

REPUBLIC OF ZAMBIA



CASE NO. S.R.M/15/2015

IN THE SUBORDINATE COURT of the first class for the Chipata district, holden at Chipata
Before HON. **NGOBOLA S.**

On the day of March, 2014 at 09:00 hours in the forenoon

THE PEOPLE versus CHIPATA CHEMIST LIMITED

1st Accused

Name: Chipata Chemist

Business Premise Address. Plot No. 1178 Nasser Street 2nd Class
Trading Area Chipata, P. O. Box 510079 Chipata Zambia

Accused were served on with a Summons dated
.....

CHARGE

STATEMENT OF OFFENCE: Delay or obstruction of an inspection in the performance of an inspector's functions and refusal to give an inspector such reasonable assistance as the inspector may require for the purpose of exercising the inspector's powers contrary to section 7 (6)(a)(b) of the competition and consumer protection act, No. 24 of 2010 (the Act)

PARTICULARS OF OFFENCE: That between the 27th and 28th March 2014 at Chipata in the Chipata District of Eastern Province, Chipata Chemist Limited did commit an offence by refusing Commission inspectors from conducting inspections at their premises despite having in their possession all the requisites as required by the Act

thereby violating section 7 (6)(a)(b) of the competition and consumer protection act, No. 24 of 2010 (the Act)

(Signed)
Complainant

Taken and sworn before me at this day of
2014

(Signed)
Prosecutor.

12/01/2015

CT: S. Ngobola

PP: E. M. Mwape

M. M. Mulenga

From the competition and consumer protection Association

Acc: Present

Ismail Siluma

Director Chipata Chemist

PP: Matter is for plea.

Charge fully explained to the accused person in English and
Whencalled upon to plead says. I understand the charge. I
deny the charge.

CT: I enter a plea of Not Guilty

PP: May the matter come up on the 9/02/15 for trial.

Order: Adjourned to the 9/02/15 for trial

(Signed)

S. NGOBOLA

SENIOR RESIDENT MAGISTRATE

12/01/2015

09/02/2015

CT: As before

Acc: Present

PP: M. M. Mulenga for CCPA

PP: Matter for trial.

PW 1 S. O. B IN ENGLISH

Name: Emmanuel Zulu

Age: 26 years

Occ: Investigator CCPC

Add: Plot 768 Kalongwezi Chipata

I have been an investigator from May 2013. I have an appointment letter

And ID 1 from CCPC. The appointment letter is yellow in colour and a CCPC logo and it has a subject of appointment and it is indicating 1/05/13. This is the document.

PP: May the document be marked

CT: Appointment letter marked ID 1.

I would like to produce the document to court as part of evidence.

Acc: No objection

CT: Produced and marked P 1

I conduct inspections in traders to enter compliance with the CCPC Act. We do it in conjunction with Chipata Municipal Council CCPC appointed inspectors. I have been conducting inspections since my appointment. I recall the 27/03/14 and 28/03/14. On these dates we were conducting our routing inspections checking for products which are expired and well labeled in accordance with the Act. On the 28/03/14 I went to carry out inspection at down town shops. We then approached the defendant shop Chipata chemist. We entered the shop and found that they were busy attending to customers. I was in the company of two inspectors from the council. I then approached one of the attendants who seem to be less busy. I then introduced myself. I told him my full names and that I had come to inspect the shop. I then requested to speak to the manager of the

shop. I was then told to wait as the manager was busy attending to customers. The first step I interview the Supervisor that I wish to conduct inspection and on these dates of 27th and 28th March I requested for approval. The supervisor is Mr. Brian Kasele found in Lusaka. The Director consumer protection. When approved was granted we wrote to the Town Clerk informing him such inspections and also the request to release the two inspectors I work with. I can identify the letter I wrote to the town clerk. It is yellow and authorised by me and the subject is inspections. This is the letter that I wrote to the town clerk. It has all the details I have mentioned

PP: May the document be marked ID 1

CT: Letter to town clerk marked ID 2

PW1: I would like to produce the letter to be part of my evidence.

