

**IN THE MATTER OF THE COMPETITION AND  
CONSUMER PROTECTION TRIBUNAL  
HOLDEN AT LUSAKA**

**2024/CCPT/003/CON**

**IN THE MATTER OF:**

**SECTION 64 OF THE COMPETITION AND  
CONSUMER PROTECTION ACT NO.24 OF 2010**

**IN THE MATTER OF:**

**RULE 4 OF THE COMPETITION AND CONSUMER  
PROTECTION (TRIBUNAL) RULES 2012,  
STATUTORY INSTRUMENT NO.37 OF 2012**

**BETWEEN:**

**COMPETITION AND CONSUMER PROTECTION APPLICANT  
COMMISSION**

**AND**

**RUSANGU UNIVERSITY**



**RESPONDENT**

**CORAM:**

Mr. J.N. Sianyabo - Chairperson

Mrs. M.B. Muzumbwe-Katongo - Vice Chairperson

Mr. D. Mulima - Member

Mrs. B.S. Chaila-Sichizya - Member

Mr. B. Tembo - Member

**For the Applicant:**

Ms. M. Mtonga, Manager, Legal Services - Competition  
and Consumer Protection Commission

Ms. T. Chola, Legal Officer - Competition and  
Consumer Protection Commission

Mr. C. Bwalya, Legal Officer - Competition and  
Consumer Protection Commission

**For the Respondent:**

S.A.G. Twumasi - Messrs. Kitwe Chambers

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**J U D G M E N T**

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#### LEGISLATION REFERRED TO:

1. Competition and Consumer Protection Act. No.24 of 2010
2. Competition and Consumer Protection (Amendment) Act No.21 of 2023
3. Competition and Consumer Protection (Tribunal) Rules, S.I. No.37 of 2012
4. Competition and Consumer Protection Commission Settlement Procedures Guidelines, 2016
5. Competition and Consumer Protection Commission Guidelines for Administration of Fines, 2019
6. Competition and Consumer Protection Commission: Leniency Programme

#### CASES REFERRED TO:

1. Charles Mambwe and Others v Mulungushi Investments Limited and Mpelembe Properties Limited (Selected Judgment No.36 of 2016)
2. Finance Bank Zambia Limited and Another v Simataa Simataa (Appeal No.11 of 2017)
3. Competition and Consumer Protection Commission v Yambe Driving School: (2017/CCPT/006/CON)
4. MTN Zambia Limited v Competition and Consumer Protection Commission (In Re: Abraham Makano): (2018/CCPT/018/CON)

#### OTHER REFERENCES:

1. Smithey, J. (n.d.), *What Are the Advantages and Disadvantages of Out-of-Court Settlements*; <https://smithey.com/out-of-court-settlements/> (Accessed: 1.8.2024)

## 1 INTRODUCTION

1.1 This is a judgment on the Application for a Mandatory Order (hereinafter “**the Application**”) brought before the Competition and Consumer Protection Tribunal (hereinafter “**the Tribunal**”) by the Competition and Consumer Protection Commission (hereinafter “**the Applicant**”) on 7<sup>th</sup> February, 2024, pursuant to section 64 of the Competition and Consumer Protection Act No.24 of 2010 (hereinafter “**the Act**”), and Rule 4 of the Competition and Consumer Protection Tribunal Rules, Statutory Instrument No.37 of 2012 (hereinafter “**the Rules**”). The Application arises from the Decision of the Board of Commissioners (hereinafter “**the Board**”) of the Applicant, which was delivered on 11<sup>th</sup> February, 2022, wherein Rusangu University (hereinafter “**the Respondent**”) was found to have breached section 47(a)(v) of the Act.

## 2 RELIEFS BEING SOUGHT

2.1 The Applicant seeks the Tribunal to grant it a Mandatory Order that will compel the Respondent to submit its latest annual books of accounts to the Applicant, for purposes of calculating the actual fine within ten (10) days of receipt of the Mandatory Order.

