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

**2014/CCPT/010**

**IN THE MATTER OF:** **SECTION 45(a) AND (b), AND 46(1) OF THE COMPETITION AND CONSUMER PROTECTION ACT NO. 24 OF 2010**

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

**BETWEEN:**

**ESPINE BUKOLO HAMUSONDE** **APPELLANT**

**AND**

**IZWE LOANS LIMITED** **1ST RESPONDENT**

**THE COMPETITION AND CONSUMER PROTECTION COMMISSION** **2ND RESPONDENT**

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**JUDGMENT**

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This is an appeal against a decision of the Competition and Consumer Protection Board (hereinafter called "the 2nd Respondent") that ordered IZWE Loans Limited (hereinafter called "the 1st Respondent"):



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(i) to refund the Appellant K843.73 that it had erroneously deducted from her salary in the month of April 2012, contrary to clause 1 of the 1st Respondent's instalment amount due dates, terms and conditions; and

(ii) warned the 1st Respondent against future infringement of Sections 46(1) and 45(a) of the Competition and Consumer Protection Act No. 24 of 2010, (hereinafter called "the CCPA"), in lieu of which it would be penalised in accordance with the said provisions of the Act.

The brief facts of the case are that on 4th November, 2013 the 2nd Respondent received a complaint from the Appellant alleging that she had on 4th April, 2012 applied for a loan of K11,000.00 from the 1st Respondent. The Appellant also alleged that the loan monthly repayments were fixed at K843.73 for a period of twenty-four (24) months.

The Appellant further alleged that on 5th April, 2012, the 1st Respondent credited her bank account with an amount of K11,000.00 at an "arrangement fee" of K2,200.00. It was also the Appellant's argument that in contravention of its loan policy, the 1st Respondent deducted the first instalment of K843.73 due on the loan on 19th April, 2012 instead of May, 2012.

In addition, the Appellant claimed that in June, 2012 she requested from the 1st Respondent a top-up loan of K1,400.00 on the already existing K11,000.00 facility. In her assertion the base loan was subsequently increased and she had anticipated to receive from the 1st Respondent's facility, a total loan sum of K12,400.00. To the Appellant's surprise, the



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sum of K14,000.00 was credited to her, with an imposed arrangement fee of K2,800.00 factored into the second facility by 1st Respondent.

The Appellant thus raised issue with the 1st Respondent on how it had arrived at the figure of K14,000.00 instead of K12,400.00. As a result of the transactions, the Appellant argued that the terms imposed by the 1st Respondent were unfair and had caused her undue hardships.

On the premise of these facts, the Appellant filed a notice of appeal before the Tribunal and against the 2nd Respondent's decision on 26th July, 2014 stating two grounds namely:

(1) That the decision did not mention any kind of compensation suffered so much at the hands of the 1st Respondent, the main reason for the complaint; and

(2) The 1st Respondent distorted facts, which facts the 2nd Respondent relied on in arriving at its decision and were a misrepresentation as observed on paragraphs 33 and 34 of its decision among others.

In support of the notice of appeal, the Appellant filed in written submissions on 5th November 2014 and supplementary submissions on 14 November 2014. In addition, the Appellant who was represented by her husband Mr. Bukolo Biemba Simenda who submitted orally before us at our sitting of 10th December 2014. The gist of all these submissions was that the 1st Respondent had distorted facts, which facts the 2nd Respondent relied on in finding that, while the 1st Respondent had wrongfully deducted monies from the Appellant; it did not recognise and order compensation for the misery and unnecessary hardship that the Appellant had suffered. The Appellant referred the Tribunal to **Section 72** of the **Competition and Consumer Protection Act No. 24 of 2010** which states that:



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**"A person who knowingly gives false evidence regarding any matter which is material to a question in any proceedings before the Tribunal commits an offence and is liable, upon conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding one year, or to both."**

In response to the appeal, the 1st Respondent conceded in its written submission filed before the tribunal on 12th November 2014 through its representative Mr. Calvin Daka, Administration Manager, that it had erroneously deducted money from the Appellant's payslip in April 2012 instead of May 2012. The 1st Respondent however, indicated that the Appellant had been refunded the K843.73 on 12th July 2012 which had been deducted in error in April 2012. It was further the 1st Respondent's submission that the deduction which was made on the Appellant's pay slip had been done through the Government payroll and that the 1st Respondent had no control over the Government payroll system. The 1st Respondent also argued that the Government was at liberty to withdraw the recovery on any loan of its client, especially when that client had insufficient funds to accommodate a deduction in a particular month.

