

NK 1/6/2020
P/A

IN THE COMPETITION AND CONSUMER
PROTECTION TRIBUNAL FOR ZAMBIA
HOLDEN AT LUSAKA

2019/CCPT/002/CON

BETWEEN:

ZAMBIA NATIONAL COMMERCIAL BANK

APPELLANT

AND

THE COMPETITION AND CONSUMER
PROTECTION COMMISSION

1ST RESPONDENT

ROBERT KAWAMA

2ND RESPONDENT

CORAM: Mr Willie A Mubanga, S.C. (Chairperson), Mrs B M Katongo (Vice
Chairperson), Mrs E C Chiyenge (Member)

For the Appellant: Mrs S. Wamulume – Head of Legal, Zambia National
Commercial Bank

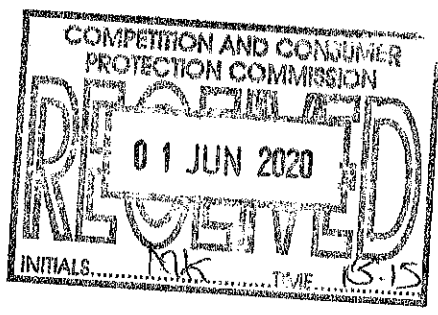
For the 1st Respondent: Mrs M.M. Mulenga – Manager Legal and Corporate Affairs
and Ms N. Pilula – Legal Officer

For the 2nd Respondent:N/A.....

RULING

Legislation referred to:

- (i) Rule 19 of the Competition and Consumer Protection (Tribunal) Rules;
- (ii) Statutory Instrument No. 37 of 2012.



2.

The application before this Tribunal arises out of the Decision delivered by the 1st Respondent Board of Commissioners on the 21st December, 2018 in which it was determined that the Appellant who was then Respondent did not violate Section 49(5) of the Competition and Consumer Protection Act No. 24 of 2010.

The 1st Respondent's Board of Commissioners directed in its Decision that "in accordance with Section 5(d) of the Act, the Appellant starts communicating changes in interest rates to its individual clients under scheme loans as well, immediately, and should be allowing these clients to either increase the monthly loan repayment instalments or extend the loan tenure in the event that the interest rates rose".

The Appellant did appeal against the said Decision which appeal has yet to be heard and determined by this Tribunal.

On the 27th June, 2018 the 1st Respondent filed an application for leave to produce new evidence pursuant to Rule 19 of the Competition and Consumer Protection (Tribunal) Rules, Statutory Instrument No. 37 of 2012, Rule 19 provides as follows:

"(1) Except where these Rules otherwise provide an application for directions of an interlocutory nature in connection with any proceedings shall unless otherwise ordered by the Chairperson, be made to the Secretariat;

3.

(2) An interlocutory application shall be in writing and shall state the title of the proceedings and the grounds upon which the application is made;

(3)-----

(4) Where an interlocutory application is not made with the consent of every party, a copy shall before it is made, be served on every other party and the interlocutory application shall state that this has been done.

(5)-----

This application is accompanied by an Affidavit also dated 27th June, 2018.

According to the 1st Respondent's Affidavit, the gist of the application is that a letter dated 30th April, 2019 from the Bank of Zambia addressed to all commercial banks was shared with the 1st Respondent's Consumer Department, and that this letter was communicated through the Bankers Association of Zambia. The letter is exhibited as 'MPS' in the 1st Respondent's Affidavit.

It was also stated in the Affidavit that the contents of the letter relate to the Appeal before this Tribunal and the contents are similar to the Board of Commissioners' Decision dated 21st December, 2018.

4.

It was also deposed in the Affidavit in Support that the said letter is not part of the Record of Proceedings filed in this Tribunal on 27th February, 2019 because the letter was not in existence at the time and that it is for this reason that the 1st Respondent is applying for leave to file the letter, dated 30th April, 2019 before this Tribunal as the said letter according to the 1st Respondent, has information that will assist the Tribunal to deal effectively with the appeal.

When the application came up for hearing before this Tribunal on 1st August, 2019, the Appellant did not raise objection to the 1st Respondent's application.

While we note that the Appellant has not raised any objection to the 1st Respondent's application it is our considered view that the document in issue which is exhibited as "MPS" in the 1st Respondent's affidavit and which is a letter from the Bank of Zambia to all the commercial banks dated 30th April, 2019 is actually a letter to which reference can be made, which in our view does not amount to introduction of new evidence.

In other words it's the tribunal's position that the document in issue is not evidence but reference material authorized by the Regulator, the Bank of Zambia.

5.

Instead of treating this as fresh evidence, as suggested by the parties concerned, it is in fact a reference document in the same way a Dictionary, Law Book or Law Report is used as resource material and not evidence.

In consequence, the application for leave to produce new evidence pursuant to Rule 19 of the Tribunal Rules is rendered redundant. We however direct that parties are at liberty to use the document as reference material.

With regard to the issue of costs, each party shall bear its own costs since the Appellant did not raise any objection to the application before us.

Dated the 28th day of MAY 2020



Mr W A Mubanga, SC.
CHAIRPERSON



Mrs B M Katongo
VICE CHAIRPERSON



Mrs E C Chiyenge
MEMBER