

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

BETWEEN

Ms. Baseke Mkandawire

COMPLAINANT

AND

**Express Roofing Centre
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

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:

1. On 4th September 2023, the Competition and Consumer Protection Commission (“the Commission”) received a complaint from Ms. Baseke Mkandawire (“the Complainant”) against Express Roofing Centre Limited (“the Respondent”). Specifically, the Complainant alleged that on 1st April 2023, she purchased roofing sheets from the Respondent worth a total of K56,925.00 and was issued with receipt number 1949 dated 1st April 2023. The Complainant alleged that she specified that she wanted the 0.5mm roofing sheets and the Respondent issued her with a quotation for the 0.5mm roofing sheets, for which she thereafter also paid. The Complainant alleged that after the roofing was almost completed, she discovered that she was given the wrong measurement of roofing sheets.

2. The Complainant alleged that as the works were ongoing, she had an independent assessor assess the work and she was only then informed that she was given 0.4mm roofing sheets instead of 0.5mm roofing sheets. The Complainant alleged that she engaged the Respondent, and they denied giving her 0.4mm roofing sheets but after visiting the property and conducting an assessment they agreed and promised to refund her the money. The Complainant alleged that she had since tried to engage the Respondent several times, but they still did not redress her in any way. The Complainant demanded that the Respondent pays her the value of the difference in price between the 0.5mm roofing sheets that she paid for and the 0.4mm roofing sheets that the Respondent supplied her.

Legal Contravention and Assessment Tests

Legal Contravention

It was submitted that:

3. The alleged conduct appeared to have contravened Section 47(a)(i) of the Competition and Consumer Protection Act, No. 24 of 2010 (“the Act”).

Section 47(a)(i) of the Act states that:

4. *“A person who or an enterprise which falsely represents that any goods are of a particular standard, quality, value, grade, composition, style or model or have a particular history or previous use 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

For the purpose of proving the violation of Section 47(a)(i) of the Act, the following assessment tests needed to be proven;

It was submitted that:

5. Whether Express Roofing Centre Limited was a “Person” or an “Enterprise” under the Act.
6. Whether the representation was on account of goods being of a particular standard, quality, value, grade, composition, style or model or has a particular history or previous use.

Investigations Conducted

It was submitted that:

7. The Commission served a Notice of Investigation and accompanying letter on the Respondent on 18th September 2023.
8. On 13th November 2023, the Commission and the Zambia Metrology Agency (“ZMA”) conducted a joint inspection in the company of the Complainant at the Complainant’s premises in New Kasama area in Lusaka South in order to verify the allegations of unfair trading practices. The purpose of the inspection and tests conducted was to determine whether the physical dimensions (thickness) and the quantity of the said roofing sheets aligned with the specifications stated on the Complainant’s Receipt No. 1949 and Invoice No. 1660 that was issued by the Respondent.

Findings

The Parties

The Complainant

It was submitted that:

9. The Complainant was Ms. Baseke Mkandawire, a holder of National Registration Card Number 74XXXX/11/1, and a resident of Lot 1X XXM Properties, XX Street, Ibex Hill, Lusaka.¹ Section 2 of the Act defines a consumer as, “*any person who purchases or offers to purchase goods or services otherwise than for the purpose of re-sale, but does not include a person who purchases goods or services for the purpose of using the goods or services in the production and manufacture of any other goods for sale, or the provision of another service for remuneration.*”² Therefore, the Complainant is a consumer because she purchased 0.5mm roofing sheets at the cost of K56,925.00 from the Respondent for her personal benefit as evidenced by Receipt No. 1949 dated 1st April, 2023.³

The Respondent

It was submitted that:

10. The Respondent was Express Roofing Centre Limited, situated in Lusaka and operating from Plot Number 11362, Sheki Sheki Road, Emmasdale, Lusaka.

¹CCPC Form IV dated 4th September 2023

² Competition and Consumer Protection Act No. 24 of 2010

³ Complainant’s Receipt No. 1949 dated 1st April 2023

A search at the Patents and Companies Registration Agency (PACRA) revealed that the Respondent was a registered company with registration number 120190005397.⁴ Section 2 of the Act defines an “enterprise” as, “*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*”. In view of the above definition, Express Roofing Centre Limited is an enterprise as envisaged under the Act as it is a company engaged in commercial activities of supplying roofing sheets and other assorted building products to the public.⁵

Submissions from the Respondent

It was submitted that:

11. In a letter dated 11th October 2023, the Respondent through their Managing Director, Mr. Mambo Mwiya, acknowledged that they supplied roofing sheets to the Complainant. The Respondent submitted that the agreed thickness of roofing sheets that they were supposed to supply was 0.5mm but due to errors in production the roofing sheets that they supplied were mixed in thickness, that is, 0.5mm and 0.4mm. The Respondent submitted that it was for this reason that they agreed as a company to refund the Complainant K12,000.00 for supplying her roofing sheets with mixed thicknesses of 0.5mm and 0.4mm. The Respondent further submitted that they were requesting to pay this money within 45 days so that the matter could be closed.

