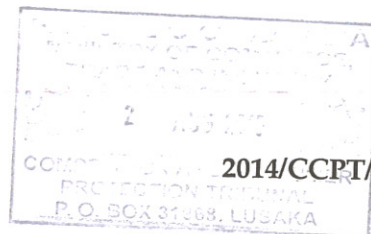


**IN THE MATTER OF THE COMPETITION  
AND CONSUMER PROTECTION TRIBUNAL  
HOLDEN AT LUSAKA**



**IN THE MATTER OF:** SECTION 60 OF THE COMPETITION AND CONSUMER PROTECTION ACT NO. 24 OF 2010

**IN THE MATTER OF:** THE COMPETITION AND CONSUMER PROTECTION (TRIBUNAL) RULES 2012, STATUTORY INSTRUMENT NO. 37 OF 2012

**IN THE MATTER OF:** THE DECISION MADE BY THE COMPETITION AND CONSUMER PROTECTION COMMISSION RELATING TO THE COMPLAINT OF HANFORD CHAABA

**BETWEEN:**

**AFRICA SUPERMARKET TRADING AS SHOPRITE ZAMBIA** APPELLANT

**AND**

**HANFORD CHAABA** 1<sup>ST</sup> RESPONDENT

**COMPETITION & CONSUMER PROTECTION COMMISSION** 2<sup>ND</sup> RESPONDENT

**QUORUM:** Mr. Willie A. Mubanga, SC (Chairperson), Mrs. Maria M. Kawimbe (Vice Chairperson), Mr. Chance Kabaghe (Member), Mr. Rocky Sombe (Member) and Mrs. Eness C. Chiyenge (Member)

**For Appellant:** Mr. Kennedy Bota – Messrs William Nyirenda & Co.

**For 1<sup>st</sup> Respondent:** No appearance

**For 2<sup>nd</sup> Respondent:** Mrs. M. B. Mwanza – Director, Legal & Corporate Affairs, CCPC  
Mrs. M. M. Mulenga – Manager, Legal & Corporate Affairs, CCPC

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**JUDGMENT**

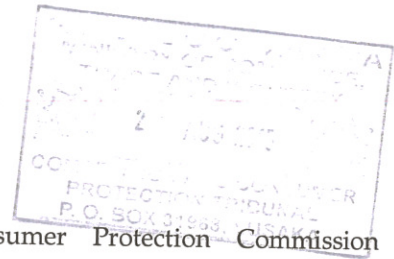
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**Legislation referred to:**

1. Competition and Consumer Protection Act, No. 24 of 2010 sections 5(l) and 52 (1)
2. Food and Drugs Act, Chapter 303, section 3 (b) and 4
3. The Competition and Consumer Protection (Tribunal) Rules S.I. 37 of 2012, Rule 15 (1)

Case referred to:

4. Mica Zambia Limited and the Competition and Consumer Protection Commission  
2014/CCPT/010/CON



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This appeal is from decision of the 2<sup>nd</sup> Respondent's Board delivered on 20<sup>th</sup> June 2014 in which the Board found that the Appellant had violated section 52 (1) of the Competition and Consumer Protection Act read with sections 3 (b) and 4 of the Food and Drugs Act, Chapter 303, and thereby did engage in unfair trading practices by offering for sale expired Take 5 Mango Flavoured drink to consumers and directed that the Appellant be prosecuted.

Facts not in dispute are that a Mr. Hanford Chaaba ("the 1<sup>st</sup> Respondent"), an employee of the 2<sup>nd</sup> Respondent, on 9<sup>th</sup> January 2014 visited the 2<sup>nd</sup> Respondent's supermarket on Cairo Road in Lusaka. The 1<sup>st</sup> Respondent was in the company of a co-employee by the name of Luyamba Mpamba, Director Mergers and Monopolies. The 1<sup>st</sup> Respondent found some "Take 5 Mango flavour" drinks on the Appellant's shelves. The price of the drinks had been reduced from K7.99 to K2.99. He discovered that the drinks had an expiry date of 5<sup>th</sup> January 2014 and brought this to the attention of the Administration Manager, a Mr. Godfrey Chitalu. Thereafter, he bought one of the expired drinks, which he later presented as evidence together with the receipt when he later lodged a complaint with the 2<sup>nd</sup> Respondent.

