

CASE FILE NUMBER: CONS/23/05/2023/00802/CPT/JCK

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

BETWEEN

Mr. Anwell Chibanga

COMPLAINANT

AND

**B- Square Credit Services
Limited**

RESPONDENT

BEFORE:

Commissioner Angela Kafunda

- Chairperson

Commissioner Stanford Mtamira

- Member

Commissioner Emmanuel M. Mwanakatwe

- Member

Commissioner Sikambala M. Musune

- Member

Commissioner Derrick Sikombe

- Member

DECISION

1. Below is a summary of the facts and findings presented by the Commission to the Board of the Commission following investigations carried out in the above case.

Introduction and Relevant Background

It was submitted that:

2. On 7th June 2023, the Competition and Consumer Protection Commission ("the Commission") in Chipata received a complaint from Mr. Anwell Chibanga ("the Complainant") against B-Square Credit Services Limited ("the Respondent"). Specifically, the Complainant alleged that in 2022, he had applied for a loan with the Respondent which was not approved. The Complainant alleged that the Respondent, however, deducted K1,065.00 from his Natsave Bank account which was later reversed after he communicated with the Respondent. The Complainant alleged that in March 2023, the Respondent deducted K154.10. The Complainant alleged that he did not have any contract with the Respondent. The Complainant was demanding for a refund of K154.10.

Legal Contravention and Assessment Tests

Legal Contravention

It was submitted that:

3. The alleged conduct appeared to be in contravention of Section 47(a)(iv) of the Competition and Consumer Protection Act, No. 24 of 2010 (“the Act”).
4. Section 47(a)(iv) of the Act stated that, “A person who, or an enterprise which falsely represent that a particular person has agreed to acquire goods and services 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.”

Assessment Tests

It was submitted that:

The following assessment tests were used to consider allegations under Section 47(a)(iv) of the Act:

5. Whether B-Square Credit Services Limited was a “person” or an “enterprise”.
6. Whether B-Square Credit Services Limited falsely represented that the Complainant had agreed to acquire a particular service.

Investigations Conducted

It was submitted that:

7. The Commission duly served a Notice of Investigation on the Respondent on 15th June 2023. The Commission also reviewed the Complainant’s pay slip.

The Parties

The Complainant

It was submitted that:

8. The Complainant was Mr. Anwell Chibanga, holder of National Registration Card (NRC) number XXXXXX/XX/1, and a civil servant. The Complainant submitted his contact number as 097XXXXXXX and that he was a resident of Chama District in Eastern Province.¹ According to the **Competition and Consumer**

¹ CCPC Form IV

Protection Commission Vs Chipata Chemists case, a person under the Act was referring to a natural person.² The Complainant did not solicit the services for which he was suffering deductions from the Respondent; therefore, the Complainant was a person as envisaged under Section 47(a)(iv) of the Act.

The Respondent

It was submitted that:

9. The Respondent was B-Square Credit Services, whose registered office is situated at Suite 120 Permanent House, Cairo Road, Lusaka. The Respondent was a company incorporated under the Laws of Zambia with the Patents and Companies Registration Agency (PACRA), Registration No. 120060062192.³ According to the Act, an enterprise meant “*a firm, partnership, joint-venture, corporation, company, association and other juridical persons, which engage in commercial activities, and includes their branches, subsidiaries, affiliates or other entities, directly or indirectly, controlled by them.*” The Respondent was therefore an enterprise as envisaged under the Act as they were a company that engaged in commercial activities.

Submissions from the Respondent

It was submitted that:

10. There were no submissions from the Respondent despite the Notice of Investigation having been duly served on them on 15th June 2023. Non-response to the Notice of Investigation constituted a violation of Section 55(5) as read together with Section 55(4) (a) of the Act.
11. Section 55(4)(a) of the Act read, “*For the purpose of an investigation under this section, the Commission may, by notice in writing served on any person, require that person to furnish to the Commission, in a statement signed by that person or, in the case of a body corporate, by a director or member or other competent officer, employee or agent of the body corporate, within the time and in the manner specified in the notice, any information pertaining to any matter specified in the notice which the Commission considers relevant to the investigation.*”
12. Section 55(5) of the Act read, “*A person who, or an enterprise which, contravenes subsection (4) commits an offence and is liable, upon conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding one year, or to both.*”

