

**CONS/28/01/2022/00156/KBW/LP**

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

**APPLICANTS:**

**Ms. Susan Kunda and 3 others**

**COMPLAINANTS**

**AND**

**Mulungushi Central Health College Ltd**

**RESPONDENT**

**BEFORE:**

**Commissioner Chenga Chisha**

**- Chairman**

**Commissioner Aubrey M. Chibumba**

**- Member**

**Commissioner Frederick Imasiku**

**- Member**

**Commissioner Nsangwa Ngwira**

**- Member**

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**DECISION**

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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 28<sup>th</sup> January, 2022, the Competition and Consumer Protection Commission ("the Commission") received complaints from Ms. Susan Kunda, Ms. Mercy Tembo, Ms. Leah Chilelo and Ms. Cynthia Banda ("the Complainants") against Mulungushi Central Health College Limited ("the Respondent"). Specifically, the

Complainants alleged that in October, 2021 Ms. Susan Kunda, enrolled for Midwifery Humanization, Ms. Mercy Tembo enrolled for Guidance & Counselling courses while Ms. Leah Chilelo and Ms. Cynthia Banda enrolled for Nursing Humanization with the Respondent. The Complainants alleged that they were offered scholarships and they only had to pay for college requirements specified below;

Requirements	Suzan Kunda	Mercy Tembo	Leah Chilelo	Cynthia Banda
Clinical Drills	800.00	400.00	400.00	400.00
Internet Services	1,750.00	300.00	300.00	300.00
Identity Card	150.00	150.00	150.00	150.00
Library Books	1,750.00	400.00	400.00	400.00
Verification of statement of Results	50.00	N/A	N/A	N/A
Medical Examination	300.00	300.00	300.00	300.00
Medical Scheme	300.00	300.00	300.00	300.00
Uniform Badge	N/A	100.00	100.00	100.00
Box of examination gloves	N/A	N/A	150.00	150.00
Reams of paper	N/A	150.00	150.00	150.00
Hand Sanitizer	N/A	150.00	N/A	N/A
Total Billed	K5,100.00	K2,250.00	K2,250.00	K2,250.00
Amount paid	K5,100.00	K2,250.00	K1,500.00	K1,500.00

The Complainants alleged that they were informed by the General Nursing Council (GNC), Health Professional Council of Zambia (HPCZ) and Technical Education, Vocational and Entrepreneurship Training Authority (TEVETA) that the Respondent was not registered with them. The Complainants alleged that their acceptance letters indicated that classes would commence on 10<sup>th</sup> January 2022,

however, as at 25<sup>th</sup> January, 2022 classes had not commenced as scheduled. The Complainants alleged that on 25<sup>th</sup> January 2022, they visited the Respondent seeking to be refunded however; the Respondent informed them that the College requirements paid for were non-refundable. The Complainants sought to be refunded respective amounts paid for college requirements.

2. The Notice of Investigation (NOI) had cited Section 47(a)(v) and Section 49(5) of the Act, however, during the investigations, the Commission established that the conduct in question bordered on Section 46(1) as read together with 45(a). Thus, the case was investigated under Section 46(1) as read together with 45(a).

### **Legal Contravention and Assessment Tests**

#### **Legal Contravention**

##### ***It was submitted that:***

3. The alleged conduct appeared to be in contravention of Section 46(1) as read together with Section 45(a) of the Competition and Consumer Protection Act No. 24 of 2010 (“the Act”).
4. Section 46(1) of the Act states that: *“A person or an enterprise shall not practice any unfair trading.”*
5. Section 46(2) of the Act states 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.”*
6. Section 45(a) of the Act states that: *“A trading practice is unfair if it misleads Consumers”.*

#### **Assessment Tests**

***For the purpose of Section 46(1) as read together with Section 45(a) of the Act, the following assessment tests will be used;***

##### ***It was submitted that:***

7. Whether Mulungushi Central Health College is a “Person” or “enterprise”;
8. Whether there was a trading practice; and
9. Whether the trading practice misled the consumer thereby distorting the consumer’s purchasing decisions.