## 3 BACKGROUND

3.1 The background to the matter is that in September 2021, the Applicant received complaints<sup>1</sup> from Ms. Nowanga Mubiana, Ms. Nomsa Bubala Namoomba and Ms. Abigail Hamanenga (hereinafter “**the Complainants**”), alleging that they had each enrolled for respective learning programmes with

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<sup>1</sup> CCPC, *Record of Proceedings* dated 7<sup>th</sup> February, 2024, pp.1-32  
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the Respondent, in varying years. Further, in May 2017, the Respondent's Vice-Chancellor is alleged to have announced the introduction of new programmes, and invited interested students to apply to switch to the new programmes, if they so wished.

3.2 Among the new programmes introduced was the Bachelor of Science (BSc.) degree in Human Nutrition and Dietetics, a four (4) year programme that the Complainants alleged were informed was being offered under a memorandum of understanding with the University of Zambia but was yet to be accredited by the relevant body charged with that responsibility.

3.3 Being interested in the new programmes, the Complainants alleged to have switched from their initial programmes to the BSc. Human Nutrition and Dietetics programme (hereinafter **"the Nutrition Programme"**). Further, the Complainants alleged that their initial programmes had the same first year general courses, and some overlapping courses in succeeding years. On the basis of the foregoing, the Complainants are alleged to have received some course exemptions resulting in a variation in their respective completion dates depending on the number of exemptions one received.

3.4 It is alleged that in September 2020, Ms. Nomsa Bubala Namoomba and Ms. Nowanga Mubiana, were stopped by the Respondent from registering for the Nutrition Programme as it was not accredited.

3.5 As for Ms. Abigail Hamanenga, she is alleged to have not registered for any courses in 2016, owing to financial challenges, but that she had since completed all the courses in the Nutrition Programme although not graduated on account of non-accreditation of the programme.



3.6 It is further alleged that following the non-accreditation of the Nutrition Programme, the Respondent offered the Complainants three (3) options namely to:

- i. Wait for the Nutrition Programme to be accredited;
- ii. Switch to another programme of their choice at fifty percent (50%) discount; and
- iii. Transfer to an accredited institution and receive exemptions from some courses based on the transcript of results acquired from the Respondent.

3.7 The Complainants alleged that other tertiary institutions were only willing to exempt them from first year, on account of the non-recognition of the Nutrition Programme, thus making option 3 untenable. It is further alleged that on account of this, the Complainants opted to wait for accreditation of the Nutrition Programme, a situation that after eleven (11) months of waiting, did not materialise. On this account, the Complainants opted to pursue courses with accredited institutions and thus sought refunds from the Respondent.

3.8 Aggrieved by the lack of progress in resolution of the matter by the Respondent, the Complainants sought the intervention of the Applicant, who proceeded to inform the Respondent of an impending investigation by way of a Notice of Investigation (hereinafter “NOI”) dated 9<sup>th</sup> September, 2021.

3.9 Upon receipt of the NOI, the Respondent replied through its lawyers Messrs. Kitwe Chambers in a letter dated 30<sup>th</sup> September, 2021, in which a twenty-one (21) day extension was sought to enable the lawyers to obtain full instructions from the Respondent.

3.10 On 4<sup>th</sup> October, 2021, the Respondent's lawyers replied to the Applicant to confirm their retention as counsel for the Respondent, but also submitted as follows: <sup>2</sup>

- a) *That circumstances which led to the said Abigail Hamanenga is most unfortunate as it was not intentional or was it dishonest or in bad faith.*
- b) *The school discussed the introduction of this new course but because of failure of the students and indeed some members of the administration inadvertently, the said Abigail Hamanenga registered for the course.*
- c) *When the error was discovered and discussions held with the said Abigail Hamanenga, the school made an effort to compensate her by offering at least 50% refund.*
- d) *However, the said Abigail Hamanenga for reasons which are unclear, did not get back to the school after she insisted on 100% refund.*
- e) *The school is willing on non-prejudice basis to assist and refund what is considered fair in the circumstances, as the school considers the interest of its student's paramount.*

