

**THE LEGAL FRAMEWORK FOR CONSUMER PROTECTION IN THE UGANDA
ENERGY SECTOR**

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DECLARATION

I **MAGINO ROGERS** do here by declare that this work is mine and has never been submitted to any educational institution for any award.

Signed Rogers Date..... 6/07/2018

APPROVAL

This is to certify that this work has been done under my supervision and I have approved it for submission to the University.

Signed  Date 6-7-18

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SUPERVISOR

DEDICATION

This work is dedicated to my hero and beloved mum Ms Katooko Justine and my dad Mr. Sabaidu John and also His Lordship Honorable Justice Geoffrey Kiryabwire for the love, care and support given to me throughout my course.

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From the bottom of my heart I thank the Lord almighty for the gift of life, support, love and care he has given to me. I also thank my supervisor Dr. Tajudeen Sanni for the guidance throughout my research

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CHAPTER ONE

1.0 Introduction

It is the multiplication of consumer services that has brought a great increase in consumer problems in regard to quality of the goods and services, most consumers are being abused in such a way that the goods and services offered to them is of poor quality. Consumer's protection can be taken to embrace almost anything connected with trade and personal safety. It includes the laws relating to exemption clauses, implied terms, purity of contracts and many others¹.

Recent years have seen a rapid increase in number of laws to protect the energy consumers not only against fraud and dishonesty in commercial dealings but also oppressive bargains. There is a wide range of statutes for the protection of the consumers of energy and some of those laws are Natural Bureau of Standards Act 1983², Electricity Act 1999³, Petroleum Supply Act⁴, Contract Act 2010⁵. Most of these statutes have similar provisions as to who may be liable; there are some defenses which may be available to a person charged with an offence and as to hither general enforcement.

In addition to the above, there are many institutional agencies charged with the enforcement of consumer's protection laws under energy sector. In Uganda, these include judiciary, police, national bureau of standards, electricity regulatory authority.

Despite the presence of these agencies problems of energy consumers are vast a number of reasons have been advanced to explain these problems, among which is the declining government policies which has failed to protect energy consumers from abuse of poor quality of petroleum, still privatization of electricity is another weakness of the government as the investors are charging high prices to the consumers of electricity.

¹ It includes the laws relating to exemption clauses, implied terms, purity of contracts and many others

² Natural Bureau of Standards Act Cap 327

³ Electricity Act 1999

⁴ Petroleum supply Act

⁵ Contract Act 2010

In addition, there is a failure of passing the permanent on the protection of consumers in general, as they just stop on bills like 2004 consumer protection bill⁶, 2016 consumer protection bill and others⁷.

The energy consumers themselves are very ignorant of their rights and most of them unfortunately do not seem to be aware of those substandard mining of petroleum which comes in the market later. After wards they just buy from the petro station and so they do not bother to report such cases. Therefore consumer protection in Uganda under energy section has remained no more than an ideal limited by the realities in Uganda.

1.1 Statement of the Problem

There are a number of legislations and institutional agencies charged with consumer protection in Uganda under energy sector, but despite this energy conditions still face very many problems and challenges.

First of all, most laws in Uganda are a mere transplant of the laws developed in England for example the Contract Act was just repealed recently in 2010 during the feudal era which had different social context from Uganda. Therefore the laws do not reflect to local circumstances and the needs of energy consumers in Uganda. Practically laws have failed to change with the change in society and are therefore out dated; most of them emphasize the rights of energy conditions but are silent on the interests of those consumers. There is need therefore to investigate the interest of the consumers of energy before making the law so that the law put in place suit the purpose for which it is created.

The institutions for energy consumer protection for example Electricity Regulatory Authority are helpless because they are underfunded; they lack the technical personnels, the necessary equipment and operation funds. Some o the institutions like the Uganda consumers protection association discriminate poor energy consumers because they cannot afford the membership fee which must be paid before one can join that association. The police, judiciary which are charged

⁶ 2004 consumer protection bill

⁷ 2016 consumer protection bill and others

with the duty of enforcing consumers of energy laws are corrupt and inefficient and so cannot discharge their duties.

To make matters worse, there is the ignorance among the energy consumers, they are unable to know, unaware of an incapable of enforcing their legal rights as energy consumers. Petroleum products are always charged highly plus electricity where they have introduced the system of “yaka” as if one is loading airtime on a phone which is costly.

The energy consumer laws is existences are weak to the extent that some have provisions which recognize offences but with no punishment/sanctions and some with sanction but weak sanction like imprisonment for one month or a fine of 20,000 (twenty thousand) to be paid by a consumer right violation hence existence of energy consumer rights violations.

1.2 Significance of the Study

The concept of energy consumer protection in Uganda has remained a mere fantasy of the mind with no or very little enforcement. The study will increase government’s involvement in protecting the people (energy consumers) from infringement of their rights. The research will make recommendations that will compel policy markets to revise the law as well as stimulate further research to give a lasting solution to the problems of the energy consumers in Uganda.

And the research will provoke energy consumer consciousness and solidarity in order to build a consumer power relative to that of suppliers to reduce any imbalances between the suppliers organized producers and the consuming public.

1.3 Objective of the study

The broad aim of this research is to analyse the laws and enforcement (institutional frame work) of the energy consumer protection legislation with the view of indicating the way forward.

1.4 Specific objectives

- i. To find out the energy consumers problems
- ii. To analyse the applicability of energy consumer laws
- iii. To make conclusion and suggest recommendations

1.5 Research questions

What are the challenges faced during the enforcement of laws on energy consumer protection

What are the factors that cause such challenges?

What are the solutions for the challenge on the enforcement of laws on energy consumer protection?

1.6 Methodology

In carrying out my research I selected the most appropriate approach depending on the context but also on the conditions and the variables at hand.

Qualitative research approach

This was based on the exploratory approach aiming at producing a comprehensive and detailed description of the area under investigation. Robson (2002) stated that for a successful qualitative research, it depends heavily on the researcher's skills such as being sensitive, open minded, responsive to contradictory evidence and good listeners.

The major tools that were utilized in this kind of research were:

- i. Observation
- ii. Questionnaires and
- iii. Interviews

This therefore implied the subjective involvement of the researcher

1.7 Area and scope of the study

The study was restricted to Mukono and Kampala towns, because most of the enforcement institutions and policy makers are in urban areas and the aim of this research is to find out the laws and loopholes in the law enforcement.

