

IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA

2014/HP/1296

(Civil Jurisdiction)

In the matter of: Section 75 of the Competition and Consumer  
Protection Act No. 24 of 2010

And

In the matter of: An appeal against the decision of the Competition and  
Consumer Protection Tribunal given on 16<sup>th</sup> December  
2013

BETWEEN

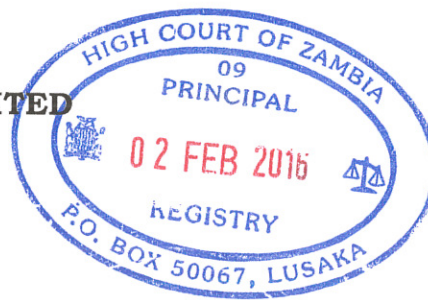
**MAMA AFRICA ENTERPRISES LIMITED**

Appellant

**AND**

**THE COMPETITION & CONSUMER  
PROTECTION COMMISSION**

Respondent



*Before the Hon. Mrs. Justice N.A. Sharpe-Phiri on 2<sup>nd</sup> February 2016*

For the Appellant : Mr. Yosa Yosa of Messrs Simeza Sangwa & Associates

For the Respondent : Mrs. M. Mulenga, Manager Legal, Competition &  
Consumer Protection Commission

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

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Authority referred to:

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

Cases referred to:

1. Amec v Whitefriars City Estates (2005)1 ALL ER 723
2. Fredrick Jacob Titus Chiluba v the Attorney General (2003) ZR 153
3. Council of Civil Services Unions & others v Minister for the Civil Service (Civil Service (1984) 3 ALL ER 935
4. Derrick Chitala v Attorney General (1995-97) ZR 91
5. London and Clydeside Estates Limited v Aberdeen dc (1979) 3 All ER 876
6. R v Immigration Appeal Tribunal, ex parte Jeyanthan Ravichandran v Secretary of State for the Home Department (1999) 3 ALL ER 231

This is an appeal by *Mama Africa Enterprises Limited* (hereinafter ‘the Appellant’) from a decision of the Competition and Consumer Protection Tribunal (hereinafter ‘the Tribunal’) of 16<sup>th</sup> December, 2013.

By the said ruling, the tribunal decided that the Competition and Consumer Protection Commission (hereinafter ‘the Respondent’) was not in breach of the provisions of **Section 55 of the Act**. It further ruled that by virtue of **Section 55(1) of the Act**, the Commission had the discretion as to the form of its report and the report, being in the form of a letter, was a proper report.

The detailed facts pertinent to this appeal are that the Respondent opened investigations into a matter against the Appellant and on 19<sup>th</sup> October 2012, it purchased water from the Appellant’s shop and was issued with a receipt for the transaction containing the words “*no claims, no return and no refund*”. The Respondent issued a notice of investigation (hereinafter ‘the notice’) and served on the Appellant on 22<sup>nd</sup> October, 2012. The Appellant admitted the offence in a letter to the Respondent and a subsequent meeting was held between the parties in relation thereto. On 6<sup>th</sup> November, 2012, the Respondent notified the Appellant by letter that it was in contravention of the Competition and

Consumer Protection Act (hereinafter 'the Act') and demanded that the Appellant's books of account be submitted to it for purposes of imposing a fine. The Appellant did not comply with this directive prompting the Respondent to apply to the Tribunal for a mandatory order compelling the Appellant to submit its books of account. The Appellant also applied to the Tribunal for a declaration that the notice be deemed null and void for procedural impropriety and that the Respondent's directives be set aside. In its ruling of 16<sup>th</sup> December 2013, the Tribunal dismissed the Appellant's motion.