3.11 The Respondent's counsel also intimated a willingness to settle the matter *ex curia*.

3.12 In further communication with the Applicant on 5<sup>th</sup> October, 2021, the Respondent's counsel gave additional reasons leading to the *status quo* and

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<sup>2</sup> CCPC, *Record of Proceedings* dated 7<sup>th</sup> February, 2024, pp.35-37  
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submitted *inter alia* that<sup>3</sup>:

*“(a) At no time did any of the complainants received [sic] a letter of change to the purported course they entered...”*

*“(b) ...the records seem to show that at no time was [sic] fees being paid...”*

#### **4 APPLICANT’S FINDINGS FOLLOWING INVESTIGATION OF THE COMPLAINTS**

4.1 On 9<sup>th</sup> November, 2021, upon completion of investigations into the matter, the Applicant served the Respondent with the letter dated 8<sup>th</sup> November, 2021<sup>4</sup>, and accompanying Preliminary Report<sup>5</sup>, in which it was established that the Respondent falsely represented the Nutrition Programme, and thus breached section 47(a)(v) of the Act.

4.2 Further, the Applicant found no previous violations of the Act by the Respondent.

4.3 Furthermore, the Respondent was requested to respond to the Preliminary Report within seven (7) days from date of receipt of the letter.

#### **5 RESPONDENT’S RESPONSE TO THE PRELIMINARY REPORT**

5.1 Following receipt of the Preliminary Report, on 11<sup>th</sup> November, 2021, the Respondent’s counsel acknowledged receipt of the Applicant’s email dated 9<sup>th</sup> November, 2021, and therein intimated the Respondent’s intentions to settle the matter *ex curia*.<sup>6</sup>

5.2 On 30<sup>th</sup> November, 2021, a meeting initiated by the Respondent, and aimed at

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<sup>33</sup> CCPC, *Record of Proceedings*, dated 7<sup>th</sup> February, 2024, p.40

<sup>4</sup> *ibid.*, p.80

<sup>5</sup> *op. cit.*, pp.41-79

<sup>6</sup> *op. cit.*, p.82



discussing settlement options, was held between the Applicant and the Respondent's counsel, Mr. Twumasi. During the said meeting, Mr. Twumasi submitted as follows:<sup>7</sup>

- i. That the Respondent had engaged Solusi University in Zimbabwe with the view of facilitating for Ms. Nomsa Bubala Namoomba and Ms. Nowanga Mubiana to complete their studies at the said institution, and with expenses fully covered by the Respondent. It was further submitted that the two Complainants had agreed to the proposal;
- ii. That Ms. Abigail Hamanenga, who had insisted on being refunded would be reimbursed around 10<sup>th</sup> December, 2021; and
- iii. That a letter of commitment to the proposed options would be furnished on the Applicant.

5.3 In a letter dated 8<sup>th</sup> December, 2021<sup>8</sup>, the Respondent through its lawyers, Kitwe Chambers committed to fulfilling the promises made during the 30<sup>th</sup> November, 2021, meeting with the Applicant.

## 6 DECISION OF THE BOARD

6.1 Upon assessing the recommendations of the investigator of the complaints, the Board on 11<sup>th</sup> February, 2022, determined that the Respondent's conduct was in breach of section 47(a)(v) of the Act, and further directed as follows:<sup>9</sup>

- i. ***The Respondent issues Ms. Nomsa Namoomba Bubala and Ms. Nowanga Mubiana refunds of the respective total amounts paid in an event that***

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<sup>7</sup> CCPC, *Record of Proceedings*, dated 7<sup>th</sup> February, 2024, p.83

<sup>8</sup> *ibid.*, p.85

<sup>9</sup> *op. cit.*, pp.86-106

*they fail to sponsor them to Solusi University as per commitment, in accordance with Section 5(d) of the Act;*

