

THE COMPETITION AND CONSUMER  
PROTECTION TRIBUNAL  
HOLDEN AT LUSAKA

2017/CCPT/018/CON

IN THE MATTER OF:



SECTION 60 OF THE COMPETITION  
AND CONSUMER PROTECTION ACT  
No. 24 OF 2010

BETWEEN:

AM TRADING AND SHIPPING LIMITED

APPELLANT

AND

MRS. CONSTANCE MIBENGE KALIMA

1<sup>ST</sup> RESPONDENT

EFFICIENT FREIGHTERS (Z) LIMITED

2<sup>ND</sup> RESPONDENT

COMPETITION AND CONSUMER  
PROTECTION COMMISSION

3<sup>RD</sup> RESPONDENT

CORAM:

Mr. A.W. Mubanga, SC-Chairperson  
Mrs. M.B. Muzumbwe-Katongo-Vice Chairperson  
Mr. C. Kabaghe-Member  
Mr. R. Sombe-Member  
Mr. B. Mwalongo-Member

For the Appellant:

Mr. Ali Muchimba, Director-AM Trading and Shipping Limited

For the Respondent:

1<sup>st</sup> Mrs. Constance Mibenge Kalima

For the Respondent:

2<sup>nd</sup> Mr. Chiko Mulenga, Director-Efficient Freighters Limited.

For the Respondent:

3<sup>rd</sup> Mrs. M. B. Mwanza- Director-Legal and Corporate Affairs, Competition and Consumer Protection Commission;

Mrs. M.M. Mulenga-Manager-Legal and Corporate Affairs, Competition and Consumer Protection Commission; and

Ms. M. Mtonga-Senior Legal Officer, Competition and Consumer Protection Commission.

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JUDGMENT

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### Legislation referred to

Competition and Consumer Protection Act No. 24 of 2010

### Cases Referred to

1. *MacLaine v. Gatty* [1921] 1 AC 376 p.386, *Gatty v MacLaine* 1921 SC (HL) 1
2. *Richard Fyffe v John Esslemont* SLC 67/15 Available at <http://www.scottish-land-court.org.uk/decisions/SLC.67.15.b.html>  
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3. *Universal Steam Navigation Co Ltd v James McKelvie & Co* [1923] AC 492
4. *Kasengo Holding Limited v. Innovative Venture Limited and the Competition and Consumer Protection Commission* Appeal No. 2019/CCPT/007/COM
5. *Competition and Consumer Protection Commission v. Mpande Limestone Limited, Lafarge Zambia Plc and Dangote Cement Zambia Limited* Cause No. 2021/CCPT/026/COM
6. *Radian Stores Retail Limited v. the Competition and Consumer Protection Tribunal* Appeal No. 2021/CCPT/037/CON
- 7.

### Works referred to

1. Definition of "Trucking". Available at <https://www.collinsdictionary.com/dictionary/english/trucking>  
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2. Definition of “Trucking”. Available at <https://www.merriam-webster.com/dictionary/trucking> visited on 25/01/2022 at 00:31 hours
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4. “What is a Receipt?”. Available at <https://www.investopedia.co/terms/r/receipt.asp> visited on 29/01/2025 at 19:53 hours.
5. LAW 302: Comprehensive Overview of the Law of Agency Principles. Available at <https://www.studocu.com/row/document/university-of-zambia/commercial-law/the-law-of-agency/90523485>  
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7. Ius Commune Casebooks for the common law of Europe Cases, Materials and Text on National, Supranational and International Law, Prof Walter van Gerven (General editor) Available at <https://www.casebooks.eu/contractLaw/Chapter27/excerpt.php?excerptId=4762>  
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8. Undisclosed Agency available at <https://lawnotes.co/undisclosed-agency/>  
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***MUZUMBWE, Vice Chairperson, delivered the judgment of the Tribunal***

**Background**

1. This is the Tribunal's judgment in the case between AM Trading and Shipping Limited (hereinafter "AM Trading" or "the Appellant" as the context may require) and Mrs. Constance Mibenge Kalima (hereinafter the "Complainant" or the "1<sup>st</sup> Respondent", as the context may require), Efficient Freighters Limited (hereinafter "the 2<sup>nd</sup> Respondent") and the Competition and Consumer Protection Commission (hereinafter "the Commission" or the "3<sup>rd</sup> Respondent" as the context may require).
2. The Tribunal sincerely regrets the delay in rendering the judgment, which judgment, in accordance with rule 31(2) of the Competition and Consumer Protection (Tribunal) Rules, Statutory Instrument No. 37 of 2012, is required to be rendered within sixty (60) days after hearing the appeal. The delay was occasioned on account of the following factors:
  - (i) The matter was initially heard during the tenure of office of the late Mr. A.W. Mubanga, SC (Chairperson of the Tribunal as he then was), Mr. C. Kabaghe (formerly Member) and Mr. R. Sombe (formerly Member). Mrs. E. Chiyenge (member) declared, at the time, interest in the matter. However, the hearing was not concluded during their tenure, as the Tribunal's jurisdiction expired and the appeal proceedings were later renewed;
  - (ii) The hearing of the matter suffered further delay on account of the absence of Efficient Freighters (the 2<sup>nd</sup> Respondent herein).

The Tribunal subsequently proceeded with the hearing of the matter without the 2<sup>nd</sup> Respondent; and

- (iii) Further, the tenure of office of the late Mr. A.W. Mubanga, SC (Chairperson of the Tribunal, as he then was), Mr. C. Kabaghe (formerly Member) and Mr. R. Sombe (formerly Member), expired, rendering the Tribunal inquorate. Mrs. E. Chiyenge was subsequently appointed as Chairperson and Mr. Buchisa Mwalongo, appointed as Member.
3. The appeal proceedings were renewed on 10<sup>th</sup> February, 2022.<sup>1</sup> The tenure of the Chairperson, Mrs. E. Chiyenge, expired before the judgment was ready, leaving the Tribunal inquorate yet again. Further, the appointment of Mr. Mwalongo was subsequently revoked. It suffices to note, however, that the case was discussed and the decision expressed herein agreed prior to the expiration of Mrs. E. Chiyenge's tenure and the revocation of Mr. Mwalongo's appointment.
4. The vacancies have greatly increased the workload for the remaining member of the Tribunal who has been charged with the duty to conclude all the outstanding judgments of the former Tribunal.

### **Facts of the Case**

5. The facts of the case are that on 4<sup>th</sup> May, 2016, the Commission, through its Kitwe office, received a complaint from the 1<sup>st</sup> Respondent against AM Trading and the 2<sup>nd</sup> Respondent. Specifically, the 1<sup>st</sup> Respondent alleged that she had purchased a container of household fittings from China worth USD5,420.00 (United States Dollars Five

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<sup>1</sup> See the letter dated 10<sup>th</sup> March, 2022, from the Commission.

Thousand, Four Hundred and Twenty) and that MsS Trading China Limited, the exporter of the said container, stated that the Bill of Lading was sent to the Appellant. The container arrived in Dar-es-Salaam on 2<sup>nd</sup> February, 2016 and the Appellant engaged the 2<sup>nd</sup> Respondent to transport the container from Dar-es-Salaam to Kitwe.

6. The 1<sup>st</sup> Respondent alleged that on 23<sup>rd</sup> February, 2016, she paid a sum of USD \$2,843.00 (United States Dollars Two Thousand, Eight Hundred and Forty-Three) to the Appellant, who in turn paid the 2<sup>nd</sup> Respondent to commence the process of transporting the container to Kitwe. It was further alleged by the 1<sup>st</sup> Respondent that on 7<sup>th</sup> March, 2016, she made another payment in the sum of USD2,200.00 (United States Dollars Two Thousand Two Hundred) to the Appellant who, in turn, paid the 2<sup>nd</sup> Respondent for transportation of the container. The 1<sup>st</sup> Respondent further indicated that the container had not been transported to Zambia because the Appellant had not paid storage charges at the port.
7. Based on the Commission's assessment, the alleged conduct appeared to be in contravention of section 49 (5) and (6) of the Competition and Consumer Protection Act, No.24 of 2010. Section 49 (5) of the Act states that (quote)-

*A person or an enterprise shall supply a service to a consumer with reasonable care and skill or within a reasonable time or, if a specific time was agreed, within a reasonable period around the agreed time. (unquote)*

8. Section 49 (6) of the Act sets out the penalty for violating section 49(5). It provides (quote)-

*A person or enterprise which contravenes subsection (5) is liable to pay the Commission a fine not exceeding ten percent of that person's or enterprise's annual turnover.*

(unquote)

9. In this regard, the 3<sup>rd</sup> Respondent commenced its investigations into the matter through a Notice of Investigations sent to the Appellant and the 2<sup>nd</sup> Respondent on 13<sup>th</sup> and 14<sup>th</sup> June, 2016, respectively. Reference is made, in this regard, to pages 8-17 of the Record of Proceedings (hereinafter "ROP").
10. The Appellant responded to the Notice of Investigations in a letter dated 21<sup>st</sup> June, 2016. Reference in this regard, is made to pages 18 to 23 of the ROP.
11. According to page 42 of the ROP (in particular paragraph 33), the 2<sup>nd</sup> Respondent did not make any submission in response to the Notice of Investigation from the 3<sup>rd</sup> Respondent.
12. The Board of Commissioners of the 3<sup>rd</sup> Respondent (hereinafter "**the Board**") subsequently adjudicated the matter and, in its decision dated 27<sup>th</sup> June, 2017, determined that the Appellant was in violation of section 49 (5) of the Act. The Board further directed that (quote)-
  - (i) *The Appellant being a first offender of section 49(5) of the Act stands fined K500.00, to be paid to the 3<sup>rd</sup> Respondent within 30 days of receipt of the 3<sup>rd</sup> Respondent's Board decision; and*

- (ii) *The Appellant pays the 1<sup>st</sup> Respondent USD 9, 156.76 for the extra costs borne by the 1<sup>st</sup> Respondent within 10 days of receipt of the 3<sup>rd</sup> Respondent's Board decision.* (Unquote)
13. The Decision of the Board was received by the Appellant on 14<sup>th</sup> August, 2017. The Appellant being dissatisfied with the decision of the Board of the 3<sup>rd</sup> Respondent filed its notice of appeal together with the grounds in support of the Appeal to this Tribunal on 23<sup>rd</sup> August, 2017. On 29<sup>th</sup> September, 2017, the 3<sup>rd</sup> Respondent filed its Notice of Grounds in Opposition to the Appeal before this Tribunal.