Much emphasis was done on the position of town dwellers because they are the majority of energy consumers in Uganda and so they deserve protection.

1.8 Literature review

Though there is no specific literature which concerns energy consumer protection but it should be noted that there is some literature on consumer protection in general

Okot Owino, in his article, “redress of consumer grievances⁸”, puts forward the view that consumer protection laws are inefficient because some laws do not recognize consumer interest but only enforce rights. He further states that the attempt to redress these grievances through legal means is fought with too many difficulties he further says that these difficulties arise because some laws are silent on the rights and interests of the consumer.

Shinanya B, in this article, “Strengthening the African Consumer⁹,” is of the view that the ineffectiveness of a consumer protection laws is due to the fact that there exists too many fragments in laws, all of which are meant to protect the consumers.

I do (researcher) agree with the view that some of the laws are silent on the rights of the consumers, in Uganda they include the National Bureau of Standards Act,¹⁰ petroleum supply Act.¹¹

These Kenyan writers however failed to identify the fact that most of these laws are too old and were implanted wholesale in Africa from Europe therefore cannot be effectively applied unless they are revised.

Although the problem of the too many laws is noted the fact that these laws are not usually in harmony with each other is not noted much as their being too many might be a big problem, when they conflict, the situation is made worse because this creates un certainty and too many loopholes, it is these loopholes which are exploited to bring about consumer abuse.

Harvey in his book, “the law of consumer protection and fair trading,¹²” states that the existing law is founded on the principle of caveat emptor” that the buyer be aware. He puts forward the view that caveat emptor exist in village markets, most commonly.

The researcher agrees with the view that the law is based on the principle of “caveat emptor” for example the new act of Sale of Goods and Supply of Services Act 2017¹³ has got provisions

⁸ Consumer grievances

⁹ Strengthening the African consumer

¹⁰ National Bureau of Standards Act

¹¹ Petroleum supply Act 2003.

¹² The law of consumer protection and fair trading,

¹³ Sale of Goods and Supply of Services Act 2017

which have aspects of caveat emptor for instance the provision that there is an implied condition of merchantable quality where a sale is by patent or trade name.

However the view put forward by the same author that caveat emptor exists commonly in village markets is not true, most especially in developed countries and also developing countries, commerce is common in urban areas with little in village in rural markets.

The view that caveat emptor exists commonly in village markets tend to presume that consumers in urban markets are literate and may not be affected by this principle and yet in actual sense consumers both in urban areas and villages are the same in terms of knowing their rights.

Miller and Lovell in their book “consumer law and practice¹⁴” are of the view that advertisements are only impressionistic and vague. They are ascended to the salesman and their truth cannot be assessed to any identified standard. He further asserts that those add nothing to the seller’s obligation and reliance on them is unjustifiable.

The view these two authors express is not true in reality. Consumers are no longer in a position to vary on their own judgment. This is due to many factors but the role of advertising is too vital and cannot be left out. In many economies, Uganda inclusive, consumers are exposed to a wide variety of goods and services as most of them are used as can be used for the same purpose, there is a lot of competition, because of this competition, advertising goods and services increases and in this way consumers are exposed to a lot of information regarding the products and services. In such circumstances, the consumer has to rely on advertisements when exercising his choice.

Cranston in his book, “consumers and the law¹⁵” says that advertisements make claims only literally true further that when the literally true statements mislead. They leave out the most important facts needed to influence the consumer’s attitude to the product or service in question. The fact that there exist many products or services which can be used for the same purpose, these adverts are meant to directly influence the consumers which cannot be relied on.

Today they have a big influence on the consumer’s choice similar to that of a contractual representation on the qualities or nature of the service or product. In my view, when Miller and

¹⁴ Consumer law and practice

¹⁵ Consumers and the law

Lovell are taken into consideration, it is probable that at the time of publishing their book, 1977 in England¹⁶, traders then applied adverts in the way they were meant to be, these remained as mere commercial puffs and vague in their nature.

Today distinction between misrepresentation and puff is very thin; the law has been pushed to its limits and abused by the modern advertising methods.

Nayenga P.K.T in his book “consumer protection in Uganda¹⁷” is of the view that the consumer organisations have not properly enforced legislation. This is because the inspectorates or inspectors concerned are not amalgamated or joined up.

While it is true that organizations/inspectorates have not enforced commodity legislation properly, Nayenge as a Ugandan writer should have noted that this is not solely because of the divisions of these organisations. Harvey noted above asserts often lack resources of trained staff and general expertise to undertake such duties as many exists in the statute books. In addition as asserted by Cranston consumer organisations face limitations in their advocacy role because their main focus is in publishing information of immediate benefit to their members. Furthermore, that they are not representative of the population because of financial constraints.

While it is true that consumer organisation are limited in their advocacy role, this in Ugandan situation is not because they are pre-occupied with publishing information. Most of these organisations lack legal power to advocate for the consumer interest.

In addition, in Uganda these organisations are still affected by political interference because appointments are from government since some of these are government organisations for example the Uganda National Bureau of Standards¹⁸, Electricity Regulation Authority and others¹⁹. Besides that, these organisations are underfunded therefore cannot properly remunerate their employees, this takes or forces them to corruption where they accept bribes to cover up wrongs. More so these organisations do not seem to work in harmony and have conflicting interests when enforcing their duties.

¹⁶ 1977 in England

¹⁷ Consumer protection in Uganda

¹⁸ Uganda National Bureau of Standards

¹⁹ Electricity Regulation Authority

Cranston and Borne and Diamond²⁰, they argue that the process of claiming compensation where goods are defective is very costly and tremble some to the consumers, it is also intimidating. They are Also of the view that the burden of proof on the consumer is too heavy since the consumer has got to establish a duty of care, breach of duty and foreseeability so as to succeed. The researcher agrees with these observations and advocates for the shifting of the burden from the consumer to the producer.

Charles Newdick in the article, "The Development of Risk Defence of the consumer Protection Act 1986²¹," agrees with this view, he asserts that the burden should shift to the manufactures/ producers among others that there are not other manufactures or test which would be proved of reveal the defeat.

However, this work has got some short comings. It is not stated whether the test for other manufacturer would or should be at an international or national level. In low developed countries for example it would be easy for the manufactures/producers to escape liability since this depends on the level of technology of the manufacturers, where the level is generally low will have little to prove. This also applies where there is a monopoly manufacturer or very few manufacturers. The scope in which the manufacture is to compare levels of technology is so limited. Where the manufacturer in question has one of the best technology it will be easier to escape liability.