- ii. The Respondent as a first-time offender is fined 0.5% of their annual turnover for breach of Section 47(a)(v) of the Act, in accordance with Section 47(a)(v) of the Act and the applicable cap in line with the Guidelines for Administration of Fines 2019; and*
- iii. The Respondent submits their latest annual books of accounts to the Commission for calculation of the actual fine within thirty (30) days of receipt of the Board Decision according to Section 5(d) of the Act.*

6.2 Further, the Respondent was given the liberty to appeal against any part of the Board directives within thirty (30) days of receipt of the Decision.

6.3 The Decision was served on the Respondent on 21<sup>st</sup> March, 2022, by way of email, and accompanied with a letter dated 17<sup>th</sup> March, 2022. The letter was re-forwarded on 17<sup>th</sup> May, 2022.

## **7 COMMUNICATION ON THE BOARD DECISION**

7.1 The Respondent's lawyers on record, Messrs. Kitwe Chambers replied to the Board Decision on 20<sup>th</sup> May, 2024, through their agents, Messrs. Mwansa, Phiri, Shilimi and Theu Legal Practitioners.<sup>10</sup> In the said reply, the lawyers alluded to discussions held with Ms. Sara Mafuta, then in-house counsel for the Applicant, and denied that the settlement was made late.

7.2 Further, the lawyers submitted that Ms. Abigail Hamanenga had been fully reimbursed, while Ms. Nomsa Bubala Namoomba and Ms. Nowanga Mubiana,

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<sup>10</sup> CCPC, *Record of Proceedings*, dated 7<sup>th</sup> February, 2024, p.130  
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were enrolled at Solusi University, at the Respondent's expense. In addition, it was submitted that the Complainants had withdrawn their complaints.

7.3 Furthermore, the lawyers sought to enter into a consent agreement with the Applicant pursuant to Rule 26 of the Rules, in addition to requesting for extension of time in accordance with Rule 27 of the Rules.

7.4 In response to the Respondent's letter, the Applicant guided in its letter of 26<sup>th</sup> May, 2022, that Rules 26 and 27 of the Rules were not applicable *in casu*, and that the Respondent should instead enter into settlement discussions with the Applicant. In addition, the Applicant informed the Respondent that the settlement discussions would include the 0.5% fine imposed on the Respondent.

7.5 Following non-response to its letter of 26<sup>th</sup> May, 2023, the Applicant wrote to the Respondent again on 14<sup>th</sup> July, 2023, in which letter the Respondent was reminded of its obligations arising from the Board Decision. In addition, the Respondent was reminded to submit its audited financial statements for the year ended 2021, within ten (10) days from the date of the Applicant's letter. The letter also stated that financial statements were required to enable the Applicant compute the fine equivalent to 0.5% of the Respondent's annual turnover.

7.6 Further, in a letter dated 2<sup>nd</sup> August, 2023<sup>11</sup>, the Respondent's lawyers, Messrs. Kitwe Chambers in replying to the Applicant's letter of 14<sup>th</sup> July, 2023, intimated on the Respondent's keen interest in settling the matter with the Applicant.

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<sup>11</sup> CCPC, *Record of Proceedings*, dated 7<sup>th</sup> February, 2024, p.135  
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7.7 The Tribunal noted that there then ensued a protracted exchange of communication regarding submission of the Respondent's books of accounts for the year ending 2021. The Respondent seemed to have had challenges in providing the requisite books of accounts, which delay was attributed to a combination of the COVID-19 situation and non-availability of auditors from the Respondent's international head office.

7.8 Having been aggrieved by the protracted delay in submission of the Respondent's requisite books of accounts, and pursuant to section 64 of the Act, the Applicant sought the intervention of the Tribunal by way of Notice of Application for a Mandatory Order filed on 7<sup>th</sup> February, 2024, and supported by an affidavit of even date deposed to by one Buumba Munyandi, an investigator in the employ of the Applicant.

