

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

**BETWEEN**

**Mrs. Namukale Kaliwanda  
Mubanga**

**COMPLAINANT**

**AND**

**Protea Safari Lodge**

**RESPONDENT**

**BEFORE:**

**Commissioner Chenga Chisha  
Commissioner Fredrick Imasiku  
Commissioner Aubrey Chibumba  
Commissioner Nsangwa Allen Ngwira**

**- Chairman  
- Member  
- Member  
- Member**

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**DECISION**

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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:***

1. On 26<sup>th</sup> April, 2022 the Competition and Consumer Protection Commission ("the Commission") received a complaint from Mrs. Namukale Kaliwanda Mubanga ("the Complainant") against Protea Safari Lodge ("the Respondent"). Specifically, the Complainant alleged that on 16<sup>th</sup> April, 2022, she and her family checked in at the Respondent's safari lodge as guests for a two nights Easter stay. The Complainant alleged that prior to checking in at the Respondent's safari lodge, she had made the reservation for two nights as per the Easter flyer published by the Respondent for a family package and made payment of K7,440.00 at the Respondent's central reservation office a week before taking up her reservation. The

Complainant alleged that the Respondent assured her over the phone that her and her family would be accommodated in the interleading family rooms which had been allocated to her during her prior stay at the Respondent's safari lodge on several occasions.

2. The Complainant alleged that upon checking in on 16<sup>th</sup> April, 2022, her and her family were ushered into room 21 and room 22 upon which she noticed that the rooms were single rooms and were smaller than the interleading rooms she had been provided with in the past. The Complainant further alleged that the rooms that were allocated to her and her family had a constant damp smell and a mould like smell and looked much older which made her and family uncomfortable. The Complainant alleged that this prompted her to lodge in a complaint with the Respondent and requested that she and her family be given the usual family accommodation that had been often provided to her during her previous stay at the lodge. The Complainant alleged that in response, the Respondent told her that she had to pay a revised rate for the rooms she was requesting for. The Complainant alleged that the revised rates increased her accommodation by K3,800.00.
3. The Complainant alleged that upon receipt of the response, she decided to call the Respondent's central reservation office but was met with a holiday notification on their number. The Complainant alleged that having paid the K7,440.00 for the accommodation already and having travelled a long distance to get to the lodge just to cancel the reservation seemed too much of a loss, consequently she paid the revised fees. The Complainant alleged that she found the entire experience she received from the Respondent alarming and unfair. The Complainant alleged that her efforts to lodge a complaint directly with the Respondent had resulted in no apology but justification by the Respondent for their actions. The Complainant demanded that the Respondent apologise to her for the unfair experience and the Commission intervenes to bring the matter to an amicable conclusion.

## **Legal Contravention and Assessment Tests**

### **Legal Contravention**

***It was submitted that:***

4. The alleged conduct appeared to be in contravention of Section 49(5) of the Competition and Consumer Protection Act, No. 24 of 2010 (the Act).
5. Section 49(5) of the Act states that: *“A person or an enterprise shall supply a service to a consumer with reasonable care and skill or within a reasonable time or, if a specific time was agreed, within a reasonable period around the agreed time.”*
6. Section 49(6) of the Act states that: *“A person who, or an enterprise which, contravenes subsection (5) is liable to pay the Commission a fine not exceeding ten percent of that person’s or enterprise’ annual turnover.”*
7. Section 49(7) of the Act states that: *“In addition to the penalty stipulated under subsection (6), the person or the enterprise shall – (a) within seven days of the provision of the service concerned, refund to the consumer the price paid for the service; or if practicable and if the consumer so chooses, perform the service again to a reasonable standard.”*

**Assessment Tests**

*The following assessment tests were used to consider Section 49(5) of the Act:*

***It was submitted that:***

8. Whether Protea Safari Lodge is a “Person” or “enterprise”;
9. Whether Protea Safari Lodge supplied a particular service to a consumer; and
10. Whether Protea Safari lodge supplied a service to the Complainant with with reasonable care and skill was exercised in the said supply; or within a reasonable time or; if a specific time was agreed, within a reasonable period around the agreed time.

**Investigations Conducted**

***It was submitted that:***

11. The Commission duly served a Notice of Investigation and an accompanying letter on the Respondent on 10<sup>th</sup> May, 2022. The

Commission also reviewed the documents submitted by the Complainant and the Respondent.

## **Findings**

### **The Parties**

#### **The Complainant**

##### ***It was submitted that:***

12. The Complainant is Mrs. Namukale Kaliwanda Mubanga of flat number 2, fidelity court, ZSIC flats, Lusaka. The Complainant's phone number is 097XXXXX43. Section 2 of the Act defines 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*".<sup>1</sup> Therefore, the Complainant is a consumer as envisaged under the Act because she engaged the Respondent to supply her with lodging services.