#### Appellant's Grounds of Appeal

14. The Appellant relied on the following Grounds of Appeal (quote):
1. *Failure to pay on time the Clearance and transportation costs on the part of the First Respondent.*
  2. *Failure to honour the promise of service delivery on the part of the Second Respondent to the First Respondent;*
  3. *Failure to accord fair hearing on all parties involved in the cited transaction, Case No. CCPC/KTW/CO/380.* (unquote)
15. The Appellant also stipulated the reliefs that it seeks. We note, from the outset, that the relief sought is comingled with arguments. Ideally, we should have separated the arguments from the reliefs sought for clarity. However, as the 1<sup>st</sup> and 3<sup>rd</sup> Respondents have referred to those reliefs as presented by the Appellant, without sifting the reliefs sought from the arguments, we have, for ease of reference, reproduced them verbatim (quote)-

- (1) *We are seeking a fair arbitration and consideration of this matter as we feel we need to get a fair hearing of this matter with all parties cited in the board decision. We feel conclusions of the aforementioned case is skewed towards the complainant who has received a favorable ruling based on unjustified claims against us as AM Trading and Shipping Company Limited.*
  
- (2) *We feel that the First Respondent did not bring on board the consequences of her not making timely payments towards movement of her container which consequently lead [sic]to her asking if a container can be kept at the port beyond the stipulated time without accruing charges, which in turn had negative impacts on the logistics towards her container. We therefore request the Tribunal to get an account from the First Respondent for her part played in the delay of movement of her container due to late payments which were also not full amounts towards the same;*
  
- (3) *We feel the need for the First Respondent to justify matters of her not being aware that us (AM TRADING and SHIPPING COMPANY LIMITED) were not transporters as well as her not being aware of the Second Respondents who happened to be the transporter, as this information had been given in the initial stage of the transaction, from both China office and our office here in Lusaka, Zambia;*

- (4) *We seek review from the Tribunal over the Board Directive for us to pay the penalty fees of ZMW500 to the CCPC and the accrued charges of USD9165.79 to the first respondent. We feel this was a case of us relaying precise, timely information between two parties with negative consequences for the first respondent but only penalizing the messengers who happened to be us, therefore we are not the ones who are supposed to pay the said amounts;*
- (5) *We also feel that the Second Respondent has to acknowledge the part they played in the transaction which lead [sic] to delayed service delivery but to date, it has even been documented that they have not responded to any notice of the commission's investigation which in itself we feel should be treated as a preliminary case of contempt on the part of the Second Respondent. We further feel the 2<sup>nd</sup> respondent is the one who is supposed to pay the first respondent since they're the ones who promised to deliver a service which did not materialize, and the same second respondent had even started paying towards the said charges;*
- (6) *We also feel the tribunal should give a directive to the first respondent to pay the outstanding balance of USD757 to us, which has not being [sic] paid until [sic] date.- (unquote)*

1<sup>st</sup> Respondent's Grounds in Opposition to Appeal

16. The 1<sup>st</sup> Respondent filed her Notice of Grounds in Opposition to Appeal on 22<sup>nd</sup> December, 2017. In its Notice, the Respondent averred as follows:
- (i) With respect to the Appellant's claim that the 1<sup>st</sup> Respondent did not bring on board the untimely manner in which the payments were made, that the 1<sup>st</sup> Respondent had initially requested the Appellant to allow her to pay after 26<sup>th</sup> June, 2016, to which the Appellant was agreeable. The 1<sup>st</sup> Respondent stated she made the initial payment of USD2,800.00 (United States Dollars Two Thousand, Eight Hundred) to the Appellant on 23<sup>rd</sup> February, 2016, within a timeframe that did not attract penalties at Dar-es-Salaam;
  - (ii) The Appellant made it clear that the money was to assist with logistics, port charges, agent fees, fuel for transportation, etc. specifically to avoid the accrual of storage charges. Assurances were made that the container will start moving and the Appellant advised her that the second payment be made when the goods started moving. The 1<sup>st</sup> Respondent stated that if the Appellant had known that the initial payment would not yield movement, it should have advised as such and accordingly, refused the payment. She stated that as she was dealing with the 1<sup>st</sup> Respondent for the first time, she did not pay the entire amount, even if she had the amount, and that she wanted guarantees, first, that the container was moving.
17. She stated that an additional payment of USD 2,200.00 (United States Dollars Two Thousand, Two Hundred) was paid to the Appellant through Standard Chartered Bank on 7<sup>th</sup> March, 2016, bringing the total to USD5,000.00 (United States Dollars Five Thousand). On 16<sup>th</sup> March, 2016, the Appellant advised the 1<sup>st</sup> Respondent and her agent at Nakonde Border that the movement Sheet (T1) was being formalised and that the Agent should be prepared, but the movement of the container did not materialise.

18. Regarding the Appellant's assertion that the Appellant was not a transporter, the 1<sup>st</sup> Respondent stated in opposition to the Appellant's Ground of Appeal that the Appellant never disclosed that it was not a transporter. She stated that the invoice issued to her after the first payment listed trucking among the services provided by the Appellant, and stated that trucking services involved transportation by truck. She also stated that the 2<sup>nd</sup> Respondent was only disclosed to her on 22<sup>nd</sup> March, 2016, when the Appellant forwarded, to her, invoices from the 2<sup>nd</sup> Respondent through WhatsApp.
19. As regards the Appellant's demand that the 1<sup>st</sup> Respondent pay it US\$757 (United States Dollars Seven Hundred and Fifty-Seven), the 1<sup>st</sup> Respondent stated that the demand was ridiculous and outrageous owing to the fact that the mishandling, omission, falsehood and outright maliciousness of the Appellant and 2<sup>nd</sup> Respondent in this transaction resulted in the 1<sup>st</sup> Respondent paying a total of USD14,965.79 (United States Dollars Fourteen Thousand Nine Hundred and Sixty-Five and Seventy-Nine Cents), instead of paying USD5,800.00 (United States Dollars Five Thousand Eight Hundred). She averred that the USD9,165.79 (United States Dollars Nine Thousand One Hundred and Sixty-Five and Seventy-Nine Cents) she was to be refunded following the ruling after investigations, sittings, and meetings held by the 3<sup>rd</sup> Respondent was the exact amount she paid in excess of the USD5,800.00 (United States Dollars Five Thousand Eight Hundred) she was legitimately required to pay for the transaction.
20. She sought the following reliefs:
  - (i) That the Tribunal upholds the decision of the Board of the Commission dated 10<sup>th</sup> August, 2017;
  - (ii) That the Appeal be dismissed with costs as it lacks merit; and
  - (iii) Any other relief the Tribunal deems fit.

### **3<sup>rd</sup> Respondent's Grounds in Opposition to Appeal**

21. The 3<sup>rd</sup> Respondent filed a Notice of Grounds in Opposition to the Appeal on the 29<sup>th</sup> of September, 2017, stating the following (quote):

- (i) *In response to Ground One the 3<sup>th</sup> [sic] Respondent avers that the Competition and consumer protection Tribunal ('The Tribunal') cannot conduct an arbitration in this matter, as they are not constituted as an arbitral body but an appellate body. This Ground is therefore misplaced. In any case, contrary to the Appellants assertion in Ground One, the Appellant was throughout the investigation process, engaged and accorded an opportunity to respond to the allegations levelled against them by the 1<sup>st</sup> Respondent and make submissions, if any, before submissions of which were considered in the decision reached by the 3<sup>rd</sup> Respondent's Board.*
- (ii) *That though the 2<sup>nd</sup> and 3<sup>rd</sup> grounds of appeal, relate to the 1<sup>st</sup> Respondent, the 3<sup>rd</sup> Respondent re-iterates its position in Ground one that the Appellant was accorded an opportunity to make representations and clarifications on any aspect of the investigation, before the matter was adjudicated upon.*
- (iii) *That the 3<sup>rd</sup> Respondent's Board was on firm ground when it directed that the Appellant be fined ZMW 500.00 (Zambian Kwacha Five Hundred), and further that Appellant pays the 1<sup>st</sup> Respondent, the accrued charges amounting to USD9,165.00 (United States Dollars Nine Thousand, One Hundred and Sixty-Five) as the said directives are a consequence of the Appellant having failed to comply with the Competition and Consumer Protection Act No.24 of 2010.*
- (iv) *That contrary to the Appellant's assertion in Ground 5 the 3<sup>rd</sup> Respondent did proceed with investigations and meted sanctions on the 2<sup>nd</sup> Respondent.*
- (v) *That contrary to the Appellant's assertion in Ground 6, although the Competition and Consumer protection Tribunal has the discretion to issue such orders as it deems fit, this is not proper cause for the Tribunal to do so as the Appellant is in fact owing the 1<sup>st</sup> Respondent. (unquote)*

22. The Appellant and the 3<sup>rd</sup> Respondent filed their Heads of Argument on 21<sup>st</sup> December, 2017, and 5<sup>th</sup> January, 2018, respectively. The contents of the Appellant and the 3<sup>rd</sup> Respondent's respective Heads of Argument will be referred to as and when necessary.
23. The Tribunal is indebted to the Parties for their respective Heads of Argument.

### Summary of the Evidence

24. The ensuing paragraphs contain a summary of the evidence led by the Parties.

### Examination-in-Chief of the Appellant's Witness

25. The Appellant's Director Mr. Ali Muchimba, aged 43, resident at 5529 Kwamwena Valley, Meanwood, Chamba Valley, gave his evidence-in-chief. He stated that the Appellant appealed against the final decision of the Board to pay the fine as they were just acting as agents between the 1<sup>st</sup> Respondent and the 2<sup>nd</sup> Respondent. The Witness stated that their duty was to mediate the transaction, and that it was their clients' prerogative to engage their own transporters or to use agents (such as the Appellant) to engage transporters.
26. The Witness stated that he had had a conversation with the 1<sup>st</sup> Respondent on phone and she had sought to establish whether the Appellant could transport her container from Dar-es-Salaam to Zambia. The Witness stated that the shipping charge, including storage, would cost USD5,800.00 (United States Dollars Five Thousand Eight Hundred). The Witness stated that he had informed the 1<sup>st</sup> Respondent that the port regulations specified that a container could only stay at the port for a period of fourteen (14) days without accruing charges. Furthermore, the Witness indicated that he had advised the 1<sup>st</sup>

Respondent to pay the said cost in full, as her container was docking on 2<sup>nd</sup> February, 2016.

27. The Witness stated that the 1<sup>st</sup> Respondent advised that she could not pay, as she would only have money on 25<sup>th</sup> February, 2016. The Witness indicated that despite never having encountered a scenario such as had been presented, he advised the 1<sup>st</sup> Respondent that they were only agents and that they needed to consult the transporter as to whether it was possible for the container to be stored for more than 23 (twenty-three) days. The Witness stated that the 2<sup>nd</sup> Respondent subsequently informed him that it was possible to keep the container up to 25<sup>th</sup> February, 2016.
28. Further, the Witness averred that when payments fell due, the 1<sup>st</sup> Respondent could not pay in full, but paid in two installments, leaving her with a balance of USD753.00 (United States Dollars Seven Hundred and Fifty-Three). Finally, the Witness stated that the 2<sup>nd</sup> Respondent informed him that the 1<sup>st</sup> Respondent's request to have the container stored at the port for twenty-three (23) days did not materialise, and that storage charges had, therefore, accrued which charges would be borne by the 2<sup>nd</sup> Respondent.