(See pages 1 – 5 Record of Proceedings)

The 2<sup>nd</sup> Respondent embarked on investigations into the incident and wrote a letter dated 15<sup>th</sup> January 2014 to the Appellant (which in the heading erroneously referred to allegations of unfair trading against Finance Bank Zambia). The letter was accompanied by a Notice of Investigation pursuant to section 55 (4) of the Competition and Consumer Protection Act No. 24 of 2010. The 2<sup>nd</sup> Respondent asked the Appellant to respond to the allegations made in the complaint. In its letter in response dated 29<sup>th</sup> January 2014, the Appellant gave an outline on operations of its group of companies; asserting its reputation of providing quality and affordable products, adherence to stringent corporate policy on expired products which entailed a surveillance system for expiry dates and timely sale of products about to expire and removal of expired goods for destruction.

The Appellant admitted that the price of the subject drink had been reduced in order to clear them as far as possible before the impending expiry date. The Appellant further



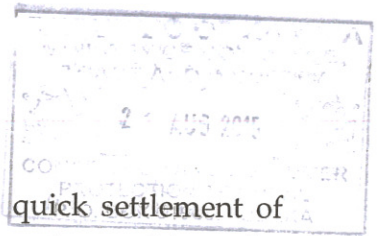
alleged that when the 1<sup>st</sup> Respondent brought the expired drinks to the attention of the supermarket management, there were only four bottles of the subject drink that had expired and that the products were immediately removed. They wondered what could have happened but speculated that the expired stocks on the shelves could have been rearranged inadvertently by a consumer and the mishap was not immediately picked up by their surveillance systems. The Appellant strongly reiterated that they had no intention of selling expired goods to customers.

The Appellant disputed the 1<sup>st</sup> Respondent's claims to the effect that the Appellant's Administration Manager (Mr. Godfrey Chitalu) had acted discourteously and rudely when it was brought to his attention that the expired items were being sold. The Appellant opined that these claims were based on the 1<sup>st</sup> Respondent's subjective perceptions. In turn, the 2<sup>nd</sup> Respondent reminded the Appellant that the entire episode was witnessed by a senior Manager of the 2<sup>nd</sup> Respondent who was in the company of the 1<sup>st</sup> Respondent. They asserted that the 2<sup>nd</sup> Respondent had no ill perceptions of the Appellant or any business entity in Zambia; that its staff acted professionally and if found wanting were duly disciplined. We mention these claims and counter-claims about the conduct of the supermarket manager and the 1<sup>st</sup> Respondent's reaction not because we find them essential to the alleged statutory violations. To the contrary, the totality of the evidence and the grounds of appeal, which we shall discuss later, show that claims and counter-claims are peripheral and do not impinge on the alleged statutory breaches so as to warrant delving into.

(See pages 6 – 12 Record of Proceedings)

The 2<sup>nd</sup> Respondent carried out investigations and produced a report in which it alleged that the Appellant had violated section 52 (1) of the Competition and Consumer Protection Act.

Before we delve into the decision of the 2<sup>nd</sup> Respondent's Board subject of the appeal, we find it fitting to make observations in passing on an issue we consider to be of public interest. It is on record that prior to the decision of the Board, the parties attempted an amicable settlement. To this effect, there is a letter at page 14 of the Record of Proceedings dated 27<sup>th</sup> February 2014 addressed to the Appellant by the 2<sup>nd</sup> Respondent. There is also a letter from the Appellant dated 19<sup>th</sup> March 2014 to the 2<sup>nd</sup> Respondent, at page 13 of the Record of Proceedings, in which the Appellant offered to settle by paying K10,000. Further, in its decision, the Board stated that the Appellant had shown willingness to settle the matter amicably and offered to pay.



Whereas in proper cases it is in the public interest to encourage quick settlement of cases via admissions and payment of fines, in our view such a route would not be proper in cases such as the present one. We cite two reasons: The first reason is that the alleged contravention of section 52 (1) is a criminal offence and therefore the 2<sup>nd</sup> Respondent has no jurisdiction to decide the guilty of the would-be accused person, pursuant to which the imposition of a fine by the 2<sup>nd</sup> Respondent could arise. The second reason is that the 1<sup>st</sup> Respondent who was the complainant is an officer of the 2<sup>nd</sup> Respondent, making it highly prejudicial to the public interest for the 2<sup>nd</sup> Respondent to encourage an amicable settlement.