Acc: No objection

CT: Produced and marked P 2

I also carry my identity card issued by the CCPC. The ID has my photo and name and it has a logo of the CCPC and position and my number. This is the ID card. May the ID be marked.

CT: ID marked ID 3.

I would like to tender it before court to be part of my evidence.

Acc: No objection

CT: Produced and marked P 3

I had entered on the front I was to wait and I did so. I waited for 10 minutes. The person who was talked to then referred us to the manager after we informed him that we had other shops to visit. I

then approached the Manager who is the defendant in this case I introduced myself I told him that I had come from CCPC.

I then told him the purpose of the inspection. I produced my ID to him. He then responded by saying that he was not aware of the exercise stating that he did not receive any notification from the town clerk. I then told him that the inspection is conducted by CCPC he then insisted that he could not allow inspection unless he was informed by the Town Clerk. We failed to get along and I advised him to indicate the reasons for his refusal on my note book and he did. I told him that the Town Clerk was well informed of the inspection. I asked one of the officers I was with to bring a file and tried to show him the copy of the letter but he shook his head and said the letter was not connected to him. I then told him that we do not inform to spot inspection. Where we have received a complaint we inform but where we have not received we do not. This is provided for in the Act though I do not have the Section at hand. I then informed my officers that since he had refused. We were not going to force him but decided to leave. He tried to engage one of the Inspectors in a Conversation as we were content to leave. The inspector name is Mr. Kalala. I advised the officer not to engage in any conversation and told him to leave and we left. Thereafter we continued with the Inspections and went back to the office. On 30/03/14. I informed my superiors of the experience we had with the defendant. I wrote to him by email. I informed the Director consumer protection and the subject was report inspections. It indicates that it came from me. He then acknowledged receipt of the same and waited for response. Later I

was advised to do a full report. A report is a full detailed report which has a subject Sport Inspections conducted in Chipata and has the month. May 2014

PP: May the document be marked.

CT: Report marked ID4 I would like to mark the report to be part of my evidence.

ACCUSED: I have an objection for the production of the document. Because I held the information about it.

PP: The report is indeed an internal document. The purpose is to show that other Enterprise we also inspected.

ACCUSED: We still object to the production.

CT: Objection overuled and the document is produced and marked P4.

CROSS EXAMINATION

- ❖ I said I agreed one of the sales persons in the shop.
- ❖ I said I waited for about 10minutes.
- ❖ I was told to wait and asked him the second time. He told me to see the Manager who was on the other side of the shop.
- ❖ I approached you.
- ❖ I introduced myself.
- ❖ It is not true that I did not introduce myself.
- ❖ I presented a copy of the letter address to the Town Clerk and the letter.
- ❖ I removed the Identity and I had it on the table.

- ❖ I produced the letter addressed to the Town Clerk after you asked for prior notification and a copy was mine but I just showed you.
- ❖ I did not show a letter from the Town Clerk.
- ❖ I did not present to you a certificate of Appointment.

RE- EXAMINATION.

- ❖ Do not to notify the traders through the Town Clerk
- ❖ When the trader requests for a letter of appointment we do produce.

PW2 SOB IN ENGLISH

NAME: Banda Brevious
AGE: 36 years old
OCCUPATION Council Police Officer
ADDRESS: Plot 171 Mwami
RANK: Sergeant

I am also an appointed Inspector under CCPC. I have been a Council employee for 6 years and CCPC Inspector for 3 years. my duties as Council Police include protection of Council property and staff. My duties as a CCPC Inspector is to carry out inspection under the CCPC Act. I have been conducting Inspection for CCPC for three years since 2012. During inspections I carry with me an ID and a letter of appointment or certificate I recall the 27th and 28th March 2014. I went out on a routine inspection with other inspectors Stenely from town Clerk. Then on the 28th we went to down shops. On the 28th we carried out inspections. At about 15hours we went for Chipata Chemist. When we entered the shop the team leader Mr. Emmanuel

Zulu introduced himself for one of the attendants and he also introduced us as Inspectors. He asked him to seek for authority from the shop where to carry out the inspection. He then told us to wait as the shop owner was attending to clients. We then waited for about 20 to 30 minutes then the shop attendant talked to the owner of the shop. I can identify my identity card it has my photo and CCPC logo my names and position. And the letter of appointment has a CCPC logo and 12/07/12 the date of appointment and the signature of the executive director. These are the documents.