#### Cross Examination of the Appellant's Witness

28. In cross examination by the 1<sup>st</sup> Respondent, the Appellant's Witness reiterated that he had informed the 1<sup>st</sup> Respondent that he was an agent. In addition, the Witness admitted that nowhere on the receipt issued to the 1<sup>st</sup> Respondent did it state that the Witness was acting as an agent, and that (quote), "***What was on the receipts is misleading***". (unquote)
29. In cross examination by the 2<sup>nd</sup> Respondent, the Appellant's Witness indicated that he was fully aware of the 2<sup>nd</sup> Respondent's trading

conditions, and that full payment needed to be made before transporting the container. He also stated that he had been informed, by the 2<sup>nd</sup> Respondent, of the storage charges. The Appellant's Witness also stated that the 2<sup>nd</sup> Respondent had informed him that he needed to consult with his colleagues in Dar-es-Salaam about the request to store and move the container on 25<sup>th</sup> February, 2016. The Appellant's Witness further stated that the 2<sup>nd</sup> Respondent had confirmed with the Appellant that the container could stay at the port for twenty-three (23) days without accruing charges due to the good relationship the 2<sup>nd</sup> Respondent had with the 2<sup>nd</sup> Respondent's colleagues. After being asked when the 1<sup>st</sup> Respondent made the second payment, the Appellant's Witness stated that the payment was made eleven (11) days into the fourteen (14) days grace period.

#### **Examination-in-Chief of the 1<sup>st</sup> Respondent**

30. The 1<sup>st</sup> Respondent, Mrs. Constance Mibenge Kalima, aged 39 years, of 4 Zambezi Road, Riverside, Kitwe, stated that she had gone to China in September, 2015, to buy household goods valued at USD5,400.00 (United States Dollars Five Thousand Four Hundred). She stated that whilst in China, she was given a business card bearing the particulars of AM Trading and Shipping Company Limited (the Appellant) who were supposed to transport her goods from Tanzania to Zambia. The 1<sup>st</sup> Respondent indicated, further, that the Appellant had not given her the option of finding another transporter.

31. The 1<sup>st</sup> Respondent further stated that the Appellant had advised her that she would be informed when the container arrived and that she would clear the container from Dar-es-Salaam within fourteen (14) days. She stated that on 2<sup>nd</sup> February, 2016, she requested a favour of the Appellant namely, if the container could stay at the port for twenty-three (23) days without accruing costs and that she would make payment on 26<sup>th</sup> February, 2016. The 1<sup>st</sup> Respondent stated that the Appellant's Witness had informed her that he needed to consult his colleagues.
  
32. The 1<sup>st</sup> Respondent testified that on 25<sup>th</sup> February, 2016, she gave the Appellant USD2,843.00 (United States Dollars Two Thousand Eight Hundred and Forty-Three) for logistics at the port and was assured that the container would start moving. However, it came to her attention that the container was not moving, causing her concern which prompted her to withhold the balance. The 1<sup>st</sup> Respondent stated that she withheld the said balance until the Appellant asked her to pay USD2,200.00 (United States Dollars Two Thousand Two Hundred) which she did, but regrettably, the container still did not move.
  
33. The 1<sup>st</sup> Respondent indicated that it was only in April that the Appellant's Witness revealed that the Appellant was, in fact, not the transporter, and begun issuing receipts in the 2<sup>nd</sup> Respondent's name. She stated that efforts to contact the 2<sup>nd</sup> Respondent failed, and that when she realised that the container still was not moving, she spoke to the transporter in Tanzania (Efficient Freighters Tanzania), who

gave her the breakdown of the money she was owing. She paid the amount and the container started moving. The 1<sup>st</sup> Respondent stated that the container arrived around July, 2016, and that she never heard from the 2<sup>nd</sup> Respondent or the Appellant. Cross Examination of the 1<sup>st</sup>

Respondent by the Appellant

34. In cross examination by the Appellant, the 1<sup>st</sup> Respondent was asked to clarify whether the USD9,922.00 (United States Dollars Nine Thousand Nine Hundred and Twenty-Two) were extra charges, to which she responded that the amount was for port charges as she had already paid for transportation. She stated that she was informed of the port charges and her request to pay within a period of time was granted. The 1<sup>st</sup> Respondent further stated that she was aware that there is a specified timeframe within which goods could be kept at the port without incurring penalties, but, following an inquiry by the 1<sup>st</sup> Respondent, the Appellant informed her that it was possible for the 1<sup>st</sup> Respondent to be given more time within which to pay for clearance of the goods.

35. She informed the Tribunal that, accordingly, she remitted, to the Appellant, part of the money in the sum of USD2,843.00 (United States Dollars Two Thousand, Eight Hundred and Forty-Three) for the clearance of the goods by 26<sup>th</sup> February, 2016, before penalties began to accrue for the goods that had not been cleared from the port. She also stated that the other amount, in the sum of USD2,200.00 (United States Dollars Two Thousand Two Hundred), was paid a week or two

after the stipulated period of 7<sup>th</sup> March, 2016, because the Appellant had assured the 1<sup>st</sup> Respondent that the Appellant would sort out everything.

36. The 1<sup>st</sup> Respondent also stated in cross examination that at the material time, she was not aware that the laws governing transportation of goods do not stipulate, when a client is exempt from the payment of penalties, and reiterated that the Appellant had assured her that the Appellant would engage the port on her behalf with a view to obtaining permission for the deferment of payment. She conceded that ignorance of the law was no defence.

37. When asked if the 1<sup>st</sup> Respondent was aware that her request to keep the container (at the port) beyond the stipulated time had no legal backing, the 1<sup>st</sup> Respondent responded that the reason there was a delay in paying the whole amount was that the Appellant never showed any urgency in getting the money from the 1<sup>st</sup> Respondent. She stated that on the 15<sup>th</sup> of February, 2016, when the Appellant called the 1<sup>st</sup> Respondent asking for money (for logistics at the port to sort out port charges and everything that else that was involved), the Appellant did not collect the money from the 1<sup>st</sup> Respondent, despite the fact that the 1<sup>st</sup> Respondent had the money. The 1<sup>st</sup> Respondent informed the Tribunal that the Appellant only collected the money on 23<sup>rd</sup> February, 2016, and that after collecting the money it was not remitted to the 2<sup>nd</sup> Respondent the same day, as the receipt indicated that the

Appellant gave the money to the 2<sup>nd</sup> Respondent on the 25<sup>th</sup> of February, 2016, -indicative of a lack of urgency.

38. The 1<sup>st</sup> Respondent clarified that on the 15<sup>th</sup> of February, 2016, the Appellant's Witness called the 1<sup>st</sup> Respondent for the money, but he did not collect the money. She stated that on 16<sup>th</sup> February, 2016, the Appellant's Witness followed the 1<sup>st</sup> Respondent to Lusaka Trust Hospital where her husband was hospitalised, but still did not collect the money, stating that he had some issues with the children and that he would come to collect it the following day. The following day, the Appellant did not show up, and that the Appellant's Witness and the 1<sup>st</sup> Respondent subsequently, met at Manda Hill (on the 23<sup>rd</sup> of February, 2016), where the 1<sup>st</sup> Respondent made payment of USD2,843.00 (United States Dollars Two Thousand Eight Hundred and Forty-Three) to the Appellant's Witness.
39. The 1<sup>st</sup> Respondent confirmed that the initial agreement (i.e. before the container arrived) was that the total to be paid was USD5,800.00 (United States Dollars Five Thousand Eight Hundred), and that she requested that the container be kept, at the port, for a further twenty-three (23) days. She also confirmed that she paid in installments because she did not have the entire amount on the 15<sup>th</sup> of February, 2016, when the Appellant called her, but only had USD3,000.00 (United States Dollars Three Thousand).
40. The Appellant's Witness asked the 1<sup>st</sup> Respondent why she called the Appellant on 15<sup>th</sup> February, 2016, if the agreement was that the 1<sup>st</sup>

Respondent pays the Appellant the monies on the 26<sup>th</sup> of February, 2016. The 1<sup>st</sup> Respondent answered that it was not her who called the Appellant's Witness, but that the Appellant's Witness was the one who called her, and that at the material time her husband was in hospital and she was waiting for her husband to get paid so that she could pay the Appellant in full.

41. The Appellant, following clarification sought by the Tribunal, submitted that according to the agreement, the amounts were supposed to be paid by the 2<sup>nd</sup> of February, 2016, (before the docking of the ship), to prevent any port charges, and that the Appellant communicated that information, over the phone, to the 1<sup>st</sup> Respondent. The 1<sup>st</sup> Respondent stated that she informed the Appellant that she had a challenge and that it was possible for the phone conversation to be retrieved, under the authority of a letter, from the mobile phone company.

42. The 1<sup>st</sup> Respondent clarified the following to the Tribunal: that the Appellant informed her that the container would be arriving on the 2<sup>nd</sup>; that two weeks thereafter, the container would begin to attract the port charges; that accordingly, the 1<sup>st</sup> Respondent was required to pay the entire amount on the 14<sup>th</sup> of February, 2016, not on the 2<sup>nd</sup> of February, 2016; that the Appellant was not being truthful about the dates; and that he had not told her that on the 2<sup>nd</sup> of February, 2016, the container would start to attract port charges, but that that was when the container was arriving.

43. There was no cross examination from the 2<sup>nd</sup> Respondent. Cross Examination of the 1<sup>st</sup> Respondent by the 3<sup>rd</sup> Respondent

44. When cross examined by the 3<sup>rd</sup> Respondent, the 1<sup>st</sup> Respondent reaffirmed that she needed a container transported from Dar-es-Salaam to Kitwe. She said she approached the company in China, where she was given the Appellant's business card, for the purpose of contacting the Appellant when she got to Zambia to transport the container to Kitwe. The 1<sup>st</sup> Respondent stated that she could not recall the name of the company in China but she averred that the Chinese company was to transport her goods to Dar-es-Salaam, and that the Appellant would, thereafter, transport her container to Kitwe. The company in China told her how much she had to pay for transportation from Dar-es-Salaam to Kitwe.

45. The 1<sup>st</sup> Respondent stated that in her communications with the Appellant's Witness, he never mentioned that there was any other person involved in the transportation. She stated also that it was only when problems arose that she noticed a different name on the receipts of the company transporting her container from Dar-es-Salaam to Kitwe.

46. The 1<sup>st</sup> Respondent further stated that the Appellant told her it would cost USD5,800.00 (United States Dollars Five Thousand Eight Hundred) for transportation and that she was issued with an invoice. She stated that the Appellant had informed her that the transportation charge was non-negotiable. The 1<sup>st</sup> Respondent, furthermore, stated that she

was not required to pay the amount in full evidenced by the fact that the Appellant's Witness had called her on 16<sup>th</sup> February, 2016, and told her he needed some money for logistics at the port, upon which request she gave him USD2,900.00 (United States Dollars Two Thousand Nine Hundred).