Moving forward, some documents purporting to be appeals to the Tribunal against the 2<sup>nd</sup> Respondent's decision and submissions thereon were filed. These irregular appeals were subsumed by a formal notice of appeal and other subsequent appeal processes. The Appellant appealed on grounds that were later amended to read as follows:

#### **Ground One**

The Commission erred in fact and law by not recognising that the Appellant's act of selling the Subject Product to the 1<sup>st</sup> Respondent was contrary to its policy and altogether under compulsion of an officer of the Commission, one Hanford Chaaba, the 2<sup>nd</sup> Respondent's Public Relations Officer and the 1<sup>st</sup> Respondent hereto.

#### **Ground Two**

The Commission erred in law and in fact for considering the Subject Product as falling under the provisions of the Food and Drugs Act when in fact not and for holding that the Appellant was in violation of section 52 (1) of the Competition and Consumer Protection Act read with section 3 (b) and section 4 of the Food and Drugs Act. No evidence was led relating to any foreign matter in or rottenness decomposition or unfitness for human consumption of the Subject Product or at all.

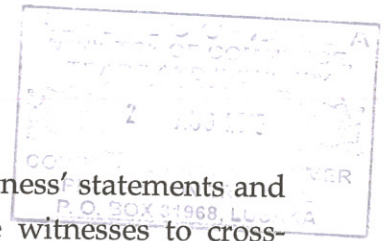
#### **Ground Three**

The Commission erred in fact and in law to direct that the Appellant be prosecuted over a complaint brought about by a senior employee of the Commission and who under compulsion of the Appellant bought the Subject Product and originated the process herein thereby constituting the Commission to be judge in its own cause contrary to the rules of natural justice.

The 2<sup>nd</sup> Respondent filed a Notice of Grounds of Opposition to the Appeal which in effect amounted to and were the same as its Skeleton arguments and submissions which were filed later.



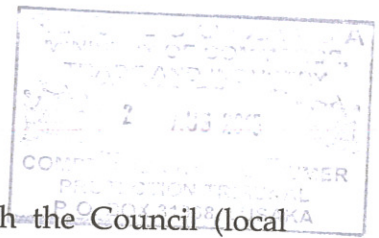
At the hearing, the 2<sup>nd</sup> Respondent made an application to file witness' statements and skeleton arguments and thereafter to proceed by subjecting the witnesses to cross-examination and re-examination and thereafter written submissions to follow. Counsel for the Appellant, who had earlier suggested tendering of evidence by way of affidavits, agreed to this form of evidence. We granted the application and the Appellant and 2<sup>nd</sup> Respondent filed Witnesses' statements and Skeleton Arguments. The statements were in respect of Charles Bota, Managing Director of the Appellant and Hanford Chaaba, the 1<sup>st</sup> Respondent. Later, the Appellant was granted leave to bring another witness, Mr. Godfrey Chitalu, the former Administration Manager at the Appellant's Cairo Road supermarket who was in charge at the material time.



The Appellant also filed documents all of which were already in the Record of Proceedings. Mr Bota (AW1) confirmed his written Witness Statement filed by counsel for the Appellant on 14<sup>th</sup> May 2014. This Witness' Statement is a reproduction of the contents of the Appellant's letter to the 2<sup>nd</sup> Respondent' letter and Notice of Investigations which we have already referred to (at pages 9 – 11 Record of Proceedings). Under cross-examination, the witness said that products such as the one in issue would take 35 to 40 days to get into the country and that sale of the products was sometimes slow; that the subject product had expired and should not have been on display for sale. Under re-examination, the witness said the product should not have been on the shelf because the Appellant had a surveillance system to ensure that expired products were removed from shelves before their expiry.

The Appellant's second witness, Godfrey Chitalu (AW2) testified in chief to the effect that he was well trained and had operated in retail business for close to 14 years. He further testified that at the Appellant company he had been trained in sales and administration; that when he trained as Sales Manager, his role included exploring goods in the store at all times and to ensure that the goods complied with food and safety standards. When asked to explain the food and safety standards, he testified that the Appellant had put up a mechanism that enabled the stores to be audited in all aspects involving food, including handling of expired items and goods about to expire. He further elaborated that when a food item was about to expire, information to that effect was communicated to the Head Office three months prior to the expiry date and the Head Office would give a price or percentage at which the item would be sold in order to clear it before the expiry date. That once items were put on clearance price, the Sales Manager would keep track of the stock and if they were not selling he would request for further price reduction. That if the items did not clear before the expiry date, they would be removed from the shelves a day before and taken to the wastage





where they would be written off and later disposed of through the Council (local authority).