Being dissatisfied with the ruling of the tribunal, the Appellant lodged this appeal on the following grounds:

1. ***That the Tribunal erred in law and in fact when it held that the Appellant had been heard prior to the Competition and Consumer Protection Commission reaching its conclusion on the investigation.***
2. ***The Tribunal grossly erred in law and in fact when it held that the commission did not breach Section 55 of the Competition and Consumer Protection Act when it found that the Act gives the commission discretion when it can issue a Notice of investigation.***
3. ***The Tribunal erred in law and in fact when it held that the fact that the report prepared by the commission took the form of a letter does not preclude it from being a report under the law.***

The Appellant seeks the following reliefs:

1. ***A declaration that the Competition and Consumer Protection Tribunal erred in fact and in law when it held that the Appellant was heard by the Respondent.***
2. ***An Order quashing the decision of the Competition and Consumer Protection Tribunal.***
3. ***That the Respondent shall be ordered to bear the costs of the appeal.***

The matter was heard before me on 24<sup>th</sup> June, 2015. Both Counsel for the Appellant and the Respondent were in attendance. They both relied on their submissions on record.

In relation to ground one, the Appellant argued that the Tribunal erred when it held that the Appellant had been heard prior to the Commission reaching its conclusion on the investigation.

Counsel argued that by virtue of **Section 55 (3) of the Act** the Respondent was, upon opening of an investigation required to provide written notice of its investigation to the Appellant and to indicate the subject matter and purpose thereof to warn the Appellant of the intended investigation and to afford it an opportunity to make representations, if any. Counsel argued further that a perusal of the wording of the notice of investigation issued on 19<sup>th</sup> October 2012 shown at page 14 of the Record of Appeal shows that the Respondent had already come to a conclusion regarding the offence committed by the Appellant before notifying the Appellant of its investigations and without affording the Appellant an opportunity to be heard.

Counsel cited the case of **Amec v Whitefriars City Estates** in which Dyson LJ stated at pages 729-730 as follows:

*'The common law rules of natural justice or procedural fairness are twofold; firstly, the person affected has the right to prior notice and an affective opportunity to make representations before a decision is made. Secondly, the person affected has the right to an unbiased tribunal.'*

Counsel argued that at the time the Respondent was issuing the notice to the Appellant, it had already decided the matter and made a decision to impose a fine on the Appellant. This, Counsel argued was in breach of **Section 55 (3) of the Act**. He cited several other cases.

In the **Fredrick Jacob Titus Chiluba v the Attorney General** the Supreme Court cited Lord Diplock in **Council of Civil Services Union and others v Minister for the Civil Service** and defined procedural impropriety as:

*'....rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision....also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice.'*

He also cited the **Derrick Chitala v Attorney General** case where Supreme Court endorsed the dictum of Lord Diplock cited above, and held that *where an administrative authority failed to observe procedural rules that are expressly laid*

*down in the legislative instrument by which its jurisdiction is conferred, the resulting decisions were not only illegal but procedurally improper.*

Further, in the case of **London and Clydeside Estates Ltd v Aberdeen DC**, Lord Hailsham LC held that,

*‘...when parliament lays down a statutory requirement for the exercise of legal authority it expects its authority to be obeyed down to the minutest detail. But what the courts have to decide in a particular case is the legal consequence of non compliance on the rights of the subject viewed in the light of a concrete slab facts and a continuing chain of events.’*

This case was cited with approval in **R v Immigration Appeal Tribunal, ex parte Jeyanthan Ravichandran v Secretary of State for the home Department**. The Court after setting out the speech of Lord Hailsham LC stated at page 238 held that:

*‘These comments of Lord Hailsham LC were made in a case where a mandatory requirement was not complied with and this resulted in a document being set aside.’*

In **Bradbury V Enfield London Borough Council**, Lord Denning stated that:

*‘If a local authority does not fulfil the requirements of the law, this Court will see that it does fulfil them. It will not listen readily to suggestions of “chaos”. The department of education and the council are subject to the rule of law and must comply with it, just like everyone else... I can well see that there may be a considerable upset for a number of people, but I think it far more important to*

*uphold the rule of law. Parliament has laid down these requirements so as to ensure that the electors can make their objections and have them properly considered. We must see their rights are upheld.'*

Counsel argued that, **Section 55(3) of the Act** provides in mandatory terms that the Commission shall give notice of the investigation as soon as practicable to the person or entity subject to the investigation. The provision does not allow the Respondent to defer the giving of notice. He argued that the Respondent failed to comply with the said **Section 55(3)** in failing to issue notice to the Appellant before concluding its investigations.

