

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

APPLICANTS:

Mr. Joseph Mwansa

COMPLAINANT

AND

Malundu School

RESPONDENT

BEFORE:

Commissioner Angela Kafunda

- Chairperson

Commissioner Derrick Sikombe

- Member

Commissioner Stanford Mtamira

- Member

Commissioner Sikambala M. Musune

- Member

Commissioner Emmanuel M. Mwanakatwe

- Member

DECISION

Below is a summary of the facts and findings presented by the Competition and Consumer Protection Commission (“the Commission”) to the Board following investigations it carried out in the above case.

Introduction and Relevant Background

It was submitted that:

1. On 7th September 2023, the Competition and Consumer Protection Commission (“the Commission”) received a complaint from Mr. Joseph Mwansa (“the Complainant”) against Malundu School (“the Respondent”). Specifically, the Complainant alleged that he had a child enrolled with the Respondent. The Complainant alleged that in 2022, the Respondent introduced an online platform called Tutec which was meant for teachers to send homework to all the pupils. The Complainant alleged that the platform fee was initially K50.00 per term but it was later increased to K100.00 per term in 2023. The Complainant alleged that the platform was not user friendly because it was mostly inaccessible.

2. The Complainant alleged that the Respondent forced all the parents to pay the Tutec fees despite its inaccessibility. The Complainant alleged that after the second term in 2023, the Respondent withheld his child's progress report despite paying the tuition fees in full, because he did not pay the Tutec fee. The Complainant alleged that the Respondent only shared his child's progress report after he paid the Tutec fee. The Complainant alleged that he had engaged the Respondent severally regarding the platform but he was not redressed. The Complainant alleged that he found the Respondent's conduct unfair as parents were forced to pay for a service which was not being utilized. The Complainant sought the Commission's intervention in the matter.

Legal Contravention and Assessment Tests

Legal Contravention

It was submitted that:

3. The alleged conduct appeared to be in contravention of Section 45(c) as read together with Section 46(1) of the Competition and Consumer Protection Act, No. 24 of 2010 ("the Act").

4. Section 45(c) of the Act stated that:

"A trading practice is unfair if it places pressure on consumers by use of harassment or coercion; and thereby distorts or is likely to distort the purchasing decisions of consumers."

5. Section 46(1) of the Act stated that:

"A person or an enterprise shall not practice any unfair trading."

6. Section 46(2) of the Act stated that:

"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 or one hundred and fifty thousand penalty units, whichever is higher."

Assessment Tests

For the purposes of Section 45(c) as read together with Section 46(1) of the Act, the following assessment tests were used;

It was submitted that:

7. Whether the Respondent was a "person" or an "enterprise";
8. Whether the Complainant was a "consumer";

9. Whether there was a trading practice;
10. Whether the trading practice placed pressure on the complainant by use of harassment or coercion; and thereby distorted or was likely to distort the complainant's purchasing decision.

Investigations Conducted

It was submitted that:

11. The Commission duly served the Notice of Investigation and the accompanying letter on the Respondent on 21st September 2023. The Commission instituted investigations in the matter under Section 45(c) as read together with Section 46(1), and Section 53(1) of the Act. However, during the process of investigations, the Commission found that the matter bordered on Section 45(c) as read together with Section 46(1) only. Hence this report was analyzed under Section 45(c) as read together with Section 46(1) of the Act. The Commission further reviewed the Respondent's TUTEC online application and screenshots of WhatsApp conversations from various parents regarding their experiences on the Respondent's application.

Findings

The Parties

The Complainant

It was submitted that:

12. The Complainant was Mr. Joseph Mwansa of Kafue District, Lusaka Province.¹ Section 2 of the Act defined 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 The Complainant was a consumer because he enrolled his son at the Respondent's school.³

The Respondent

It was submitted that:

13. The Respondent was Malundu School, located at Plot 287/288 Unity Drive, Kafue District. The Respondent was a registered company (Registration No.

¹ CCPC Form IV dated 7th September 2023

² The Competition and Consumer Protection Act No. 24 of 2010

³ CCPC Form IV dated 7th September 2023

319920060235) with the Patents and Companies Registration Agency (PACRA).⁴ 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 an enterprise as they were a company that engaged in commercial activities as envisaged under the Act, of providing education services to the public.