Meeting with the Respondent and Complainant held at the Commission⁶

It was submitted that:

12. In a meeting held at the Commission on 11th October 2023, the Respondent submitted that they admitted to the allegations that were levelled against them by the Complainant and that they were offering to pay the Complainant K12,000.00 within 45 days. The Commission, however, observed that the Complainant rejected the Respondent’s offer to pay her K12,000.00 as she demanded that the Respondent owed more than that. The Commission noted that the Complainant and the Respondent agreed that the Complainant was given roofing sheets with a total length of 503 meters for the K56,925.00 that

⁴ PACRA printout on file

⁵ Complainant’s Invoice No. 1660

⁶ Meeting between the Commission’s Mr. Bright Mwelwa and Mr. Kutasha Jacobs and the Respondent’s Mr. Maimbo Mwiya on 11th October 2023

she paid the Respondent. However, the meeting could not yield positive results as the parties could not reach an agreement.

13. The Commission closed the meeting with the Respondent offering and committing to pay the Complainant K13,260.00 as a refund within 14 days from the date of the meeting and also the Commission informing the parties that it was going to conduct further investigations and verify all the facts around the case even as the refund was being prepared as agreed.

Observations and Findings from Joint Inspection with ZMA⁷

It was submitted that:

14. On 13th November 2023, the Commission and ZMA conducted an inspection at the Complainant's house to ascertain the thickness of the roofing sheets supplied by Express Roofing Centre to the Complainant and the total running meters (length) of the roofing sheets supplied.
15. ZMA submitted that the following approach was undertaken by them to establish the facts:
- i. As the roofing sheets were already installed on the Complainant's building at the time of the inspection, the thickness of the sheets was determined by measuring the thickness of some straight edges of the roofing sheets, accessible using a ladder.
 - ii. The thickness of the sampled roofing sheets was measured using a calibrated vernier calliper with the following details:

Serial Number	Date Calibrated	Certificate No.
ZMA-INP-010	06/03/23	ZMASIL DC/23/138

- iii. The total length of all the roofing sheets could not be accurately determined due to restricted access to the installed roofing sheets.

ZMA's Findings at the Complainant's Premises

ZMA submitted that they made the following observations during the inspection:

- i. There were grey IBR roofing sheets installed on a building within the property which the Complainant identified as having been supplied by Express Roofing Centre and another named supplier.

⁷ Zambia Metrology Agency (ZMA) Inspection Report dated 14th November 2023

- ii. There were no visible markings on any of the roofing sheets that would allow for the identification of the manufacturers or the declared thicknesses of the roofing sheets. However, the Complaint was able to identify the sections that were covered by Express Roofing Centre sheets.
- iii. The results from the thickness tests were tabulated as follows;

Table 1: Showing the thickness measurements for the sampled roofing sheets

Sn.	Declared Thickness (mm)	Measured sheets Thickness (mm)	Thickness Variance (mm)	MPEs (mm)
1.	0.50	0.43	-0.70	0
2.	0.50	0.41	-0.09	0
3.	0.50	0.39	-0.11	0
4.	0.50	0.41	-0.09	0
Average		0.41	-0.09	0

ZMA's Analysis of the Findings

16. ZMA submitted that from the measurements conducted at the Complainant's site, the average thickness on the samples of the roofing sheets delivered by the Complainant was found to be **0.41mm**. ZMA submitted that this result showed a variance of **-0.09mm** from what was declared as **0.5mm**.

ZMA further submitted that it should be noted that there is no tolerable error provided for in the regulations for the declared thickness in question and that, therefore, the roofing sheets in question were found to be non-compliant with the regulations.

ZMA's Conclusion

17. ZMA submitted that Section 46(b) of the Metrology Act No.6 of 2017 states that:

"A person commits an offence who falsely presents a product or service to be a commodity or service that complies with the provision of a standard of this Act."