## 8 THE APPLICATION

8.1 The grounds in support of the Notice of Application are contained in paragraphs 4 to 29 of the affidavit in support, which shall not be repeated but stated *inter alia* that the Respondent had not submitted its books of accounts, despite having been given time to do so, hence the application.

8.2 On 12<sup>th</sup> February, 2024, the Respondent filed its affidavit in opposition deposed to by one Dorababu Tadejali, the Vice Chancellor of the Respondent and stated, *inter alia*, as follows:

- i. That the Applicant was aware of and authorised the Respondent to settle the matter with the Complainants;
- ii. That once the settlement was achieved the Complainants would withdraw the case, and duly did;

- iii. That the settlement was undertaken on the understanding that once the complaints were addressed, the Respondent should not be punished twice;
- iv. That the books of accounts for the year 2021 were not ready owing to the COVID-19 situation, and would most probably be in or about May or June 2024. In the interim, the 2019 books of accounts were available for submission as an alternative; and
- v. That the actions of the Applicant in wanting to impose financial penalties on the Respondent were unfair and unlawful.

8.3 In reply to the Respondent's affidavit in opposition, the Applicant filed an affidavit on 7<sup>th</sup> March, 2024, and this affidavit was deposed by Buumba Munyandi, a Provincial Investigator in the employ of the Applicant. In the said affidavit, the Applicant averred, *inter alia*, that:

- i. The issue was not on the settlement with the Complainants but on the Applicant following the imposition of a fine of 0.5% of the Respondent's annual turnover;
- ii. The withdrawal of the complaints by the Complainants needed to be proven by the Respondent;
- iii. The Respondent was not absolved of its default by settling with the Complainants;
- iv. The Respondent had inordinately delayed in the submission of the books of accounts for the year 2021, the basis on which the fine would be calculated as per requirements of the Act; and
- v. The Respondent's non-compliance with the Board Decision is what prompted the Applicant to seek a Mandatory Order from the Tribunal.

## 9 THE APPLICATION HEARING

9.1 The matter was heard virtually on 8<sup>th</sup> July, 2024<sup>12</sup> and the parties were represented by respective counsel.

## 10 APPLICANT'S SUBMISSIONS

10.1 The Applicant's counsel, Ms. Malibase Mtonga submitted that the Applicant was applying for a Mandatory Order pursuant to Rule 4 of the Rules and section 64 of the Act. She further submitted that the application was supported by an affidavit and Record of Proceedings dated 7<sup>th</sup> February, 2024, and an affidavit in response dated 7<sup>th</sup> March, 2024, as well as Skeleton Arguments dated 28<sup>th</sup> June, 2024<sup>13</sup>. Furthermore, counsel submitted that the Applicant would rely on the said documents in their entirety.

10.2 In Heads of Argument, the Applicant argued as follows:

- i. That per the requirement of the law, the Respondent was requested to make representations to show cause why the Applicant should not proceed to apply for a Mandatory Order. However, the Applicant considered the Respondent's representations as an attempt at further delay the submission of the books of accounts required;
- ii. It was further, submitted that evidence in the Record of Proceedings<sup>14</sup> showed the Respondent had not met any previously suggested submission dates of October 2023, November 2023, and January 2024;
- iii. Furthermore, the Respondent's counsel cited the Tribunal's holding in the matter of *Competition and Consumer Protection Commission v Yambe*

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<sup>12</sup> Parties signed a consent order dated 28<sup>th</sup> June, 2024

<sup>13</sup> Filed after Respondent's Skeleton Arguments which were deposited on 10<sup>th</sup> April, 2024

<sup>14</sup> CCPC, *Records of Proceedings*, dated 7<sup>th</sup> February, 2024, pp.138-139;141



*Driving School*<sup>15</sup> (hereinafter “the Yambe Case”) that refunding the complainant in that matter did not cure the driving school of its infringement of the law; and

iv. The Applicant argued that the Respondent’s non-compliance with submission of the requisite books of accounts rendered any possible discussions of settlement of the fine, an exercise in futility.