The 1st Respondent also alleged that in July 2012, it had failed to recover an instalment amount on the loan from the Appellant, due to the reason that there were insufficient funds on her account. The 1st Respondent drew the Tribunal's attention to the Instalment Amounts/Repayments clause which provides in part that:

**"It is a specific condition of the loan that although you have agreed to have the instalment amounts deducted from your**



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**salary, you are still solely responsible for ensuring that the repayments are received by Izwe Loans by the due date and the address of Izwe Loans as reflected in the Loan agreement".**

We must say that the other submissions made by the 1st Respondent in response to the Appeal did not add value and will not be considered in this judgment. Suffice to say that all in all, the 1st Respondent argued that it acted fairly in its trading practice, except for the erroneous deduction that it had made in the recovery of the first loan repayment instalment.

In further response to the appeal, the 2nd Respondent on 14th November 2014 through its Director, Legal and Enforcement, Mrs. M. Mwanza filed in a notice of grounds in opposition to appeal which averred that:

(i) the 2nd Respondent had no powers to order any kind of compensation whatsoever in this case; and
(ii) that it did not approve any misrepresentation by the 1st Respondent as both parties, that is the Appellant and 1st Respondent had been given an opportunity to be heard by it.

The 2nd Respondent buttressed its grounds in opposition to appeal with written submissions, filed before the Tribunal on 2nd December 2014, wherein it argued that its mandate was as spelt out in **Section 5 of the CCPA** that is *inter alia:*

***"to investigate unfair trading practices and unfair contract terms and impose such sanctions as may be necessary and act as a primary advocate for competition and effective consumer protection in Zambia."***



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It also argued that it did not have the power to order compensation and referred the Tribunal to Section 46 as read with Section 45 of the CCPA which provide:

**Section 46(1):**

**"A person shall not practice any unfair trading."**

**Section 46(2):**

***"A person who, or an enterprise which, contravenes subsection (1) is liable to pay the Commission a fine not exceeding ten percent of that person's or enterprise's annual turnover or one hundred and fifty thousand penalty units, whichever is higher."***

**Section 45(a):**

***"A Trading practice is unfair if it misleads consumers; and thereby distorts, or is likely to distort, the purchasing decisions of consumers."***

**Section 45(b):**

***"A trading practice is unfair if it compromises the standard of honesty and good faith which an enterprise can reasonably be expected to meet; and thereby distorts, or is likely to distort, the purchasing decisions of consumers."***



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It was also the 2nd Respondent's argument, which we found of limited usefulness in the case before us, that it could only impose a sanction of a fine not exceeding 10% of the 1st Respondent's annual turnover or one hundred thousand penalty units, whichever would have been higher. More purposefully, the 2nd Respondent averred that it had no power to order compensation to the Appellant and that since this was a first infringement of the CCPA involving the 1st Respondent; its practise was to warn first offenders as it did; by warning the 1st Respondent to desist from such action in the future and to refund the complainant.

In addition the 2nd Respondent submitted that compensation was only awarded to complainants that were captured under Section 49 of the Act which provides:

**49(1) "A person or an enterprise shall not supply a Consumer with goods that are defective, not fit for the purpose that the consumer indicated to the person or enterprise".**

**49(2) "A person who or an enterprise which contravenes subsection (1) commits an offence and is liable upon conviction –**

- **(a) To a fine not exceeding five hundred thousand penalty units; and**
- **(b) To pay the Commission, in addition to the penalty stipulated under paragraph (a), a fine not exceeding ten percent of that person's or enterprise annual turnover**



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**49(3) "A person who or an enterprise which contravenes subsection (1), shall**

**(a) Within seven days of the supply of the goods concerned, refund the consumer the price paid for the goods; or**

**(b) If practicable and if the consumer chooses, replace the goods with goods which are free from defect and are fit for the purpose for which they are normally used or the purpose that the consumer indicated to the person or enterprise."**

The 2nd Respondent also argued that since it had already resolved in favour of the Appellant on the erroneous deduction of K843.73, there was no need to order other compensation to the Appellant, as she was not captured under S49 of the CCPA.

In arriving at our judgment, we have considered the appeal before us in which, a number of arguments have been advanced by the rivalry parties. We however, find that there are only two questions for the determination of the Tribunal, that is:

(i) whether the 2nd Respondent was misled by the 1st Respondent in arriving at its decision; and
(ii) whether the 2nd Respondent has the power to order compensation to the Appellant.



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Quite clearly from the facts before us, it is common cause that a loan agreement was executed between the Appellant and 1st Respondent in an ordinary borrower and lender relationship. It is also common cause that the Appellant was served with a payment schedule in the Addendum to the Loan Agreements, which both the Appellant and 1st Respondent were bound by.