The above literature is just some of the samplings of the writing of some writers who have critically analyzed to proposed study and other articles have the law in which consumer protection should be attained.

1.9 Arrangement of Chapters

For the purpose of presenting a coherent and systematic in depth critique of the subject matter under the study, this research paper has been divided into five chapters

1.9.0 Chapter 1

This chapter contains a general introduction of the subject matter under the study, it gives the statement of the problem, significance of the study, it also contains the objective of the study, the

²⁰ Cranston and Borne and Diamond

²¹ The Development of Risk Defence of the consumer Protection Act 1986

hypothesis to be tested, the methodology employed, area and scope of the study, literature review and finally chapterisation.

1.9.1 Chapter 2

This chapter discussed various laws on energy consumer protection, principles and rules of common laws that form laws centered the concept of Energy consumer protection. This is because the laws play a very vital role in laying down and enforcing rights of the energy consumer. Selected statutes looked at are, the sales of goods and supply of services Act 2017, Electricity Act 1999.

1.9.2 Chapter 3

This chapter discussed and is critique of institutional frame work. Institutional Mechanism established by legislation and those directly related to our central concern. These institutions include, Uganda National Bureau of Standards, Uganda Regulatory Authority. And also some voluntary Organizational like Uganda consumer Protection Organisation

1.9.3 Chapter 4

This discussed the impact energy consumer laws in Uganda; the chapter also reveals the remedies available to the consumer aggrieved under energy sector..36

1.9.4 Chapter 5

This chapter emphasized the paper's conclusion by giving a summary of findings; recommendations were raised as were based on the above findings.

CHAPTER TWO

AN ANALYSIS OF THE LAWS RELATING TO CONSUMER PROTECTION IN UGANDA UNDER ENERGY SECTOR

2.0 Introduction

The energy consumer protection laws play a very important role in laying down and enforcing rights of energy consumers.

Laws on energy consumer protection prohibit unfair trade practices such as breach of contractual duties and others. Also set standards for the quality, safety and reliability of many goods and services so that failure to comply with these standards can result into legal actions against the supplier. The energy consumer protection laws usually establishes institutions on agencies that enforce the laws dealing with energy consumer protection, in Uganda for instance we do not have a consumer protection laws as it is still a bill but there are some laws protection the main laws are the electricity Act²², petroleum supply Act²³, sale of Goods and supply of services Act²⁴, Uganda National Bureau of Standards Act²⁵, contract Act²⁶

In this chapter the researcher looks at some of the basic laws relating to protection of energy consumers interest pointing out their strengths or weaknesses

2.1 The Electricity Act 1999

This is the basic law regulating the use of electricity in the country. Regulating the use of electricity is very important because now days people cannot trade without power as it is needed in so many places. Besides that, electricity (power) if not used properly into an accident because it is dangerous.

Under the Act²⁷, Electricity Regulatory Authority is established to regulate the supply and use of electricity and also to protect interests of electricity consumers.

²² Electricity Act 1999

²³ Petroleum supply Act 2003

²⁴ Sale of goods and supply of services Act 2017

²⁵ Uganda National Bureau of standards Act Cap 327

²⁶ Contract Act 2010

²⁷ Section 5 Electricity Act 1999

Under the Act²⁸, provides the government shall undertake to promote, support and provide rural electrification programmes through public and private sectors participation in order to achieve equitable regional distribution access to electricity so this fulfills the interest of energy consumers in the villages.

The Act also provides section 74(2)²⁹ A person with a complaint of a breach of a fair competitions against licensee on system operation shall lodge a complaint to the authority, and the authority shall, if it appears that a breach of competition has been committed, investigates to act or omission and where appreciated take steps in order to remedy the breach.

Still under the Act³⁰ provides licensee, shall upon being required to do so by the owner or occupier of any premises supply electricity to these premises.

2.2 Contract Act 2010

Each time a person pays for power he/she enters into a contract with the suppliers that is why it is imperative to examine the laws governing contracts in Uganda because there is also a contractual duty on the side of the supplier in which he has to fulfill in order to remain in good terms with the consumers

Sec 33 (1) ³¹ provides the parties to a contract shall perform or offer to perform their respective promises, unless the performance is dispersed with or excused under this Act or any other law

Sec 61 Contract Acts³² also governs the relationship between the consumer and supplier as it provides that where there is a breach of contract, the party who suffers the breach is entitled to receive from the party who breaches the contract, compensation for any loss or damage caused to him or her. Therefore the above provision tries to protect the consumers from their rights being violated anyhowly.

²⁸ Section 62 Electricity Act 1999

²⁹ Section 74(2) Electricity Act 1999

³⁰ Section 77 Electricity Act 1999

³¹ Section 33(1) Contract Act 2010

³² Section 61 Contract Act 2010

2.3 The Petroleum Supply Act 2003

This is the basic law regulating the supply of petroleum by supervising and monitoring through the technical petroleum committee³³.

Sec 32(1)³⁴ provides the commissioner shall develop and implement or cause the implementation of a programme of gradual adaption and adaptation of the prevailing international standards, technical specifications and codes of practice in relation to the petroleum supply industry in co-operation with the Uganda national bureau of standards and the committee. So here this law protects energy consumers as it requires the sale of petroleum products to comply with the international standards and if it does not do so then it shall be a violation of energy consumers rights internationally. However the law is not practical as it only monitors the sale of petroleum products in towns while leaving village energy consumer in a poor state.

Sec 32(2)³⁵ provides for the standards, specifications and codes of practice as established by the standards developing organization which are recognized by the international petroleum industry in matters of quality industrial safety and environment protection. This is real evidence that the Act protects energy consumers as it regulates the quality of petrol on the market. This Act is very important because there is no one who can deal with out petrol because every person to move from one place to another so if the prices of petroleum products are not monitored then consumers are likely to be affected so much.

Under sec4³⁶ of the Act, The technical Petroleum committee is established to regulate the importation, exportation, processing, supply, storages, distribution and marketing of petroleum products. This committee has all powers to regulate and supervise the sale of petroleum products and therefore it makes any seller to a loose a license if he/she does not comply with the standards set by the committee hence protecting energy consumers. However the standards which are set by the committee are not followed some times because the members of the committee are too corrupt to the extent that they deal with sellers of the petroleum products to violate this law.