47. The 1<sup>st</sup> Respondent also stated that she had asked the Appellant if her container could stay at the port for twenty-three (23) days without accruing charges, and that the Appellant's Witness had informed her that this could be done. The 1<sup>st</sup> Respondent further stated that the twenty-three (23) days were inclusive of the fourteen (14) days grace period.
48. The 1<sup>st</sup> Respondent stated that her container arrived in Dar-es-Salaam on 4<sup>th</sup> February, 2016, and that she made her first instalment on 22<sup>nd</sup> March, 2016, and the second one on 7<sup>th</sup> March, 2016. The 1<sup>st</sup> Respondent stated that she paid the Appellant a total of USD5,000.00 (United States Dollars Five Thousand). She stated that she did not give the Appellant the USD700.00 (United States Dollars Seven Hundred) as there was a breakdown in communication, and that the shipping company the Appellant had introduced her to, was not answering her phone calls and was avoiding her.
49. The 1<sup>st</sup> Respondent testified that the 2<sup>nd</sup> Respondent produced a document to the 1<sup>st</sup> Respondent showing that USD16,715.00 (United States Dollars Sixteen Thousand Seven Hundred and Fifteen) had been paid and that the container would move from Dar-es-Salaam to Kitwe.

She stated that she kept on waiting for the container, but the container was not moving. The 1<sup>st</sup> Respondent testified that on noticing the lack of movement, she engaged Efficient Freighters, the transporters in Tanzania, who gave her a breakdown<sup>2</sup> of the monies owed by the 1<sup>st</sup> Respondent, and that by this time, the 2<sup>nd</sup> Respondent had stopped responding to the 1<sup>st</sup> Respondent's phone calls.

50. The 1<sup>st</sup> Respondent testified further, that after seeing the breakdown, the 1<sup>st</sup> Respondent obtained a loan to pay off the amount owed, and that after making payment, the container started moving. She stated that she never heard from the Appellant and the 2<sup>nd</sup> Respondent again. She informed the Tribunal that the container arrived in Kitwe at the 1<sup>st</sup> Respondent's residence and that she could not remember the exact date of its arrival, but that it should have been somewhere between around June and August, 2016.

51. The 1<sup>st</sup> Respondent also testified that before the arrival of the container, she made numerous efforts to ensure the movement, to Kitwe, of the container, but the Appellant and the 2<sup>nd</sup> Respondent were not responding positively. She stated that a Mr. Phiri, the Manager of the 3<sup>rd</sup> Respondent's office in Kitwe tried to engage the Appellant and the 2<sup>nd</sup> Respondent so that, together with the 1<sup>st</sup> Respondent, they could agree on how to ensure the movement of the container but to no avail.

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<sup>2</sup> See page 34 of the Record of Proceedings for the breakdown

52. The 1<sup>st</sup> Respondent also stated that she sought a refund, from the Appellant, of USD9, 922.00 (United States Dollars Nine Thousand Nine Hundred and Twenty-Two), being the monies expended in excess of the USD5,800.00 (United States Dollars Five Thousand Eight Hundred) paid by the 1<sup>st</sup> Respondent.
53. The 1<sup>st</sup> Respondent was referred to page 33 of the ROP which she identified as the document sent to her as assurance that the 2<sup>nd</sup> Respondent was free to clear the 1<sup>st</sup> Respondent's container from the port and move it to Kitwe. The witness was also referred to page 34 of the ROP. The 1<sup>st</sup> Respondent recognised the tax invoice at page 34 of the ROP and stated that the document contained the breakdown of the total she was supposed to pay after the container had accumulated port charges. She read the amount reflected on the tax invoice as USD16,753.00 (United States Dollars Sixteen Thousand Seven Hundred and Fifty-Three). She informed the Tribunal that she paid USD9,922.00 (United States Dollars Nine Thousand Nine Hundred and Twenty-Two) on top of her payment of USD5,000.00 (United States Dollars Five Thousand United States Dollars).
54. The 1<sup>st</sup> Respondent was also referred to the document on page 29 of the ROP, which she subsequently identified as the contract between Way Plus Company Limited and herself. She stated that the contract (at page 29 of the ROP) was entered into with Way Plus Company Limited when the 2<sup>nd</sup> Respondent had issues with the transporters in Dar-es-Salaam, and had to look for another transporter to transport

the 1<sup>st</sup> Respondent's goods. She also testified that Way Plus Company Limited did not transport the container, and that she had to look for yet another transporter, Efficient Freighters in Tanzania, to which Company USD9,922.00 (United States Dollars Nine Thousand Nine Hundred and Twenty-Two) was paid for transportation without the knowledge of the 2<sup>nd</sup> Respondent who was incommunicado.

55. When Learned Counsel for the 3<sup>rd</sup> Respondent referred the 1<sup>st</sup> Respondent to Clause 4 of the Contract, the 1<sup>st</sup> Respondent explained that the USD4,000.00 (Four Thousand United States Dollars) referred to in that clause was paid to Way Plus Company Limited from the USD5,000.00 (Five Thousand United States Dollars) paid to the 2<sup>nd</sup> Respondent.

56. There was no re-examination of the 1<sup>st</sup> Respondent.

#### **Orders of Directions by the Tribunal**

57. Following conclusion of submissions by the Parties, the Tribunal gave the following orders of directions:

- (i) That the Appellant files its submissions within two (2) weeks (i.e. by the 27<sup>th</sup> of September, 2018);
- (ii) That the 1<sup>st</sup> Respondent files its submissions in response within three (3) weeks from the receipt of the Appellant's submissions (i.e. by the 4<sup>th</sup> of October, 2018);

- (iii) That the 3<sup>rd</sup> Respondent files its submissions in response within two (2) weeks from the receipt of the Appellant's submissions (i.e. by the 27<sup>th</sup> of September, 2018); and
- (iv) That the Appellant files its submissions in reply (if any) within seven (7) days of receipt of the 1<sup>st</sup> and 3<sup>rd</sup> Respondents' submissions.

58. The Appellant filed its submissions on the 27<sup>th</sup> of September, 2018. The same were received by the 3<sup>rd</sup> Respondent on the 2<sup>nd</sup> of October, 2018, which filed its submissions on 15<sup>th</sup> October, 2018. There were no submissions received from the 1<sup>st</sup> Respondent and there was no reply received from the Appellant.

### Consideration of Appeal

59. In considering this Appeal, the Tribunal had occasion to consider the Record of Proceedings. The Tribunal also considered the grounds of appeal, the oral evidence and the Parties' respective submissions. The Tribunal is indebted to the Parties for their respective submissions, to which reference will be made as and when need arises.
60. The grounds of appeal, together with the relevant relief sought by the Appellant, are addressed below.

### Ground 1

***Failure to pay on time the clearance and transportation costs on the part of the First Respondent.***

61. In the view of the Tribunal, the following relief sought by the Appellant is connected to Ground 1: -(quote)

***2. We feel that the 1<sup>st</sup> Respondent did not bring on board the consequences of her not making timely payments toward movement of her container which consequently led to her asking if the container can be kept at the port beyond the stipulated period of time without accruing charges, which in turn had negative impacts on the logistics towards her container. We therefore request the Tribunal to get an account from the first respondent for her part played in the delay of the movement of her container due to late payments which were also not also full amounts towards the same. - (unquote)***

**The Appellant's Submissions on Ground 1**

62. Albeit not expressly stated by the Appellant, it is the Tribunal's considered view that the following submissions made by the Appellant relate to Ground 1:

- (i) That the First Respondent had an obligation to pay the full amount of transportation pegged at USD5,800.00 (United States Dollars Five Thousand, Eight Hundred) immediately the twenty-three (23) days were up, but she failed to comply and ended up paying in two (2) instalments, with eleven (11) days between the said installments. This delay caused the accrual of charges;
- (ii) The 1<sup>st</sup> Respondent still had a balance to pay, yet she was seeking a refund, when in the actual sense, she was still owing;

- (iii) The Transporter had tried to collect the balance from the 1<sup>st</sup> Respondent, but her adamantness that her container reaches the border prior to making the payment caused the charges to accumulate<sup>3</sup>; and
- (iv) The Appellant never agreed to receive payments in installments, but that rather, the 1<sup>st</sup> Respondent requested an illegal regulated time extension for her container to be kept at the port.<sup>4</sup>

### 3<sup>rd</sup> Respondent's Submissions on Ground 1

64. The Tribunal notes that the 3<sup>rd</sup> Respondent erroneously cited relief No. 2 sought by the Appellant as Ground 1. Relief No. 2 is reproduced below for ease of reference. (Quote)

*2. We are seeking a fair arbitration and consideration of this matter as we feel we did not get a fair hearing of this matter with all parties cited in the Board decision. We feel conclusion of the aforementioned case is skewed towards the complainant who has received a favourable ruling based on unjustified claims against us as AM Trading and Shipping Company Limited.* - (unquote)

65. The 3<sup>rd</sup> Respondent then proceeded to make submissions around Relief No.2, which, in the view of the Tribunal, are not linked to Ground 1, but are more appropriate for the purpose of arguing Ground 3 of the Appeal. We will, therefore, not reproduce those submissions as we

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<sup>3</sup> See para. 2 of the Appellant's submissions.

<sup>4</sup> See para. 9 of the Appellant's submissions.

consider Ground 1 of the Appeal, but will consider those submissions as we consider Ground 3 of the Appeal.

66. We find, however, that the submissions advanced by the 3<sup>rd</sup> Respondent in relation to what the 3<sup>rd</sup> Respondent has erroneously referred to as Ground 2 is relevant to the consideration of Ground 1. In this regard, Learned Counsel for the 3<sup>rd</sup> Respondent submitted that the 1<sup>st</sup> Respondent testified that she was charged USD5,800.00 (United States Dollars Five Thousand Eight Hundred) to have the container transported from Dar-es-Salaam to Kitwe and that the Appellant did not give the 1<sup>st</sup> Respondent an invoice.
67. Further, that the Appellant being the facilitator of the transportation of the container ought to have known and communicated to the 1<sup>st</sup> Respondent that the USD5,800.00 (United States Dollars Five Thousand Eight Hundred) needed to be paid in full. Counsel submitted that instead, the Appellant received the money in installments as evidenced by the receipt issued by the Appellant to the 1<sup>st</sup> Respondent on page 4 of the ROP. Accordingly, there was no evidence on record that the Appellant had indicated to the 1<sup>st</sup> Respondent that failure to pay the amount in full would contribute to the delay of the container. Rather, it was established that the Appellant did not give the 1<sup>st</sup> Respondent timelines but had accepted payments in installments. Counsel further submitted that the Appellant assured the 1<sup>st</sup> Respondent that her container could stay at the port for twenty-three (23) days without accruing port charges.