PP: May the documents be marked.

CT: ID marked ID5 letter of appointment marked ID6. I would like to produce the documents as part of my evidence.

ACCUSED: No objection.

CT: Produced and marked P5 and P6 respectively. The owner of the shop asked the investigator to produce to him the letter from the Town Clerk indicating authority for the inspection. The investigators produced a letter from the Town Clerk authorizing the inspection. The owner of the shop refused to be inspected. He said he had no communication from the Town Clerk to state that we were to carry out inspection. The inspector then told him that CCPC was independent and needed no letter from the Town Clerk to authorize them to conduct an inspection.

The letter produced by PW1 only showed that the Town Clerk had authorized Inspectors to work with CCPC. He refused to do inspection even after showing him the letters. Emmanuel Zulu asked him to write his request or a papers and he did so and we left the shop. We then went to other shops.

CROSS EXAMINATION

- ❖ We waited for 20 to 30 minutes later we talked.
- ❖ The attendant come to see you after 30minutes of waiting.
- ❖ I had a letter of my appointment and my ID.
- ❖ I produced the letter of appointment and the ID.
- ❖ I am unable to produce the piece of paper you wrote on in Court.

RE-EXAMINATION Nothing

COURT: I produced the letter of appointment on my own and the accused did not request for it.

That is the procedure we produce the letter of appointment each time we visit a shop.

PW3 SOB IN ENGLISH

NAME Kalala Fanwell
AGE: 40years
OCCUPATION: Council Police
ADDRESS: Plot 183 DK compound
RANK: Sergeant
S/N: AD052

I am also a CCPC Inspector. I have been an Inspector for three years as a Council Police I protect Council property. As an inspector I carry out Inspections and make sure traders comply with the Act. When conducting inspection I carry with me an ID from CCPC and a letter of Appointment. I can identify the ID it has my name and position as inspector on the certificate of Appointment if has a logo for CCPC my name and signature of the director. These are the documents that I am referring to.

PP: May the documents be marked certificate of appointment for PW3 marked ID7 ID for PW3 marked ID8. I would like to tender documents to be part of the evidence.

ACCUSED: No objection.

COURT: Produced and marked P7 and P8 respectively.

I do recall the 27th and 28th of March 2014. On the 28th we moved to down shop during routine inspections. After we had finished conduction inspections in Town. I was with Mr. Zulu the Supervisor as well as Mr. Banda. We went to Chipata chemist and Mr. Zulu introduced himself to the shop attendant and asked him if at all he could see the owner of the shop. The shop keepers went and talked to their boss and when she come back she told us to wait for him. We waited for 20 to 30 minutes and Stanley came to see us. Mr. Zulu left us and went to speak to the person the shop attendant had gone to speak with who was at a distance because the shop is big. The person he talked to asked for an authorization letter from the Town Clerk to allow us search his shop. The person Mr. Zulu was speaking

with is the accused in this case. He did not allow us to search the shop. We then went back to the office. It was the last shop we were inspecting. Two days later we received a letter from the accused addressed to the Town Clerk and copied to the Muslim Association and to the DC.

CROSS EXAMINATION

- ❖ Mr. Zulu introduced himself and was told to wait for the owner of the shop.
- ❖ The person we talked to was also attending to other clients and she did not come to you straight away.
- ❖ We waited for at least 20 to 30 minutes.
- ❖ You said you needed a letter of authorization from the Town Clerk.
- ❖ I have come to Chipata Chemist work and private business many times.
- ❖ When I came on the first inspection I came us CCPC.
- ❖ You would be lying if you say I came us Chipata Municipal Council.
- ❖ May the documents be marked CC.

COURT: Marked CC1.

- ❖ If has a seizure form from Chipata Council.
- ❖ I have approached you on my person capacity.
- ❖ I cannot remember approaching you and wanting goods on credit.
- ❖ I did not show Mr. Zulu who the owner or the shop was.
- ❖ When I first came to the Chemist I was not obstructed.