## **Investigations Conducted**

### ***It was submitted that:***

10. The Commission duly served a NOI and an accompanying letter on the Respondent on 14<sup>th</sup> February, 2022. The Commission also reviewed the Certificate of Registration, Admission letters and receipts. The Commission sent letters to GNC and Higher Education Authority (HEA) requesting for their submissions on 23<sup>rd</sup> March, 2022 and 30<sup>th</sup> March, 2022.

## **Findings**

### **The Parties**

#### **The Complainant**

### ***It was submitted that:***

11. The Complainants are Ms. Susan Kunda, Ms. Mercy Tembo, Ms. Leah Chilelo and Ms. Cynthia Banda.<sup>1</sup> 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.*”<sup>2</sup> Therefore the Complainants are consumers as envisaged under the Act, as they acquired respective services from the Respondent as evidenced by the Complainants’ admission letters.

#### **The Respondent**

### ***It was submitted that:***

12. The Respondent is Mulungushi Central Health College Limited located in Kabwe. A search at Patents and Companies Registration Agency (PACRA) revealed that the Respondent was a registered company with registration number 32100171241. According to Section 2 of the Act, “enterprise,” means “*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.*” Therefore, the Respondent is an enterprise as envisaged under the Act as it engages in commercial activities.

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<sup>1</sup> CCPC Form IV

<sup>2</sup> CCPA No. 24 of 2010

### **Submissions from the Respondent<sup>3</sup>**

#### ***It was submitted that:***

13. The Respondent submitted to the Commission in their letter dated 1<sup>st</sup> March, 2022 that they were registered according to the new amendment Act no 23 of 2021 of Higher Education dated 20<sup>th</sup> May, 2021. The Respondent submitted that HPCZ and GNC visited the Respondent during inspections on the nursing and midwifery courses and observed that they did not offer any courses under GNC. The Respondent further submitted that they were requested to write to the GNC secretary general on the confirmation that they did not offer any courses under GNC. The Respondent submitted that they had a Memorandum of Understanding (MoU) with the Complainants that college requirements were non-refundable. The reasons for not refunding college requirements were specified in the table below.

**Table 1: Reasons submitted by the Respondent**

<b>Requirements</b>	<b>Reason for not refunding</b>
Attachments	Ministry of Health price was K3,600.00 for six months and students only contribute K400.00.
Internet Services	Was for bundles that students contribute to the online dashboard of the lecturer's operation.
Identity Card	Involved studio passport size photos and the actual Identity Card
Medical Examination	Include covid 19 test conducted and the hospital involved staff transportation and food.
Medical Scheme	In case the student falls sick it was the responsibility of the institution to provide transport and carter for hospital bills.
Surgical gloves	Used by the students during attachments
Two Reams	They were to be used at the institution

14. The Respondent also submitted that all requirements were non-refundable because the money was paid towards, studies, printing uniform badges, internet service providers etc.

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<sup>3</sup> Letter from the Respondent

15. The Respondent submitted that the college requirements vary according to the level of scholarship that was given and that in the case of Susan Kunda (the Complainant), she had an 80% scholarship thereby making her pay more.
16. The Respondent submitted that they did not collect tuition fees from any Complainant.

### **Third Party Submissions**

#### **Nursing and Midwifery Council of Zambia (NMCZ)**

##### ***It was submitted that:***

17. The Nursing and Midwifery Council of Zambia (NMCZ) submitted in their letter dated 20<sup>th</sup> April, 2022 that the Respondent was not inspected to assess any Nursing or Midwifery training programmes.
18. NMCZ submitted that the Respondent was investigated on 1<sup>st</sup> March, 2022 for purporting to provide Nursing and Midwifery training programmes without NMCZ's approval.
19. NMCZ submitted that their preliminary investigations revealed that the Respondent was offering programmes purported to be Midwifery Humanization, Guidance & Counselling courses and Nursing Humanization. NMCZ further submitted that the three (3) programmes were not and had not been approved by NMCZ, contrary to Section 33, 34 and 35 of the Nurses and Midwives Act No. 10 of 2019 (refer to paragraph 24 & 25).
20. NMCZ submitted that there was no regulation under the Nurses and Midwives Act that justifies the conduct by the Respondent to offer Midwifery Humanisation and Nursing Humanisation in the absence of the NMCZ approval. NMCZ further submitted that the Respondent was therefore directed to immediately stop using the words Nursing and Midwifery in the training programmes because they were not approved by NMCZ.