68. Counsel, furthermore, submitted that in view of the foregoing, the 1<sup>st</sup> Respondent acted on the Appellant's information, hence could not be said to have contributed to the delay of the container. In this regard, counsel cited the words of the Lord Birkenhead in the case of MacLaine v. Gatty [1921] 1 AC 376 p.386, where he stated that-

*“Where A has by his words or conduct justified B in believing that a certain state of facts exists, and B has acted upon such belief to his prejudice, A is not permitted to affirm against B that a different state of facts existed at the same time”.*

#### Consideration of Ground 1 by the Tribunal

69. The Tribunal has considered the evidence on record and the submissions of the Parties and notes that, whereas the Appellant submitted that the 1<sup>st</sup> Respondent had an obligation to pay the full amount of transportation pegged at USD5,800.00 (United States Dollars Five Thousand Eight Hundred), there is no evidence to show that this information was relayed to her. Rather, in the view of the Tribunal, the evidence on record shows that the Appellant was amenable to the payment of the USD5,800.00 (United States Dollars Five Thousand Eight Hundred) in installments. This is evident from receipt No. 161 exhibited at page 4 of the ROP, which receipt was issued by the Appellant's Witness to evidence acceptance of part payment in the sum of USD2,843.00 (United States Dollars Two Thousand Eight Hundred and Forty-Three). Scrutiny of the receipt shows the words- (quote)

*SUM OF.../USD DOLLAR TWO THOUSAND EIGHT HUNDRED AND  
AND FORTY THREE ONLY...*

*ON ACCOUNT OF PART PAYMENT ON ROAD TRANSPORT FOR  
20FT CTN FROM DAR-ES-SALAAM TO NDOLA*

*...Bal. \$2,957-00 - (unquote)*

[Emphasis ours]

70. In the view of the Tribunal, if indeed part payment was not acceptable, the Appellant ought to have refused to receive the initial payment made by the 1<sup>st</sup> Respondent as a sign that the said consideration of USD2,843.00 (United States Dollars Two Thousand Eight Hundred and Forty-Three) was not sufficient for the service sought by the 1<sup>st</sup> Respondent. In the view of the Tribunal, the issuance of the receipt and the use of the words “PART PAYMENT” was evidence that the payment was acceptable, albeit not in full satisfaction of the price for the service. We, therefore, agree with counsel for the 3<sup>rd</sup> Respondent that payments in installments were accepted by the Appellant.

71. We further hold the considered view that the Appellant’s conduct is that in respect of which the doctrine of Estoppel would properly apply.

**What is Estoppel?**

72. Estoppel arises when a person misleads another person, causing the other person to reasonably rely on the person who has misled them.<sup>5</sup> The misleading results in the misled person making expenditures or taking action contrary to what a reasonable person would do, had they

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<sup>5</sup> Boundaries & Estoppel by Knud E. Hermansen & Robert Liimakka, available at <https://umaine.edu/svt/wp-content/uploads/sites/105/2015/05/Estoppel.pdf>  
Visited on 29/08/2025 at 22:01 hours

known the truth.<sup>6</sup> The misleading actions may occur by, inter alia, acts, omissions, words, actions or conduct.<sup>7</sup>

73. Estoppel bars the person who misled the other person from denying or contradicting the acts, omissions, words, actions or conduct which the other person relied on to their detriment. This legal principle is critical to maintaining fairness and justice in various legal proceedings.

In the case of *Richard Fyffe v John Esslemont SLC 67/15*<sup>8</sup>, the Scottish Land Court referred to the following statement enunciated by the Lord Chancellor (Birkenhead) in *Gatty v Maclaine 1921 SC (HL) 1* as “a classic statement of the doctrine of personal bar” (in other jurisdictions known as Estoppel):

*“Where A has by his words or conduct justified B in believing that a certain state of facts exists, and B has acted upon such belief to his prejudice, A is not permitted to affirm against B that a different state of facts existed at the same time”.*

74. The Tribunal finds that in this case, the Appellant by failing (which constitutes an omission) to mention to the 1<sup>st</sup> Respondent that installments were not acceptable, and by accepting (which constitutes an act) part payment and issuing (which constitutes an action) a receipt in acceptance of the part payment must be estopped from affirming that installments were not acceptable. This is because the

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<sup>6</sup> *Ibid*

<sup>7</sup> *Op.Cit*

<sup>8</sup> Available at <http://www.scottish-land-court.org.uk/decisions/SLC.67.15.b.html>  
Visited on 20/06/2025 at 01:22 hours

1<sup>st</sup> Respondent relied on the Appellant's acts, omissions and actions which conveyed to the 1<sup>st</sup> Respondent the understanding that payments in installments were acceptable. This understanding operated to the detriment of the 1<sup>st</sup> Respondent who had to pay USD9,165.79 (United States Dollars Nine Thousand One Hundred and Sixty-Five and Seventy-Nine Cents) in excess of the USD5,800.00 (United States Dollars Five Thousand Eight Hundred) she was legitimately required to pay for the transaction.

75. **Ground 1 of the Appeal and the relief connected thereto, therefore, fails.**

## **Ground 2**

***Failure to honour the promise of service delivery on the part of the Second Respondent to the First Respondent.***

76. It is also the considered view of the Tribunal that albeit not expressly stated by the Appellant, the reliefs sought by the Appellant that are, to a certain extent connected with Ground 2 of the Appeal are Reliefs No. 3 and 5 reproduced below for ease of reference.

***“3. We feel the need for the first respondent to justify matters clearly of her not being made aware that us (AM Trading and Shipping Company Limited) were not transporters, as well as her not being aware of the second respondents who happened to be the transporter, as this information had been given in the***

*initial stage of the transaction, from both China office and our office here in Lusaka Zambia.*

5. *We also feel that the second respondent has to acknowledge the part they played in the transaction which led to delayed service delivery but to date, it has even been documented that they have not responded to any notices of the Commission's investigation which in itself we feel should be treated as a preliminary case of contempt on the part of the second respondent. We further feel the second respondent is the one who is supposed to pay the first respondent since they are the ones who promised to deliver a service which did not materialise, and the same second respondent had even started paying towards the said charges."*

**Appellant's submissions in relation to Ground 2**

77. Further, albeit not expressly, submitted by the Appellant it is the Tribunal's considered view that the following Appellant's submissions relate to Ground 2:

- (i) The 2<sup>nd</sup> Respondent accepted the responsibility of keeping the container beyond the legal stipulated timeframe and also started paying storage charges; and
- (ii) From the date that the 3<sup>rd</sup> Respondent commenced the investigations, the 2<sup>nd</sup> Respondent had neither submitted any explanation nor responded to the 3<sup>rd</sup> Respondent's queries to

help with investigations. The Appellant questioned why the 3<sup>rd</sup> Respondent had not taken any action against the 2<sup>nd</sup> Respondent.

### **3<sup>rd</sup> Respondent's Submissions in Relation to Ground 2**

78. Again, the 3<sup>rd</sup> Respondent did not make specific reference to Ground 2 of the Appeal as raised by the Appellant, but cited the second relief sought by the Appellant as Ground 2. Relief No. 2 sought by the Appellant states as follows:

*“2. We feel that the 1<sup>st</sup> Respondent did not bring on board consequences of her not making timely payments towards movement of her container which consequently led to her asking if the container can be kept at the port beyond the stipulated period of time without accruing charges, which in turn had negative impacts on the logistics towards her container. We therefore request the Tribunal to get an account from the first respondent for her part played in the delay of the movement of her container due to late payment which were also not full amounts towards the same.”*

79. The 3<sup>rd</sup> Respondent then made submissions which, in the view of the Tribunal are not relevant to Ground 2 as advanced by the Appellant, but were relevant to Ground 1 which has already been considered above by the Tribunal. The 3<sup>rd</sup> Respondent's submissions in this respect will not, therefore be reproduced.

80. It suffices to note, however, that the 3<sup>rd</sup> Respondent made submissions that are related to this ground under what the 3<sup>rd</sup> Respondent referred to as Ground 3. The 3<sup>rd</sup> Respondent submitted that the Appellant, in Ground 3 of the Appeal stated-

*“We feel the need for the First Respondent to justify matters clearly of her not being made aware that us (AM Trading and Shipping Company Limited) were not transporters, as well as her being aware of the 2<sup>nd</sup> Respondents who happened to be the transporter, as this information had been given in the initial stage of transaction, from both China office and our office here in Lusaka, Zambia.”*

81. Counsel for the 3<sup>rd</sup> Respondent submitted that in the circumstances *in casu*, the Appellant did not disclose to the 1<sup>st</sup> Respondent that he was an agent of the 2<sup>nd</sup> Respondent, and that this was evident at page 4 of the Record of Proceedings which shows a receipt from the Appellant to the 1<sup>st</sup> Respondent. The receipt does not indicate that the Appellant was receiving money on behalf of the 2<sup>nd</sup> Respondent and hence he cannot claim to be an agent of the 2<sup>nd</sup> Respondent. In the case of *Universal Steam Navigation Co Ltd v James McKelvie & Co [1923] AC 492* Lord Shaw of Dunfermline stated that-

*“...the appending of the words ‘agents’ to the signature of a party to a mercantile contract is, in all cases, the domination factor in the solution of the problem of principal or agent. A highly improbable and conjectural case*

*(in which this dominating factor might be overcome by other parts of a contract) may by an effort of imagination be figured, but apart from that, the appending of the word 'agent' to the signature is conclusive assertion of agency, and a conclusive rejection of responsibility of a principal, and must be accepted in that twofold sense by the other contracting party."*

82. In relation to the case, counsel submitted that there could be no conclusion that an agent and principal relationship existed between the Appellant and the 2<sup>nd</sup> Respondent as the receipt issued by the Appellant did not indicate that the money was received on behalf of the 2<sup>nd</sup> Respondent. Furthermore, regarding the assertion that the Appellant was not into transportation, counsel submitted that the receipt exhibited at page 4 of the ROP issued by the Appellant to the 1<sup>st</sup> Respondent has the following words written on it "***part-payment on road transport for 20ft container from Dar-es-Salaam to Ndola***". In addition, the said receipt had the heading "Trucking" written on it clearly indicating the service that was being rendered to the 1<sup>st</sup> Respondent.
83. Counsel stated that this was conclusive evidence of the fact that the Appellant is into transportation.

#### **Tribunal's consideration of Ground 2**

84. The Tribunal considered the testimony of the Parties. In particular, the Tribunal considered the testimony of both the Appellant and the 1<sup>st</sup> Respondent who testified that they had conversed on the phone, and

that the 1<sup>st</sup> Respondent had sought to establish whether the Appellant could transport her container from Dar-es-Salaam to Zambia. The Tribunal noted that in the conversation that ensued, the Appellant, according to the 1<sup>st</sup> Respondent, had informed the 1<sup>st</sup> Respondent that the Appellant could transport the container for the 1<sup>st</sup> Respondent. The Appellant did not make mention that it was not, itself, a transporter or make mention of a third party or that it was an agent of the 2<sup>nd</sup> Respondent, as the Appellant was now alleging.