RE EXAMINATION

- ❖ We seized goods from CCPC.
- ❖ I went on fourth occasions as am inspector under CCPC.

ACCUSED: We are not ready for our defence.
PP: We propose the 25/02/15.
COURT: Adjourned to the 25/02/15 for defence.

S. NGOBOLA
SENIOR RESIDENT MAGISTRATE
09/02/2015

25-02-2015

CT: As before
Acc: Present
PP: Matter for Defence.
ACCUSED: I am ready for defence.
Name: Ishimail Adam Suleman
Age: 62 years
Occ: Businessman
Director Defendant Company.
Add: Plot 173 Kwacha Road.
Kanjala Chipata

Around 28th March at 15hrs. Three people approached me in my Chemist and said they had come from CCPC and that they had come for an inspection. One was in plain clothing and the other two in

Council uniform. I requested them to wait for me to finish attending to customers. They told me that they were not ready to wait and that I was to stop whatever I was doing and attend to them. I then asked for an introductory letter from the Town Clerk since there were some Council police when with them. One gentleman just waved a card which was around his neck and said he was an inspector and did not need to talk to show me anything. I then told them that I was not going to allow them the inspection without an introductory letter. One of them then asked Mr. Kolala to get a file from the bonnet. Once the file was brought they waved the letter from the file and did not leave me to know it. I then demanded to see the like but they said since this man is not cooperative let's go on the way out they said I was going to see and that they were going to charge me about 1000 penalty Units. That is how they left and I received summons in December.

CROSS EXAMINATION

- ❖ I knew something about pharmacy.
- ❖ It was my first time I heard of CCPC.
- ❖ During the first inspection I did not ask for an authorization letter.
- ❖ I asked for an authorization letter because they were two people from the Council and one from CCPC.
- ❖ I did not just come up with the idea of asking for a letter.
- ❖ During the first inspection they got bottles of Brufen which were to expire at that month end.
- ❖ The first inspection was in the Council and not by CCPC.

- ❖ The approach was un gentleman because they said they were not going to wait for me to attend to customers.
- ❖ When I was served with summons I appeared before Court.
- ❖ I asked Mr. Zulu if it was possible to settle the matter outside Court.
- ❖ Not with Mr. Zulu but with the commission.

RE- EXAMINATION: Nothing

COURT: Matter adjourned to the 22/04/15 for judgment.

S. NGOBOLA
SENIOR RESIDENT MAGISTRATE
25/02/2015

21-05-2015

CT: As before

ACCUSED Representative: Present

PP: Matter for

Judgment. Judgment read out in open Court and attached.

S. NGOBOLA
SENIOR RESIDENT MAGISTRATE
21/05/2015

**IN THE SUBORDINATE COURT OF THE FIRST CLASS
FOR THE CHIPATA DISTRICT**

HOLDEN AT CHIPATA

(Criminal Jurisdiction)

BETWEEN:

THE PEOPLE

AND

CHIPATA CHEMIST LIMITED

J U D G M E N T

Cases referred to:

1. Mwewa Murono v. The People (2004) ZR P.207

Legislation referred to:

1. Competition and Consumer Protection Act No.24 of 2010 ss. 7(4), 7(6)(a)(b)

In this case Chipata Chemist Limited stand charged with delay or obstruction of an inspector in the performance of an inspector's functions and refusal to give an inspector such reasonable assistance as the inspector may require for the purpose of exercising the inspector's powers contrary to section 7(6)(a)(b) of the Competition and Consumer Protection Act, No.24 of 2010.

Particulars of the offence allege that between the 27th and 28th March, 2014 at Chipata in the Chipata District of the Eastern Province of the Republic of Zambia, Chipata Chemist Limited did commit an offence by refusing Commission inspectors from conducting inspections at their premises despite having in their possession all the requisites as required by the Act thereby violating section 7(6)(a)(b) of the Competition and Consumer Protection Act No.24 of 2010.

The company director Mr Ismail Siluma, on behalf of Chipata Chemist denied the charge.