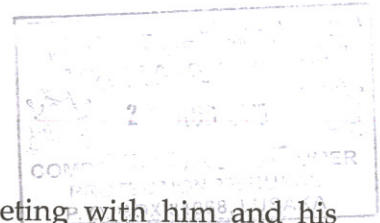
The witness went on to speculate as to what could lead to expired items being found on the shelves; that sometimes out of excitement customers would rush to get more than they could pay for and leave some items at the teal, following which the frontline staff would just return the now expired item inadvertently without informing appropriate staff. Another possibility cited by the witness was that staff would sometimes put aside items with reduced prices hoping to purchase the same in due course but then later on forget about them.

As to what transpired regarding the subject incident on 9<sup>th</sup> January 2014, in summary the witness said he was approached by the 1<sup>st</sup> Respondent and a lady whom he later came to know as Mpamba, Director, Mergers and Monopolies, at the 2<sup>nd</sup> Respondent. The 1<sup>st</sup> Respondent asked him why they were selling expired stuff, he took the bottle and they went together to the fridges where, he said, they found that expired bottles of the juice were four in number. He said he offered an apology but they did not heed; that after checking the shelves they left but the witness realised later that when he took the expired items away, they remained with one which they bought; that he then sent the Sales Manager to take down their details that he realised that they had remained with one bottle which they bought. That they produced their business cards, following which the witness and the Sales Manager tried to plead but they insisted that they should attend at the 2<sup>nd</sup> Respondent offices to deal with the issue. He confirmed that the 1<sup>st</sup> Respondent bought the item without resistance because the witness and the Sales Manager only found out later that the transaction had occurred.

Under cross-examination, the witness testified that at close of business at the end of the day, they would find a lot of products left over by customers; that if front line staff did not notice that a product was expired they took it back to the shelf but that it was not normal for such items to be returned to the shelf; that he was reprimanded and warned by the Appellant as a result of the incident; that when a customer bought an item as in this case after complaining that it was unfit, there was an improper motive.

The 2<sup>nd</sup> Respondent's witness, the 1<sup>st</sup> Respondent (RW), confirmed his written statement. In his statement, the witness more or less reiterated what he had stated in his complaint, already referred to. He added to the written statement further evidence in chief to the effect that after the incident in the shop, AW2 followed him saying he wanted to have a word to which he responded that he was rushing home and that AW2 then asked for his business card, which he gave him. That the next day, AW2 and his





colleague went to see RW at his office and asked for a meeting with him and his supervisor. That they held the meeting at which the Appellant's officers and AW2 apologised for the way AW2 had conducted himself and asked for withdrawal of the complaint, saying AW2 had just been promoted and the incident was just an unfortunate episode. That this meeting was followed by another meeting with another employee of the Appellant who met RW and his supervisor and apologised.

Under cross-examination, RW said he introduced himself and his colleague who was in his company earlier before he gave his business card and that he gave the business card to AW2 later when he followed them because he asked for it. That there were seven expired items of the same description; that they were displeased with AW2 because he did not conduct himself properly as Manager. That he bought the item for purposes of proof, not for consumption, and that he did not consume it or intend to consume it. That by the following day the case against the Appellant had been opened by the 2<sup>nd</sup> Respondent because it did not require further proof as the expired date spoke for itself. That AW2 had refused to remove the expired items from the shelf until RW bought one of the items. That in his complaint or statement he had not included that the Appellant's staff removed the expired items from the shelf because the aspect of the items being displayed on the shelves for sale was more significant than that they removed them. That the witness did not know whether or not the drink was rotten, decomposed, or had foreign matter.

We have given serious consideration to this appeal and we have critically looked at the grounds of appeal, the evidence and the law in question as well as the arguments and submissions advanced by counsel for the Appellant and counsel for the 2<sup>nd</sup> Respondent. The provisions of the law in dispute are as follows:

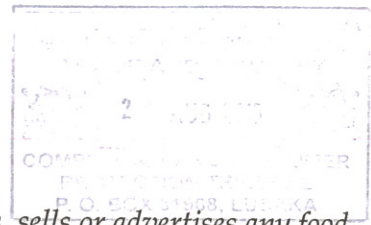
**Section 52 (1) of the Competition and Consumer Protection Act:**

*"A person or an enterprise shall not sell any goods to consumers unless they conform to the mandatory safety standards for the class of goods set by the Zambian Bureau of Standards or other relevant competent body."*

Contravention of section 52 (1) is an offence described in subsection (2) in the following terms: "A person who, or an enterprise which, contravenes subsection (1) commits an offence and is liable, upon conviction ...."