85. The Tribunal noted that in consequence of the phone conversation between the Appellant and the 1<sup>st</sup> Respondent, payment of USD2,843.00 (United States Dollars Two Thousand Eight Hundred and Forty-Three) was made by the 1<sup>st</sup> Respondent to the Appellant and a “**Trucking Receipt**” issued.
86. The Tribunal notes that whereas the Appellant suggests that they are not in the business of freight or transportation, close scrutiny of the Appellant’s receipt No. 161 dated “**23/02/16**”, issued by the Appellant to the 1<sup>st</sup> Respondent for the sum of USD2,843.00 (United States Dollars Two Thousand Eight Hundred and Forty-Three)<sup>9</sup>, shows that the Appellant holds, or at the time held, itself out as a transporter. This is evident from the words “**SEA/AIR FREIGHT/TRUCKING RECEIPT**” contained in the Receipt (Pages 4 and 49 of the ROP refers).

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<sup>9</sup> The Receipt is set out at page 4 of the ROP.

87. The Tribunal also considered what the terms “trucking”, “receipt” and “shipping” mean.

### What is trucking?

88. Trucking is the activity of transporting goods from one place to another using trucks.<sup>10</sup> It is also defined as the process or business of transporting goods on trucks.<sup>11</sup> A trucking service is a carrier—that is, someone to drive your freight from point A to point B.<sup>12</sup>

### What is a receipt?

89. The Tribunal established that a receipt is a written acknowledgment that something of value has been transferred from one party to another.<sup>13</sup>

90. Further, the Tribunal considered the Certificate of Incorporation dated the 6<sup>th</sup> day of December, 2010, pertaining to the incorporation of the Appellant as a private Company Limited by Shares<sup>14</sup>. The Tribunal notes that the certificate of incorporation sets out the name of the Appellant as, “AM Trading and Shipping Company”.

### What is shipping?

91. The Tribunal, in addition to the foregoing, considered the definition of shipping and found that shipping is considered to be an activity related

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<sup>10</sup> Definition of “Trucking”. Available at <https://www.collinsdictionary.com/dictionary/english/trucking> visited on 25/01/2022 at 00:26 hours.

<sup>11</sup> Definition of “Trucking”. Available at <https://www.merriam-webster.com/dictionary/trucking> visited on 25/01/2022 at 00:31 hours.

<sup>12</sup> “Trucking Services”. Available at <https://www.freightcenter.com/trucking-service> visited on 25/01/2025 at 00:35 hours.

<sup>13</sup> “What is a Receipt?”. Available at <https://www.investopedia.co/terms/r/receipt.asp> visited on 29/01/2025 at 19:53 hours.

<sup>14</sup> Company Registration No. 88735; Serial No. 1191727. See Page 62 of the ROP

to the use of ships for the transport of cargo, passengers, luggage and mail and that to ship means to put (goods) in a ship.<sup>15</sup>

92. On the basis of the foregoing, in the view of the Tribunal, the wording on the receipt, is sufficient to cause a reasonable person to believe that the Appellant is in the trucking business or is a shipper. The view of the Tribunal is augmented by the fact that the Certificate of Incorporation issued in respect of the Appellant describes the Appellant as “AM Trading and Shipping Company”.
93. The Tribunal also considered the averment by the Appellant that it was an agent of the 2<sup>nd</sup> Respondent, with a view to establishing whether or not this fact exonerated the Appellant from liability.

#### **Definition of Agency**

94. The Tribunal found that an agent is a person who is empowered to represent another legal entity referred to as the principal.<sup>16</sup> Further, the Tribunal found that the agent brings the principal into a legal relationship with a third party.<sup>17</sup> Furthermore, the Tribunal found that generally, where a party is acting as agent, the contract it enters into with a third party is between the principal and the third party.<sup>18</sup> In the ordinary course of events, the agent has no personal rights or liabilities in relation to the contract.<sup>19</sup> This outcome represents an accepted exception to the usual operation of the doctrine of privity in contract

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<sup>15</sup> Dictionary of Shipping Terms, 6ed, Peter Brodie, available at <https://armcol.org/wp-content/uploads/2024/08/3214.-Dictionary-of-Shipping-Terms-Peter-Brodie.pdf> visited on 2nd April, 2025 at 13:04 hours.

<sup>16</sup> LAW 302: Comprehensive Overview of the Law of Agency Principles. Available at <https://www.studocu.com/row/document/university-of-zambia/commercial-law/the-law-of-agency/90523485> Visited in 26/08/2025 at 20:20 hours.

<sup>17</sup> *Ibid*

<sup>18</sup> *Op. cit.*

<sup>19</sup> *Op. cit*

law.<sup>20</sup> Consent whether express or implied, to act as an agent is required and no one can act as an agent without the consent of the principal.<sup>21</sup>

95. The Tribunal also established that an agent will be liable on contracts made in a personal capacity—for instance, when the agent personally guarantees repayment of a debt.<sup>22</sup> The agent’s intention to be personally liable is often difficult to determine on the basis of his signature on a contract.<sup>23</sup> Generally, a person who signs a contract can avert personal liability merely by showing that the person was in fact signing as an agent.<sup>24</sup> If the contract is signed “Jones, Agent,” the signatory Jones can adduce evidence showing that it was never his intention to be held personally liable. But if he signed “Jones” and neither his agency nor the principal’s name is included, Jones will be personally liable.<sup>25</sup>
96. In addition, the Tribunal established that an agent will be held liable if the agent fails to disclose the agency and the identity of the principal while entering into the contract.<sup>26</sup> In such a case, the agent will be subject to all the liabilities created by the contract, in the same way as if the agent were the principal in interest.<sup>27</sup> In order to avoid the

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<sup>20</sup> *Op. cit*

<sup>21</sup> *Op. cit*

<sup>22</sup> Liability of Principal and Agent; Termination of Agency. Available at [https://saylordotorg.github.io/text\\_law-for-entrepreneurs/s24-liability-of-principal-and-age.html](https://saylordotorg.github.io/text_law-for-entrepreneurs/s24-liability-of-principal-and-age.html)

Visited on 30/06/2025 at 23:10 hours.

See also Chapter 15, Liability of Principal and Agent; Termination of Agency available at

<https://2012books.lardbucket.org/pdfs/business-and-the-legal-environment/s18-liability-of-principal-and-age.pdf>

visited on 30/06/2025 at 23:32 hours

<sup>23</sup> *Ibid*

<sup>24</sup> *Op. cit*

<sup>25</sup> *Op. cit*

<sup>26</sup> Undisclosed Agency available at <https://lawnotes.co/undisclosed-agency/>

Visited on 22/05/2025 at 19:33 hours

<sup>27</sup> *Ibid*

personal liability of the agent, therefore, disclosure of the principal must normally be made at the time of making the contract.<sup>28</sup> After the principal is disclosed, the agent will not be liable for subsequently authorised acts between the third person and the principal.<sup>29</sup>

97. The Tribunal also found that if a third person has no knowledge about the fact that the agent is acting for a principal, then both the agency and the principal is “undisclosed.” The agent of an undisclosed principal can be held liable on the contract as the real obligor as agent contracted in that capacity. Similarly, an undisclosed principal can also be held liable as the principal must also assume its obligations under the contract.
98. It suffices to note that the liability of an undisclosed principal and the agent is normally an alternative liability which entails that the third party can only make either the principal or the agent liable and not both of them simultaneously.<sup>30</sup> A third party, accordingly, can elect to make the principal or the agent responsible only after the discovery of the principal and the opportunity to make a considered or informed choice. However, once an election is made by a third party, it is generally irrevocable.<sup>31</sup>
99. Applying the foregoing *in casu*, it is clear that the Appellant did not disclose the existence of the 2<sup>nd</sup> Respondent whom the Appellant

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<sup>28</sup> *Op. cit*

<sup>29</sup> *Op. cit*

<sup>30</sup> Undisclosed Agency available at <https://lawnotes.co/undisclosed-agency/>  
Visited on 22/05/2025 at 19:33 hours

<sup>31</sup> *Ibid*

purported was the principal. Further, in the view of the Tribunal, the Appellant appears to have made itself personally liable by stating that it could transport the container as requested by the 1<sup>st</sup> Respondent. This is augmented by the fact that the Appellant did not provide its Principal's name or state the fact that the Appellant was an agent on the Trucking Receipt. Rather, there was appended on the Trucking Receipt what the Tribunal has concluded is the Appellant Witness' signature (having compared the signature on page 4 of the ROP with that on page 17 of the ROP). This suggests personal liability of the Appellant.

100. The Tribunal also notes the case of *Universal Steam Navigation Co Ltd v James McKelvie & Co [1923] AC 492* cited by Counsel for the 3<sup>rd</sup> Respondent, and finds useful, the following excerpts from that case<sup>32</sup>:

*“VISCOUNT CAVE LC: ... If the respondents had signed the charterparty without qualification, they would of course have been personally liable to the shipowners; but by adding to their signature the words “as agents” they indicated clearly that they were signing only as agents for others and had no intention of being personally bound as principals. I*

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<sup>32</sup> Ius Commune Casebooks for the common law of Europe Cases, Materials and Text on National, Supranational and International Law, Prof Walter van Gerven (General editor)  
Available at <https://www.casebooks.eu/contractLaw/Chapter27/excerpt.php?excerptId=4762>  
Visited on 16/04/2025 at 17:54 hours

*can imagine no other purpose for which these words could have been added;...*

*It is, as Bankes L.J. said, to the interest of the commercial community that a signature "as agent" should have a generally accepted meaning, and I agree ... that such a qualification of the signature should be taken as a deliberate expression of intention to exclude any personal liability on the part of the signatory. ...*

*LORD SHAW OF DUNFERMLINE: ...The first question is in what character Messrs. McKelvie signed this document? I see no ground whatsoever for denying effect to the express word "agents": it was undoubtedly in that character that the contract was signed: there is as little ground for cutting out the express character in which it was signed as for cutting out the signature itself."*

101. On the basis of the foregoing, and in the absence of any evidence to show that the Appellant signed the receipt as an agent of the 2<sup>nd</sup> Respondent, the Tribunal finds no basis to conclude that the Appellant was an agent.
102. The Tribunal also finds that even if, by some stretch of the imagination, the converse could be reached based on the evidence presented in this case, i.e. that it could be established from the facts in this case that the Appellant was in fact an agent of the 2<sup>nd</sup>

Respondent and was not, therefore, personally liable for the transportation of the container, the 1<sup>st</sup> Respondent who did not know of the principal at the time of entering into the contract was well within her legal right (in terms of law of Principal and Agent) to raise a complaint against the Appellant, being the entity with whom she had contracted.