² Competition and Consumer Protection Act No. 24 of 2010

³ Patents and Companies Registration Agency (PACRA) search on 6th July 2022

Review of the Complainant's Pay Slips⁴

It was submitted that:

13. A review of the Complainant's payslip dated 30th March 2023, showed that the Respondent caused a deduction of K154.10 from his salary, i.e, the Respondent's name (B-square Credit Service) was indicated as having caused a deduction of K154.10 with a wage code number E947 attached to their name. A further review of the Complainant's June 2023 pay slip revealed that the Respondent made a deduction of K131.58⁵.

Review of the Complainant's Bank Statement⁶

It was submitted that:

14. The Complainant availed the Commission with his bank statement for the account he held with Natsave Bank. A review of the said statement dated 28th June 2023 revealed that the Respondent made a deduction of K881.00 directly from the Complainant's bank account on 26th June 2023.

Submissions to the Commission's Preliminary Report

It was submitted that:

15. The Commission duly served the preliminary report to the Respondent on 29th September 2023, and to the Complainant on 4th October 2023. However, there were no submissions received from the parties.

Relevant Findings

It was submitted that:

16. The Commission found that on 30th March 2023 and 30th June 2023, the Respondent caused respective deductions of K154.10 and K131.58 from the Complainant's salary which had a wage code number E947.⁷
17. The Commission observed that the Respondent made a deduction of K881.00 directly from the Complainant's bank account held with Natsave Bank.⁸

⁴ Complainant's Pay slips dated 30th March 2023

⁵ Complainant's Pay slips dated 30th June 2023

⁶ Complainant's bank account statement dated 28th June 2023

⁷ Ibid

⁸ Op.Cit

18. The Commission found that the Respondent did not respond to the Notice of Investigation which was duly served on 15th June 2023 despite acknowledging receipt.⁹

Previous cases involving the Respondent

It was submitted that:

19. At the 58th Board of Commissioners Meeting for Adjudication of cases held on 11th October 2022, the Respondent was fined 0.5% of their annual turnover for breach of Section 47(a)(iv) of the Act in the case involving a Mr. Kumoyo Muyunda who suffered unsolicited deductions for a loan he did not sign for.

Analysis of Conduct

It was submitted that:

20. In analyzing the case for possible violation of Section 47(a)(iv) of the Act, the following assessment tests were used.

Whether B-Square Credit Services Limited was a “person” or an “enterprise”

It was submitted that:

21. Refer to paragraph 9 of the report.

Whether B-Square Credit Services Limited falsely represented that the Complainant had agreed to acquire a particular service

It was submitted that:

22. According to Black Law’s dictionary, Misrepresentation was defined as “*the act of making a false or misleading assertion about something.*”¹⁰ The Commission established that on 30th March 2023 and 30th June 2023, the Respondent caused respective deductions of K154.10 and K131.58 from the Complainant’s salary which had a wage code number E947 without his consent. The Commission further established that on 26th June 2023, the Respondent made a deduction of K881.00 directly from the Complainant’s account. The Commission established that the Complainant did not apply for the deductions. Therefore, the Commission deduced that the Respondent represented to the Payroll Management and Establishment Control (PMEC), the body that

⁹ Acknowledgement of the Notice of Investigation dated 15th June 2023.

