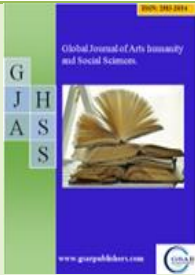


OPEN ACCESS	<b>Global Journal of Arts Humanity and Social Sciences</b>			
	ISSN: 2583-2034			
	Abbreviated key title: Glob.J.Arts.Humanit.Soc.Sci			
	Frequency: Monthly			
Published By GSAR Publishers			www.gsapublishers.com	
Journal Homepage Link: <a href="https://gsarpublishers.com/journal-gjahss-home/">https://gsarpublishers.com/journal-gjahss-home/</a>				
Volume- 4	Issue-12	Dec 2024	Total pages 1156 - 1163	DOI: 10.5281/zenodo.14533375

## AN EXAMINATION ON THE LAWS OF PROTECTION OF CONSUMERS OF PETROLEUM PRODUCTS IN TANZANIA.

BY

Mofuga Rosta<sup>1\*</sup>, Dr Francisco Damas<sup>2</sup>

LLM Student at St. Augustine University of Tanzania,  
Senior Lecture at St Augustine University of Tanzania



### Abstract

The main objective of this study is to examine Tanzania's laws on protecting the consumers of petroleum product, with a particular emphasis on the roles of the Energy and Water Utilities Regulatory Authority Act, regulations, and other relevant legislation. Therefore, the study investigates and examine the Energy and Water Utilities Regulatory Authority Act (EWURA Act), its regulations, and other relevant laws.

The study examines the rules under the Act including's Energy and Water Utilities Regulatory Authority (Petroleum Products Price Setting) Rules GN No. 74 of 2020, Energy and Water Utilities Regulatory Authority (Consumer Complaints Settlement Procedure) Rules GN No. 10 of 2012, and other relevant laws like Weights and Measures Act Cap 340 R.E 2002, and the Standards Act No. 2 of 2009 which works together with EWURA Act.. The study also, review the Constitution of the United Republic of Tanzania (1977) on protection of consumers of petroleum product in Tanzania.

The issue under the study aims at examine whether the laws of protection of consumers of petroleum products were effective? This is due to the present of complain of consumers of petroleum product on the present of the mentioned laws and rules. Hence the examination based on the effectiveness or ineffectiveness of the laws on protection of consumers of petroleum product.

### Article History

Received: 11- 12- 2024  
Accepted: 17- 12- 2024  
Published: 19 - 12- 2024

Corresponding author  
**Mofuga Rosta**

### Introduction

A consumer has been defined in various statutes and case law, with different authors providing expanded interpretations of the term.

Bray A. Game<sup>1</sup> defines a consumer as a person who buys goods or services for personal, family, or household use, with no intention of resale while the Molony Committee on Consumer Protection defines<sup>2</sup> a consumer as one who purchases or hires goods for private use or consumption. Various authors<sup>3</sup> have adopted this definition of a consumer but in my own view the consumers also include the beneficially of the purchaser of goods or services

Section 2 of the Fair Competition Act of 2003<sup>4</sup> defines a consumer to mean the final purchaser of a good or services and includes a person who: -

*Purchase or offer to purchase goods or services otherwise than for the purpose of resale but does not include a person who purchase any goods or services for the purpose of using them in the production or manufacture of any goods or manufacture of any goods or article for sale.*

The House of Lords in *Donoghue v. Stevenson*<sup>5</sup>, described the term consumer as the final user of a good or commodity, in *Oswal Fine Arts v. Modrass*<sup>6</sup>, the court held that individuals purchasing goods for commercial purposes are not consumers, but also in

<sup>1</sup>Bryan. A. Garner(U.S.A) *Black's Law Dictionary B''' Edition Page 335* (Lukwago & Co. Advocates Library)

<sup>2</sup>1958.

<sup>3</sup>Geoffrey Woodroffe and Robert Lowee *Consumer Protection and practice 7''' Edition (2007) Sweet & Maxwell 100 Avenue Road Swiss Cottage London, England (LDC Library).*

<sup>4</sup>No 8 of 2003

<sup>5</sup>(1932) AC 563

<sup>6</sup>Petition No. 1/88 of 1980



*Customs Brokers Co. Ltd v. United Dominions Trust Ltd*<sup>7</sup> a company can also be considered a consumer if purchases goods not for commercial purpose or for production of other goods.