Submissions from the Respondent⁵

It was submitted that:

14. In an email dated 18th September 2023, the Respondent submitted that the Complainant’s son, Jotham Mwansa, was their pupil enrolled in Grade 1 and that his parents paid the school fees as required. The Respondent submitted that on 9th April 2022, they had introduced the Educational Management Program (edumgra), which was now called Tutec, to parents during their Parent-Teacher Association (PTA) Annual General Meeting (AGM). The Respondent submitted that they had informed parents and guardians that their Educational System would be integrated with an online program as mentioned above. The Respondent submitted that they had further informed the parents that preparations were underway and that once completed, they would be informed. The Respondent submitted that the initiative was welcomed by parents.
15. The Respondent further submitted that on 17th June 2022, they communicated to the parents on their Grade WhatsApp group of the development. The Respondent submitted that their teachers were trained and that they issued identity (ID) codes to all their learners. The Respondent submitted that they had further extended an invitation to all the parents who wished to be trained on how to access the platform, however, only a few attended. The Respondent submitted that since the program was not difficult to access, the link was shared to all and those with ID codes managed to log in and navigate from the dashboard. The Respondent submitted that some of the parents managed to access the platform and were very excited, however, others were unsuccessful. The Respondent submitted that they devised a demo to ease the struggle and offered assistance to those that were struggling.
16. The Respondent submitted that the program was very good and that since they had started using it, parents were able to access the learners’ homework and assignments, and they could give feedback on the work, access results,

⁴ Patents and Companies Registration Agency (PACRA) search on 29th September 2023

⁵ Email from the Respondent dated 18th September 2023

monitor the subjects in class, attendance registers, and notifications on their payments. The Respondent submitted that the program was officially commenced in June 2022 and the fee attached to it was K100.00, which was communicated to the parents. The Respondent however submitted that considering that it was the middle of the term, Management negotiated with the service provider to allow parents to only pay half of the amount for that particular term. The Respondent submitted that they further communicated to the parents that from the third term going forward, K100.00 would be paid each term.

17. The Respondent submitted that in the Complainant's case, he never paid the K50.00 fee in the second term of 2022 or the K100.00 in the third term of 2022. The Respondent submitted that since all the learners' results were accessed through the service, a list of those who owed the school was compiled and they were temporarily blocked on the open day. The Respondent submitted that once again, their Management came to an agreement with the service provider and the progress reports were released the same day. The Respondent submitted that the Complainant was one of the few parents who had not welcomed the program with a positive mind, neither had he made an effort to visit the school seeking help even after several invitations.
18. The Respondent submitted that as a school, they were moving away from using too much paper to embracing new technology in trying to safeguard the environment. The Respondent further submitted that they would soon do away with hard copy progress reports and that parents would only access their children's progress reports on the same program online. The Respondent submitted that the program was okay and user friendly despite a few challenges experienced by parents at inception. The Respondent submitted that each time parents faced the challenges, they forwarded them to the service provider who had since worked on them. The Respondent lastly submitted that the program was actually faster when one downloaded the application.

Submissions from the Complainant⁶

It was submitted that:

19. On 22nd September 2023, the Complainant submitted that the Respondent forced him to pay the outstanding Tutec fee of K150.00 in order for them to issue him with his son's progress report on 11th August 2023. The Complainant submitted that he had no choice but to pay as requested by the Respondent, despite him not accessing any information on their platform. The

⁶ Telephone conversation with the Complainant on 22nd September 2023

Complainant submitted that each time his son had homework on the Respondent's platform, it could not be accessed and that he had informed them about it on several occasions. The Complainant further submitted that he was not the only parent that experienced these challenges with the Respondent's platform, as several other parents experienced it too. The Complainant lastly shared a copy of his receipt from the Respondent, and screen shots of the Respondent's WhatsApp group for the Commission's review.

Review of the Complainant's receipt from the Respondent⁷

It was submitted that:

20. A review of the Complainant's receipt number 3822 from the Respondent revealed that he paid them K150.00 on 11th August 2023. The review further revealed that the payment description was 'Tutec fees for the second and third terms of 2023'.

