.

²⁴ Technical Assessment Report from the Department of Electrical and Electronic Engineering of the School of Engineering at the University of Zambia ("UNZA") dated 24th April, 2023.

Board Determination

43. The facts and evidence of this case have shown that the Respondent did violate Section 49(1) of the Act.

Board Directive

44. The Board hereby directs that;
- i. The Respondent refunds the Complainant K10,925.00 being the amount she paid for the water pump and control box within (10) days of receipt of the Board Decision in accordance with Section 5(d) of the Act.

Note: Any party aggrieved with this order or directive may, within thirty (30) days of receiving this order or directive, appeal to the Competition and Consumer Protection Tribunal.

Dated this 19th October, 2023


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Chairperson
Competition and Consumer Protection Commission