The term "Consumer Protection" is not explicitly defined under Tanzanian law, but it is interpretation and implementation of laws on which the term refers as the practice of safeguarding buyers of goods and services, and the public, against unfair practices in the marketplace. Mwitwa N.B.<sup>8</sup> explains that consumer protection involves actions of the state to address injustices faced by consumers due to sellers' or producers' conduct. It is basically a consolidation of reliefs obtainable in tort, contract, and criminal law which are protective or remedial. V.L. KwesiEssien<sup>9</sup> views consumer protection as legal safeguards that ensure fair treatment for buyers, and measures to assure that products are of suitable quality and meet their purpose. It consists of those measures where the law intervenes to impose safeguards in favor of purchasers and hire-purchasers, together with the activities of a number of organizations, variously inspired, the object or effect of which is to procure fair and satisfying treatment for the domestic buyer.

#### Consumer Protection Instruments

Consumer protection measures are categorized into law-based instrument and non-based instrument. Both instead of the both instruments intend to prevent businesses from engaging in fraud or specified unfair practices to gain an advantage over competitors or to mislead consumers. They may also provide additional protection for the general public which may be impacted by a product or its production even when they are not be direct purchaser or consumer of that product. For example, government regulations may require businesses to disclose detailed information about their products particularly in areas where public health or safety is an issue, such as with food, petroleum products or other goods or services.

## EVOLUTION OF CONSUMER PROTECTION LAWS IN TANZANIA

Tanganyika gained independence from British rule in 1961, with Mwalimu Julius KambarageNyerere as the first president and during the time Tanganyika had no law dealing with protection of consumers but the colonial law still existed. On 1964 Tanganyika joined with Zanzibar and formed, the United Republic of Tanzania. From time until the 1980s, Tanzania's economy was under state control, and the government played a significant role in protecting consumers from harmful goods and services. This responsibility was influenced by the socialist policies introduced through the Arusha Declaration in 1967.

<sup>7</sup> (1988)

<sup>8</sup> Mwitwa N.B (2016) *The Constitutionality of Consumer Protection in Tanzania*, *Orient Journal of Law and Social Science*, Volume X, Issued on 12th November 2016 P. 54

<sup>9</sup> V.L KwesiEssien. *Consumer Protection in Nigeria: The Case for reform*. 16 N.Y.U.J.INT'L L. & pol. 516. Quoting verbatim from the COMMITTEE ON CONSUMER PROTECTION, FINAL REPORT 8 (1962) (cmd No. 1781) quoting from a Nigerian Report.

The Arusha Declaration of 1967 led to nationalized all major means of production so as to promote equitable utilization and control of natural resources<sup>10</sup>. The Price Regulations Act of 1973 was enacted to regulate prices for essential goods and services and to monitor monopolies. During the period, the state was the sole provider of goods and services, including oversight of consumer affairs. This era lasted until the mid-1980s when Tanzania underwent economic reforms due to an economic crisis, leading to the liberalization of the economy.

The liberalization process influenced to the repeal of the Price Regulations Act of 1973 in 1989<sup>11</sup>. In the 1990s, Tanzania sought to liberalize its economy and reform consumer protection laws. Then government established a task force in 1994 to study competition and consumer protection laws, drawing on experiences from countries like Australia, Jamaica, and Canada.<sup>12</sup> This effort resulted in to the enactment of Fair-Trade Practices Act of 1994. This law was considered as the milestone in the development of Competition Law in Tanzania<sup>13</sup> with promotion of competition and protection of consumers at the same time. The purpose of the Act is shown under the long title which provides that.

*"Encourage competition in the economy by prohibiting restrictive trade practices, regulating monopolies, concentration of economic power and prices, to protect the consumer and to provide for other related matters"*

This legislation had numerous flaws and failed to adequately protect the interests of consumers, notably those who purchase petroleum products, among others; it also granted the Minister in Charge of Competition Issues excessive authority including of fixing prices which was the among of the reasons for the repeal of the Price Regulations Act of 1973<sup>14</sup>. Additionally, the Act did not have extraterritorial application, despite the rapidly globalizing economy, where actions outside Tanzania's jurisdiction could potentially affect the country's<sup>15</sup> economic efficiency. An overall evaluation of the Act reveals that it was a relic of the command-and-control approach to governance, prevalent from the early years

<sup>10</sup> Jones, R., (1983) *Resources and Industry in Tanzania: use, misuse and abuse (Dar-es-Salaam: Tanzania Publishing House)*

<sup>11</sup> This is considered one of the most daring actions of the second phase government under president Ally Hassan Mwinyi who, due to his unwavering attempts to reform the economy hitherto dwarfed by strict socialist principles, came to be popularly known as Ruksa ( "he who permits")

<sup>12</sup> Musonda, Flora "Competition Law and Policy in Tanzania" available at <http://competitionregimes.com/pdf/Book/Africa/56- Tanzania>

<sup>13</sup> Godfrey Mkocho "Challenges/obstacles faced by competition authorities in achieving a greater economic development through promotion of competition contribution from Tanzania" Paper presented at the OECD global forum on competition 12th February 2004.