He argued further that the Tribunal in its ruling at page 4 found that a meeting was held in which the Appellant was granted an opportunity to be heard. However, to the contrary the Respondent had as at the date of the said meeting already reached a decision that the Appellant was liable to pay a fine to be imposed after it submitted its annual returns request for in the notice. At the meeting held on 5<sup>th</sup> November 2012, all the Respondent did was to affirm its decision to impose the penalty by insisting that the Appellant hands over its annual returns and the Respondent gave a deadline for submission of the said annual returns. He stated that this is clearly evidenced in the email dated 5<sup>th</sup> November 2012 from the Respondent's research analyst at page 44 of the record of appeal. This is before the Respondent issued a report containing its decision. Counsel argued that the Respondent therefore failed to observe the mandatory procedure stipulated in **Section 55(3)** which it ought to have obeyed down to the minutest detail.

Ground 2 is that the Tribunal erred in law and fact when it held that the Commission did not breach **Section 55 of the Act** as the provision gives the Commission discretion when it can issue a notice of investigation.

Counsel argued in relation to this ground that **Section 55(3)** does not give the Commission discretion to conclude its investigation and thereafter communicate its decision in the notice. The section requires that the Commission shall, upon opening an investigation, as soon as practicable give written notice of the investigation to the person who is the subject of the investigation. Counsel argued that the provision is couched in mandatory terms and therefore it cannot be argued that the section gives the Respondent the discretion as to when it can issue a notice of investigation.

Counsel submitted further that although **Section 55(6) of the Act** empowers the commission to issue the notice of investigation after conclusion of the investigation, this discretion can only be exercise where it has reasonable grounds to believe that the giving of the notice may materially prejudice its investigations.

Counsel argued further that although the tribunal in its ruling at page 7 of the record of appeal referred to **Section 55(6) of the Act** in deciding that the Respondent has a discretion as to when it can issue a notice of investigation, the tribunal did not have any factual basis for relying on **Section 55(6) of the Act**. He argued that there was no evidence to suggest that compliance with the mandatory requirement of advance notice would prejudice its investigations. Counsel argued that the Respondent did not rely on **Section 55(6) of the Act** in opposing the Applicant's notice of motion. He argued that the Respondent did not allege that it issued the notice of investigation after conclusion of the investigation because it had reasonable grounds to believe that doing otherwise would materially prejudice its investigation.

Ground 3 was that the tribunal erred in law and in fact when it held that despite that report prepared by the Commission taking the form of a letter did not preclude it from being a report under the law.



Counsel argued that **Section 55(10) of the Act** mandates the Commission at the conclusion of an investigation to publish a report of the inquiry and its conclusions. Counsel argued however that the Respondent did not publish a report as required, but merely wrote a letter to the Appellant dated 6<sup>th</sup> November, 2012 communicating its directives on the investigation.

