

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

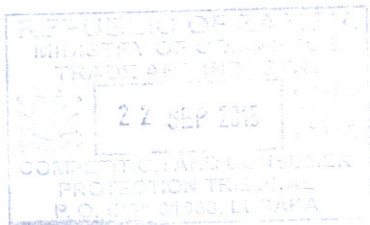
2015/CCPT/010/CON

IN THE MATTER OF:

**SECTIONS 60 & 64(1) OF THE
COMPETITION AND
CONSUMER PROTECTION ACT
NO. 24 OF 2010**

IN THE MATTER OF:

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



IN THE MATTER OF:

**THE COMPETITION AND
CONSUMER PROTECTION
(GENERAL) REGULATIONS,
2011, STATUTORY
INSTRUMENT NO. 97 OF 2011**

BETWEEN:

**COMPETITION AND CONSUMER PROTECTION
COMMISSION**

APPLICANT

AND

KITCHEN OILS IMPORTERS LIMITED
T/A BULK SALADI

RESPONDENT

CORAM:

Mr. Willie A. Mubanga, SC (Chairperson), Mrs. Maria M. Kawimbe (Vice Chairperson), Mr. Chance Kabaghe (Member), Mr. Rocky Sombe (Member) Mrs. Eness C. Chiyenge (Member)

For the Applicant:

Mrs. Maureen Mwanza – Director Legal & Corporate Affairs, Competition and Consumer Protection Commission, Mrs. M. M. Mulenga – Manager, Legal & Corporate Affairs, Competition and Consumer Protection Commission, Ms. M. C. Kabwela – Legal Officer, Competition and Consumer Protection Commission

For the Respondent:

Mr. Misheck Mwila Mwewa, Director Operations, Kitchen Oils Importers Limited

RULING

Legislation referred to:

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

Works referred to:

1. Atkins Court Forms, 2nd Edition, 1995 Issue, Vol. 4, at Paragraph 5

This Ruling is on a short familiar point of law, which rarely arises. At the hearing of this matter on 24th June, 2015, we asked the parties to address us on the following questions, that is:

- (i) ***Whether Kitchen Oils Importers Limited is a party to these proceedings?***
- (ii) ***Whether Kitchen Oils Importers Limited is adequately identified or discussed in the Applicant's Board's decision?***

The following facts we believe will suffice as the background to this application. These being that on 18th May, 2015 the Competition and Consumer Protection Commission (hereinafter called the "Applicant") filed an Application for a Mandatory Order before the Tribunal. In support of the application, an affidavit was deposed to by a Mr. Kondwani Kaonga an employee of the Applicant organization.

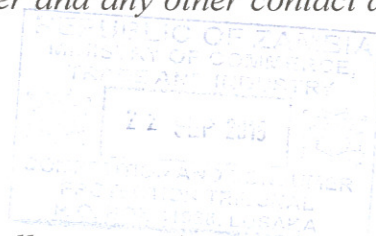
He deposed that on 16th May, 2013 the Applicant received a complaint alleging that some cooking oil manufacturing firms namely, Zambeef Products Plc and Mount Meru Millers (Z) Limited were involved in the sale of decanted cooking oil. He further deposed that the containers in which the cooking oil was decanted into bore labels of other producers and companies that were not involved in the said business.

It is also shown in the Record of Proceedings at pages 9-17 that assessment tests and investigations were conducted by the Applicant on the cited companies. It is

also observed that the only companies cited as respondents in the proceedings before the Applicant were Zambeef Products Plc and Mount Meru Millers (Z) Limited. We wish to point out that a number of references were made to the Competition and Consumer Protection Act (hereinafter called “the Act”). However, for the purposes of the issues that we raised, we intend to restrict ourselves to the reference of section 50 subsections (1) and (2) of the said Act, which is reproduced here below:

Section 50(1):

“A product that is sold in Zambia shall have a label to clearly indicate the product name, the ingredients used in the product, the date of manufacture and expiry of the product, the manufacturer’s name, the physical location of the manufacturer, the telephone number and any other contact details of the manufacturer”.