#### **The Respondent**

##### ***It was submitted that:***

13. The Respondent is Protea Safari Lodge situated at Plot number 1887, Kamaila Road, Chisamba. The Respondent is registered with the Patents and Companies Registration Agency (PACRA) as a company with registration number 320000090992. According to Section 2 of the Act, an, "enterprise," means *a firm, partnership, joint-venture, corporation, company, association and other juridical persons, which engage in commercial activities, and includes their branches, subsidiaries, a affiliates or other entities, directly or indirectly, controlled by them.*" Therefore, the Respondent is an enterprise as envisaged under the Act as it is a company which engages in commercial activities of supplying lodging and safari services to the general public.

#### **Submissions from the Respondent<sup>2</sup>**

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<sup>1</sup> Competition and Consumer Protection Act No. 24 of 2010.

<sup>2</sup> Respondent's letter to the Commission dated 14<sup>th</sup> May, 2021

***It was submitted that:***

14. In a letter dated 13<sup>th</sup> May, 2022, the Respondent through Mr. Solistor Cheelo – Public Affairs and Compliance Manager submitted that the Complainant checked in at their premises on 16<sup>th</sup> April, 2022.
15. The Respondent submitted that the rooms that were advertised on their easter flyer which the Complainant responded to were interleading rooms and as such when the Complainant checked in at the lodge, she was ushered to (the, an) interleading room.
16. The Respondent submitted that when the Complainant was ushered into the room, she and her family expressed displeasure over the room because it was different from the one she had been previously allocated during her and her family's visit to the lodge on 30<sup>th</sup> December, 2020.
17. The Respondent submitted that after deliberation with the Complainant over the room she rejected, they allocated her and her family deluxe rooms based on their personal preference and that the staff at the reception explained that the change of rooms would attract additional costs as the deluxe rooms had higher rates than the inter-leading family rooms.
18. The Respondent submitted that during the Complainant's visit in December, 2020, her and her family were upgraded to the deluxe rooms at no extra charge because all their family rooms at the time were occupied and that the front office staff explained to the Complainant what necessitated the change of rooms. The Respondent submitted that this kind of courtesy was purely at their discretion and was not often extended to the same guest.
19. The Respondent submitted that after deliberating with the Complainant over the rejected room, the Complainant and her family were allocated deluxe rooms based on her personal preference. The Respondent submitted that their reception staff explained to the Complainant that the change in rooms would attract additional costs as the deluxe rooms had higher rates than the inter-leading family rooms.
20. The Respondent submitted that the Complainant acknowledged and accepted to pay the additional cost which arose from the upgrade in an email addressed to them that stated; *"Good day! Kindly advise the revised rates based on the Easter rates and the balance to be paid following the*

*movement to the more upgraded family room. Thanks, Namukale Kaliwanda Mubanga.*<sup>3</sup>

21. The Respondent submitted that they were taken aback a few days later when they received an email outlining several concerns regarding the Complainant's unpleasant stay at the lodge as no complaint was raised with them at the time she checked out of the lodge.
22. The Respondent submitted that their decision to give back K2,000.00 to the Complainant was merely a gesture of goodwill towards her as a repeat customer and that it should not have been misconstrued as a refund. The Respondent submitted that the Complainant declined to take the money and instead requested for a full refund.
23. The Respondent submitted that they had a guest feedback form at the lodge which would have given the Complainant an opportunity to submit her concerns and an opportunity for them to respond to any concerns that may have arisen during the Complainant's stay at the lodge, but the Complainant did not complete the form.
24. The Respondent submitted that the booking terms and conditions in the Easter flyer were explicit in that the advertised rate only allowed two (2) children less than twelve (12) years to share with two (2) adults but the Complainant came with three (3) children.
25. The Respondent submitted that they attach great importance to the safety of their guests especially during the COVID-19 period, hence, they deep clean their rooms, and this sometimes involves fumigation. The Respondent submitted that this was in line with the safety protocols given to them by their regulator (Zambia Tourism Agency) and the Ministry of Health.
26. The Respondent further submitted that they had withdrawn the discretionary fee of K2,000.00 they offered the Complainant as a gesture of goodwill as they believe that the Complainant misunderstood it as a refund.

### **Review of the Respondent's Easter Flyer**

***It was submitted that:***

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<sup>3</sup> Complainant's email to the Respondent dated 16<sup>th</sup> April, 2022

27. A review of the Respondent's Easter flyer submitted by the Respondent revealed that the Respondent offered a promotion on double rooms and family rooms at a rate of K2,820.00 per night and K3,720.00 per night respectively. The review also revealed that family room had a condition attached to it that stated; "based on 2 adults and 2 children below 12years".<sup>4</sup>

**Picture 1: Easter Flyer**

**PROTEA HOTEL.**  
MARRIOTT  
Lusaka Safari Lodge

JOIN US FOR YOUR  
**EASTER WEEKEND  
GETAWAY**

<b>Double room</b> K 2,820 <small>per night</small> <small>Based on two people sharing</small>	<b>Family room</b> K 3,720 <small>per night</small> <small>Based on 2 adults and 2 children below 12yrs.</small>
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Rates are inclusive of dinner, bed and breakfast.