Counsel cited the case of **Freeman v Dartford Brewery Company Limited**, where the Court commented on a report prepared by a referee and said at pages 123-124 thus;

*‘There comes before me bare findings of fact; not any statements as to the evidence which supported these findings. There is nothing to show me which evidence was accepted and which evidence was rejected except by a process of investigation.*

*.....That is not what is meant by the words ‘stand referred for inquiry and report’ within the meaning of the .....Act..... The referee is not merely to make an award as would an arbitrator, or to give a verdict as would a jury.*

*..... It would still be quite possible for the referee to put before the Court a report which made it clear what evidence was before him, what facts he found proved what inferences he drew from those facts and the results at which he arrived, having applied his view of the law.....*

*.... If the report is in proper form, it will have the result for the most part of the judge will be able to say: “I agree with this, ‘or I am doubtful about this, ‘or even sometimes ‘I certainly disagree with this.’*

Counsel argued that the said letter did not meet the mandatory requirements of **Section 55(10) of the Act** as it did not detail what factual inquiry the commission took, nor did it provide in detail its findings or detail or how the commission arrived at its decisions or conclusions regarding the investigations. Counsel therefore urged the Court to quash the decision of the Tribunal.

With regard to this appeal, Counsel for the Respondent began by arguing that the function of the Respondent is to act as a primary advocate for fair competition and effective Consumer Protection in Zambia. The Respondent having had sight of an irregularity, where the Appellant displayed a disclaimer entitled “no claims, no returns, no refunds,” the Respondent had a duty to protect consumers by issuing a notice of investigation to the Appellant in accordance with **Section 55 (3) of the Act**.

In relation to ground 1 as to whether or not the Appellant had been heard prior to the Commission reaching its conclusion on its investigation, Counsel for the Respondent argued that the Respondent did give the Appellant an opportunity to be heard before reaching its conclusion. Counsel stated that the notice of investigation was served on the Appellant on 22<sup>nd</sup> October, 2013 and the Appellant responded to the notice by letter of 1<sup>st</sup> November, 2012 in which they admitted having disclaimers in their receipts.

Counsel argued further that the record of appeal showed further that a meeting was held on 5<sup>th</sup> November, 2012 in the course of the Respondents’ investigation for the purposes of addressing queries raised by the Appellant and for the commission to engage the Appellant on the matter. He said it was clear that the Respondent exercised the principles of natural justice by granting the Appellant an opportunity to be heard and therefore there was no breach of **Section 55(3) of the Act** as the Respondent had followed the section.

With regard to the second ground of appeal, the Respondent argued that the tribunal did not err when it held that the Respondent did not breach **Section 55 of the Act** as the Respondent has discretion under **Section 55(6) of the Act** to determine when to issue a notice of investigation or to defer the giving of notice where the Commission has reasonable grounds to believe that the giving of notice may materially prejudice its investigations. Counsel argued that although **Section 55 (6) of the Act** empowers the Respondent to defer the giving of notice, the case in question did not fall under the aforementioned provision and the Respondent did issue a notice of investigation to the Appellant.

Regarding the third ground of appeal, Counsel for the Respondent submitted that **Section 55(10) of the Act** requires the Respondent to publish a report of an inquiry in such manner and form as it considers appropriate. He said the Act was silent on the form of the report and thus the Respondent exercised its discretion on the format of the report and the Respondent considered it appropriate given the nature of this case to report its findings through a letter. The Appellant responded in its letter of 1<sup>st</sup> November 2012 confirming that they had complied with the Respondent directive of removing the disclaimer from the receipts.

In conclusion, Counsel argued therefore that the Appellants arguments of not having been afforded an opportunity to be heard and not having been issued with a report are baseless and unfounded and ought to be dismissed.

In reply, the Appellant filed arguments on 31<sup>st</sup> July 2015 in which he restated his arguments supporting his grounds of appeal. Counsel reiterated that there was a clear breach of procedure on the part of the Respondent by failing to issue a notice of investigation to the Appellant and affording it an opportunity to be heard before reaching a decision and imposing sanctions.

Counsel argued therefore that the Respondent's decision is fraught with procedural impropriety. He urged the Court to uphold the appeal and reverse the decision of the Respondent and grant the Appellant the reliefs sought before the tribunal.

I have considered the facts of this case, the proceedings before the Tribunal, the decision of the tribunal and the detailed submissions by both parties. I am indebted to Counsel for their detailed arguments.