## 11 RESPONDENT’S SUBMISSIONS

11.1 On 10<sup>th</sup> April, 2024 in anticipation of the Applicant’s arguments in support of the Application, counsel for the Respondent had filed Heads of Argument and List of Authorities. These were augmented with oral submissions by the Respondent’s counsel, Mr. Twumasi during the hearing.

11.2 Firstly, counsel for the Respondent pleaded for the Application to be rejected with costs, arguing that the matter had already been settled with the Complainants, and the approval of the Respondent prior to the Board Decision. To buttress this point, counsel cited the Supreme Court’s *dictum* in the case of *Finance Bank Zambia Limited and Another v Simataa Simataa* (hereinafter “the FBZ Case”), where, *inter alia*, settlement of cases *ex curia* was encouraged<sup>16</sup> and that:

***“...the policy of the law is to uphold and enforce settlement agreements if they are fairly made and not in contravention of***

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<sup>15</sup> 2017/CCPT/006/CON

<sup>16</sup> Smithey cited *inter alia* reduced expenses as an advantage of out-of-court settlements. See article at <https://smithey.com/out-of-court-settlements/>

*some law or other overriding public policy.”*<sup>17</sup>

11.3 Citing the case of *Charles Mambwe and Others v Mulungushi Investments Limited and Mpelembe Properties Limited*<sup>18</sup>, where the Supreme Court held *inter alia* that once a consent settlement order was entered into by the parties, it marked the close of the case, counsel for the Respondent argued that the Applicant authorised the settlement with the Complainants, and once the matter was settled, the case was considered closed.

11.4 Furthermore, counsel submitted that punishing the Respondent after the said *ex curia* settlement with the Complainants was a case of double jeopardy and illegal.

11.5 The Respondent’s counsel also reiterated that the Respondent had not refused to provide the books of accounts for reasons stated in various correspondence with the Applicant.

11.6 Mr. Twumasi further belaboured the contents of the written submission and emphasised the Respondent’s plea that the Tribunal should not entertain the Application as it would prejudice the Respondent. He further argued that the Applicant having allowed the Respondent and the Complainants to settle the matter *ex curia*, the Board should not have proceeded to render its Decision.

11.7 In response to the Tribunal’s question on why the Respondent had not challenged the Board Decision by way of an appeal, Mr. Twumasi submitted that the Respondent was still negotiating the settlement of the fine with the

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<sup>17</sup> Appeal No.11 of 2017, p.738

<sup>18</sup> Selected Judgment No.36 of 2016, p.1334

Applicant, which negotiations had stalled on the account of the outstanding books of accounts.

## **12 APPLICANT'S REPLY TO THE RESPONDENT'S SUBMISSIONS**

12.1 In rebutting the Respondent's submissions, Ms. Mtonga succinctly prayed that the Tribunal grants the Mandatory Order as the application before the Tribunal was for a Mandatory Order to compel the Respondent to submit its books of accounts, and had nothing to do with neither the refund nor the settlement agreement with the Complainants.

12.2 Ms. Mtonga further submitted that the Respondent had suggested the settlement before the Board Decision but concluded only it after the Decision. She argued furthermore that the Respondent then proposed to settle the fine but the negotiations with the Applicant dragged on as the Respondent kept delaying to submit the books of accounts.