<sup>14</sup> Sections 31 through Cap 340 R.E 2002h 40 providing for powers of the Minister. While it is not uncommon for a competition law to contain price regulation provisions, powers of the minister in the act were considered beyond acceptable thresholds for a functioning market economy.

<sup>15</sup> On the importance of extra territorial application of competition law see an Indian case *Haridas vs All India Float Glass Manufactures Association* 6 SCC 600



of independence until the late 1990s<sup>16</sup>. As a result, the Act was replaced by a new law governing both competition and consumer matters. This new law was called the Fair Competition Act, 2003 (Cap 285 R.E. 2002), which accompanied by sectoral laws. such the Energy and Water Utilities Regulatory Authority Act (EWURA Act), and Surface and Maritime Transport Regulatory Authority Act (SUMATRA), which was not longer today's.

## THE LEGAL FRAMEWORK FOR PROTECTION OF CONSUMERS OF PETROLEUM PRODUCTS IN TANZANIA

Tanzania has multiple laws safeguarding consumer rights, there isn't a single, all-encompassing law. Instead, various sectors are addressed by a number of legislations. In contrast to South Africa and Kenya, which have a single law known as the Consumer Protection Act, Tanzania has sectoral laws pertaining to consumer protection. The most prominent of these is Cap 414 of 2002 (Act No 2 of 2001), which oversees consumers of water, electricity, natural gas, and petroleum products. It was formerly known as the Energy and Water Utilities Regulatory Authority Act. Other relevant laws which work with Act Cap 414 R.E 2002 is the Weights and Measures Act No. 20 of 1982, Petroleum Act of 2015 and the Standard Act No 2 of 2009, while the constitution was the prominent to all other laws because it has to be enacted without contravene any provision from it and also it provides basic rights including the rights of consumers.

### The Constitution of the United Republic of Tanzania, 1977

The state is the most important contemporary political community, and a constitution often contains a set of laws, beliefs, and customs that regulate how those community's function. The Constitution is also referred to as the supreme law, providing fundamental rights to all individuals in the country. It establishes the basic principles for the enactment of laws, which must not contravene its provisions.<sup>17</sup>

The Constitution of the United Republic of Tanzania outlines the rights and duties of the state and individuals. The Bill of Rights of 1984, incorporated into the Constitution, guarantees basic rights to all citizens and obligates the state to ensure the protection of these rights. Although the Constitution does not directly provide the article on consumer protection but through the interpretation of the right to life it includes also the protection of consumers<sup>18</sup>.

### Energy and Water Utilities Regulatory Authority Act Cap 414 R.E 2002 (EWURA Act)

Act No. 2 of 2001 established this Act, which was subsequently included in the Revised Laws of 2002 as Cap 414. The Act, as principal legislation, governs a number of Tanzanian sectors, including water, natural gas, electricity, and petroleum. In 2006,

<sup>16</sup> Introduction of multiparty democracy in the country in 1992 is generally considered as the beginning of a new era that widened popular participation in governance in Tanzania.

<sup>17</sup> Article 64(5) of the Constitution of the United Republic of Tanzania of 1977

<sup>18</sup> Article 14 of the Constitution of the United Republic of Tanzania of 1977

the Energy and Water Utilities Regulatory Authority (EWURA) was established by the Act. Protecting consumers of petroleum products and other sectors mentioned herein above as the primary goal of the Act. The Act creates the authority to accept and handle consumer complaints and offers a number of consumer protection procedures. In addition to regulating many issues pertaining to petroleum products, the Act's regulations help consumers understand their rights and obligations.<sup>19</sup>

### The Energy and Water Utilities Regulatory Authority

The Authority oversees Tanzania's power, water, natural gas, and petroleum industries both financially and technically. In order to promote the interest and welfare of consumer of petroleum products in Tanzanian, the Authority is also in charge of promoting economic efficiency, effective competition, and consumer interests' protection.<sup>20</sup>

Through its departments, EWURA has procedures for resolving disputes in the water, natural gas, power, and petroleum sector. Consumer complaints from this sector are handled, ensuring that customers' interests are protected. The mission of EWURA is centred on these mechanisms. By encouraging efficient competition and economic efficiency, safeguarding consumer interests, ensuring the financial stability of efficient suppliers, promoting the availability of regulated services to all consumers (including low-income, rural, and disadvantaged consumers), and keeping in mind the need to protect and preserve the environment, EWURA works to improve the welfare of Tanzanian society in the course of its operations.