ZMA further submitted that the findings from the investigation established that the roofing sheets found at the Complainant's premises were less than the declared 0.5mm thickness, as the average was determined to be 0.41mm. Therefore, ZMA submitted that the claim by the Complainant can be validated.

ZMA Recommendations

18. ZMA submitted that there is a need to establish precise regulations with regards to roofing sheets which should compel manufacturers and suppliers to apply applicable labelling requirements, for accountability purposes.

Review of the Complainant's Receipt and Invoice⁸

It was submitted that:

19. A review of Receipt No. 949 and Invoice No. 1660 revealed that the Complainant was invoiced for a total length of 666.1 meters of 0.5mm roofing sheets worth K76,602.00 at the price of K115.00 per meter and that on 1st April 2023 she made a payment of K56,925.00 to the Respondent for the 0.5mm roofing sheets.
20. Based on the evidence above, the Commission therefore, noted that since the Complainant was to pay K76,602.00 for a total length of 666.10 meters of roofing sheets, then by implication, for the payment of K56,925.00 the Complainant was to get a total length of 495.00 meters of roofing sheets.

Review of Respondent's Advert⁹

It was submitted that:

21. A review of the Respondent's advert posted on their Facebook page revealed that the price of the 0.4mm IBR roofing sheets that the Respondent gave the Complainant at the time the Complainant purchased her roofing sheets was K98.00 per meter.

⁸ Invoice No. 1660 and Receipt No. 949 dated 1st April 2023

⁹ Respondent's advert posted on their Facebook page

Figure 1: Showing Respondent's advert showing the price of the 0.4mm roofing sheets



Commission's Analysis of the Actual Refund to the Complainant

It was submitted that:

22. Based on the evidence above, the Commission established that the total length of the roofing sheets that the Complainant purchased at a price of K115.00 per meter for the K56,925.00 that she paid was 495 meters. The Commission also found that the 0.4mm roofing sheets were selling at K98.00 per meter. Therefore, the total cost of the total length of 495 meters of the 0.4mm roofing sheets would have been 495m by K98.00 = K48,510.00. The Complainant paid K56,925.00 for the 0.5mm roofing sheets, hence, the difference between the 0.5mm roofing sheets she paid for and the 0.4mm roofing sheets she was given was K56,925.00 less K48,510.00 = K8,415.00. Thus, the Commission established that the Complainant's actual refund was K8,415.00. See the table below indicating the price for 0.5mm and 0.4mm roofing sheets:

Table 1: Summary of the types and quantity of roofing sheets delivered and those that were not delivered and yet paid for.

NOT DELIVERED BUT PAID FOR	DELIVERED
0.5mm roofing sheets comprising a total length of 495 meters which were selling at a unit price of K115.00 per meter amounting to K56,925.00.	0.4mm roofing sheets comprising a total length of 495 meters which were selling at a unit price of K98.00 per meter amounting to K48,510.00.

Submissions to the Commission's Preliminary Report

It was submitted that:

23. The approved Preliminary Report was duly served on the Complainant on 8th February 2024 and on the Respondent on 9th February 2024 respectively in order for them to make submissions to the report. There were no submissions received from the Respondent.

Submissions from the Complainant¹⁰

It was submitted that:

24. In an email to the Commission dated 13th February 2024, the Complainant submitted that she was thankful to the Commission for its findings and was thereby accepting the recommendations presented in the preliminary report. The Complainant further submitted that the refund was not her primary issue but the principle of doing things right and businesses not taking advantage of their customers. The Complainant submitted that the Respondent was dishonest in their dealings, and they completely refused to take any responsibility for their actions. The Complainant submitted that she was hoping that the Respondent learnt from this and makes better business decisions in the future.

Commission's Response to Submissions to the Preliminary Report

It was submitted that:

25. The Commission noted the Complainant's submissions to the preliminary report.

¹⁰ Complainant's email to the Commission dated 13th February 2024

Relevant Findings

It was submitted that:

26. The Commission established that on 1st April 2023 the Complainant paid K56,925.00 to the Respondent for the purchase of 0.5mm charcoal grey IBR roofing sheets.¹¹
27. The Commission established that the Respondent supplied the Complainant with charcoal grey IBR roofing sheets that had an average thickness of 0.4mm.¹²
28. The Commission established that the 0.4mm roofing sheets were already installed on the building at the Complainant's property.¹³
29. The Commission established that the value of the difference between the 0.5mm roofing sheets the Complainant paid for and the 0.4mm roofing sheets that the Respondent supplied her was K8,415.00.