Based on the Loan Agreement, the commencement of the deductions was to be followed as provided in Clause 1 of each agreement, that is:

**"if your loan is disbursed in time for your employers deadline for Izwe Loans to submit your deduction to your employer for it to be effective on your salary date next month, then your first instalment will be due on your salary date next month".**

As far as the repayment of the instalment amounts were concerned, we would agree with the 2nd Respondent's finding that the commencement of deductions was erroneously effected in April 2012. The deductions should have been as pointed out by the 2nd Respondent effected in the subsequent month following disbursement of the loan to the Appellant, that is May 2012.

In finding so, we do not agree with the Appellant that the 2nd Respondent may have been misled by the 1st Respondent in its consideration of the Appellant's loan application. As such, we reject the argument advanced by the Appellant that there was any breach of Section 72 of the CCPA. We must emphasize that Section 72 of the CCPA can only be invoked before the Tribunal and not in proceedings before the 2nd Respondent.



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In any event, the errors cited by the Appellant on the loan agreements should have been resolved with the 1st Respondent, as these in our view were of a housekeeping and were of no consequence on the application of the loan. We therefore agree with counsel for the 2nd Respondent with the authority cited in the case of **L'Estrange Vs F. Graucob Ltd (1934) 2KB 394**. It is our view that the case in point established the basic principle that one is bound by their signature as a general rule. The case also brought out the principle that:

***"In an ordinary case, where an action is brought on a written agreement which is signed by the defendant, the agreement is proved by proving his signature, and in the absence of fraud, it is wholly immaterial that he has not read the agreement and does not know its contents".***

Further, we are of the considered view that, where a Contract expresses its terms in certain and unambigious language, the Courts will generally be bound to apply these rules as held in the case of **Sam Amos Mumba v Zambia Fisheries and Fish Marketing Corporation Limited (1980) Z.R. 135 (H.C.)**; wherein the court held *interalia* that:

***"(i) Where the parties have embodied the terms of contract into a written document, extrinsic evidence is not admissible to add to, vary, subtract from or contradict the terms of the written document except on certain exceptions".***

In light of the authorities cited above, we do not agree that the 2nd Respondent was misled by the 1st Respondent and that this ground of appeal fails.



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The second question advanced to us is on the issue of compensation. We agree with Counsel for the 2nd Respondent that the mandate of the CCPC is as provided by S5 of the CCPA. In effect, what this Section does, is that it vests the CCPC largely with a regulatory role in as far as fair trading practices are concerned. We do not consider that the 2nd Respondent has other powers reposed in it except those stated in its statute of creation.

In the case before us, we do not accept that the 2nd Respondent is the proper forum for the Appellant's claim for compensation, since no reliefs can be sought from it, except for infringements specified in S49 of the Act. We also note that as shown in the 2nd Respondent's investigations, contained in the Record of Appeal, the case before us is not one under the provisions of S49 of the Act. Thus, the case of **N. B. Mbazima and others Joint Liquidators of ZIMCO Limited (In Liquidation vs Reuben Vesla SCZ Judgement No. 6 of 2001** fortifies our assertion that the Appellant's claim is before a wrong forum. In that case the issue of forum was discussed and we will apply it in parenthesis to this case, being that:

*"Sections 85(2) and 108 the Industrial and Labour Relations Act show that the jurisdiction of the Industrial Relations Court is limited to settling of labour disputes falling under the Act and is an alternative forum to the High Court only in cases of labour disputes".*

Our understanding of that judgment is that a statute created body can only deal with matters under such statute. In other words, it cannot exercise any other jurisdiction outside such statute. In saying so, we assert that this is the case in point, with respect to the 2nd Respondent. We do not agree that the 2nd Respondent has any power beyond that which is provided in the



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CCPA. Thus, we consider that any exercise of power outside the CCPA would be nugatory and *void ab initio*.

For this reason, the second ground of appeal lacks merit and also fails. The result of the appeal is that the Appellant has not succeeded on both grounds of appeal. Although costs normally follow the event, we find that on the facts, the Appellant filed this appeal in order to clarify a matter of importance to her. We also observe that the question of jurisdiction of the 2nd Respondent vis a vis compensation, which we have clarified above, is equally of importance to other would be complainants. Thus, there will be no order as to costs.

Action dismissed.

Leave to appeal within thirty (30) days is hereby granted.



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Mr. W. A. Mubanga
Chairperson

Mrs. M. Kawimbe
Vice Chairperson

Mr. R. Sombe
Member

Mr. C. Kabaghe
Member

Mrs. E. Chiyenge
Member