#### **Higher Education Authority (HEA)**

##### ***It was submitted that:***

21. The HEA submitted in their letter dated 10<sup>th</sup> May, 2022 that the Respondent was not registered with them and was in breach of the provisions of the Higher Education Act number 4 of 2013 Section 15(1) and the Higher Education (Amendment) Act of 2021 section 11 (2). The HEA also submitted that the

Respondent risks being prosecuted for operating without registration and offering learning programmes which were not accredited by the HEA.

### **Review of Nurses and Midwives Act No. 10 of 2019**

#### ***It was submitted that:***

22. A review of Nurses and Midwives Act No. 10 of 2019 revealed that Section 33 (1) of the stated that “*A higher education institution shall not provide or hold out as providing, training in nursing or midwifery unless the training programme is approved by the Council in consultation with the Higher Education Authority and Zambia Qualifications Authority. (2) A higher education institution that contravenes subsection (1) is liable on conviction, to a fine not exceeding five hundred thousand penalty units and to an additional fine of forty thousand penalty unit for each day during which the offence continues*”.
23. A further review of the Nurses and Midwives Act No. 10 of 2019 revealed that Section 34 (1) of the Act stated that “*A higher education institution that intends to provide training in nursing or midwifery shall apply to the Council for approval of the higher education institution’s proposed training programme in the prescribed manner and form of payment of a prescribed fee.*”
24. The Commission noted that for any higher education institution to provide training in any of the courses allegedly being offered by the Respondent, it is a prerequisite to be registered under the Nursing and Midwifery council of Zambia in consultation with the HEA and Zambia Qualifications Authority (ZAQA).

### **Review of the Contract between the Respondent and Ministry of Health (MoH)<sup>4</sup>**

#### ***It was submitted that:***

25. A review of the contract between the Respondent and MoH dated 11<sup>th</sup> November, 2021 submitted to the Commission by the Respondent revealed that the Respondent obtained authorisation from the MoH to conduct attachments at Government hospitals.

### **Review of the Certificate of Registration<sup>5</sup>**

#### ***It was submitted that:***

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<sup>4</sup> Contract between the Ministry of Health and Mulungushi Central Health College

<sup>5</sup> Review of the Certificate of Registration

26. A review of the certificate of registration revealed that the Respondent was registered with Zambia Counselling Council (ZCC).