## **13 CONSIDERATION OF THE MATTER**

13.1 The Tribunal considered the affidavit filed in support of the application for a Mandatory Order, the Record of Proceedings as well as the oral submissions of from both counsels. Based on this, the following facts are not in dispute:

- i. In September 2021, the Applicant received three (3) complaints against the Respondent from the Complainants;
- ii. That between September 2017 and May 2018, the Complainants switched from the initial programmes of study to the Nutrition Programme;
- iii. That upon discovering that the Nutrition Programme was not accredited



the Complainants sought refunds from the Respondent;

iv. That the Respondent offered the Complainants various options, *inter alia*, a fifty percent (50%) refund on the fees already paid;

v. That the Applicant correctly found the Respondent in violation of section 47(a)(v) of the Act, for enrolling the Complainants in a learning programme that was not accredited by the Higher Education Authority (hereinafter “the HEA”);

vi. That the Applicant followed due process by giving the Respondent an opportunity to respond to the findings and directives of the Board; and

vii. That the Respondent has not complied with the directives of the Board.

13.2 Based on the foregoing, the Tribunal is of the view that there are several factors to be considered, *in casu*.

13.3 Firstly, is the question of whether the Respondent was in violation of the law. As noted earlier, the available evidence is that the Applicant rightfully found the Respondent in violation of section 47(a)(v), and the Respondent did not dispute this fact.

13.4 Secondly, is whether the violation attracted a fine. The answer to that question is found in section 47 of the Act which states, *inter alia*, that:

***“A person who, or an enterprise which...(b) makes a false or misleading representation concerning—***

***(i) the price of any goods or services;***

***(ii) the availability of facilities for the repair of any goods or of spare parts for goods;***

***(iii) the place of origin of any goods;***

***(iv) the need for any goods or services; or***

*(v) the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy;*

*is liable to pay the Commission a fine not exceeding ten percent of that person's or enterprise's annual turnover or one hundred and fifty thousand penalty units, whichever is higher."*

13.5 Therefore, according to the Fines Guidelines, as a first offender, the Respondent was fined the lowest penalty of 0.5% of annual turnover<sup>19</sup>, and the calculation was to be based on the turnover of the immediately preceding year. As such the fine was to be calculated on basis of the Respondent's 2021 annual turnover.

13.6 Thirdly, in order to expedite resolution of the complaints, the Respondent opted to settle the matter amicably with the Complainants, a situation which was encouraged by the Applicant as stated in the minutes of the meeting held on 30<sup>th</sup> November, 2021. The Tribunal also noted that this was a generally favoured route by the Supreme Court as seen in the **FBZ Case**, *supra*.

13.7 Fourthly, having reached an amicable solution with the Complainants was the Respondent then absolved of its requirement to pay the fine imposed for violation of section 47(a)(v)? To answer this question, the Tribunal relied on precedence in the **Yambe Case**, *supra*, where it was held that as the violations had already occurred, the defaulter was not absolved from paying the respective fines. Further, it was noted that the Fines Guidelines gave the Applicant the discretion to impose an administrative fine for violations of the Act.<sup>20</sup> However, the amicable resolution of the matter between the Respondent and the Complainants may merely act as a mitigation in any

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<sup>19</sup> CCPC., *Fines Guidelines*, 2016, p.7

<sup>20</sup> *Ibid.*, p.6

settlement discussions with the Applicant over the fine.<sup>21</sup> On this score, the Tribunal noted that the total waiver of the fine as being sought by the Respondent would be *ultra vires* the law.

13.8 Further, the Tribunal considered the Respondent's offer to submit the books of accounts for the year 2019, since the 2021 records were not available. On this matter, the Tribunal was of the view that the Applicant's hands were tied as the Fines Guidelines require *in casu* submission of either the 2022 or 2023 books of accounts in the absence of the 2021 records.

13.9 Furthermore, in analysing the evidence adduced by the parties, the Tribunal observed that in all the correspondence between the Respondent and the Applicant, the Respondent did not challenge the fine imposed but was seemingly only seeking for extension of time in which to submit the books of accounts. Further, the Respondent argued that it had not filed an appeal because it was still in discussions with the Applicant regarding entering a settlement agreement on the fine. It was the Tribunal's considered view that by not appealing the Board Decision, the Respondent slept on its rights to challenge the Board's directives.