¹⁰ Black’s Law Dictionary 8th Ed. Rev., p1022.

processed salaries for civil servants and to the bank that the Complainant agreed to acquire a particular service from them when in fact not. The Commission established that the Respondent was in violation of Section 47(a)(iv) of the Act

Whether the Respondent furnished the Commission, in a statement signed by that person or, in the case of a body corporate, by a director or member or other competent officer, employee or agent of the body corporate, within the time and in the manner specified in the notice, any information pertaining to any matter specified in the notice which the Commission considers relevant to the investigation

It was submitted that:

23. A Notice of Investigation was served on the Respondent on 15th June 2023. The Respondent acknowledged receipt of the letter, indicating that a Notice was served. However, the Respondent did not avail the Commission with any response.
24. The Competition and Consumer Protection Tribunal, in the case of **MTN Zambia Limited v the Competition and Consumer Protection Commission (2013)** held that: *“the Appellant’s failure to respond to the NOI issued by the Commission was a serious dereliction of duty on the part of the Appellant and could be construed to mean a lack of defence on their part”*. The Tribunal cited **Order 18 rule 13 of the Rules of the Supreme Court (White Book) 1999 Edition** which provided that:

“Any allegation of fact made by a party in his pleading was deemed to be admitted by the opposite party unless it was traversed by that party in his pleading or a joinder of issue under rule 14 operates as a denial of it.”

25. Considering this cited provision, the Respondent’s failure to respond to the Notice of Investigation issued by the Commission was a serious dereliction of duty on the part of the Appellant and could be construed to mean a lack of defense on the part of the Respondent.

Board Deliberation

26. Having considered the facts, evidence and submissions in this case, the Board resolves that the Respondent engaged in unfair trading practices, hence breached Section 47(a)(iv) of the Act.

Board Determination

27. The facts and evidence of this case have shown that the Respondent did violate Section 47(a)(iv) of the Act.

Board Directive

28. The Board hereby directs that;
- (i) The Respondent refunds the Complainant a total amount of K1,166.68 which they deducted from his salary within ten (10) days of receipt of the Board Decision in accordance with Section 5(d) of the Act; and
 - (ii) The Respondent is fined 0.55% of their total annual turnover for 2022 with the applicable cap in line with the Commission's Guidelines for Administration of Fines, 2019 for violation of Section 47(a)(iv) of the Act in accordance with Section 47 of the Act (**Refer to Appendix 1**).
 - (iii) The Respondent submits their annual books of accounts for 2022 to the Commission for the calculation of the actual fine within thirty (30) days of receipt of the Board Decision in accordance with Section 5(d) of the Act.

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

Dated this 5th December 2023


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Chairperson

Competition and Consumer Protection Commission

Appendix 1-Calculation of Fine

The Calculation of the recommended fine was determined as follows-

- (a) ***The Competition and Consumer Protection Act No. 24 of 2010: Guidelines for Administration of Fines sets a base of 0.5% for offences relating to Part VII of the Act with the following caps;***

Offence	Starting Fine	Maximum Fine in Kwacha
Unfair trading practice	0.5% of turnover	<ul style="list-style-type: none"> • K1,000 for turnover upto K50,000
False or misleading representation		<ul style="list-style-type: none"> • K10,000 for turnover above K50,000 upto K250,000
Price Display		<ul style="list-style-type: none"> • K40,000 for turnover above 250,000 upto K500,000
Supply of defective and unsuitable goods and services		<ul style="list-style-type: none"> • K70,000 for turnover above K1,500,000
Section 49) except for Section 49(1)		<ul style="list-style-type: none"> • K150,000 for turnover above K1,500,000 upto K3,000,000 • K200,000 for turnover above K3,000,000 upto K5,000,000 • K500,000 for turnover above K5,000,000

Display of Disclaimer	0.5% of turnover	K30,000
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(b) The Competition and Consumer Protection Act No. 24 of 2010: Guidelines for Administration of Fines – further provides for additions as follows-

- (i) The starting point of a financial fine will be a fine of not less than 0.5% of annual turnover for first time offenders.
- (ii) (The starting point of a financial fine for a repeat offender will be the previous fine charged by the Commission.
- (iii) Thereafter, the Commission will be adding 10% of the fine determined in step one above for each aggravating factor.

(c) *Whether the Respondent is a repeat offender under Section 47(a)(iv);*

The Commission's review of the case file for the Respondent shows that the Respondent is a repeat - offender of this Provision of the Act. As such, the fine is calculated as follows:

Previous fine is 0.5%.

$$= 0.5 + 0.1(0.5)$$

$$= 0.5 + 0.05$$

$$= 0.55$$

$$= \mathbf{0.55\%}$$

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