**The Food and Drugs Act:**

Section 3 (b): *" Any person who sells any food that consists in whole or in part of any filthy, putrid, rotten, decomposed or diseased substance or foreign matter, or is otherwise unfit for human consumption shall be guilty of an offence."*



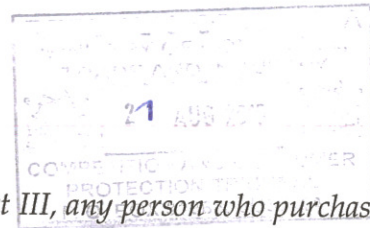
Section 4: *“Any person who labels, packages, treats processes, sells or advertises any food in a manner that is false, misleading or deceptive a regards its character, nature, value, substance, quality, composition, merit or safety, or in contravention of any regulation made under this Act, shall be guilty of an offence.”*

On grounds one and three of appeal, counsel for the Appellant canvassed that the 1<sup>st</sup> Respondent being an employee of the 2<sup>nd</sup> Respondent and in the company of his superior was not an ordinary customer of the Appellant and that he bought the expired item by way of getting evidence. Without hesitation, we find the Appellant’s arguments unpersuasive. It is obvious that the Appellant was selling the subject items and we cannot accept the position that the 1<sup>st</sup> Respondent bought the item under compulsion of the Appellant. In any case, this allegation flies in the teeth of the evidence of AW2 whose testimony confirmed that the 1<sup>st</sup> Respondent bought the item without resistance because they did not know that one of the items had remained with the 1<sup>st</sup> Respondent when AW2 took away the items. The inference here is that between 5<sup>th</sup> January 2014, when the items expired, and 9<sup>th</sup> January 2014, when the subject incident occurred, the items were on offer for sale to consumers. In fact, the expired items may have been sold to consumers before the incident occurred.

At any rate, the statutory provision in question does not qualify “sell any goods to consumers” to mean goods being sold to ordinary customers, as suggested by counsel for the Appellant, whatever “ordinary customers” may mean. The purpose of section 52 (1) of the Act is to prevent goods that do not meet mandatory safety standards set by the Zambia Bureau of Standards or other competent body from being sold to consumers. For the purpose of determining whether the Appellant was selling the items in question to consumers, it is sufficient that it has been established and it is not in dispute that the items were on display on for sale in the Appellant’s supermarket. It is sufficient for that purpose that the items were being sold to consumers in general. This was demonstrated by the fact that one of the items was sold to the 1<sup>st</sup> Respondent. The claim that AW2 would have stopped the 1<sup>st</sup> Respondent from buying the item had he known that the latter had remained with one bottle does not change the undisputed fact that the expired items were on display for sale to consumers.

We need not go further on this point, but for the sake of argument, in response to counsel for the Appellant’s submissions on the definition of “consumer”, we would go on to state that in terms of the definition of “consumer” given by section 2 of the Act, there was nothing in the transaction that would take the 1<sup>st</sup> Respondent outside of the definition in paragraph (b). The definition of “consumer” in this paragraph is given as (relevant part only quoted):





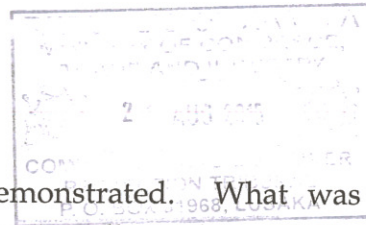
*"for the purposes of other parts of the Act, other than Part III, any person who purchases or offers to purchase goods or services otherwise than for the purpose of re-sale, but does not include a person who purchases goods or services for the purpose of using the goods or services in the production and manufacture of any other goods for sale ...."*

We are satisfied that the 1<sup>st</sup> Respondent did not purchase the item for re-sale or for using the item in the production and manufacture of any other goods for sale. Therefore, counsel for the Appellant's argument is misplaced.