Burden Of Proof Warning

Throughout the proceedings I have borne in mind, and I still remind myself at this stage, that in criminal cases the legal burden of proving every element of the offence charged and consequently the guilt of the accused lies on the prosecution from beginning to end; the standard of proof is very high, one beyond

reasonable doubt (see the case of **Mwewa Muroho v. The People(1)**)

No Onus of Proof on the Accused Persons

There is no onus on the accused to prove its innocence and if at the end of and on the whole of the case, there is a reasonable doubt created by the evidence given by either the prosecution or the accused, as to whether the accused person committed any of the offences alleged, I shall resolve that doubt in favour of the accused and give it its benefit.

The Ingredients of the offence

In order to establish the guilt of the accused, the prosecution must satisfy me beyond all reasonable doubt upon each and every ingredient of the offence charged.

Section 7(6)(a)(b) of the Competition and Consumer Protection Act No. 24 of 2010 on which the accused is charged provides:

“7(6) A person who—

(a) delays or obstructs an inspector in the performance of the inspector’s functions;

(b) refuses to give an inspector such reasonable assistance as the inspector may require for the purpose of exercising the inspector’s powers.

Commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units

or to imprisonment for a period not exceeding two years, or to both”.

The section begins with the words *“A person who-“*The word *“A person”* is defined *by Blacks Law Dictionary, tenth edition* at page 1324 thus:

“A human being or a natural person”

It is always necessary to establish under the second element the action of the accused (the actus reus) in the commission of the offence, whether the accused delayed or obstructed the inspector. In this sense, therefore the second element presents two situations such that the accused can be found guilty by the prosecution proving one of them.

The definition of the word *“delay”* is defined by *Black’s Law Dictionary* at page 518 thus;

“The act of postponing or slowing”

And at page 1246, the same authority defines the word *“obstruct”* thus;

“to block or stop up”

Thus, when these definitions are read together the prosecution has to prove that the accused a natural person did postpone, slow up or block an inspector in the performance of the inspectors’ functions.

The inspector's functions are provided in section 7(4) of the Competition and Consumer Protection Act thus;

“7(4) An inspector may, with a warrant, at any reasonable time —

(a) enter and search any premises occupied by an enterprise or any other premises, including a private dwelling, where information or documents which may be relevant to an investigation may be kept;

(b) search any person on the premises if there are reasonable grounds for believing that the person has personal possession of any document or article that has a bearing on the investigation:

Provided that a person shall only be searched by a person of the same sex;

(c) examine any document or article found on the premises that has a bearing on the investigation;

(d) require information to be given about any document or article by —

(i) the owner of the premises;

(ii) the person in control of the premises;

(iii) any person who has control of the document or article; or

(iv) any other person who may have the information;

(e) take extracts from, or make copies of, any book or document found on the premises that has a bearing on the investigation;

(f) use any computer system on the premises, or require assistance of any person on the premises to use that computer system, to—

(i) search any data contained in, or available to the computer system;

(ii) reproduce any record from the data; or

(iii) seize any output from the computer for examination and copying; and

(g) attach and, if necessary, remove from the premises for examination and safeguarding any document or article that appears to have a bearing on the investigation.

(5) An inspector who removes any document or article from any premises under paragraph (g) of subsection (4) shall—

(a) issue a receipt for the document or article to the owner of, or person in control of, the premises; and

(b) return the document or article as soon as practicable after achieving the purpose for which it was removed”.

I am reminded at this juncture to consider the effect of the first element in section 7(6) on the accused Chipata Chemist Limited.

“A person” referred to in section 7(6) as defined above means a natural person or a human being. This implies that only a natural person, a human being can be charged with the offence under section 7(6) of the Competition and Consumer Protection Act.

Chipata Chemist Limited is a legal person at law and not a natural person or a human being, therefore cannot be charged with any of the offences under section 7(6) of the Competition and Consumer Protection Act No. 24 of 2010.

For, the forgoing, I find Chipata Chemist Limited not guilty of the offence charged and I acquit it accordingly.

Delivered on the 21st day of May, 2015.



S. Ngobola

Senior Resident Magistrate