103. In the case of *Kasengo Holding Limited v. Innovative Venture Limited and the Competition and Consumer Protection Commission*<sup>33</sup> in which an issue had been raised as to the party that ought to have been made answerable for the conduct in question, this Tribunal stated,

*“44. An issue has also been raised as to the party that should have been made answerable for the alleged conduct, i.e. whether Brismas Snack Pitch Limited or the Appellant. Typically, competition and consumer laws target conduct of enterprises, whether perpetrated directly or indirectly through the agency of subsidiaries or other associated enterprises. The law makes itself enforceable as broadly as possible without company law bottlenecks with respect to distinctions between companies as separate legal personalities, such as pronounced in *Salomon v, Salomon and Company [1895-1899] All E.R. 33.*”*

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<sup>33</sup> Appeal No. 2019/007/COM

104. On the basis of the foregoing, the Tribunal finds that Ground 2 of the Appeal and relief No. 3 and 5 connected therewith fails.

Ground 3

*Failure to accord fair hearing on all parties involved in the cited transaction, Case No. CCPC/KTW/CO/380.*

105. In the view of the Tribunal the reliefs, sought by the Appellant, which are connected to this ground of appeal, are reliefs No.1 and No.5 in which the Appellant raises issues that are connected to the failure to accord a fair hearing in the matter. The two reliefs state, respectively (quote)-

1. *We are seeking a fair arbitration and consideration of this matter as we feel we did not get a fair hearing of this matter with all parties cited in the Board decision. We feel conclusions of the aforementioned case is skewed towards the complainant who has received a favourable ruling based on unjustified claims against us as AM Trading and Shipping Company Limited.*
5. *We seek a review from the Tribunal over the Board directive for us to pay the penalty fees of ZMW500.00 to the CCPC and the accrued charges of USD9165.76 to the first respondent. We feel this was merely a case of us relaying precise, timely information between two parties with negative consequences for the first respondent but only penalising the messengers who*

*happen to be us, therefore we are not the ones that are supposed to a pay the said amounts. - (unquote)*

106. The Tribunal has considered the submissions of the Appellant and the 3<sup>rd</sup> Respondent.

**Submissions by the Appellant on Ground 3**

107. Whereas the Appellant did not expressly make any submissions directly in relation to this Ground of Appeal, it sought as a relief, a fair arbitration, which it did not believe it had received from the 3<sup>rd</sup> Respondent, as the third Respondent concluded the matter without hearing from the 2<sup>nd</sup> Respondent.

**Submissions by the 3<sup>rd</sup> Respondent on Ground 3**

108. The Tribunal notes that rather than cite the actual Ground 3 of the Appeal as advanced by the Appellant, the 3<sup>rd</sup> Respondent cited the 3<sup>rd</sup> relief sought by the Appellant as Ground 3 of the Appeal. That relief provides as follows:

*“3. We feel the need for the First Respondent to justify matters clearly of her not being made aware that us (AM Trading and Shipping Company Limited) were not transporters, as well as her being aware of the 2<sup>nd</sup> Respondents who happened to be the transporter, as this information had been given in the initial stage of transaction, from both China office and our office here in Lusaka, Zambia.”*

109. We find that this argument is not relevant to the actual Ground 3 raised by the Appellant. That notwithstanding, the 3<sup>rd</sup> Respondent makes the relevant submissions under what it has cited as being Ground 1 of the Appeal. The 3<sup>rd</sup> Respondent submitted, in that regard, as follows:

(i) That the Act provides for the procedure a party aggrieved by a Board decision may take under Section 60, which states that:

*“A person who, or an enterprise which, is aggrieved with an order or direction of the Commission under this Part may, within thirty days of receiving the order or direction, appeal to the Tribunal.”*

(ii) That the Tribunal pursuant to section 68 (a) of the Act hears appeals brought before it, and that it is, as such, an appellate body and not an arbitral body. Accordingly, the Appellant could not seek arbitration before the Tribunal;

(iii) That the Appellant responded to the Notice of Investigation on 21<sup>st</sup> June, 2016, reflected at pages 18 to 23 of the ROP, and that those submissions were incorporated into the Preliminary Report at pages 35 to 48 of the ROP;

(iv) The Preliminary Report was sent to the Appellant by the 3<sup>rd</sup> Respondent, and in this regard, reference was made to pages 53 to 56 of the ROP, and that the Board of Commissioners considered the Preliminary Report. This, the 3<sup>rd</sup> Respondent submitted, constituted a fair trial; and

(v) That even though the Board of Commissioners may not have arrived at a decision the Appellant would have considered

favourable, the Board of Commissioners arrived at a just decision based on the evidence and submissions from the parties.

110. Learned Counsel for the 3<sup>rd</sup> Respondent also submitted that even though the 2<sup>nd</sup> Respondent was served with the Notice of Investigation as reflected at page 16 of the ROP, the 2<sup>nd</sup> Respondent did not make any submissions to the 3<sup>rd</sup> Respondent during the investigation. Accordingly, the 3<sup>rd</sup> Respondent proceeded to analyse the information and the evidence that was before it and the same was submitted to the Board of Commissioners for adjudication.

### **Consideration of Ground 3 by the Tribunal**

111. The Tribunal considered Ground 3 and in so doing, asked itself if it is clothed with jurisdiction to arbitrate. In responding to this question, the Tribunal considered the meaning of arbitration.

### **What is arbitration?**

112. The Tribunal found that arbitration is a form of alternative dispute resolution in which the disputing parties, by consensus, submit their dispute, for resolution, to one or more neutral persons referred to as “**arbitrator**” or “**arbitrators**”, as the case may be.<sup>34</sup> The arbitral tribunal will hear the Parties, consider the evidence produced before it, and on that basis, make a binding decision. The Parties usually agree to resolve any potential dispute by arbitration even before the

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<sup>34</sup> Guide to WIPO Arbitration, available at [wipo\\_pub\\_919\\_2020.pdf](#) visited on 22<sup>nd</sup> November, 2024 at 12:19 hours.

incidence of the dispute.<sup>35</sup> This agreement is achieved by the parties including resort to arbitration in the contract governing their relationship.<sup>36</sup>

113. The Tribunal considered its jurisdiction under the Act. Reference was made, in particular, to section 68 of the Act which provides as follows:  
- (quote)

**68. The functions of the Tribunal are to—**

**(a) hear any appeal made to it under this Act; and**

**(b) perform such other functions as are assigned to it under this Act or any other law. - (unquote)**

114. A perusal of the provision shows that the Tribunal has appellate and not arbitral jurisdiction. We, therefore, agree with Counsel for the 3<sup>rd</sup> Respondent in this respect.

115. The Tribunal considered whether or not the connotation by the Appellant that it was not accorded a fair hearing (see relief No. 1 sought by the Appellant) was justifiable.

**Was the Appellant accorded a fair hearing?**

116. In the case of the **Competition and Consumer Protection Commission v. Mpande Limestone Limited, Lafarge Zambia Plc and Dangote Cement Zambia Limited**<sup>37</sup> (hereinafter the Cement Case), this Tribunal stated, with respect to the right to be heard that (quote)-

**60. The right to a fair hearing requires that individuals should not be penalised by decisions that affect,**

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<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*, p.8

<sup>37</sup> Cause No. 2021/CCPT/026/COM

*inter alia, their rights or interests, unless they have been given prior notice of the case made against them, a fair opportunity to answer it, and the opportunity to present their own case. In the Zinka Case, the Court stated, regarding the right to be heard-*

*“...that no man shall be condemned unheard, that is, parties shall be given adequate notice and opportunity to be heard (audi alteram partem). As was quaintly stated by an eighteenth-century judge, Foretescue, J., in R. v Chancellor of the University of Cambridge [8] at page 567:*

*'Even God himself did not pass sentence on Adam before he was called upon to make his defence.’*

61. *This principle (i.e. the right to be heard) dates back several centuries, has been applied in various circumstances, and is recognised as one of the tenets of the English justice system.<sup>38</sup> Under that system, it is considered one of the fundamental requirements of adjudication that, whenever the interest of a person is affected by a judicial or administrative decision, that person must be accorded the opportunity to know and to understand the allegations made against them, and to*

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<sup>38</sup> The Fundamental Principles of Natural Justice in Administrative Law, Muhammad Zubair, Sadia Khattak, Journal of Applied Environmental and Biological Sciences, 2014, pp. 68-72, at p.70 . Available at [https://www.textroad.com/pdf/JAEBS/J.%20Appl.%20Environ.%20Biol.%20Sci..%204\(9\)68-72.%202014.pdf](https://www.textroad.com/pdf/JAEBS/J.%20Appl.%20Environ.%20Biol.%20Sci..%204(9)68-72.%202014.pdf)  
Visited on 09/09/2021 at 20:43 hours.

*make representations to the decision-maker in response to those allegations.*<sup>39</sup>

62. *The very fact that a decision affects an individual's rights or interests is sufficient to subject the decision to the procedures required by natural justice. The procedural requirements may be set out in statute, statutory instrument, guidelines (whether statutory or non-statutory) or a procedure which the decision maker has, for itself, established.*<sup>40</sup> *Such procedures are intended, not only to guarantee that the decision maker takes into account all relevant considerations, but also to ensure procedural fairness for those affected by the decision it is required to make.*

63. *Where a procedure is laid out for the making of decisions by a decision maker, the decision maker will be required to follow the procedures prescribed for making its decisions. The expression "procedural fairness" usually refers to these requirements that are used to ensure that the principles of natural justice are upheld. Procedural fairness is required in any context or sphere wherein the power of the government or other authority may be brought to bear against an individual or group.*<sup>41</sup>

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<sup>39</sup> *Ibid*

<sup>40</sup> Decision Making by Public Bodies: How to Avoid Legal Challenge by Martin Scott, Available at <https://www.fieldfisher.com/en/insights/decision-making-by-public-bodies-how-to-avoid-legal-challenge#rationalandevidencebased>

Visited on 02/09/2021 at 00:57 hours

<sup>41</sup> Natural justice and procedural fairness at OBSI, Available at <https://www.obsi.ca/en/how-we-work/resources/Documents/Principles-of-Natural-Justice-in-Ombudsmanship.pdf>

64. *Departure from an established prescribed procedure in itself can give rise to a successful legal challenge, by way of judicial review, even if no unfairness results. Failure to follow prescribed procedures is what is referred to as procedural impropriety...*

65. *By way of example, procedural fairness entails-the right to be informed in advance of the case against a person- i.e. the factual basis on which the decision-maker may act; the right to a reasonable time within which to prepare a response; the right to be heard (which hearing may either be oral or in writing); ...the right to legal representation; and the right to reasons for the decision. Irrespective of the nature of the body making the decision whether that is judicial, quasi-judicial or administrative, the essence is that a person should be treated fairly.<sup>42</sup> - (unquote)*

117. In the view of the Tribunal, the Appellant, was accorded a fair trial as the 3<sup>rd</sup> Respondent followed the procedures prescribed for making its decisions, and thereby ensured that the principles of natural justice were upheld. The Tribunal premised this finding on the fact that the Appellant was given prior notice of the case made against them, i.e. the factual basis on which the 3<sup>rd</sup> Respondent sought to act, a fair opportunity to answer the case, and the opportunity to present their own case. This is evident from the fact that a Notice of Investigation (in

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Visited on 09/09/2021 at 16:14 hours.