**Review of the Respondent's Facebook page<sup>6</sup>**

***It was submitted that:***

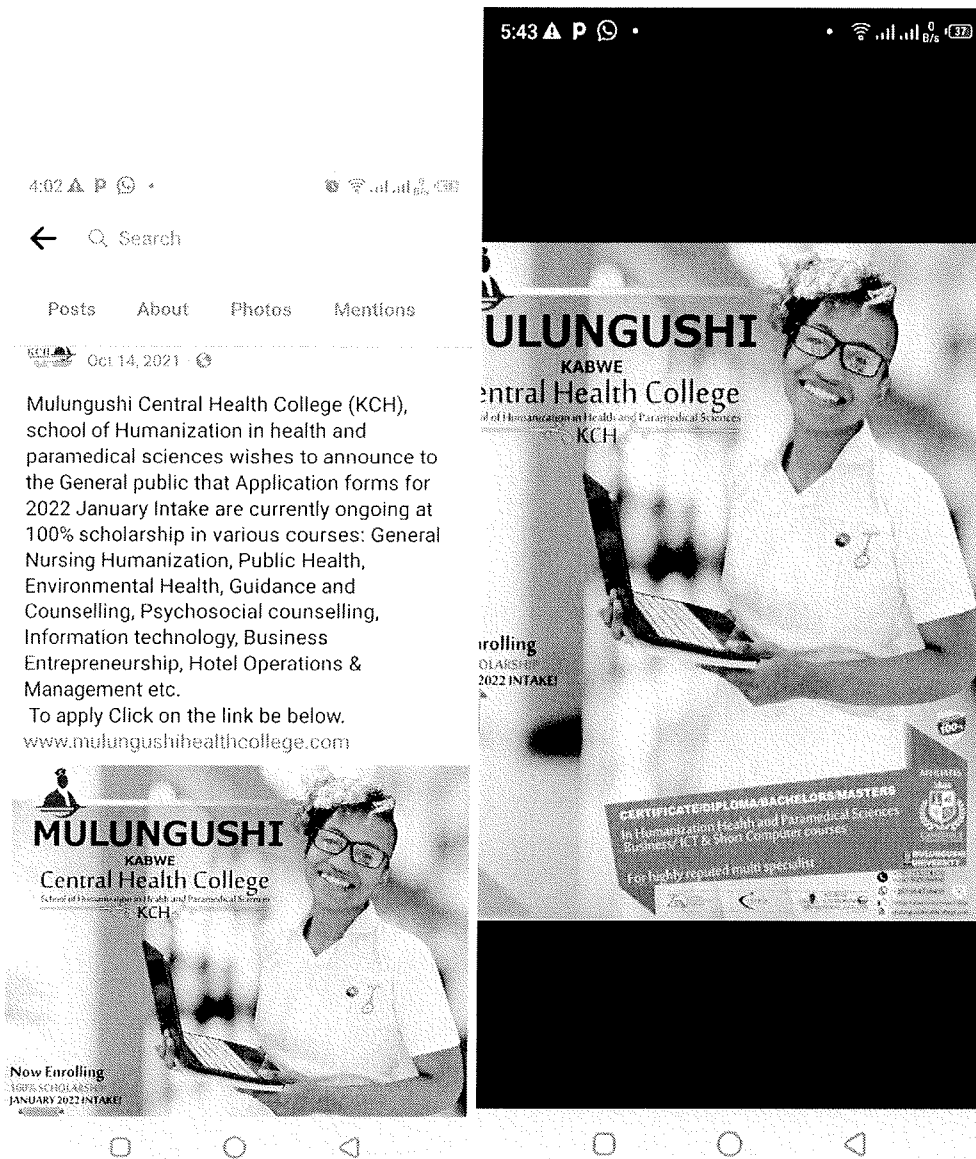
27. A review of the Respondent's advertisement of learning programs revealed that the that General Nursing Humanization, Public Health, Environmental Health etc were among the programmes advertised on the Respondent's face book page as at 14<sup>th</sup> October, 2021. **(Refer to figure 1 below).**

28. ***Figure 1: Respondent's Facebook page***

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<sup>6</sup> The Respondent's Facebook page as at 14<sup>th</sup> October, 2021





29. A further review of the Respondent's Facebook page revealed that there was no statement stating that they did not offer any programmes under GNC or HPCZ.

### **Review of the Complainants' Admission Letters<sup>7</sup>**

***It was submitted that:***

30. A review of the Complainants' admission letters revealed that the learning was scheduled to commence on 10<sup>th</sup> January, 2022 however, the date was subject to adjustment.

<sup>7</sup> Complainant's admission letter dated 2-th April, 2015

<b>Admission letter dated</b>	<b>Complainant's names</b>	<b>Name of Program</b>	<b>Commencement date</b>	<b>Duration</b>	<b>Scholarship</b>	<b>Requirement fees (K)</b>
30 <sup>th</sup> August, 2021	Suzan Kunda	Midwifery Humanisation Course	Nil	3 years	80%	5,100.00
1 <sup>st</sup> November, 2021	Mercy Tembo	Guidance and Counselling	10 <sup>th</sup> January, 2022	3 years	100%	2,250.00
30 <sup>th</sup> November, 2021	Leah Chilelo	Nursing Humanisation	10 <sup>th</sup> January, 2022	3 years	100%	2,250.00
30 <sup>th</sup> November, 2021	Cynthia Banda	Nursing Humanisation	10 <sup>th</sup> January, 2022	3 years	100%	2,250.00

*Table 2*

**Review of the Complainants' receipts<sup>8</sup>**

***It was submitted that:***

31. A review of the Complainants' receipts revealed that Ms. Susan Kunda paid K5,100.00, Ms. Mercy Tembo paid K2,250.00, Ms. Leah Chilelo paid K1,500.00 and Ms. Cynthia Banda paid 1,500.00 on various dates between November 2021 and January 2022.