Good Friday, Easter Saturday and Easter Monday <b>BUFFET LUNCH</b>	K350 <small>pp</small> <small>children below 12yrs half price</small>
<b>SUNDAY LUNCH</b> <small>Easter egg hunt on Easter Sunday for the children</small>	K450 <small>pp</small> <small>children below 12yrs half price</small>

**PROTEA HOTEL.**  
MARRIOTT  
Lusaka Safari Lodge

For bookings and enquiries:  
Phone: +260 211 842 843-6 or +260 976 212 844  
Email: [reservations@psafarilodge.co.zm](mailto:reservations@psafarilodge.co.zm)

Terms and conditions: Bookings essential. Single rooms rates available. Rates are inclusive of VAT, service charge and 1.5% tourism levy. Valid from 15th to 18th April 2022.

## Relevant Findings

### ***It was submitted that:***

28. The Commission established that on 18<sup>th</sup> March, 2022 the Complainant made a reservation for a two nights (16<sup>th</sup> April, 2022 and 17<sup>th</sup> April, 2022)

<sup>4</sup> Respondent's easter flyer submitted by the Respondent on 13<sup>th</sup> May, 2022

stay for her and her family at the Respondent's safari lodge and made a payment of K7,528.74 on 8<sup>th</sup> April, 2022 towards the same reservation.

29. The Commission established that the Complainant's booking was a response to an easter flyer published by the Respondent, which included details of the applicable rates for the double rooms and family rooms and the terms and conditions applicable to the rates offered for the respective rooms. It was established that the Complainant made a booking for a family room.
30. The Commission established that the Respondent was charging K2,820.00 per night for a double room based on the condition that two people were sharing and K3,720.00 per night for a family room based on the condition that the occupants were two adults and two children below 12 years.<sup>5</sup>
31. The Commission established that on 16<sup>th</sup> April, 2022, the Complainant checked in at the Respondent's lodge with three children and her spouse and were ushered into the rooms 21 and 22 as allocated to them by the Respondent.
32. The Commission established that the Complainant was not pleased with the rooms allocated to her and her family and expressed her displeasure to the Respondent's front desk staff upon which she requested to be moved to another room that catered to her preferences which in this case was a deluxe room.
33. The Commission established that the Respondent informed the Complainant that her request to be moved to her preferred room would attract additional charges, as the deluxe rooms attracted a higher tariff than the family room she had been initially allocated. The Commission established that the revised rates brought the total bill she had to pay from K7, 528.74 to K14, 832.48.<sup>6</sup>
34. The Commission established that the Complainant acknowledged and agreed in an email addressed to the Respondent to pay the revised rates to be moved to the rooms that catered to her preference.<sup>7</sup>

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<sup>5</sup> Respondent's easter flyer

<sup>6</sup> Copy of Complainant's invoice submitted by the Respondent.

<sup>7</sup> Complainant's email to the Respondent dated 16<sup>th</sup> April, 2022



### **Previous cases involving the Respondent**

#### ***It was submitted that:***

35. A review of the Respondent's case file revealed that there was no case against the Respondent in which they were found to have violated Section 49(5) of the Act.

### **Submission to the Report**

#### ***It was submitted that:***

36. After the approval of the Preliminary Report, it was duly served on the Respondent and the Complainant on 6<sup>th</sup> June, 2022 in order for them to make submissions to the report. However, there were no submissions to the report from the Complainant.

### **Respondent's Submissions<sup>8</sup>**

#### ***It was submitted that:***

37. On 10<sup>th</sup> June, 2022, the Respondent submitted that they had no objections to the findings of the Commission and wished to confirm that the report clearly articulated the sequence of events and was a reflection of what transpired at the lodge on the material day.

### **Analysis of Conduct**

#### ***It was submitted that:***

38. In analyzing the case for possible violation of Section 49(5) of the Act, the following assessment tests are used:

### **Whether Protea Safari Lodge is a "Person" or "Enterprise";**

#### ***It was submitted that:***

39. Refer to paragraph 13 of the report.

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<sup>8</sup> Respondent's letter to the Commission dated 10<sup>th</sup> June, 2022

**Whether Protea Safari Lodge supplied a particular service to a consumer;**

***It was submitted that:***

40. The Act defines the term “supply” includes, “in relation to services, the provision by way of sale, grant or conferment of the services.” The Act further defines a “Service” as “includes the carrying out and performance on a commercial basis of any engagement, whether professional or not, other than the supply of goods, but does not include the rendering of any services under a contract of employment”.<sup>9</sup> The Commission established that the Complainant paid the Respondent a total sum of K14, 832.48 for two (2) nights stay at the Respondent’s safari lodge. Thus, the Respondent did supply the Complainant with a service as confirmed by the Complainant that she checked in at the lodge on 16<sup>th</sup> April, 2022 and checked out on 18<sup>th</sup> April, 2022.