Previous Cases involving the Respondent

It was submitted that:

30. A review of the case file for the Respondent showed that there was no case in which the Respondent was found to have breached Section 47(a)(i) of the Act.

Analysis of Conduct

In analysing the case for possible violation of Section 47(a)(i) of the Act, the following assessment tests were used:

Whether the Respondent was a "person" or an "enterprise";

It was submitted that:

31. The Respondent was an enterprise. Refer to paragraph 10 of the report.

¹¹ Invoice No. 1660 and Receipt No. 1949 dated 1st April 2023

¹² Zambia Metrology Agency (ZMA) Inspection Report dated 14th November 2023

¹³ Zambia Metrology Agency (ZMA) Inspection Report dated 14th November 2023

Whether the misrepresentation was on account of goods being of a particular standard

It was submitted that:

32. False representations or misrepresentation is, “any manifestation by words or other conduct by one person to another that, under the circumstances, amounts to an assertion not in accordance with the facts”.¹⁴ The above definition implies that a person who represents that a particular good is of a particular standard, so that another person makes a purchasing decision based on the facts presented has falsely represented to that person and distorted their purchasing decision. Standard is defined as, “a level of quality or attainment”.¹⁵ This is in line with a person’s expected benefit or usefulness of a particular good.
33. In this regard, the Commission established that on 1st April 2023, the Complainant engaged the Respondent to supply her with 0.5mm charcoal grey IBR roofing sheets a total cost of K K56,925.00.¹⁶
34. The Commission established, through a review of Invoice No. 1660 and Receipt No. 1949 dated 1st April 2023, that the Complainant paid for roofing sheets of 0.5mm thickness. The Complainant relied on the information given to her by the Respondent that the roofing sheets were of 0.5mm thickness for durability and performance considerations. However, the Commission established through the ZMA report that the Respondent supplied the Complainant roofing sheets of 0.4mm thickness which were thinner than what the Complainant paid for and contrary to what was indicated on the invoice. Therefore, the standard of the roofing sheets was falsely represented considering the level of quality or attainment that the Complainant would have obtained from the roofing sheets did not meet her expected standard as the roofing sheets were not 0.5mm as indicated on the invoice issued by the Respondent but 0.4mm.
35. The Commission established that the Respondent had falsely represented to the Complainant that the roofing sheets supplied to her were of 0.5mm thickness when in fact not. The Commission established that despite the Respondent being paid for 0.5mm IBR roofing sheets, the Respondent supplied her with 0.4mm IBR roofing sheets. Therefore, the Commission found that the Respondent violated Section 47(a)(i) of the Act.

¹⁴ Black’s Law Dictionary 4th Ed. Rev., p1152

¹⁵ <https://www.merriam-webster.com/dictionary/value>

¹⁶ Invoice No. 1660 and Receipt No. 1949 dated 1st April 2023

Board Deliberation

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

Board Determination

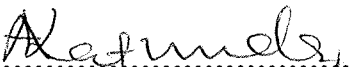
37. The facts and evidence of this case have shown that the Respondent violated Section 47(a)(i) of the Act.

Board Directives

38. The Board hereby directs that;
- i. The Respondent is fined 0.5% of their annual turnover for 2022 for breach of Section 47(a)(i) of the Act in accordance with Section 47(a)(i) of the Act and the Competition and Consumer Protection Guidelines for Issuance of Fines, 2019 (*See Appendix 1 for details*);
 - ii. The Respondent submits their audited annual books of accounts for the year 2022 to the Commission for calculation of the actual fine within thirty (30) days of receipt of the Board Decision in accordance with Section 5(d) of the Act; and,
 - iii. The Respondent refunds the Complainant K8,415.00 within ten (10) 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 (CCPT).

Dated this 5th April 2024


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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 2019 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 False or misleading representation Price Display Supply of defective and unsuitable goods and services Section 49 except for Section 49(1)	0.5% of turnover	<ul style="list-style-type: none"> • K1,000 for turnover up to K50,000 • K10,000 for turnover above K50,000 up to K250,000 • K40,000 for turnover above 250,000 up to K500,000 • K70,000 for turnover aboveK1,500,000 • K150,000 for turnover above K1,500,000 up to 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

(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)(i);*

The Commission's review of the case file for Express Roofing Centre Limited shows that the Respondent is a first-time offender of this Provision of the Act. As such the fine will be set as 0.5%.

(d) Starting with a baseline fine of 0.5%.