Review of the WhatsApp Group Screenshots Submitted by the Complainant

It was submitted that:

21. A review of the WhatsApp Group screenshots submitted by the Complainant revealed that different parents complained about the Respondent's platform as they could not access their children's homework/assignments. The review further revealed that three of the parents could not view their children's assignment, as they had outstanding fees that needed to be settled before they could access it. **(Kindly refer to Annexure 1)**

Further Submissions from the Respondent⁸

It was submitted that:

22. On 3rd October 2023, the Respondent submitted that the platform's challenges had since been rectified as the parents were able to access it. The Respondent further attached screenshot conversations of their WhatsApp group regarding positive feedback from the parents, for the Commission's review.

⁷ The Complainant's receipt number 3822 dated 11th August 2023

⁸ WhatsApp message from the Respondent dated 3rd October 2023

Review of the WhatsApp Group Screenshots Submitted by the Respondent

It was submitted that:

23. A review of the WhatsApp Group screenshots submitted by the Respondent revealed that they had shared the Tutec link with the parents and guardians. The review further revealed that different parents were able to access the homework and reports sent to the pupils, through the Tutec website. **(Kindly refer to Annexure 2)**

Further Submissions from the Complainant⁹

It was submitted that:

24. On 9th February 2024, the Complainant submitted that he was still experiencing challenges with the Respondent's Tutec link as he was unable to access any of his son's homework.

Further Submissions from the Respondent

It was submitted that:

25. On 10th February 2024, the Respondent availed the Commission with the Tutec link, together with the Complainant's son's log in credentials for review. The Respondent further submitted that assignments could not be viewed once the deadline passed, as the system automatically archived them. The Respondent however submitted that the progress reports could still be viewed on the system.

Review of the Tutec Website¹⁰

It was submitted that:

26. A review of the Respondent's Tutec website on 7th March 2024 revealed that the Complainant's son was in Grade 2B with four subjects indicated as integrated science, Mathematics, Social Studies and Zambian Language. The review further revealed that all of the Complainant's son's 2023 term reports were available on the website. The review revealed that there were no new assignments uploaded on the website. The review lastly revealed that there were two notifications informing the Complainant's son that he had a new assignment in reading which was due on or before 9th October 2023 and in Social Studies which was due on or before 1st March 2024.

⁹ Telephone conversation with the Respondent on 9th February 2024

¹⁰ Review of the Complainant's son's profile on the Tutec Education website www.tutec.education on 7th March 2024

Submissions from Tutec Education¹¹

It was submitted that:

27. On 25th March 2024, the Commission contact the Respondent's service provider, Tutec Education, to ascertain whether there were other schools that used their platform. Ms. Carol Shingama, a Director at Tutec Education, submitted that they currently only offered their services to the Respondent in Zambia, as they were yet to enroll other private schools. Ms. Shingama further submitted that at inception, they had received a few complaints from the Respondent as parents had challenges accessing their website. Ms. Shingama further submitted that all the issues had since been rectified and that parents were now acquainted with how the system worked, therefore, they did not receive any further complaints.

Submissions to the Commission's Preliminary Report

It was submitted that:

28. The Commission duly served the preliminary report on the Complainant on 24th April 2024, and on the Respondent on 30th November 2024, for further submissions.

Submissions from the Complainant¹²

It was submitted that:

29. In an email dated 24th April 2024, the Complainant submitted that his major concern was regarding how often the Respondent's platform was used. The Complainant however submitted that overall, he was okay with the closure of the case and would work with the Respondent to ensure that their platform was used for the benefit of the school, pupils and the parents.

Submissions from the Respondent¹³

It was submitted that:

30. In an email dated 5th May 2024, the Respondent submitted that they were satisfied with the manner in which the Commission handled the matter, as well as the outcome. The Respondent further submitted that the matter could have been resolved in a different way, had the Complainant made efforts to respond to their invitations for assistance.