**Whether Protea Safari Lodge supplied a service to the Complainant with reasonable care and skill or within a reasonable time or; if a specific time was agreed, within a reasonable period around the agreed time.**

***It was submitted that:***

41. The assessment of Section 49(5) of the Act has more than one component, however, the analysis of the case under review will focus on the aspect of, “whether the Respondent supplied a particular service to the Complainant with reasonable care and skill”.
42. The Black’s Law Dictionary defines Reasonable Care as, “a test of liability for negligence, the degree of care that a prudent and competent person engaged in the same line of business or endeavors would exercise under the circumstances”. Reasonable skill is defined as, “the skill ordinarily and used by persons engaged in a particular business”. In the case at hand reasonable care and skill translates to whether the Respondent was responsible for providing lodging accommodation to the Complainant.<sup>10</sup>
43. In the case under review, it was established that on 18<sup>th</sup> March, 2022 the Complainant made a reservation for a two nights (16<sup>th</sup> April, 2022 and 17<sup>th</sup>

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<sup>9</sup> Competition and Consumer Protection Act No. 24 of 2010

<sup>10</sup> Blacks Law Dictionary 8<sup>th</sup> Edition

April, 2022) stay for her and her family at the Respondent's safari lodge and made a payment of K7,528.74 on 8<sup>th</sup> April, 2022 towards the same reservation. It was also established that the Complainant's booking was a response to an easter flyer published by the Respondent, which included details of the applicable rates for the double rooms and family rooms and the terms and conditions applicable to the rates offered for the respective rooms. It was established that the Complainant made a booking for a family room which attracted a rate K3,720.00 per night based on the condition that the occupants were two adults and two children below 12 years as shown in **Picture 1** under paragraph 27 of this Report.

44. It was further established that when the Complainant checked in at the lodge on 16<sup>th</sup> April, 2022, she was in the company of her spouse and her three children. It was established that upon being ushered into her allocated family the room, the Complainant was not pleased with the rooms the Respondent had allocated to her citing that the rooms were smaller than the rooms she had been allocated during her previous stay at the lodge in December, 2020. The Complainant went on to express her displeasure to the Respondent's front desk staff upon which she requested to be moved to another room that catered to her preferences which in this case was a deluxe room. It was established that upon making the request to be moved to another room, the Respondent notified her that her request to be moved to her preferred room would attract additional charges, as the deluxe rooms attracted a higher tariff than the family room she had been initially allocated. During the course of the investigation, it was established that the Complainant through an email<sup>11</sup> to the Respondent acknowledged receipt of this information and agreed to pay the revised rates for her preferred room.
45. The evidence, therefore, showed that the Respondent's flyer specified that the family room that the Complainant paid for in the first instance had a condition that it was based on two adults with two children under the age of 12 years, however, when the Complainant took up her reservation at the Respondent's lodge, she checked in with her spouse and three children, which was a violation of the term listed by the Respondent on the flyer. Furthermore, when the Complainant discovered that the allocated family room did not meet her preferences and was offered alternative accommodation at a higher rate, she agreed to pay the revised rates of the alternative accommodation and went on to stay at the lodge

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<sup>11</sup> Complainant's email to the Respondent dated 16<sup>th</sup> April, 2022 at 3:00PM

for the entire reservation period. As such, the Commission established that the Respondent supplied to the Complainant the family room as per the easter flyer and when she expressed displeasure with the room allocated to her and requested to be moved to a room that matched her preference, the Respondent informed her that her desired room attracted higher rates, of which she agreed to pay. Consequently, the service that the Respondent was engaged to provide did materialise as the Complainant ended up staying at the lodge for the rest of her reservation. Therefore, the Respondent did not violate Section 49(5) of the Act.

**Board Deliberation**

46. Having considered the facts, submissions, and evidence in this case, the Board resolves that the Respondent did not engage in unfair trading practices as relates to delivery of a service with reasonable care and skill hence were not in violation of Section 49(5) of the Act.

**Board Determination**

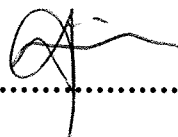
47. The facts and evidence of this case have shown that the Respondent did not engage in unfair trading practices, hence was not in violation of Section 49(5) of the Act.

**Board Directive**

48. The Board directs that the case is closed under Section 49(5) of the Act.

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

Dated this 9<sup>th</sup> June, 2022



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**Chairman**  
**Competition and Consumer Protection Commission**