The Authority additionally endeavours to improve public awareness, comprehension, and knowledge of the regulated industries<sup>21</sup>. Furthermore, EWURA has the duty to conduct inspections at petrol stations So as to determine the standard of products and to ensure consumers are protected against defective products, exorbitant prices, inaccurate measurements, and related schemes.

As a result, the authority's responsibility is to guarantee the constant protection of consumers of petroleum products and associated sector. Receiving complaints regarding these products, looking into them, and drawing judgements are the Authority's responsibilities. The Authority has the jurisdiction to fine service providers and make orders to ensure that the items delivered to customers are safe and that prices follow the Authority-established formulae when it discovers violations of consumer rights.

### Energy and Water Utilities Regulatory Authority Consumer Consultative Council

EWURA Consumer Consultative Council (EWURA CCC) was established under Section 30 of the Energy and Water Utilities

<sup>19</sup> At the moment, the government owns 40% of shares of among other undertakings, British Petroleum (Tanzania) Limited

<sup>20</sup> Section 6(a) and (b) of the Energy and Water Utilities Regulatory Authority Act Cap 414 R.E 2002

<sup>21</sup> Section 6 of the Energy and Water Utilities Regulatory Authority Act Cap 414 R.E 2002



Regulatory Authority Act No 2 of 2001. The Council's main duties include representing the interests of consumers, gathering and disseminating information on consumer-interest and establishing local and regional consumer committees and conferring with them and other significant stakeholders.<sup>22</sup>. The Council's (EWURA CCC) also has to raise public awareness, network, lobby, educate, and create capacity in order to support the protection of interest and welfare of consumers.

#### **The Energy and Water Utilities Regulatory Authority (Petroleum Products Price Setting) Rules 2022 - GN 57**

These regulations mandate the issuance of indicative and maximum prices of all petroleum products in Tanzania, the rules were introduced in January 2009. The rule introduces the pricing formulas on the selling of petroleum products by the service providers. The rule was modified in July 2011 on which the prices of petroleum products were released twice a month; now, they are released once a month at every first Wednesday of the month. As of right now, wholesale prices for petrol, diesel and kerosene are established at a uniform price, whereas retail prices vary by location.

All regions' local pump rates are calculated using the discharge costs at the ports of Mtwara, Tanga, and Dar es Salaam. Prices are released on the first Wednesday of each month, and EWURA carries out this duty in compliance with the regulations<sup>23</sup>. The Authority started releasing retail pricing that applied to all districts, small townships, and regions from the time of the establishment of this rule. Service providers are prohibited from charging more for petroleum products than what is permitted in their localities. The rules requires every filling station to display the prices of petroleum products on easily readable boards that include the rates charged, any available discounts, and any trade incentives or promotions.<sup>24</sup> Violations of these pricing rules attract punitive measures from EWURA. Also, the Authority has established a menu for consumers to know the price of petroleum basing on its locality via Dial \*152\*00#.

Despite being created by the Authority, the system has many impacts to customers, including network problems, a lack of consumer knowledge, and the delayed inspections, which can let service providers to violates consumers rights. Furthermore, local dealers of petroleum products frequently evade control, especially in places without petrol stations or where business is handled locally, whereas the system only covers those operating through petrol stations.

#### **The Energy and Water Utilities Regulatory Authority (Consumer Complaint Settlement Procedure) Rules, 2012**

These rules were made under Section 40 of the EWURA Act,<sup>25</sup>. The rule governs the procedure for the settlement of dispute arises

<sup>22</sup> Section 31 of CAP 414 R.E 2002

<sup>23</sup> Rule 4 of the EWURA (Petroleum Products Price Setting) Rules 2022-GN 57

<sup>24</sup> Rule 4(3) of the EWURA (Petroleum Product Price Setting) Rules 2022 GN 57

<sup>25</sup> Act No 11 of 2001

on the sector between the consumers and service providers and also with the authority. The complaints regulated by this rule must fall under the petroleum, electricity, water and natural gas.

A dispute may be filed with the Authority against a regulated supplier in connection with any matter related to regulated services by completing and submitting the complaint form prescribed in the Third Schedule<sup>26</sup>. A complaint may also be lodged by the Energy and Water Utilities Regulatory Authority Consumer Consultative Council.<sup>27</sup> The rules outline the procedure for handling complaints by EWURA and provide for appeals to the Fair Competition Tribunal<sup>28</sup>, established under the Fair Competition Act.