By this appeal, the Appellant seeks an order quashing the decision of the Competition and Consumer Protection Tribunal and an order that the Tribunal erred when it held that the Appellant was heard by the Respondent.

From the grounds of appeal and the contentions of the parties, it is clear that the issues for my consideration are as follows:

- 1. Whether the Respondent has discretion as to when to issue a Notice of investigation under Section 55(3) of the Act?*
- 2. Whether the Appellant was afforded an opportunity to be heard on the Notice of investigation?*
- 3. Whether the Respondent was in contravention of the provisions of Section 55(10) of the Act when it issued the document of 6<sup>th</sup> November, 2012?*

The first issue to consider is whether the Respondent has the discretion under **Section 55(3) of the Act** to determine when to issue a notice of investigation.

The Appellant contended that the Respondent did not have the discretion as to when to issue the notice of investigation. He argued that the Respondent violated the provisions of **Section 55 (3) of the Act** by failing to issue a notice to the Appellant before concluding its investigations. Counsel argued that the Respondent opened investigations on 18<sup>th</sup> October 2012, issued a Notice of investigation on 19<sup>th</sup> October, 2012 but only served a notice on the Respondent on 22<sup>nd</sup> October 2012. Therefore, the Respondent only issued the notice to the Appellant after it had concluded its investigations.

On the other hand, Counsel for the Respondent argued that the Respondent was empowered under **Section 55 (3) of the Act** to determine when to issue a notice of investigation. He argued that this provision further authorizes the Respondent to defer the giving of notice where it has reasonable grounds to believe that the giving of notice would materially prejudice its case.

**Section 55 (3) of the Competition and Consumer Protection Act** states that:

***‘The Commission shall, upon opening an investigation, as soon as practicable, give written notice of the investigation to the person who is subject of the investigation or to an enterprise which is suspected to be a party to the matter to be investigated and shall indicate in the notice, the subject matter and the purpose of the investigation.’***

The foregoing provision clearly obliges the Respondent to provide notification of an investigation to a party as soon as practicable after opening of an investigation. It also requires that the notice shall indicate the subject matter and purpose of the investigation.

From the wording of **Section 55 (3) of the Act**, it is evident that the Respondent was obligated to give written notice of the investigation to the Appellant soon after opening of the investigation.

The evidence before me shows that the Respondent opened investigations on 18<sup>th</sup> November 2012 and on 19<sup>th</sup> October 2012 went into the Appellant's shop to purchase a bottle of water. A receipt was issued to the Appellant for this purchase which contained the words, "no claims, no return and no refund." Following this, the Respondent issued a notice of investigation on 19<sup>th</sup> October 2012 and served it on the Appellant on 22<sup>nd</sup> October 2012. The said notice shown at page 14 of the record of appeal issued by the Respondent to the Appellant reads in part as follows:

***'TAKE NOTICE that the Competition and Consumer Protection Commission has officially commenced investigations against you on the following allegations (3):***

***The Competition and Consumer Protection Commission has raised investigations against your company which appear to be in breach of Section 48(1) of the Act. Specifically, Mama Africa has issued the Commission with a receipt with the words NO CLAIMS, NO RETURN AND NO REFUNDS. The display of disclaimers is prohibited by section 48 of the Act. You are therefore requested to submit your latest annual returns in order for the Commission to determine what action to take.***

***You are hereby requested to respond to this notice within fourteen (14) days of receipt thereof.***

This evidence shows that the Respondent did issue a notice of investigation to the Appellant a day after it opened its investigation although it was only served on the 22<sup>nd</sup> October 2012. There is no doubt therefore that the Respondent issued a notice of investigation soon after it opened the investigations in accordance with **Section 55 (3) of the Act**.