³³ Section 1 Petroleum Supply Act 2003

³⁴ Section 32(1) petroleum Supply Act 2003

³⁵ Section 32(2) petroleum Supply Act 2003

³⁶ Section 4 Petroleum Supply Act 2003

Sec 17(2) the Act³⁷, no person shall perform petroleum supply operations without having obtained a petroleum operating license under this Act. The Act also prohibits activities against fair competition and by doing this, the Acts protects energy consumers. Here by making it a mandatory requirement to obtain a license, the law is protecting the energy consumers from fraudulent sellers of petroleum products because to obtain such a license, one has to fulfill all requirements needed by the committee like applicant's names, address and others which makes him/her to act diligently while in such a business of petroleum products hence protecting the energy consumers

Sec 37 of the Act³⁸ provides for general offences and penalties for example any person who sales mixed and adulterated petrol commits an offence therefore the Act protects energy consumers. These offences and their penalties make fraudulent dealers of petroleum products to learn and stop the habit of carrying out unfair practices therefore the law here protects energy consumers however the law is somehow not too strong as some penalties are weak to the extent that sometimes convicted persons serve punishments of imprisonment for only 3 months as per sec 38 thereof

Sec 11 of the Act³⁹ provides that participants in the supply chain shall not form cartels or attempts to control prices of the products or services or engage in any other restrictive trade practices which are contrary to the principle of fair competition.

2.4 The Uganda National Bureau of Standards Act Cap 327.

This Act establishes the Uganda national bureau of standards (UNBS).

The functions are to formulate, determine, modify and endorse standards for commodities and codes of practice

Sec18(1)(a) of the Act⁴⁰, provides for a declaration of compulsory standards specification for any manufacture of production or composition of any commodity to be a compulsory standards specification.

³⁷ Section 17(2) Petroleum supply Act 2003

³⁸ Section 37 Petroleum Supply Act 2003

³⁹ Section 11 Petroleum Supply Act 2003

Also under sec 22 provides, every person to whom a permit has been granted under this Act shall, if and whenever required by the council to do so, submit for examination on testing a sample of the commodity or product in respect of which the permit has been granted

Sec 21 of the Acts⁴¹ also provides that no person shall import distribute, sell or have in his/her possession or control for sale or distribution any commodity for which a compulsory standard specification has been declared unless the commodity conforms to the compulsory standard specification

2.5 The Sale of Good and Supply of Services Act, 2017

This is an Act which provides for the formation, effect, obligations and performance of contracts for the sale of goods and supply of services, also provides for remedies under those contracts; also provides for consumer protection and for related matters⁴²

This Act still provides for implied service in contract all which are meant to protect the consumer includes energy consumers.

Under section 14 of the Act⁴³ provides for sale by description where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description

Under section 15 of the Act provides for implied undertaking as to quality and fitness for purpose.

Under section 16 of the Act still provides where materials are used under a contract for the supply of service, there is an implied terms the materials will be sound and responsibly fit for the purpose for which they are required.

The Act still provides that in the case of a contract for sale by sample there is an implied conditions that the quality of the bulk shall correspond with the quality of the sample as per **section 17 (2) (a).**

⁴⁰ Section 18(1)(a) Uganda National Bureau of Standards Act Cap 327

⁴¹ Section 21 Uganda National Bureau of Standards

⁴² Section 1 sale of goods and supply of services Act 2017

⁴³ Section 14 sale of goods and supply of services Act 2017

Under section 18 of the Act⁴⁴ provides is a contract for the supply of services where the supplier is acting in the course of business, there is an implied term that the supplier will carry out the service with reasonable care and skills

Therefore basing on the provisions of this Act, this Act protects the consumers so much and in such consumers, includes energy consumer as well

2.6 The United Nations: Guidelines for Consumer Protection (as expanded in 1999)

The UN guidelines for consumer protection to which Uganda is a state party, has some good objectives intended to protect consumers from exploitation and thereby enabling consumers to enjoy quality goods and services. Here are some of the objectives; to assist countries in achieving or maintaining adequate protection for their population as consumers; to facilitate production and distribution patterns responsive to the needs and desires of consumers; to encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers; to assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers; to facilitate the development of independent consumer groups; to further international cooperation in the field of consumer protection; to encourage the development of market conditions which provide consumers with greater choice at lower prices to promote sustainable consumption.

However, the general principle of the guidelines is to encourage the government to develop and or maintain a strong consumer protection policy, taking into account; the protection of consumers from hazards to their health and safety; the promotion and protection of the economic interests of consumers, access of consumers to adequate information to enable them to make informed choices according to individual wishes and needs, availability of effective consumer redress among others.

2.7 The UN Guidelines and Consumer Rights

In accordance with the UN Guidelines for Consumer Protection, Governments are required to afford protection to consumer rights. Consumers are recognized the following rights:

⁴⁴ Section 18 sale of goods and supply of services Act 2017

- (a) Right to Satisfaction of Basic Needs,
- (b) Right to Safety,
- (c) Right to Choice,
- (d) Right to Information,
- (e) Right to Consumer Education,
- (f) Right to Redress,
- (g) Right to Representation, and
- (h) Right to a healthy Environment.

(a) Right to Satisfaction of Basic Needs

This is the right to basic goods and services, which guarantee a dignified living.

- 1) Governments should give priority to areas of essential concern for the health of the consumer, such as good petroleum products.
- 2) Policies should be adopted or maintained for product quality control , adequate and secure distribution facilities , standardized international information;
- 3) When formulating national policies and plans with regard to food, governments should take into account the need of all consumers for energy; governments should strengthen national policies to improve the supply, distribution and quality of energy.
- 4) Governments should develop or maintain adequate standards, provisions and appropriate regulatory systems for ensuring the quality and appropriate use of energy through the energy sector policies which could address, inter alia, distribution, production, licensing managements, registration systems and the availability of reliable information of energy in the country.

(b) Right to say

This is the right to be protected against products, production processes and services, which are hazardous to health or life.