#### **The Energy and Water Utilities Regulatory Authority (Compounding of Offences) Rules, GN 397 of 2020**

Section 42A of the Energy and Water Utilities Regulatory Authority led to the introduction of this regulations.<sup>29</sup>, it set out procedures for compounding offences under the Act or sector. The legislation<sup>30</sup> apply to offences prescribed under the Act and sector legislation, except for offences:(a) related to the quality of petroleum products, (b) related to theft and vandalism of infrastructure in regulated sectors, (c) related to economic crimes, (d) related to tax evasion, and(e) prescribed under Section 240(4) of the Petroleum Act.

An order for compounding an offence shall not affect any measures the Authority may take to prevent significant damage to a person, property, or to protect the subject matter or public interest.

#### **Fair Competition Act, 2003**

The Act was implemented in accordance with the United Nations Conference on Trade and Development (UNCTAD) Model Law and to represent global best practices.<sup>31</sup>. The Fair Competition Act was passed by Parliament on April 2, 2003, and assented by the President on May 23, 2003 and commenced date were on May 12, 2004. The Act aimed at protecting and promoting the welfare of all consumers in Tanzania without impeding competition, and to prevent anti-competitive agreements that create dominant positions in the market. The Act provides the commission and the appellate bodies for protection of consumers.

#### **The Fair Competition Commission (FCC)**

The Fair Competition Act of 2003 establish the Commissions<sup>32</sup> to safeguard the interests of consumers. The commission looks into all forms of anti-competitive practices that impact consumers, such as merger and acquisition, cartel and price fixing by the manufacturer or suppliers of products. This was done by the

<sup>26</sup> Rule 4 of The Energy and Water Utilities Regulatory Authority (Consumer Complaint Settlement Procedure) Rules GN 428 OF 2020

<sup>27</sup> Rule 4(5) of the GN 428 of 2020

<sup>28</sup> Rule 22(1) of the GN 428 of 2020

<sup>29</sup> NO 11 OD 2001

<sup>30</sup> Rule 5 of the GN 397 OF 2020

<sup>31</sup> United Nations Conference on Trade and Development Model Law on Competition, <http://r0.unctad.org/en/subsites/cpolicy/docs/Modelaw04.pdf>

<sup>32</sup> Section 62 of the Fair Competition Act No 8 of 2003



commission so as to avoid the creation of monopolies of the markets which will tend to affect the consumers.

The general role of the Commission is to promote and enforce compliance with the Act, promote public knowledge, make information available to consumers, conduct inquiries, studies, and research, and consult with consumer bodies<sup>33</sup>. The FCC handles consumer matters arising from competition, as seen in the case of *Chalnze Company Limited vs. Fair Competition Commission and Two Others*<sup>34</sup>, where the parties applied for a merger and acquisition, which was later declared unlawful for attempting to create a dominant position in the cement business in Tanzania.

#### Fair Competition Tribunal (FCT)

The Tribunal was established under section 83(1) of the Fair Competition Act of 2003. The Fair Competition Tribunal (FCT) has appellate jurisdiction over matters originating from regulatory authorities such as EWURA, TCRA, LATRA, and TCAA, as well as decisions from the Fair Competition Commission (FCC) and the Chief Inspector<sup>35</sup>.

The President, after consulting with the Chief Justice, appoints a chairman to oversee the Tribunal.<sup>36</sup>, and other six members appointed by the President after consulting with the Attorney General<sup>37</sup>. The members of the tribunal must have qualifications and experience in industry, commerce, economics, law, or public administration<sup>38</sup>.

#### National Consumer Advocacy Council

The Fair Competition Act of 2003 established the National Consumer Advocacy Council<sup>39</sup>. The council consists of a chairman appointed by the Minister of Trade and Industry<sup>40</sup> and at least five and not more than ten members, with the Deputy Chairman elected by the members.

The Act specifies the council's many responsibilities, such as representing consumers' interests, gathering and sharing information and opinions on consumer issues, forming consumer committees, and conferring with government, business, and other consumer organisations.

#### The Standards Act No. 2 of 2009

This principal legislation promotes the standardization of specifications for commodities and services<sup>41</sup>. The Act established the Tanzania Bureau of Standards (TBS) under Section 3(3)<sup>42</sup>, which provides that TBS is a corporate body with perpetual

succession and a common seal, capable of suing and being sued in its corporate name. Section 4<sup>43</sup> outlines the main functions of TBS to include formulating, determining, modifying, endorsing, and enforcing standards for commodities and codes of practice. Other TBS functions relevant to consumer protection include enforcing standards to protect the public against harmful ingredients, dangerous components, and shoddy materials.