**Further Submissions from the Complainants**

***It was submitted that:***

32. On 9<sup>th</sup> February, 2022 the Complainants submitted in a telephone conversation that they withdrew from pursuing the programmes in question after being informed that the Respondent was not registered with the relevant authorities such as GNC, HPCZ and TEVETA. The Complainants further submitted that

<sup>8</sup> Residential Registration slip

classes were scheduled to commence on 14<sup>th</sup> February, 2022 however, they only conducted Covid 19 tests which were considered as medical examination.<sup>9</sup>

33. The Complainant specifically Susan Kaunda submitted that a photograph was taken of her for the student identity card to be made however, she did not receive her student identity card.

### **Submissions to the Commission Report**

#### ***It was submitted that:***

34. After approval of the preliminary report by the Commission, the report was sent to the Respondent on 19<sup>th</sup> May, 2022 and the Complainants on 20<sup>th</sup> May, 2022 to make further submissions based on the Commission's findings. The Complainants did not make any comments despite acknowledging receipt of the report however, the Respondent made further submissions based on the Commission's findings.

### **Further Submissions from the Respondent<sup>10</sup>**

#### ***It was submitted that:***

35. The Respondent submitted in an email dated 29<sup>th</sup> May, 2022 that the Complainant's were informed that they do not offer General Nursing or Registered Nursing and Midwifery but that they offered Nursing Humanization Health which was offered through MoH. They further submitted that they were not regulated by GNC and HPCZ and that their courses deal with community health service thus, do not need any qualifications for one to study the course. The Respondent added that this information was put in the terms and conditions of the application form and details of the learning programme.
36. The Respondent submitted that they were affiliated with Zambia Counselling Council (ZCC) and the MoH. They further submitted that ZCC and MoH under the District Health Director gave them a go ahead to offer certain courses and that the contract enabled students to have attachments at Government hospitals, clinics and are awarded credible certificates issued by the MoH of the Republic of Zambia and that their college had joint United Nations programs of HIV/AIDS (UNAIDS) thus this enables their students to be employed at Government hospitals, clinics, and other reputable organizations.

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<sup>9</sup> Record of telephone conversation between the Commission and the Complainant on 22<sup>nd</sup> March, 2021.

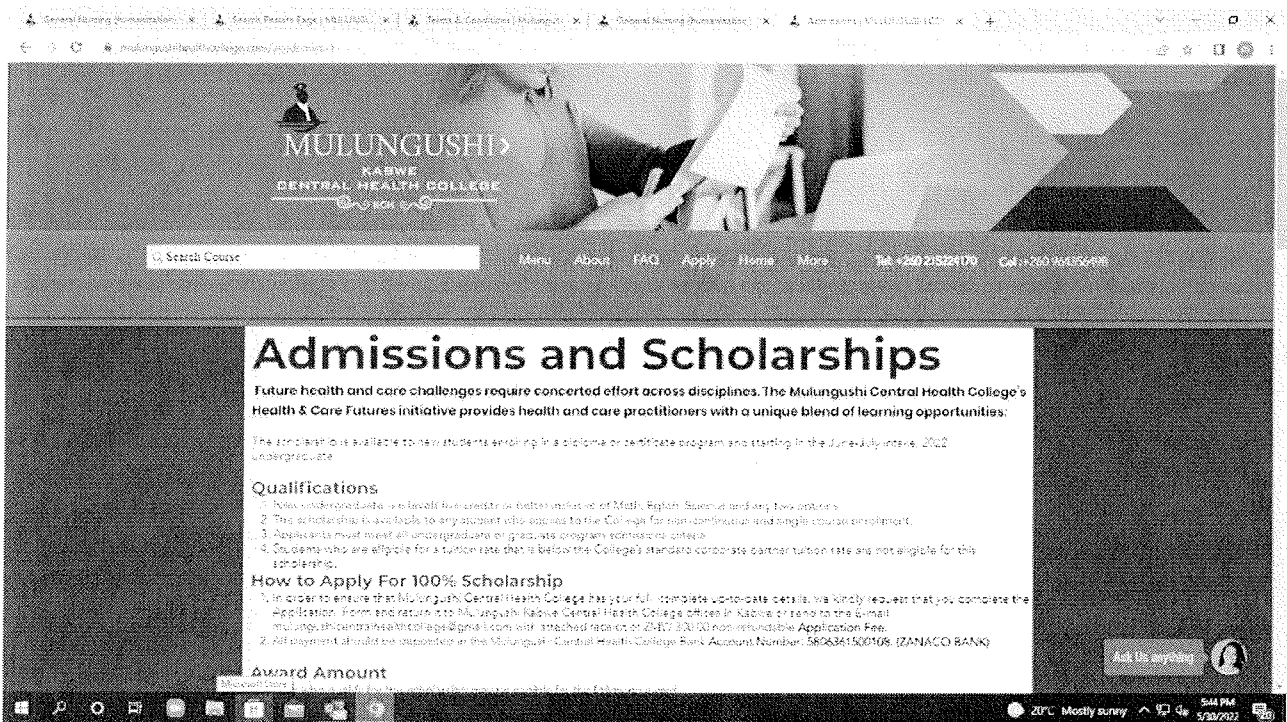
<sup>10</sup> Letter from the Respondent dated 29<sup>th</sup> May, 2022