¹¹ Telephone conversation with Tutec Educations Ms. Carol Shingama on 25th March 2024

¹² Email from the Complainant dated 24th April 2024

¹³ Email from the Respondent dated 5th May 2024

Relevant Findings

It was submitted that:

31. The Commission established that the Complainant's son was a pupil at the Respondent's school.¹⁴¹⁵
32. The Commission noted that on 9th April 2022, the Respondent introduced the Educational Management Program (edumgra), which was now called Tutec, to parents during their PTA AGM.¹⁶ The Commission further noted that on 17th June 2022, the Respondent implemented the program which enabled parents to access their children's homework, assignments as well as progress reports.
33. The Commission found, through the review of the Respondent's WhatsApp Group screenshots, that parents had been informed of the program and were able to access it despite their various experiences.
34. The Commission noted that the Respondent requested parents to pay K100.00 per term as the Tutec.¹⁷ The Commission further noted that because the program was introduced during the second term of 2022, the Respondent requested parents to pay K50.00 for that term, and thereafter K100.00 per term.
35. The Commission established that the Complainant did not pay the Tutec fees, therefore, he was unable to access his son's 2023 second term's progress report from the Respondent, as he was still owing them.¹⁸
36. The Commission however established that the Complainant received his son's progress report after paying the Respondent K150.00 on 11th August 2023.¹⁹
37. The Commission established, from the Complainant's submissions, that he was still unable to access the Respondent's program.²⁰
38. The Commission further established, after reviewing the Respondent's Tutec website, that the program was accessible and that there were no assignments available for viewing.²¹
39. The Commission further established that there were no other schools in Zambia that used Tutec Education's system, hence no industry practice or

¹⁴ CCPC Form IV dated 28th August 2023

¹⁵ Email from the Respondent dated 18th September 2023

¹⁶ Email from the Respondent dated 18th September 2023

¹⁷ Email from the Respondent dated 18th September 2023

¹⁸ Email from the Respondent dated 18th September 2023

¹⁹ The Complainant's receipt number 3822 dated 11th August 2023

²⁰ Telephone conversation with the Respondent on 9th February 2024

²¹ Review of the Complainant's son's profile on the Tutec Education website www.tutec.education on 7th March 2024

third-party submissions received on the matter.²²

Previous Cases involving the Respondent

It was submitted that:

40. A review of the Respondent's file revealed that there was no case in which the Respondent was found to have breached Section 45(c) as read together with Section 46(1) of the Act.

Analysis of Conduct

It was submitted that:

In analyzing the case for possible violation of Section 45(c) as read together with Section 46(1) of the Act, the following assessment tests were used:

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

It was submitted that:

41. The Respondent was an enterprise pursuant to Section 2 of the Act. Please refer to Paragraph 13.

Whether the Complainant was a "consumer";

It was submitted that:

42. The Complainant was a consumer pursuant to Section 2 of the Act. Please refer to Paragraph 12.

Whether there was a trading practise;

It was submitted that:

43. A trading practice was defined as "*a customary way of doing business; especially a method of using specifications for size, thickness, shape or quality adopted within a given industry.*"²³ The Commission established that the Respondent offered education services to the Complainant's son, which required usage of the Tutec Education system at a termly fee of K100.00. Therefore, there was a trading practice.

²² Telephone conversation with Tutec Educations Ms. Carol Shingama on 25th March 2024

²³ Black's law Dictionary, 8th Edition, p1534

Whether the trading practice placed pressure on the consumers by use of harassment or coercion and thereby distorted or was likely to distort the consumers purchasing decision

It was submitted that:

44. Harassment was defined as *“words, conduct, or action (usually repeated or persistent) that, being directed at a specific person, annoys, alarms, or causes substantial emotional distress to that person and serves no legitimate purpose; purposeful vexation.”*²⁴ Coercion was defined as *“conduct that constitutes the improper use of economic power to compel another to submit to the wishes of one who wields it.”*²⁵ Black’s Law Dictionary also referred to implied coercion which was also termed “undue influence” to mean *“the improper use of power or trust in a way that deprives a person of the free will and substitutes another’s objective; the exercise of enough control over another person that a questioned act by this person would not have otherwise been performed, the person’s free agency having been overmastered.”*
45. In considering the concept of undue influence, the authors of “Consumer Law and Policy” stated that, *“the concept of undue influence ... recognizes that certain relationships will be presumed to raise undue influence while in other cases undue influence may be proved from all the circumstances of the case. This will usually require proof that there was a relationship of trust and confidence between the parties and that this relationship was used to bring about a particular transaction that would not be regarded as prudent. There is also the further category of the ‘unconscionable bargain’. This involves situations where one party has exploited a weakness of the other party.”*²⁶
46. In the case of **Kasengo Holdings Limited V Innovate Venture Limited and Competition and Consumer Protection Commission**²⁷ the Competition and Consumer Protection Tribunal in analyzing section 45(c) of the Act stated that:
- “The concern of the law is whether the conduct of the Appellant’s Brimas Restaurant/Take Away employees was such as placed or would place pressure on consumers by use of harassment or coercion, thereby distorting, or likely to distort, the purchasing decisions of consumers... In fact, for arguments sake, if left unsanctioned, the Appellant’s conduct could well not only distort the purchasing decisions of the passengers on the Post Bus issue, but also other*

²⁴ Black’s Law Dictionary, 11th Edition, p860

²⁵ Black’s Law Dictionary, 11th Edition, p326

²⁶ Ramsey I, Consumer Law and Policy Text and Materials on Regulating Consumer Markets, 2nd Edition, 2007, p324-325

²⁷ Appeal No. 2019/007/COM

passengers on other buses, or indeed other buses using Brimas Bus Station, who might buy food from other suppliers.”

47. In the matter at hand, the Commission established that the Complainant's son was a learner at the Respondent's school. The Commission established that on 17th June 2022, the Respondent implemented the Tutec program which enabled parents access their children's homework, assignments as well as progress reports. The Commission found, through the review of the Respondent's WhatsApp Group screenshots, that parents had been informed of the program as they were able to access it despite their various experiences. The Commission further found that the Respondent requested parents to pay K50.00 as the Tutec fee for the second term of 2022, and thereafter K100.00 per term.
48. The Commission established that the Complainant did not pay the Tutec fees, therefore, he was unable to access his son's 2023 second term's progress report from the Respondent, as he was still owing them. The Commission established that despite the Respondent communicating to all the parents about the Tutec fee during their PTA AGM held on 9th April 2022, the Complainant did not make the payment as requested. The Commission therefore established that the Complainant's conduct was not in line with the communication that was communicated to him through the PTA AGM held by the Respondent. Hence, the Complainant was required to pay the Tutec fee which enabled him access to the education services provided by the Respondent, in accordance with the notification issued by the PTA.
49. The Commission is therefore of the view that the Complainant needed to pay the Tutec fee to access his son's progress report. The Commission however established that the Complainant received his son's progress report after paying the Respondent K150.00 on 11th August 2023. Therefore, the Commission determined that violation of the Act could not be established, as the Complainant was required to pay the Tutec fee to access his son's progress report. Additionally, the Commission opined that the Respondent did not coerce the Complainant into paying them K150.00 as the Tutec fee, because the fee had already been communicated to all parents at the PTA AGM held on 9th April 2022.
50. The Commission further noted from the Complainant's submissions, that he was still unable to access the Respondent's program.²⁸ The Commission however established after reviewing the Respondent's Tutec website, that the program was accessible and that there were no assignments available for viewing. The Commission is further of the view that it was public knowledge

²⁸ Telephone conversation with the Respondent on 9th February 2024

that information and communication technologies entailed challenges such as internet connectivity, which could limit ones' access to a website. The Commission further noted that it could not obtain any industry practise on the performance of the Tutec Education system, as there were no other schools that used the program apart from the Respondent. Therefore, violation of Section 45(c) as read together with Section 46(1) of the Act, could not be established.

Board Deliberation

51. Having considered the facts, evidence and submissions in this case, the Board resolves that violation of Section 45(c) as read together with Section 46(1) of the Act could not be established.

Board Determination


52. The facts and evidence of this case have shown that violation of Section 45(c) as read together with Section 46(1) of the Act could not be established.

Board Directive

53. The Board hereby directs that the case is closed.

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 13th June 2024


.....

Chairperson
Competition and Consumer Protection Commission