Furthermore, Section 4(1)(h)<sup>44</sup> of the Standards Act states that TBS should provide for the testing of locally manufactured or imported commodities, including petroleum products, to determine whether they conform to standard specifications. According to Section 15<sup>45</sup>, the TBS Board may declare a specification for any commodity or manufacturer to be a standard specification, which will be used as a mark to show that the commodity is endorsed by TBS. This mark is currently in use.

Unfortunately, the Act<sup>46</sup> does not provide clear avenues for redress of consumer complaints. There is no provision stating that TBS may receive complaints from the public in cases of cheating or substandard products. When quality complaints arise, they are often handled by EWURA, despite TBS being the agency responsible for determining product quality. Therefore, there is a need for collaboration between the two agencies to ensure that the petroleum supplied to consumers is of good quality.

#### The Weights and Measures Act, Cap. 340 R.E 2002

The main function of this Act<sup>47</sup> is outlined in Section 3, which is to regulate the use of<sup>48</sup> weighing and measuring equipment. The Act<sup>49</sup> seeks to ensure that consumers receive the correct quantity of goods by providing detailed procedures for certifying weighing or measuring equipment for trade, as specified in Section 9<sup>50</sup>. Additionally, the Weights and Measures Act makes it an offence, under Section 35<sup>51</sup>, to sell or expose for sale underweight goods.

One general weakness of the Weights and Measures Act, as amended, is its heavy reliance on penal sanctions to enforce compliance. Moreover, the offences created under the Act attract very minimal fines, ranging from ten thousand to twenty thousand shillings, or imprisonment for a term of three to seven years, as stated in Section 45 of the Act. These fines have never been revised upwards. A consumer who buys underweight goods due to a trader using false equipment is not primarily interested in seeing the trader jailed but rather in receiving compensation or the correct quantity of goods. Therefore, the Weights and Measures Act<sup>52</sup> should be amended to include more up-to-date provisions for

<sup>33</sup> Section 65 (2) of the Fair Competition Act No 8 of 2003

<sup>34</sup> Consolidated Appeal No 6, 10, and 12 Fair Competition Tribunal at Dar es Salaam

<sup>35</sup> Section 85 of the Fair Competition Act No 8 of 2003.

<sup>36</sup> Section 83(a) of the Fair Competition Act No 8 of 2003

<sup>37</sup> Section 83(2) b of the Fair Competition Act No 8 of 2003

<sup>38</sup> Section 83(3) of the Fair Competition Act No 8 of 2003

<sup>39</sup> Section 92 (1) of the Fair Competition Act No 8 of 2003

<sup>40</sup> Section 92(2) of the Fair Competition Act No 8 of 2003

<sup>41</sup> Long title of the Standard Act No 2 of 2009

<sup>42</sup> The Standard Act No 2 of 2009

<sup>43</sup> *ibid*

<sup>44</sup> Act No 2 of 2009

<sup>45</sup> The Standard Act No 2 of 2009

<sup>46</sup> *Ibid*

<sup>47</sup> The Weights and Measures Act Cap 340 R.E 2002

<sup>49</sup> *Ibid* of the Act Cap 340 R.E 2002

<sup>50</sup> *Ibid* of the Weight and Measure Act

<sup>51</sup> Cap 340 R.E 2002

<sup>52</sup> *Ibid*



compensating cheated consumers, such as receiving compensation or the correct amount of goods.

## CHALLENGES FACING LAW ON PROTECTION OF CONSUMERS OF PETROLEUM PRODUCTS IN TANZANIA

Tanzania has laws addressing the protection of consumers of petroleum products, but complaints still arise within the sector. Apart from other factors, some of the challenges are caused by the laws and rules enacted to protect consumers of petroleum products. The following are the legal challenges in the protection of consumers in the petroleum sector:

### The Law Deals with Multiple Sectors

Act No of 2001<sup>53</sup> (Cap 414 R.E 2002) governs more than one sector: natural gas, electricity, water, and petroleum. These four sectors varying degrees of importance; hence, the authority may not give equal priority to all sectors. Currently these sectors require each sector to be regulated by its own law and rules as it done under the SUMATRA Act. Managing four sectors under one Act resulted in poor performance across the board. Prof. Mark Mwandosya, in his book called Challenges of Regulatory in Africa, explained that during the establishment of the sectors under the Act the sector was small but for now the sectors has developed hence requires each sector to have its own law.