- 37. The Respondent submitted that the Health Humanization was affiliated to them by Cambridge International Britain and the course was not nursing or midwifery but Humanization Health in any other course such as Nursing and Midwifery.
- 38. The Respondent submitted that college requirements were used by the Complainants, and they would only refund attachment fee, surgical gloves, and medical scheme as they were not used.
- 39. The Respondent further submitted that they informed the Complainant's via website and classrooms that the institutions was not registered under GNC or HPCZ but under Zambia Information and Communications Technology Authority (ZICTA), ZCC and MoH. The Respondent also submitted that the information was displayed on their website and on sight application forms.

**Review of the Respondent's online application**

***It was submitted that:***

- 40. A review of the Respondent's online application revealed that there was no statement showing that the Respondent was not registered with GNC. A further review of the Respondent's online application revealed that for new undergraduates the qualification was five (5) credits or better inclusive of Mathematics, English, Science and any two options as shown in **Figure 2** below.
- 41. **Figure 2:** Extract of the Respondent's online application



42. **Figure 3:** Extract of details of the online programmes offered by the Respondent



### **The Commission's Response to the Respondent's Submissions**

#### ***It was submitted that:***

43. *The Respondent submitted in an email dated 29<sup>th</sup> May, 2022 that the Complainants were informed that they do not offer General Nursing or Registered Nursing and Midwifery but Nursing- Humanization Health which was offered through MoH. They further submitted that they were not regulated by GNC and HPCZ but the courses dealt with community health service and do not need any qualifications for one to study the course. The information was put in the terms and conditions of the application form and details of the learning programme. The Commission noted that there was no information online stating whether the Respondent was offering courses under GNC or HPCZ or not. The Commission also noted that the details for Nursing/ Midwifery (Humanization) stated that “this is the need to put the person at heart of care course. To be humans is to experience life in relation to how you are.” The Commission also noted that the description of the course was not clearly stating that it dealt with a community health service as stated by the Respondent. The Commission noted that the qualifications for undergraduates was five (5) credits or better inclusive of Mathematics, English, Science and any two option subjects*
44. *The Respondent submitted that they are affiliated with ZCC and the MoH. They further submitted that ZCC and MoH under the District Health Director gave them a*

go ahead to certain courses and the SCPC enabled students to have attachments at the Government hospitals, clinics and are awarded credible certificates issued by Ministry of Health of the Republic of Zambia and the joint United Nations program of HIV/AIDS (UNAIDS) and makes their students employable in Government hospitals, clinics, and other reputable organizations. The Commission noted that the Respondent was affiliated with ZCC and they signed the contract with MoH for students undertake attachments at Government hospitals. The Commission noted that there was no certification from the Respondent to offer Nursing Humanization and Midwifery Humanization as they were not counselling courses, refer to paragraph 43.