Moreover, simply because the customer who later lodged the complaint with the 2<sup>nd</sup> Respondent was an officer of the institution did not justify or remove the alleged offence. We agree with counsel for the 2<sup>nd</sup> Respondent who referred us to our recent decision in the case of **Mica Zambia Limited and the Competition and Consumer Protection Commission 2014/CCPT/010/CON** that the 2<sup>nd</sup> Respondent is mandated by law to be a primary advocate of consumer protection in Zambia and is vested with statutory power to institute investigations on a complaint by any person or on its own initiative (see section 5 (f) and 55 (1) of the Competition and Consumer Protection Act). Indeed, as counsel has pointed out, it would not have been prudent for the 1<sup>st</sup> Respondent to overlook the Appellant's alleged offence on account of his being an employee of the 2<sup>nd</sup> Respondent. To the contrary, it weighed more heavily on him to report the alleged violation of the law. To reject the 1<sup>st</sup> Respondent's evidence on the grounds canvassed by the Appellant would undermine the objects of the Act and public policy in so far as consumer protection is concerned.

We therefore hold that the expired drink and the receipt in respect of purchase of the same tendered by the 1<sup>st</sup> Respondent are acceptable evidence and proof before this Tribunal that the Appellant did engage in selling the expired items to consumers. In arriving at this decision, we take into account the undisputed evidence that the expired items were on display for sale from 5<sup>th</sup> January 2014 when they expired to 9<sup>th</sup> January 2014 when the subject incident occurred. We also refer to the Tribunal's power given by **Rule 15 (1) of the Competition and Consumer Protection (Tribunal) Rules, S.I. 37 of 2012**, to *"receive, as evidence, any statement, document, information or other matter that may assist it to deal effectively with an appeal, whether or not the evidence would be admissible in a court of law."*

On the issue of the Appellant's policy regarding surveillance of products for expiry and timely removal of such products before their expiry dates, we note that this is an institutional policy and therefore within the exclusive knowledge of the Appellant, as pointed out by counsel for the 2<sup>nd</sup> Respondent. Therefore, when it comes to compliance,



the implementation of the policy is only as good as demonstrated. What was demonstrated was non adherence to systems to which the Appellant claims to be committed.

On ground two of appeal, counsel for the Appellant argued that the expired items did not fall under the provisions of the Food and Drugs Act and that the 2<sup>nd</sup> Respondent erroneously held that the Appellant was in violation of section 52 (1) of the Competition and Consumer Protection Act read with section 3 (b) and section 4 of the Food and Drugs Act. He further argued that the standards that the goods should conform to under section 52 (1) of the Competition and Consumer Protection Act ought to be set by the Zambia Bureau of Standards or other relevant competent body which the 2<sup>nd</sup> Respondent is under duty to consult. He argued that no evidence was led by the 2<sup>nd</sup> Respondent of any reference to the Zambia Bureau of Standards or at all. Further that no evidence was led relating to any foreign matter in or rottenness, decomposition or unfitness for human consumption of the expired items.

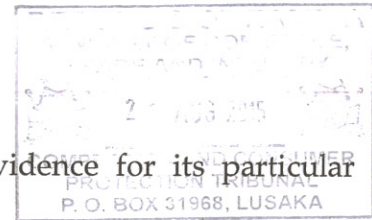
In response, counsel for the 2<sup>nd</sup> Respondent argued that the Food and Drugs Act sets mandatory standards that are administered by competent bodies other than the Bureau of Standards, and that these are predominantly public health departments of local authorities. That in particular section 3 prescribes a standard for food that should be sold; that it should not be food that has any foreign matter, or rottenness, decomposition, is unwholesome or is otherwise unfit for consumption. That the reason why the item in question had an expiry date was to indicate that beyond that date it was unsafe and therefore unfit for consumption.

Our considered view is that the findings, deliberations and determination of the 2<sup>nd</sup> Respondent's Board were not conclusive as to the criminal culpability or otherwise of the Appellant but *prima facie* (on the face of it) pointed to violation of the laws in question for which the Board directed that the Appellant be prosecuted. Since the offences in question are of a criminal nature, they can only be prosecuted before and determined by a criminal court of competent jurisdiction, not the 2<sup>nd</sup> Respondent's Board. It is such a court which would hear the full-fledged legal arguments about mandatory food safety standards and competent bodies that may set such standards as are contemplated in section 52 (1) of the Competition and Consumer Protection Act.