### Multiple Laws

The EWURA Act as the principal law governing petroleum products does not function independently when performing different duties on petroleum products like on inspecting quality and measurement of petroleum product. In assurance of quality of products, the Tanzania Bureau Authority under Standard Act No 2 of 1999 is the main regulatory which was mandated to do so and when EWURA officers conducts inspection on quality the inspection must be done on consideration of TBS specification and not otherwise, this has stated in the case of *BP Tanzania Limited vs. EWURA*<sup>54</sup>, the tribunal emphasized that the authority must adhere to applicable laws, rules, and regulations, meaning EWURA's inspections are constrained by TBS standards. In measurement EWURA depends on the Weights and Measures Agency and this make the application of Weights and Measures Act Cap 340 R.E 2002

### Lack of Inspection Procedures.

EWURA's lack of clear procedures for petrol station inspections and this led to legal violations, as seen in the case of *BP Tanzania Limited vs. EWURA*<sup>55</sup>, by which the inspection was conducted on the absence of the owner of the petrol station and when matters went to tribunal the decision by the authority was dismissed even if the petrol station was found with petroleum products which was defective. The absence of clear procedures and a lack of timeframe for inspections can allow service providers to engage in illegal

practices, such as mixing products with other consignments or selling the products which have not quality or using faulty pumps, thereby compromising consumer rights.

### Delegation of the powers of the Authority failed to observe the presence of natural justice

In principle, while carrying out its duties, the law should observe the principles of natural justice. The Energy and Water Utilities Regulatory Authority Act does not consider the principle stated above because the Act establish the authority which was mandated to conducts inspection or investigation on the petroleum products then the authority determines the disputes if found that there was the violation of consumers rights. This shows that the authority having the investigation duties, interest under the petroleum products and the determinant of issues under petroleum sector violated the principle of natural justice by being bias and being the judge on its own case. This was observed in *BP Tanzania Limited v. EWURA*<sup>56</sup> on which the tribunal held that the omission to conduct a re-test was not only a violation of the mandatory provisions of the rules but also denied the appellant the right to have the test conducted in its presence, thus breaching the rules of natural justice by denying the appellant the right to be heard.

### Lack of awareness to people on the role of the Authority

The lack of public education by the authority and the absence of outreach by the officers working under the authority are the reasons why consumers are unaware of the existence of the authority that was established to protect their interests and welfare. Furthermore, the authority was only present in a small number of regions; hence, the lack of public education and the EWURA office in every Tanzanian region greatly contributes to the lack of knowledge. Additionally, the law does not mandate that the authority notify the public of its existence.

Therefore, the law governing the protection of consumers of petroleum products, which also regulates electricity, water, natural gas, has been ineffective The law only governs licensed service providers, while those conducting business without licenses continue to violate consumer rights. Lastly, the law does not adequately address petroleum products, sometimes causing conflicts with other laws.

## RECOMMENDATIONS

This article not only highlights the challenges facing the laws governing the protection of consumers of petroleum products but also provides suggestions to improve these laws, with the hope that if implemented, they will enhance consumer protection.

### Enactment of a Single Law Regulating Petroleum Products Only

Parliament should enact a new law for comprehensive consumer protection of petroleum products, covering quality, measurement, price, and availability. The law should be flexible, adaptable to technological changes, and regulate the entire petroleum product system, similar to Nigeria, Ghana, and Uganda's laws. The law also

<sup>53</sup> Cap 414 R.E 2002

<sup>54</sup> Appeal No 2 of 2010

<sup>55</sup> Supra

<sup>56</sup> *ibid*



should be enacted on consideration of international standard on protection of consumers of petroleum products in Tanzania.

#### Establishment of an Institution Dealing Exclusively with Petroleum Products

As noted, the current institution is multi-sectoral and oversees electricity, natural gas, water, and petroleum products. Due to its multi-functional nature, the institution may not perform its roles equally to all sectors. To have a strong institution with higher performance in the petroleum products sector, there should be an institution dedicated solely to petroleum products only. The authority should handle all petroleum matters to avoid the inefficiency of having multiple authorities, such as EWURA and PURA. This would reduce costs and improve sector regulation, as seen in Uganda with the Petroleum Authority of Uganda (PAU).

#### Establishment of Consumer Protection Guidelines

Consumer protection guidelines should be established alongside existing laws, considering emerging issues and international best practices. These should serve as a foundation for enacting consumer protection laws, clarify investigation procedures, and enforce laws. The guideline should not replace existing laws but act to enhance the law enacted to be effectively and can be amended as needed. This recommendation draws from United National Guideline on Protection of Consumers of 2006.