The UN Guidelines considers the right to safety as one of the fundamentals

Governments are required to:

- (1) Adopt safety measures, including safety criteria, especially in this sector where electricity is so dangerous to consumers. Effective monitoring, inspection and evaluation mechanisms
- 2) Elaborate and implement standards for the safety and quality of goods and services;
- 3) Adopt specific policies to ensure distribution of essential goods and services, where this distribution is endangered, including assistance for the creation of adequate storage and retail facilities;
- 4) Encourage and ensure the availability of facilities to test and certify the safety, quality and performance of essential consumer goods and services: and
- 5) Adopt policies under which, if a product is found to be seriously defective and/or to constitute a substantial and severe hazard even when properly used, manufacturers and/or distributors should recall it and replace or modify it, or substitute another product for it; if it is not possible to do this within a reasonable period of time, the consumer should be adequately compensated.

(c) Right to Choice

This is the right of consumers to choose between different alternatives, to obtain optimum benefit from their economic resources.

The UN Guidelines provide that Government policies should seek to achieve the goals of satisfactory production and performance standards, adequate distribution methods, fair business practices, informative marketing and effective protection against practices which could adversely affect the economic interests of consumers and the exercise of choice in the market place. Governments should, in particular, adopt Laws and standards to monitor adverse practices, false or misleading claims in marketing and service frauds;

- (1) Laws for the regulation of promotional marketing and sales practices, which should be guided by the principle of fair treatment of consumers (through the provision of the information necessary to enable consumers to take informed and independent decisions, as well as measures to ensure that the information provided is accurate);
- (2) Laws protecting consumers from such contractual abuses as one-sided standard contracts, exclusion of essential rights in contracts, and unconscionable conditions of credit by sellers; and suppliers
- (3) Laws pertaining to weights and measures, with adequate machinery for its enforcement;
- (4) Measures relating to the control of restrictive and other abusive business practices which may be harmful to consumers, including means for the enforcement of such measures;
- (5) Policies encouraging the formulation and implementation by business, in cooperation with consumer organizations and other interested parties, of codes of marketing and other business practices to ensure adequate consumer protection (which should receive adequate publicity);
- (6) Policies that make clear the responsibility of the producer to ensure that goods meet reasonable demands of durability, utility and reliability, and are suited to the purpose for which they are intended, and that the seller should see that these requirements are met (including, where appropriate, adequate availability of reliable after-sales service and spare parts); similar policies should apply to the provision of services; and
- (7) Measures for fair and effective competition in order to provide consumers with the greatest range of choice among products and services at the lowest cost,

(d) Right to Information

This is the right of the consumer to be informed about the quality and price of goods or services. The right to information is essential for making —informed decisions D; therefore, consumers must be provided with adequate information, enabling them to act with discernment.

The UN Guidelines require, inter alia, that:

- 1) Vital safety information should be conveyed to consumers on proper use of goods and risks involved in intended or normally foreseeable use;
- 2) There should be free flow of accurate information on all aspects of consumer products;
- 3) Consumer access to accurate information about the environmental impact of products and services should be encouraged through such means as product profiles, environmental reports by industry, information centres for consumers, voluntary and transparent eco-labeling programs and product information hotlines.

(e) Right to Consumer Education

This is the right to acquire the knowledge and skills to be an informed consumer.

2.8 Tort Law and the Consumer

Tort law impacts business and consumers both positively and negatively. It's the branch of law that deals with civil cases in which one party sues another party. For consumers, the threat of litigation is beneficial for example; hazardous petroleum products at the petrol station. The owner of the petrol can be charged under Tort law hence protecting consumers.

The petrol station knows that customers who get fake petrol might sue, and this is a huge motivator in keeping business on the up-and-up. Of course, business hate tort law for this reason.

Product liability refers to the tortious liability of a commercial supplier of products for certain injuries caused by those products e.g. the liability of a manufacturer to the consumer of his contaminated petroleum products⁴⁵

Grimshaw — vs- Ford motor Co⁴⁶. the defendant Ford Motor Co. was held liable for its placement of the pinto tank so that fires entering the passenger compartment were frequent after rear — end collision allegedly the positioning of the tank and failure to secure it against fire were knowingly done by Ford as part of its effort to produce an economy car.

⁴⁵ Jane Stapleton;; product liability (Butterworths & Co. publishers, London 1994) page 46

⁴⁶ (1962) 2 QB 198

Grant vs Australia Knitting Mills⁴⁷" Here the plaintiff bought a pair of under parts from the retail shop which had been manufactured by the defendants. The parts contained a chemical irritant which caused the plaintiff to contract dermatitis and for this the defendants were held liable despite possibility of intermediate examination which was present according to the defendant's defence.

In **Frost Vs Aylesbury Co. Ltd⁴⁸**, a dairy company was held liable when a consumer contracted typhoid after consumption of their milk.

Herwchtal Vs- Stewart and Aderm⁴⁹ held that a product law has been applied to natural products such as a pet skunk and other items such as tombstones, motorcars excreta. .

Honston Lighting and Power Co. vs- Reynolds⁵⁰"; a product is not limited to tangible goods only; it may include intangible goods such as electricity after it has been delivered to the consumer.

2.9 Common Law Doctrines

Exclusion clause is a term in a sale contract that limits the remedies available to one or both parties to it in an action for breach of warranty, that is, statement made as to quality of goods sold.

The consumer does not in most cases read the document because some of the terms are too detailed and he has no option but to enter into the contract in order to get something out of it. In **L'Estrange Vs Grancob⁵¹** Scrutton L J said "when a document containing contractual terms is signed, then, in the absence of fraud, misrepresentation, the party signing it is bound, and it is wholly immaterial whether he has read the document or not". Therefore, he does not negotiate but adhere.

⁴⁷ (1978) 1 KB 215

⁴⁸ (1940) 3 ALLER 575

⁴⁹ (1940) 1 KB 155

⁵⁰ 765 SWzd 784n (Tex 1939)

⁵¹ (1934) 2 KB 394 .

Instances where exclusion clause held to be ineffective, **Chappleton Vs- Barry UDC**⁵², deck chairs were stacked by notice asking the public who wished to use the deck chairs to get tickets and retain them for inspection. The plaintiff paid for two tickets for two chairs, but did not read them, on the back of the ticket were printed words purporting to exempt the council from liability. The plaintiff was injured when a deck chair collapsed. It was held that the clause was ineffective, the ticket was just to show that the hirer had paid for the chairs and how long he was to sit on them. Slessor II pointed out that a person may have sat on these chairs for hours before the attendant comes and gives him a receipt. Therefore the conditions might be there but if the person does not read them, then at time they are taken to be ineffective depending on the circumstances.