Section 50(2):

“A person or an enterprise shall not sell any goods to consumers unless the goods conform to the mandatory consumer product information standard for the class of goods set by the Zambia Bureau of Standards or other relevant competent body”.

Our short comment on the cited section 50 subsections (1) and (2) is merely to emphasize that it proscribes the sale of unlabeled products as well as the sale of goods that do not conform to the mandatory consumer product information. We note from page 22 of the Record of Proceedings that the Applicant’s Board deliberated on the complaint and *inter alia* observed that:

“6.1 Having considered the facts, evidence and submissions in this case, the Board resolved that Zambeef Products Plc and Mount Meru Group supplied consumers with decanted cooking oil. The decanted cooking oil supplied to the consumer at the bulk station did not meet the product information standard by ZABS and did not meet the labeling requirement stipulated in section 50(1) of the Act.” (our emphasis)

The Applicant's Board determined *inter alia* on the referenced page 22 of the Record of proceedings that:

“7.1 The facts and evidence of this case have shown that Zambeef Products Plc and Mount Meru Millers are in breach of section 50(1) and 50(2) of the Act. The Board also determined that there were other companies that were engaged in the conduct such as High Protein foods and Saladi House Limited who were in violation of Sections 50(1) and 50(2) of the Act as well as the ZABS standard ZS234.” (our emphasis)

In addition, the Applicant's Board directed on 20th December, 2013 that:

“8.0 Board Directive;

Zambeef Products Plc, Mount Meru Millers, Saladi House, High Protein Foods Limited and all other companies involved in decanting of cooking oil be given a period of three (3) months from the date of receiving the Board decision; and in consultation with the Commission and ZABS to come up with and implement ways of selling decanted cooking oil without violating the ZABS standard ZS234 and Sections 50(1) and 50(2) of the Act.”

We have further noted from the Record of Proceedings at pages 24 – 86, that following the Applicant's Board's directive, a number of inspections were carried out by the Applicant, between September, 2014 and March, 2015. A number of observations are made in the inspections report and at page 79 of the Record of Proceedings, the author of the report, a Kondwani Kaonga (investigator) had the following to say:

"It is noted that Bulk Saladi had not done anything to implement the Board Directive."

The investigator went on to say:

"Based on the above findings: It is recommended that the application for a mandatory order to the tribunal be implemented for Bulk Saladi."

As we stated earlier, we posed some questions to the parties at our last hearing of this matter on 24th June, 2015. The reason was that we needed to settle the question whether the application for a Mandatory Order against the Respondent was properly before the Tribunal. We will now proceed to deal with each of the questions that we posed to the parties.

(i) Whether Kitchen Oils Importers Limited is a party to these proceedings?

What immediately comes to our mind is, who is Bulk Saladi? Fortunately, we do not have to belabour the issue, granted the Applicant's due diligence finding as stated in its submissions in response to our question. The finding being that Bulk Saladi is not a registered entity with the Patents and Companies Registration Agency (PACRA) and is therefore not a person at law. We must say that we have

no reason to doubt this information, which has been provided to us by the Applicant.

We have equally observed in the Record of proceedings that there was no reference made to Kitchen Oils Importers Limited (hereinafter called "the Respondent") nor is there a suggestion that the Respondent's trading name is Bulk Saladi.

Paradoxically, what is before us is a proposition from the Applicant that Bulk Saladi is the Respondent's trading name. According to the Applicant, this information was supplied to it by a Mr. Phiri, an employee at the Respondent company.

In order to settle this issue, we take the view that the Applicant's proposition defies logic and fails to reconcile the fact that PACRA has no records to show the existence of Bulk Saladi. On that understanding, we do not accept the Applicant's proposition that the Respondent also trades as Bulk Saladi. If anything the information allegedly given by Mr. Phiri cannot be relied on as it is unsubstantiated.

Further, after taking into account the Applicant's Board's deliberations, determination and directive we note that the companies or persons to be pursued were identified. The Respondent was not one of the targeted companies. Thus, in our view the Respondent, was wrongly pursued by the Applicant.