45. *The Respondent submitted that the Health Humanization was affiliated to them by Cambridge International Britain and the course was not nursing or midwifery but Humanization Health in any other course such as Nursing and Midwifery. The Commission noted that the Respondent did not submit any documents showing that they were affiliated with Cambridge. The Commission noted the Respondent's submission but maintained that the focus of the investigation was whether the Respondent was affiliated or approved by the relevant authorities to offer Nursing Humanisation and Midwifery Humanisation in Zambia.*
46. *The Respondent submitted that college requirements were used by the Complainants and they would refund attachment fee, surgical gloves and medical scheme as it was not used. The Commission noted that the Respondent did not avail the Complainant's student identity cards and medical reports to the Commission despite the Complainant's submitting that they did not collect any identity cards or undertake any medical procedures besides the Covid-19 tests which were free at all Government hospitals and clinics. The Commission noted that the Complainants' registered and paid for the college requirements based on the Facebook advert they saw, thus the decision to make any and all payments was solely based on the Respondent's advert on the website.*
47. *The Respondent further submitted that they informed the Complainant's via website and classrooms that the institutions was not registered under GNC or HPCZ but under ZCC, ZICTA and MoH. The Respondent also submitted that the information was displayed on their website and on sight application forms. The Commission noted that there was no information online stating whether the Respondent was offering courses under GNC or HPCZ or not. Further, the Commission noted that the Respondent did not submit any evidence to substantiate the allegations that they informed the Complainant's of their affiliation status with GNC or HPCZ.*

### **Relevant Findings**

***It was submitted that:***

48. The Commission established that the Complainants had enrolled with the Respondent to pursue three (3) programmes namely, Midwifery Humanisation, Guidance & Counselling courses and Nursing Humanization as shown in Table 2.<sup>11</sup>
49. The Commission established that Ms. Susan Kunda paid K5,100.00, Ms. Mercy Tembo paid K2,250.00, Ms. Leah Chilelo paid K1,500.00 and Ms. Cynthia Banda paid K1,500.00 for college requirements on various dates between November 2021 and January 2022.<sup>12</sup>
50. The Commission established that the Respondents made payments to the Respondent for college requirements based on the Facebook advertisement displayed by the Respondent with the impression that they were registered with the relevant authorities. The Commission established that the Complainants withdrew from pursuing their studies on 25<sup>th</sup> January 2022 after discovering that the Respondent was not registered with the relevant authorities.
51. The Commission established that the Respondent advertised on their Facebook page that application forms were available for 2022 January intake in various courses such as; General Nursing Humanization, Public Health and Guidance & Counselling as evidenced in Figure 1.
52. The Commission found that the Respondent advertised on their website that one of their courses they offered was “Nursing/Midwifery (Humanization) with details, this is the need to put the person at heart of care course. “To be humans is to experience life in relation to how you are” (Figure 3).
53. The Commission established that the Respondent was offering Midwifery Humanisation, Guidance & Counselling courses and Nursing Humanization that were not approved by NMCZ, contrary to Section 33, 34 and 35 of the Nurses and Midwives Act No. 10 of 2019.<sup>13</sup>
54. The Commission established that there was no Regulation under the Nurses and Midwives Act that justified the conduct by the Respondent to offer the Midwifery Humanisation and Nursing Humanisation in the absence of the NMCZ approval.<sup>14</sup>

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<sup>11</sup> Admission letters.

<sup>12</sup> Review of receipts.

<sup>13</sup> Letter from Nursing and Midwifery Council of Zambia dated 20<sup>th</sup> April, 2022

<sup>14</sup> Ibid <sup>13</sup>

55. The Commission established that the Respondent was not registered or accredited with the HEA.

**Previous cases involving the Respondent**

***It was submitted that:***

56. A review of the Respondent's case file revealed that there was no case against the Respondent in which they were found to have violated Section 46(1) as read together with Section 45(a) of the Act.

**Analysis of Conduct**

***It was submitted that:***

57. For the purposes of Section 46(1) as read together with Section 45(a) of the Act, the following assessments tests were used;

**Whether Mulungushi Central Health College is a "person" or an "enterprise";**

***It was submitted that:***

58. Refer to paragraph 12 of the report.

**Whether there was a trading practice;**

***It was submitted that:***

59. Trade practice is 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.*"<sup>15</sup> The Commission found that the Complainants were enrolled with the Respondent to pursue different programmes as evidenced by the admission letters. The Commission found that the Respondent's customary way of conducting business was to provide education services to their students. Therefore, there was a trading practice between the Respondent and the Complainant for the provision of educational services.