As for *prima facie* evidence of contravention of section 52 (1) of the Competition and Consumer Protection Act, the evidence of AW2 emphatically put across the position that it was the Appellant's policy, and in which he was trained, "to ensure that the goods



*complied with food and safety standards.”* We repeat the evidence for its particular relevance here.



When asked to explain the food and safety standards, he testified that the Appellant had put up a mechanism that enabled the stores to be audited in all aspects involving food, including handling of expired items and goods about to expire. He further elaborated that when a food item was about to expire, information to that effect was communicated to the Head Office three months prior to the expiry date and the Head Office would give a price or percentage at which the item would be sold in order to clear it before the expiry date. That once items were put on clearance price, the Sales Manager would keep track of the stock and if they were not selling he would request for further price reduction. That if the items did not clear before the expiry date, they would be removed from the shelves a day before and taken to the wastage where they would be written off and later disposed of through the Council (local authority).

According to AW2's evidence, the policy of the Appellant recognised that food stuffs were supposed to be removed before their expiry dates in order to secure food safety. To us, AW2's evidence is plain proof that expired food is unsafe and therefore unfit for human consumption.

What the 2<sup>nd</sup> Respondent determined is apparently that there are in fact in our laws mandatory standards for food safety established by the legislature. We are of the view that Section 3(b) of the Food and Drugs Act sets out a mandatory food safety standard in that it gives an un-exhaustive description, and prohibits the sale, of food that is unfit for human consumption. The section criminalises the sale of *“any food that consists in whole or in part of any filthy, putrid, rotten, decomposed or diseased substance or foreign matter, or is otherwise unfit for human consumption.”* (Emphasis ours) According to this mandatory statutory food safety standard, it is criminal to sell food that falls in any of the specified categories of food that is unfit for human consumption or food that is for any other reason unfit for human consumption. Can it be argued for consumer protection that in the present case the food was unfit for human consumption because it had expired and therefore it was unsafe to consume? Our response is in the affirmative and, in our view, the evidence of AW2 plainly confirms this position.

We are of the view that there is no magic about the terms “mandatory safety standard” and “competent body”. If a law enacted by Parliament sets out a prohibition against selling of food that is unfit for human consumption, can it be argued that this is not such a mandatory safety standard for food, or that Parliament is not among such competent bodies, as are contemplated by section 52 (1) of the Competition and Consumer Protection Act? We think not, but we are also of the view that these

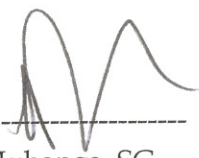
questions would be conclusively resolved in a criminal court of competent jurisdiction and not by the 2<sup>nd</sup> Respondent's Board nor, indeed, the Tribunal.

Furthermore, in view of the weight of the evidence against the Appellant and the public health issues raised, it is proper for the Appellant to be prosecuted. In so concluding, we also take into account that the 2<sup>nd</sup> Respondent enjoys a broad mandate which includes to "do all such acts and things as are necessary, incidental or conducive to the better carrying out of its functions under this Act" (Section 5 (1) of the Act). The 2<sup>nd</sup> Respondent is, in our view, perfectly within its mandate to direct that a person or enterprise be prosecuted for an alleged criminal offence under the Competition and Consumer Protection Act or any other law touching protection of consumers. In the case of offences falling under other laws, implementation of such a decision may require collaboration with other law enforcement agents, which is lawful.

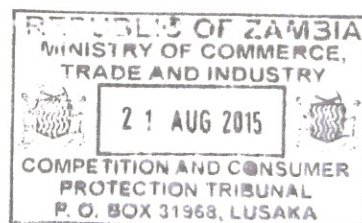
In consequence, we uphold the decision of the 2<sup>nd</sup> Respondent. The appeal is accordingly dismissed with costs to be assessed if not agreed.

Any person aggrieved with this decision may appeal to the High Court within **thirty (30) days** of the determination.

Delivered at **LUSAKA** this **21<sup>st</sup>** day of **August** 2015.



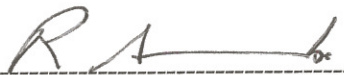
Willie A. Mubanga, SC  
Chairperson



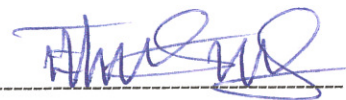
Maria M. Kawimbe  
Vice Chairperson



Chance Kabaghe  
Member



Rocky Sombe  
Member



Eness C. Chiyenge  
Member