#### Education on Consumer Rights

Consumers are often unaware of their rights and the duties of the institutions and councils responsible for protecting consumers of petroleum products. Education should be provided to consumers to help them understand their rights and the steps to take when their rights are violated. Consumers should also be educated about the roles of institutions established under the law to enable them to utilize these bodies effectively. This can be achieved through public education via television, radio, and other means to raise awareness about consumer rights.

#### Simplification of Procedures for Dispute Settlements

EWURA handles disputes related to defective products, measurement, pricing, or maliciously cause of the scarcity of petroleum products caused by the service providers as it indicated into petcom oil station and MbaliziPertolstaion at Mbeya. If amicable, the matter goes to the EWURA committee. When appealing to the Fair Competition Tribunal, EWURA is a party, but consumers are often aggrieved from these procedures due to the fact that he or she was excluded. It's recommended to include consumers as parties in the appeal process. Also, the procedures for lodging the claims be simplified.

## CONCLUSION

Tanzania has taken various initiatives to address the protection of consumers of petroleum products, recognizing the importance of these products in economic activities. Despite these efforts, challenges remain, including the multi-sectoral nature of the Energy and Water Utilities Regulatory Authority Act, conflicting laws, and a lack of consumer education, rendering the law ineffective. To achieve full consumer protection for petroleum

products in Tanzania, a law specifically addressing petroleum products and a dedicated regulatory authority with full powers over the sector must be established.

## BIBLIOGRAPHY

### Books

1. Brian W. Havey& Deborah. L. Pavry. *The Law of Consumer protection and fair trading*. 3<sup>rd</sup>.
2. Edition. Better Warth& Co publishers Ltd 1991 Lord and Uk.
3. Robert Lower & Geoffrey Woodroffe. *Consumer Law and Practice* 4<sup>th</sup> Edition (1995) Sweet & Maxwell Ltd of 1000 Avenue Road, Swiss Cottage London, England
4. John Mickle Burgh. *Consumer Protection* 1997, Professional Books Ltd New Castle.
5. Geoffrey Woodroffe and Robert Lowee. *Consumer Protection* 7<sup>th</sup> Edition (2007) Sweet & Maxwell of 1000 Avenue Road.
6. Katalin Judith Cseres (2005) *Competition Law and Consumer Protection*; Kluwer law international.
7. Kikoyo O.I (2018), *The Dawn of Consumer Rights Protection in Tanzania* (Dar Es Salaam, E and D Vision Publishing Ltd

### Journals and Articles

1. Howells Geraint, "Protecting Consumer values in the Fourth Industrial Revolution" *Journal of Consumer Policy* 43.1 2021: 216-278.
2. Mwita N.B., An Examination of Legal and Institutional Framework on Consumer Protection, Challenges and Prospects: East African Community Scenario, (*Orient Journal of Law and Social Sciences*, Volume XI, Issue 3, February 2017).
3. Mwita N.B (2016) The Constitutionality of Consumer Protection in Tanzania, *Orient Journal of Law and Social Science*, Volume X, Issued on 12th November 2016.
4. Tenga, R.W., Consumer Protection Model and the Tanzania Legal Compliance Framework with some reference to the Communication Sector, paper presented at the TCRA
5. Competition Workshop (Movenpick Hotel: 26th June, 2009).
6. V.L KwesiEssein. *Consumer Protection in Nigeria: The Case for reform*. 16 N.Y.U.J.INT'L L. & pol. 516. Quoting verbatim from the Committee on Consumer Protection, Final Report 8 (1962)

### Laws

- **International Instruments**
  - The United National Guideline for Consumer Protection (UNGCP) of 1999
  - International Consumer Protection and Enforcement Network of 2020
  - International Covenant on Economic, Social and Cultural Rights of 1966
- **Municipal Laws**
  - Constitution of the United Republic of Tanzania of 1977

as amended from time to time.

- Energy and Water Utilities Regulatory Authority Act Cap 414 of 2006.
- Standard Charter Act No 2 of 2009.
- Weight and Measures Act Cap 340 R.E 2002.

**Website**

<http://competitionregimes.com/pdf/Book/Africa/56-Tanzania>

[www.faircompetitiontribunal-case-digest](http://www.faircompetitiontribunal-case-digest) .

[www.ewura.go.tz](http://www.ewura.go.tz)

[www.torintohotmedia.blogspot.com](http://www.torintohotmedia.blogspot.com)