The exclusion clause is designed to best accommodate two parties of equal bargaining power so that when the other takes issues with the conditions he will be listened to. Obviously, the relationship between the consumer and the manufacturer does not fit this scenario. Wilson in examining the origin of exclusion clause says "... natural self interest soon leads to the inclusion in such contracts of protection extending beyond the realm of legitimate interest

Big business concerns have taken advantage of the ungainly position of the consumer to exclude liability even for the bluntest breaches. In **Glynn Vs Margetson**⁵³ the defendants attempted to rely on an exclusion clause. The House of Lords held that the defendants were liable for the delivery of bad oranges because their main purpose was to deliver perishable cargo of oranges to Liverpool and in light of the words of the clause it could be ignored and the ship could only call at ports en route.

This clearly depicts the consumer's position trapped between great economic enterprises all subjecting him to clause he is powerless to negotiate against because he enters into contract out of necessity.

⁵² (1941) 1 KB 531

⁵³ (1893) AC 35

In **Parker Vs South Eastern Railway**⁵⁴, Mellish U stated, if the person receiving the ticket did not see or know that there was any writing on the ticket, he is not bound by the conditions.

Course of dealing makes exclusion clause effective in **Spurling J Ltd Vs Bradshaw**⁵⁵ the Exclusion clause on that particular occasion he was aware of it through his previous dealing with the defendants

Common knowledge: In British hire Corp. Vs IPSwich Plant hire Ltd⁵⁶, where the parties in the same line of business and the exclusion clause which existed was common. The fact that the defendant had seen the clause before they commenced work did not render it ineffective

Contra proferentum rule is a rule of contractual interpretation which provides that an ambiguous term will be construed against the party that imposed its inclusion in the contract. This protects the interest of consumer who might be ignorant of the terms including liability of the seller

In **Olley Vs Marlborough Court Ltd**⁵⁷, the hotels inclusion clause excluding liability for the theft of the claimant's fur coat due to their negligence was held to be ineffective as the claimant did not receive notices of the clause until after she had entered into the contract with the hotel at their reception. Where reasonable notice is deemed to be sufficient, the clause will be effective and the party affected by it will be bound by it

2.10 Conclusion

The above law and the common law doctrines governing consumer protection and practice maintain the standards on quality of product produced by the manufacturers.

However, implementations of these laws remain a big challenge as some of the laws mainly rely on penal sections and the enforcement urgency are not provided for under the law discussed above. The laws are good in regulating the conduct of the manufacturers and providing quality goods if implemented properly. Consumer's rights are continuously infringed on due to ignorance of those consumers on the law.

⁵⁴ (1877) 2 CPD 416

⁵⁵ (1956) 2 ALLER 12

⁵⁶ (1974) 1 ALLER 1059

⁵⁷ (1949) 1 KB 532

CHAPTER THREE

INSTITUTIONAL FRAME WORK GOVERNING CONSUMER LAW AND PRACTICE: A COMPLIANCE OVERVIEW

3.0 Introduction

The state regulatory measures against unfair trade and practice, under the given circumstances, are commendable taking into account the low levels of awareness, institutional capacity constraints, political and protective interference and incoherence of the sectoral policies and regulatory frameworks. It is worthy nothing that the existing sectoral policies, legal and regulatory frame works in the communications, energy, media, standards, revenue, and investment, amongst others provide a learning experience and spring board to the protection of energy consumers from unlawful exploitation which results into consumption of poor quality goods.

Some of the existing Sectoral Policies and Laws related to energy consumer protection are here in below stated

3.1 Communication Commission

It is useful to examine the effectiveness of this institution because it is the one which governs the media house where by energy consumers are being misled by the adverts which are published every day.

The Uganda Communications Act⁵⁸ establishes the Uganda Communication Commission (UCC). The Sectoral Regulatory Authority, it issues licenses to prospective operators of all services in the communication sector, in line with regulations laid down in the Act. The UCC has powers to ensure that consumers are protected and answers consumer's complaints in relation to sector players which consumers include energy consumers UCC works closely with two consumer associations namely, Uganda consumer Protection Association and Consumer Education Trust in promoting consumer issues in the sector.

UCC receives complaint from consumer and resolves the complaint hence protecting the consumer from possible exploitation.

⁵⁸ Uganda Communication Act Cap 106

Complaint handling mechanism: UCC set up a consumer complaints desk whose main function is to receive analyze and investigate customer complaints.

The consumer affairs desk also follows *up* the resolution of complaints and compilation of a data base of complaints and later on provides energy consumers with remedies where necessary.

To assist consumers make informed choices through the provision and transfer of information, UCC does the following;

An integrated media plan: Disseminating information through entertainment, electronic (Television and Radio), print (magazine, Advertorials, Branded column on consumer tips), facts sheets, brochures, consumer dialogues, outdoor billboards and drama scripts, road shows, public lectures.

Establishment of tribunal: The Communication Act provides for the establishment of a tribunal known as Uganda Communications Tribunal consisting of a judge and two other persons appointed by the president on recommendation of the judicial service commission of the tribunal to hear and determine all matters relating communications services arising under the Act. It further provides that the tribunal shall in the exercise of its jurisdiction under the Act have all powers of the High Court

3.2 Electricity Regulatory Authority

The electricity Act establishes the electricity regulatory authority, the sector regulatory agency in 2001. It issues licenses to prospective operators; approves power purchasing agreements and tariffs; quality of service delivery and efficiency, and handles consumer complaints. The legal and regulatory framework protects the right of consumer in quality goods when fully privatized.

3.3 Uganda National Bureau of Standards (UNBS)

The Uganda National Bureau of Standards performed some duties like supervising the sale of goods and products in the country including petroleum products. So by doing this, the institutions protects energy consumers

Is the institution that comes closest to being at the centre of consumer protection. Their approach is a macro-approach that ensures that substandard and dangerous goods are kept off the shelves in order

to protect consumers. However, they do not extend to the enforcement of consumer rights and more so, they cover only goods, not ' services.

The Uganda National Bureau of Standards Act provides for the establishment of the standard Bureau to protect consumers and inspect products and promote business and good practices through quality assurance and standards development

3.4 The Uganda Consumer's Protection Association (UCPA)

That association (UCPA) is a nongovernmental organization duly registered with the NGO Board, ministry of internal affairs and is an affiliate member of consumers international and has a membership of 365. They have six vibrant branches (called chapter) in Gulu, Fort portal, Soroti, Bushenyi, Mbale, and Mbarara.