The Appellant has suggested that the notice of investigation was issued after the Respondent had reached its conclusion. A perusal of the notice reveals that the Respondent had officially commenced its investigations against the Appellant on 19<sup>th</sup> October 2012. The notice does request the Appellant to submit its latest annual returns in order for the commission to determine what action to take. The Appellant argues that this means that the Respondent closed its investigations before it gave notice to the Appellant and that the Respondent did not have the discretion to issue the notice when it desired. The use of the words, '*as soon as practicable*' in **Section 55(3) of the Act** signifies that the Respondent has the discretion to determine when it is feasible for it to issue the notice aforesaid.

However, a request made in the notice for the Appellant to supply its books of account gives the impression that the Respondent had already concluded its investigation. However, the subsequent paragraph in the notice requires the Appellant to respond to the notice within fourteen (14) days of receipt thereof. This sentence corroborates the Respondent's argument that it had not concluded its investigation at this stage as it would not have requested the Appellant to respond to the notice.

From the foregoing, I am of the view that the Respondent had not concluded its investigations at the time that it issued the notice and that by virtue of the provisions of **Section 55(3) of the Act**, the Respondent was at liberty to issue

the notice of investigation when it deemed appropriate. I find that the Appellant's argument under this head fails and I dismiss it accordingly.

The next issue is whether the Appellant was afforded an opportunity to be heard on the notice of investigation. The Appellant contends that it was not afforded an opportunity to be heard by the Respondent before it reached its decision.

The Respondent argued on the other hand, that it had exercised the principles of natural justice by affording the Appellant an opportunity to be heard. It argued that the Appellant had been heard by way of its letter of 1<sup>st</sup> November 2012 in which they admitted having disclaimers on their cash receipts/proforma and by way of a meeting held on 5<sup>th</sup> November 2012 between Mrs. A Patel and Mr. Fred Kaunda, the proprietor and accountant of the Respondent and Mrs Kanyama, the Secretary of the Respondent.

A review of the documentation shows that although the notice of investigation purports to give notice to the Appellant of the investigations, it does at the end of the notice, request the Appellant to furnish its books of account for the purpose of the Respondent ascertaining what further action to take. On the face of it, it appears that the Respondent had determined the matter at that stage but the facts of this matter do not end here. The evidence of the case on record shows that following the issuance of this notice of investigation on 19<sup>th</sup> October 2012, the Appellant did respond to the Respondent by way of letter dated 1<sup>st</sup> November 2012 admitting the allegation. A meeting was subsequently held on 5<sup>th</sup> November 2012 between the Appellant and the Respondent at which queries raised by the Appellants representatives were addressed by the Respondent. This shows that there was dialogue between the Appellant and the Respondent, both in writing and in person following the issuance of the notice of investigation. The Respondent did therefore proceed to hear the Appellant.



The argument that the Appellant was not afforded an opportunity to be heard before the final directives were issued by the Respondent cannot therefore be sustained. I find that the Respondent did grant the Appellant an opportunity to be heard. The Appellant's claim in this regard fails.

The last issue to address is whether the Respondent contravened the provisions of **Section 55 (10) of the Act** when it issued its directive by way of letter of 6<sup>th</sup> November 2012.

The Appellant contends that the Respondent did not publish a report as provided in the Act after its investigations but conveyed its decision to the Appellant by way of letter of 6<sup>th</sup> November, 2012. The Appellant referred to the definition of the word "report" in Black's Law Dictionary 8<sup>th</sup> edition as 'a formal oral or written presentation of facts or a recommendation for action' in comparison to the definition of a letter defined as 'a written communication that is usually enclosed in an envelope, sealed, stamped and delivered' in the same edition of Black's Law Dictionary. The Appellant argued therefore that the letter issued by the Respondent dated 6<sup>th</sup> November, 2013 fell short of the requirements under **Section 55(10) of the Act**.