From the Record of Proceedings, we have already observed that a number of investigations were carried out by the Applicant regarding the sale of decanted cooking oil. We have also observed that a Mr. Misheck Mwila Mwewa a Director at the Respondent company, admitted that he is involved in the business of selling decanted cooking, but in a personal capacity.

The question that results from this admission is whether the business activities of Mr. Mwewa in his personal capacity are binding on the Respondent company. In considering that question, we do not think it is proper discourse to delve into a long discussion on the rights, responsibilities and obligations of a company, shareholders, employees, etc.

Save that where there is a principal-agent relationship, there are certain conditions that have to be met for that relationship to be created. One of the primary conditions is that the agent must act on behalf of the principal and that the agent should not be an employee of the principal.

To this extent, the learned authors of **Atkins Court Forms, 2nd Edition, 1995 Issue, Vol. 4, at Para 5**, summarised the duties owed by an agent to its principal to include the duty to carry out the principal's lawful instructions and to indemnify his principal in respect of the agent's negligence or other breach of duty.

In casu, Mr. Mwewa is an employee of the Respondent, whose evidence is that he also engages in the sale of decanted cooking oil; has not been refuted by the Applicant. In his Affidavit in Opposition to an Application for a Mandatory Order deposited to on 11th June, 2015, Mr. Mwewa averred that the Respondent company is involved in the business of importing cooking oil as shown in **exhibit "MMM1"**.

From the evidence before us, we have little difficulty in finding that Mr. Mwewa's business is not that of the Respondent's type of business. We also have little difficulty in asserting that there is no principal – agent relationship within the authoritative works of the learned authors of *Atkin Court Forms*. If anything, what exists between the Respondent and Mr. Mwewa is a Master-Servant relationship.

In our view the acts of Mr. Mwewa performed in his personal capacity do not bind the Respondent company. It is also our view that in the absence of proof to show that the Respondent does trade as Bulk Saladi, the Respondent is not a party to these proceedings. Further that, if the Respondent was trading as Bulk Saladi, then the records should have been located at PACRA, but this is not the case. As such, the Respondent is wrongly before us.

(ii) Whether Kitchen Oils Importers Limited is adequately identified or discussed in the Applicant's Board's decision?

At the beginning of this Ruling, we purposefully gave a long recital on the history of this application. We did this to appreciate the context in which the Applicant's Board's directive was made. We understand the Applicant's Board's decision to be that the Applicant's officers were at liberty to pursue **all the companies and others** that are involved in the business of selling decanting cooking oil. (Our emphasis)

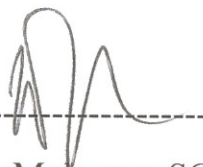
However, pursuing those companies and others involved in our view, required thorough investigation coupled with concrete leads on the actual companies or persons involved in that business; so that all those that are found wanting may be held accountable.

From the Record of Proceedings, we observe that the companies and other entities that were to be pursued were identified and listed at pages 24-86 of the Record. We have equally observed that the Respondent company, was not identified nor discussed in the Applicant's Board's decision as one of the targeted companies. We also decided earlier that the Respondent is not trading as Bulk Saladi. It is thus surprising that the Respondent company should be the subject of this Application for a Mandatory Order.

Based on the foregoing, we take the view that this Application for a Mandatory Order against the Respondent on the bulk decanting and sale of cooking oil by the Applicant has no merit and is hereby dismissed. We order each party to bear its own costs.

A person aggrieved with this Ruling may appeal to the High court within thirty (30) days of this decision.


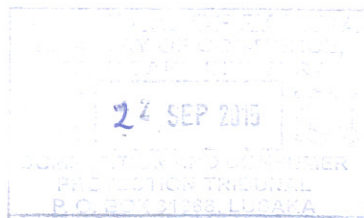
Delivered at **LUSAKA** this **22nd** day of **September, 2015**.




Willie A. Mubanga, SC
Chairperson



Maria M. Kawimbe
Vice Chairperson



Chance Kabaghe
Member



Rocky Sombe
Member



Eness C. Chiyenge
Member