Their major tasks are; protecting and promoting the interests of the consumer, fostering competitive and a fair market place, monitoring trade practices, lobbying for better legal protection to consumers, collecting marketing information on goods and services, educating consumers about their rights and responsibilities, resolving disputes between consumers and business, improving product quality and safety, promoting environmental protection, and consumer health, disseminating consumer information, working together with government and outside parties to promote consumer interests.

At present UCPA continues to assert its voice to the entire national political leadership, manufacturers, stake holders and energy consumers through the mass media and workshops in the pursuit of its goals.

But the glowing factors that inhibit UCPA's activities include financial constraints. The Association is handicapped in terms of facilities and cannot employ a bigger number of officials to speed its mission. It can hardly afford up country operations and meaningful surveillance as it lacks adequate modern equipment to conduct testing and analysis.

The absence of transport facilities and the intimidation actions of the officials by stronger business concern continues to hamper the fulfillment of its aims in this regard, the anxious energy consumer remains with little protection and defense from this up-coming hope of energy consumer advocacy and other consumers at large

Confectioneries *are not* examined to ensure that they are disease free that can be passed on to Consumer

Kampala City Council and other local authorities have to find funds and other ways of protecting consumers against consumption of expired poor quality or unhygienic food. Food quality should be given priority among other policies. Kampala City Council alone may not fully be able to manage and supervise all food handlers due to limited capacity or' funds and personnel. Government or Kampala City Council should for that matter authorize intervention by the private sector. Independent, reputable private companies with the required capacity and experience should be authorized to do the inspection, supervision, microbiological tests of food at a fee.

3.5 The Judiciary

The courts are established, staffed, funded and run by governmental authorities but the judicial system should be regarded as an independent institution separate from government. Courts have an important role to play in providing remedial or reactive protection to consumers and also provide remedies.

The High Court entertained the matter in the case of **Silver Spring Hotel Vs Umeme**⁵⁹ and it held that Umeme was in breach of contractual duty therefore an injunction of granted so that the consumer to be protected

The 1995 constitution⁶⁰ provides for independence of the judiciary and it is in line with stipulates the Courts of Judicature to comprise of the Supreme Court, Court of Appeal, the High Court and Subordinate Courts, namely Magistrate Courts. The 1996 Judicature Act then spells out the jurisdiction of the respective courts and recites the High Court as having unlimited jurisdiction. The **Magistrate's Court Act**⁶¹ lays down the jurisdiction of various grades of magistrates Court. All consumers concerns or commercial causes can be handled by the Magistrate Court and the High Court depending on the peculiarly position of such cases.

We ought to appreciate that consumer access to judicial remedies is comprised of multitude of factors. One, the consumers' interests are more varied and diverse and in most cases appear to be

⁵⁹ (2013) HCCA

⁶⁰ Art 128 1995 constitution

⁶¹ Magistrates Courts Act Cap 16

relatively small in peculiarly claims; consumers are weaker and less organised. Due to abject poverty many of them cannot afford legal representation⁶². There is a general lack of self confidence among the illiterate consumers. All these make it complex for the judiciary which employs procedural rigidities and conservative practices to be able to assist these consumers engulfed in the said obstacles.

Still there is too much delay in proceedings and litigation. This is worsened by the absence of a distinctive commercial bench in our judiciary. These delays, occasion injustice and unfairness as it is a common legal dictum that, "justice delayed is justice denied." In this respect, many consumers lose confidence easily in the judicial processes as consumption is a matter of life and death, it should not be postponed to the future till after litigation.

In addition, our judicial system employs complicated procedural technicalities. The difficult legal jargon used in litigation simply scare away the many illiterate and legally ignorant would be litigants in consumer causes. Such technicalities and the absence of a specific consumer protection law tend to alienate the naïve consumers from judicial remedies. Hence this institution, provides remedies only to the rich, literate and assertive sellers who in all cases are the violators of the provisions of the energy consumer laws.

Most unfortunate to note is that our judiciary is not devoid of corrupt tendencies. Consumer surveys and personal interactions with the disgruntled losers in court reveal that the richer and well known litigants sometimes bribe magistrates or judge to decide in their favour. It is worse if the case involves a politician where magistrates are always intimidated by such high ranking government officials. This further portrays the adequate safeguards afforded by our judiciary to the consumer

3.6 Conclusion

In conclusion, efficacy of the institutional framework in energy consumer protection has no remarkable practical successes. This in certain spheres render these mechanisms practically extinct or non existent. It is quite evident today that the ordinary energy consumers see no sense in the rather incapacitated institutional regime that purport to afford consumers

⁶² Simanya, "Strengthening Consumers" page 20

protection. It is upon this critique that we now turn to the next chapter to recommendation to a bid to reform the commercial laws and institutions to give energy consumers protection.

CHAPTER FOUR

THE EFFECT OF ENERGY CONSUMER LAW IN UGANDA AND REMEDIES AVAILABLE FOR ENERGY CONSUMERS

4.0 Introduction

The laws on energy consumer protection prohibits "unfair, unreasonable or unjust" contractual terms, and regulate exclusion and limitation of liability clauses and disclaimers, for example if the terms of the transaction or agreement are so adverse to the consumer as to be inequitable or if it is excessively one sided in favor of any person other than the consumer or other person to whom goods or services are to be supplied, then it is deemed to be unfair transaction.

Business policies and practices are reviewed where by the unethical business policies and practices are eliminated as a result of law on energy consumer protection.

The standard of production of goods by the manufacturers has greatly improved due to the checks and or supervision of the goods entering or leaving the country and various licenses involved before starting up business like petrol stations etc. All these are as a result of laws on consumer protection, hence production of quality goods.

Remedies are available to the energy consumer whose rights in quality goods have been infringed on. Courts are mandated to entertain consumer's complaint and or suits and including energy and consumer award damages to energy consumers award damages to energy consumers whose rights are violated and whose terms of sales raiment have been breached.

The law on energy consumer protection has curbed down the excessive cheating and or exploitation of energy consumers by the manufacturers, for example the weight and measures act provides for the right quantity for the right amount of money paid and it is an offence to sell underweight goods knowing hence consumers get the right quantity of goods.