<sup>42</sup> The Fundamental Principles of Natural Justice in Administrative Law, *supra*

compliance with section 55 of the Act) was sent to Appellant and duly received by the Appellant's Witness. Page 17 of the ROP refers in this respect.

118. Further, in keeping with section 55(4) of the Act, the Appellant was given an opportunity to respond to the Notice of Investigation, and did so respond on 21<sup>st</sup> June, 2016, as evidenced at pages 18 to 23 of the ROP. The submissions made by the Appellant (at the time referred to as the "1<sup>st</sup> Respondent"), were incorporated into the Preliminary Report (published in compliance with section 55(10) of the Act) in paragraphs 16 to 32 of the Preliminary Report at pages 38 to 42 of the ROP. The Appellant was, therefore, accorded the right to make written representations to the decision-maker (in this case the 3<sup>rd</sup> Respondent) in response to the allegations levelled against the Appellant.
119. The Tribunal notes that the Preliminary Report was subsequently sent to the Appellant by the 3<sup>rd</sup> Respondent, and receipt thereof duly acknowledged by the Appellant's Witness. Reference, in this regard, is made to page 52 of the ROP. Further reference is made to pages 53 to 56 of the ROP which contain a letter dated 6<sup>th</sup> March, 2017, authored by the Appellant's Witness in response to the Preliminary Report. The Tribunal notes that the Board of Commissioners of the 3<sup>rd</sup> Respondent considered this Preliminary Report in arriving at its Decision which is now the subject of appeal.
120. Also, worthy of note is that the Decision of the Board of the 3<sup>rd</sup> Respondent was a reasoned decision. The 3<sup>rd</sup> Respondent, therefore,

accorded the Appellant the right to be availed the reasons for the decision arrived at against the Appellant.

121. On the basis of the foregoing, it is the considered view of the Tribunal that the 3<sup>rd</sup> Respondent complied with its prescribed procedures for investigating and determining complaints. We, accordingly, hold the view that the Appellant was accorded a fair trial and was not unduly penalised for the actions for which it was investigated by the 3<sup>rd</sup> Respondent and found wanting.
122. We, therefore, agree with Learned Counsel for the 3<sup>rd</sup> Respondent, and adjudge that Ground 3 of the Appeal, and reliefs 1 and 5 connected thereto, fails.
123. Having established that AM Trading held itself out to provide trucking services, the next question the Tribunal finds imperative to respond overall to is, “Did the Appellant violate section 49(5) of the Act as found by the Board of the 3<sup>rd</sup> Respondent, i.e., did the Appellant offer the trucking service to the consumer (1<sup>st</sup> Respondent) with reasonable care and skill or within a reasonable time or, if a specific time was agreed, within a reasonable period around the agreed time?”
- This question is addressed below.
- “Did the Appellant offer the trucking service to the consumer (1<sup>st</sup> Respondent) with reasonable care and skill or within a reasonable time or, if a specific time was agreed, within a reasonable period around the agreed time?”*
124. Section 49(5) of the Act provides that -

*“A person or an enterprise shall supply a service to a consumer with reasonable care and skill or within a reasonable time or, if a specific time was agreed, within a reasonable period around the agreed time.”*

125. The 1<sup>st</sup> Respondent submitted that the Appellant was engaged by the 1<sup>st</sup> Respondent to transport her container from Dar-es-Salaam to Kitwe, and that as evidenced by the receipt at page 4 of the Record of Proceedings, the Appellant acknowledged the part payment towards the transportation of the container. It was also submitted that the Appellant assured the 1<sup>st</sup> Respondent that the container would not accrue charges during the 23-day period which the 1<sup>st</sup> Respondent required it to stay at the port.
126. Learned Counsel for the 3<sup>rd</sup> Respondent also submitted that despite the Appellant assuring the 1<sup>st</sup> Respondent that by the time she was making her second installment, the container would start moving, the record will show that none of the assurances given to the 1<sup>st</sup> Respondent happened. This was because the Appellant did not exercise reasonable care and skill when dealing with the transportation of the 1<sup>st</sup> Respondent’s container. Counsel submitted that because the Appellant was in the business of transportation, the Appellant was reasonably expected to know that in order for the container to move and not accrue more charges, the 1<sup>st</sup> Respondent needed to pay the amount charged in full. In this regard, the Appellant failed to provide a service with reasonable care and skill.

127. The Tribunal is of the view that in order to properly respond to the foregoing question, there is need to answer the following questions: What does it mean to supply? What is a service? Who is a consumer? What is reasonable care and skill? The Tribunal addressed these questions in the case of in the case of *Radian Stores Retail Limited v. the Competition and Consumer Protection Tribunal*<sup>43</sup> (hereinafter “the Radian Stores Case”).

#### What is “supply”?

127. “Supply” is defined in section 2(1) of the Act, to include, in relation to - “(b) *services, the provision by way of sale, grant or conferment of the services;*”.

#### What is a service?

128. Section 2 (1) of the Act defines “services” to include “... *the carrying out and performance on a commercial basis of any engagement, whether professional or not, other than the supply of goods, but does not include the rendering of any services under a contract of employment;*”. In the view of the Tribunal, the services to be supplied by the Appellant were trucking services.

#### Who is a consumer?

129. Paragraph (b) of the definition of “consumer” set out in section 2 (1) of the Act provides that a consumer is “... *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*

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<sup>43</sup> Appeal No. 2021/CCPT/037/CON

*the production and manufacture of any other goods for sale, or the provision of another service for remuneration;”*. The Tribunal is of the view that the 1<sup>st</sup> Respondent, having sought the trucking services to ferry a container carrying her household goods is a consumer within the context of the foregoing definition.

#### **What is reasonable care and skill?**

128. With respect to the definition of “reasonable care”, the Tribunal referred to Black’s Law Dictionary which states that the term is “*a test of liability for negligence, the degree of care that a prudent and competent person engaged in the same line of business or endeavour would exercise under circumstance.*”<sup>44</sup> Further, that “reasonable skill” is defined as “*the skill ordinarily used by persons engaged in a particular business.*”<sup>45</sup>

130. In the *Radian Stores Case*, this Tribunal stated that-

*“110. ... reasonable care and skill are measured on an objective test. That it means “omission to do something which a reasonable man, guided upon these considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. The defendants might have been liable for negligence, if unintentionally, they omitted to do that which a reasonable person would have done, or did that which a person taking reasonable precautions would*

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<sup>44</sup> Quoting Black’s Law Dictionary, 8<sup>th</sup> Edition, p. 504

<sup>45</sup> *Ibid*

*not have done.” Blyth v. Birmingham Waterworks Company (1856) 11 Exch 78, earlier cited by counsel for the Respondent.”*

131. The Tribunal is of the view that as the Appellant was in the business of trucking, the Appellant was reasonably expected to know that in order for the container to move from the port and avoid the accrual of charges, the 1<sup>st</sup> Respondent was required to pay the amount charged in full. In this regard, the Appellant, by failing to provide this information to the 1<sup>st</sup> Respondent, failed to provide a service with reasonable care and skill.

**What is “within reasonable time?”**

132. In the *Radian Stores Case*, this Tribunal stated in relation to the words, “*or within a reasonable time or, if a specific time was agreed, within a reasonable period around the agreed time*”, that, “*95. ...the Tribunal is of the view that these are prescribing time for the supply of a service to ...consumer(s). We accordingly conclude that the part of this provision relating to supply within reasonable time applies to all situations of supply of a service and demands that the service be supplied within reasonable time.*” *However, the last part of the provision is restricted to a supply where time has been agreed;...*”

133. The Tribunal notes from paragraph 61 at page 90 of the ROP, in lines 7 to 8, that the container ought to have been delivered to the 1<sup>st</sup> Respondent in March, 2016, as the 1<sup>st</sup> Respondent made the second payment on 7<sup>th</sup> March, 2016. Further, the container was given thirty

(30) days before it began accruing demurrage charges. Regrettably, the container was delivered in July, 2016 - four (4) months after the estimated delivery period. This in the view of the Tribunal was unreasonable.

134. The Tribunal finds, therefore, that the Appellant violated section 49(5) as properly determined by the Board of the 3<sup>rd</sup> Respondent, on account of the Appellant not having offered the trucking services to the 1<sup>st</sup> Respondent with reasonable care and skill or within a reasonable time.

### Conclusion

135. The Tribunal upholds the decision of the Board of the 3<sup>rd</sup> Respondent and in summary finds as follows:

- (i) As regards Ground 1, the Appellant by failing to mention to the 1<sup>st</sup> Respondent that installments were not acceptable, and by accepting part payment and issuing a receipt in acceptance of the part payment must be estopped from affirming that installments were not acceptable. This is on account of the 1<sup>st</sup> Respondent having relied on the Appellant's acts, omissions and actions to her detriment. The Appellant's acts, omissions and actions, in the view of the Tribunal conveyed to the 1<sup>st</sup> Respondent the understanding that payments in installments were acceptable. This understanding which was relied upon by the 1<sup>st</sup> Respondent operated to her detriment as she ended up having to pay USD9,165.79 (United States Dollars Nine Thousand One Hundred and Sixty-Five and Seventy-Nine Cents)

in excess of the USD5,800.00 (United States Dollars Five Thousand Eight Hundred) she was legitimately required to pay for the transaction. **Ground 1 of the Appeal and relief No.2 connected thereto, therefore, fails.**

(ii) There is no evidence to show that the Appellant signed the receipt No. 161 issued to the 1<sup>st</sup> Respondent for the trucking services as an agent of the 2<sup>nd</sup> Respondent. The Tribunal finds no basis to conclude that the Appellant was an agent. **Ground 2 of the Appeal and relief No. 3 and 5 connected therewith fails;** and

(iii) The Tribunal finds that the 3<sup>rd</sup> Respondent complied with its prescribed procedures for investigating and determining complaints. Accordingly, the Appellant was accorded a fair trial and was not unduly penalised for the actions for which it was investigated by the 3<sup>rd</sup> Respondent and found wanting. **Ground 3 of the Appeal, and reliefs 1 and 5 connected thereto, fails.**

136. The appeal is dismissed.

137. The costs of the appeal shall be borne by the Appellant.

138. Any party aggrieved by this judgment may appeal to the Court of Appeal within thirty (30) days of determination of the matter.

Delivered at Lusaka this \_\_\_\_\_ day of \_\_\_\_\_, 2026.



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Miyoba B. Muzumbwe - Vice Chairperson