**Whether the Consumer had been misled and the conduct distorted or was likely to distort the Consumer's purchasing decision;**

***It was submitted that:***

60. According to Black's Law Dictionary, misleading is defined as "*delusive; calculated to be misunderstood.*" The Commission established that the Complainants had

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<sup>15</sup> Black's Law Dictionary, 8<sup>th</sup> Edition p1534



enrolled with the Respondent to pursue various programmes as shown in Table 2. The Commission established that the Respondent was offering programmes purported to be Midwifery Humanisation and Guidance & Counselling courses and Nursing Humanization that were not approved by NMCZ, contrary to Section 33, 34 and 35 of the Nurses and Midwives Act No. 10 of 2019. The Commission established that there was no justification for the Respondent to offer the Midwifery Humanisation and Nursing Humanisation in the absence of the NMCZ approval. Given this submission from NMCZ the Respondent was directed to immediately stop using the terms Nursing and Midwifery in the training programmes because they were not approved by NMCZ. The Commission opined that despite the Respondent not outrightly mentioning that they were not accredited with NMCZ or HEA it is a common practice that any institution offering such programmes be registered so that their certificates are validated or recognized.

61. The Commission established that the Respondent displayed company logos of institutions depicting that they were seemingly affiliated with when in fact not. The Commission established that by advertising the programmes on their Facebook page, the Respondent misled the Complainants to believe that the learning programmes in question were accredited with the NMCZ as it was industry practice to register learning programmes; Midwifery Humanisation and Nursing Humanisation with the NMCZ. The Commission established that the Facebook advertisement misled the Complainants into pursuing the programme in question believing that it was accredited with the NMCZ when not. Thereby, the Respondent distorted the purchasing decision of the consumers. The Commission, therefore, established that the Respondent breached Section 46(1) as read together with Section 45(a) of the Act.

### **Board Deliberation**

62. Having considered the facts, evidence and submissions in this case, the Board resolves that the Respondent was offering programmes purported to be Midwifery Humanisation and Guidance & Counselling courses and Nursing Humanization that were not approved by Nursing and Midwifery Council of Zambia (NMCZ). The Board further resolves that by advertising the programmes on their Facebook page, the Respondent misled the Complainants to believe that the learning programmes in question were accredited with the NMCZ as it was industry practice to register learning programmes; Midwifery Humanisation and Nursing Humanisation with the NMCZ.

**Board Determination**

63. The facts and evidence of this case have shown that the Respondent violated Section 46(1) as read together with Section 45(a) of the Act.

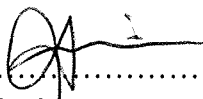
**Board Directive**

64. The Board hereby directs that;

- i. The Respondent as a first-time offender is fined 0.5% of their annual turnover for breach of Section 46(1) of the Act as read together with Section 45(a) in accordance with Section 46(2). (Refer to Appendix 1).
- ii. The Respondent refunds the Complainants all the amounts paid for college requirements within ten (10) days of receipt of the Board Decision in accordance with Section 5(d) of the Act.
- iii. The Respondent should stop offering Nursing and Midwifery courses to the public within ten (10) of receipt of the Board Decision in accordance with Section 5(d) of the Act until they have been registered with the NMCZ.
- iv. The Respondent should stop referring to their Humanization courses as Midwifery Humanization and Nursing-Humanization within ten (10) of receipt of the Board Decision in accordance with Section 5(d) of the Act until they have been registered with the NMCZ.
- v. The Respondent submits their latest annual books of accounts to the Commission for calculation of the actual fine within thirty (30) days of receipt of the Board Decision according to Section 5(d) of the Act

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

**Dated this 9<sup>th</sup> Day of August, 2022.**



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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;**

<b>Offence</b>	<b>Starting Fine</b>	<b>Maximum Fine in Kwacha</b>
Unfair trading practice	0.5% of turnover	<ul style="list-style-type: none"> <li>• K1,000 for turnover upto K50,000</li> <li>• K10,000 for turnover above K50,000 upto K250,000</li> <li>• K40,000 for turnover above 250,000 upto K500,000</li> <li>• K70,000 for turnover above K1,500,000</li> <li>• K150,000 for turnover above K1,500,000 upto K3,000,000</li> <li>• K200,000 for turnover above K3,000,000 upto K5,000,000</li> <li>• K500,000 for turnover above K5,000,000</li> </ul>

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 2019, 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 a 10% of the fine determined in step one above for each aggravating factor

**(c) *Whether the Respondent is a repeat offender under Section 46(1) as read together with Section 45(a) ;***

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

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

**=0.5%**