13.10 In addition to the above, the following issues also arose:

- i) In replying to the Respondent, the Applicant submitted that the discussions were not on the settlement but the extension of time for submission of books of accounts. The Tribunal noted that the Respondent had not proved otherwise;

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<sup>21</sup> op.cit., p.4



- ii) Furthermore, the settlement programme is not a leniency programme<sup>22</sup> neither does settlement with a complainant relieve a sanctioned party from its obligations under the Act<sup>23</sup>. The Tribunal noted that the Applicant's letter of 26<sup>th</sup> May, 2022<sup>24</sup>, in response to the Respondent's letter dated 22<sup>nd</sup> May, 2022 was very categorical, when it guided that Rule 26 of the Rules could not be applied *in casu*. Instead, the Applicant advised the Respondent to enter into a settlement agreement with it in accordance with the settlement procedures. In addition, the Applicant informed the Respondent that the settlement discussions would include the fine of 0.5% of annual turnover that had been imposed on the Respondent for violation of section 47(a)(v) of the Act;
- iii) The Tribunal is also of the view that the Supreme Court's holding in the *Mambwe Case, supra*, was not applicable herein as the alleged settlement did not pass the test of the standard set in the said judgment, which is one of existence of an agreement signed by the Respondent, Complainants and the Applicant (as arbitrator);
- iv) Furthermore, the Respondent did not challenge the Board Decision but the application for a Mandatory Order implying that it accepted the directives but was merely negotiating for more time to submit the books of accounts;
- v) In addition, at the time of hearing the case, there was no indication from the Respondent that the books of accounts were ready, contrary to its submission in the Skeleton Arguments, where it had intimated a timeframe

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<sup>22</sup> CCPC, *Settlement Procedures*, 2016, para.3(ii)

<sup>23</sup> 2018/CCPT/009/CON, pp.13-15

<sup>24</sup> CCPC, *Record of Proceedings* dated 7<sup>th</sup> February, 2024, p.132

of May or June, 2024. Assuming the said documents exist, it should not be a problem for the Respondent to expeditiously submit the books of accounts to the Applicant; and

vi) The Tribunal noted the Applicant's submission regarding the timing of the alleged settlement, wherein Ms. Mtonga had argued that the settlement was concluded after the Board Decision. The position was corroborated by the Respondent's letter of 20<sup>th</sup> May, 2024, in which it reported that while Ms. Abigail Hamanenga is alleged to have been reimbursed in December, 2021, scholarship award letters for the other Complainants were dated 7<sup>th</sup> March, 2022. This in our considered view was clearly after the Board Decision was made;

13.11 Based on the foregoing, it is quite evident that the Respondent's options are limited to either paying the whole fine or entering into a settlement with the Applicant, both situations which rely on availability of the requisite books of accounts for purposes of computation of the applicable fine in monetary terms.

## **14 TRIBUNAL DECISION**

Based on the foregoing, the Tribunal adjudges as follows:

14.1 The Application is successful and the Mandatory Order is hereby granted.

14.2 On the balance of law and evidence adduced *in casu*, the Tribunal holds that the Respondent is duly entitled to collect the fine of 0.5% of the Respondent's annual turnover, for breach section 47(a)(v) of the Act.

14.3 The Respondent is hereby directed to submit its books of accounts for the year-ended 2021, and if not available those of the next subsequent year

within thirty (30) days from the date of delivery of this judgment.

14.4 No costs are awarded.

A party aggrieved by this decision of the Tribunal may appeal to the Court of Appeal within thirty (30) days of determination of the matter.

Dated the

day of

2024



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Mr. J.N. Sianyabo  
CHAIRPERSON



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Mrs. M. B. Muzumbwe-Katongo  
VICE CHAIRPERSON



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Mr. D. Mulima  
MEMBER



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Mrs. B. S. Chaila-Sichizya  
MEMBER



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Mr. B. Tembo  
MEMBER