The Respondent on their part argued that by virtue of **Section 55(10) of the Act** a report issued by the Commission could be issued "*in such manner and form as it considers appropriate*". It argued therefore that the Respondent saw it fit to publish the report in the form of a letter. A review of the relevant section states that:

***'The Commission shall, at the conclusion of an investigation under this section, publish a report of the inquiry and its conclusions in such manner and form as it considers appropriate.'***

It is clear that the above provision obliges the Respondent to publish a report of its inquiries and conclusions at the end of an investigation. However, the Respondent does have the discretion to determine the manner and form in which the report may be done. The provision empowers the Respondent to issue the said report in any manner or form that it considers appropriate.

In the present case, the document issued by the Respondent after the close of its investigations reads as follows:-

***The Competition and Consumer Protection***

***6<sup>th</sup> November, 2012***

***The Proprietor***

***Mama African Enterprises Limited***

***Ref: Allegations of Display of Disclaimers***

***Following the meeting held at the Commission's Kitwe Office on 5<sup>th</sup> November, 2012 concerning an observed disclaimer on your tax invoice number 56781 dated 18<sup>th</sup> October, 2012 issued to the commission. You may wish to know that displaying disclaimers is a contravention of Section 48(1) of the Competition and Consumer Protection act number 24 of 2012 (the Act). Specifically, the said section reads as follows:***

***48. (1) "an owner or occupier of a shop or other trading premises shall not cause to be displayed any sign or notice that purports to disclaim any liability or deny any right that a consumer has under this act or any other written Law".***

***"A person who, or an enterprise which, contravenes subsection (1) is liable to pay the commission a fine not exceeding ten percent of that person's or enterprise's annual turnover."***

*To this effect, the commission hereby gives you the following directives:*

- 1. That you should cause to be removed all disclaimers displayed in your trading premises or stationery with immediate effect;*
- 2. That you pay a fine not greater than 10% but to be determined by the commission based on your annual turnover in your latest full business year;*
- 3. That you should submit to the commission your formal books of accounts or your daily sales report on or before 9<sup>th</sup> November, 2012.*

*In the interim, if you wish to seek further details and/or clarification on any aspect of this matter you may get in touch with undersigned on telephone numbers 260 21 221115, fax 260 211 221067.'*

Counsel for the Appellant has correctly argued that whereas a report envisages a more detailed written presentation of facts, a letter is simply an exchange of information in writing. On the face of it, it does appear that this document of 6<sup>th</sup> November, 2012 is no more than a letter although it does reveal the findings of the Commission as well as the conclusions and directives. That notwithstanding, it is clear that **Section 55(10) of the Act** gives the Respondent the discretion as to the form in which the report will be published.

The facts of this case do not reveal that this matter required much more to be detailed. Therefore, I agree with the Tribunal that the irrespective of the form, the report took; it did not preclude it from being a report particularly that the law allows the Respondent the discretion to decide the form of the report. Further, there was no prejudice that the Appellant has suffered by the report taking the form it did.

It is clear that the Respondent found that the Appellant was displaying disclaimers on its receipts contravening **Section 48(1) of the Act**. The said **Section 48(1)** reads as follows:-

*'(1) An owner or occupier of a shop or other trading premises shall not cause to be displayed any sign or notice that purports to disclaim any liability or deny an right that a consumer has under the Act or any other written law.*

*(2) A person who, or an enterprise which, contravenes subsection (1) is liable to pay the commission a fine not exceeding ten percent of that person's or enterprises annual turnover.'*

The Appellant admitted having committed this offence and following this admission, the Respondent directed the Appellant to submit its books of account for the purposes of determining the penalty to impose. This was in accordance with **Section 48(2) of the Act**.

In view of the above, I therefore find that the decision of the Competition and Consumer Protection Commission tribunal was on firm ground when it dismissed the Appellants motion.

I accordingly uphold this decision of the tribunal in its entirety. I dismiss all the grounds of this appeal with costs to the Respondent to be taxed in default of agreement.

**Delivered at Lusaka this 2<sup>nd</sup> February 2016**

  
**N.A. Sharpe-Phiri**  
**High Court Judge**