4.1 Heavy Reliance on Penal Sanctions to enforce compliance.

The general weakness about weight and measures act is its heavy reliance on penal sections to enforce compliance. Moreover, the offence created throughout the act attracts very paltry fines

ranging between five hundred shillings and two hundred thousand shillings. Energy consumer who has about underweight goods as a result of a trader using false equipment is not interested in seeing the trader going to jail. A consumer need is just to get compensated or to be given the right quantity of goods that he or she has paid for. Therefore, it is a challenge and the act needs to be amended so as to provide for more up to date ways of appeasing a cheated consumer for example compensation or being given the right amount of goods.

4.2 Formal Complaint Not Provided For Under the Act

The Act⁶³ establishes the Uganda National Bureau of Standards with the functions inter alia to formulate, determine, modify, endorse and enforce standards for commodities and codes of practice, but the Act does not have clear avenues for redress of consumer complaints for example, there is no provision in the Act that boldly states that the UNBS may receive complaints from the consuming public in case a consumer is cheated or has bought substandard products.

4.3 The gaps in the law still glaring

The most glaring gaps in the act however, is the lack of regulation of solar energy. A large number of energy consumers in Uganda especially in rural areas use solar. It has been discovered that some solar manufacturers use weak solar panels to generate solar heat for example; some of them mix plastic panels with metallic ones. This poses a serious violation to energy consumer. These practices use however continue unabated and are not investigated mainly because the Uganda National Bureau of Standards Act does not provide any mechanism for regulating solar energy and its use.

4.4 Weak Enforcement Mechanism of the Law

Like the weights and measures Act⁶⁴, this Act has good provisions which if implemented, would curb the sale of adulterate petroleum products. However, the Act lacks effective provisions that would ensure compliance and also relies on penal sanctions to enforce compliance and these are very low. The oil quality is still wanting and also adulterated petrol is still on the market. Some

⁶³ Uganda National Bureau of Standards Act Cap 327

⁶⁴ Weights and measures Act

of the major challenges to enforce petroleum supply Act are poverty, lack of energy informed consumers, lack of adequate administration and enforcement. In a situation where the majority of energy consumers is availability of petrol as opposed to the quality of petrol for instance consumers prefer buying petrol from poor petrol stations to standard petrol stations where petroleum products are cheap and readily available.

4.5 Rigidity in Forms Required in Contract Affect Justice

The **Sale of Goods** and supply of services Act⁶⁵ requires that a contract for the sale of goods of the value of two hundred shillings or more has to be in writing, if it is to be enforceable. This provision is limiting first, because in Uganda today, two hundred shillings does not buy anything of value. Secondly, most of the contracts for the sale of goods may fail to enforce the breach in a court of law because the contract was not in writing:

Furthermore, under the Act⁶⁶, parties are permitted to contract out of the provisions of the Act, by stipulating that "where any law duty or liability would arise under a contract of sale by implication of law, it may be negative or varied by express agreement or the course of dealing between the parties, or by usage if the usage be such as to bind both parties to the contract". In practice most vendors and suppliers

4.6 Unfair trade practices

Trade and general economic liberalization of the 1990s has led to the expansion of businesses and increased competition in markets, but reduced or even disbanded the safety nets for consumers and quality assurance. Practices like misleading advertisements and information ties, wrong billing and threats from powerful regional enterprises are prevalent. Measures to check the practices effectively are non-existent.

The unfair trading practices that warrant the regional and global arrangements are due to the nature of political and protective interference and business influence, or under hand arrangement done across borders. The heavy handedness of governments in the name of investment, whilst

⁶⁵ Section 5 Sale of goods and Supply of Services Act 2017

⁶⁶ Section 54 Sale of Goods and Supply of Services Act 2017

detering control or enforcing regulatory aspects; plus the weak roles of government surveillance mechanisms, have resulted in the gradual abrogation of this responsibility to citizens energy (consumers) and governments have in turn become answerable to business in pursuit of attracting foreign investments.

A typical and the most recent example was when trade minister, Hon. Amelia Kyambade dismissed and or terminated the services of the Director Uganda National Bureau of standard when the Bureau official in the course of their duty exposed a suppliers altered petroleum products. . The machines which were being used for the production of petrol were not genuine as a result; some water would find their ways in the product, ready for consumption. This poses danger as energy consumer's life as consumers would end up buying and consuming without noticing hence terrible infection. This was telecast live on Uganda Broadcasting Corporation, a national television and when asked, the dismissed director categorically said, he was being sacked for exposing un-substandard, uttered production of goods by the people who call themselves investors and further stated that the minister was trying to cover up those involved in dubious business / bad business practice in the name of encouraging investment in Uganda. This also attracted the attention of some opposition members of parliament who commented that instead of eliminating the bad, unethical business practice, the government is busy protecting the manufacturers, who are involved in such bad business practices to the detriment, peril of innocent energy consumers and at the expense of the consumers.

The government instead of supporting the work of the Bureau of Standards which is a legal duty under the Act is interfering with its work and as a result, the people who suffer are the consumers and yet the energy consumers pay for these substandard products which later turns useless in their lives.

4.7 Remedies available to energy consumers in case their right s violated.

4.8 Damages for breach

The basic objective is to compensate for loss or injury suffered as a result of breach of contract. The underlying principle was well stated by Parke B. in **Robinson Vs Harman**⁶⁷ when he said

⁶⁷ (1848) 1 Ex. 850 at KB55.

"when a party sustains loss by reason of a breach of contract, he is so far as money can do it, to be placed in the same situation with regard to damages as if the contract had been done.

However, it might be too harsh on a contract breaker in making him liable for a claim of unforeseen and fortuitous circumstances and therefore only for reasons of policy, the liability of the party in breach is limited by the rule or rules in **Hadley vs baxendale**⁶⁸, as Newman industries Ltd and the house of lords in **kofous VS Czarnikow**⁶⁹ Ltd "Broadly speaking, we are here concerned with the application of the relevant principles to contracts for the supply of goods and or services in circumstances where the supplier had defective by performed by providing substandard goods and services, though the principles are equal applicable of the supplier had delayed performance or not performed at all. The principles in question, evolved primarily in the context of contract of sale, became embodied in the sale of goods and supply of services Act and equally have been applied by analogy to other contracts for the supply of goods such as contracts of hire and purchase agreements".

Where a supplier provides goods and or services which do not comply with the requisite standard, the general rules as losses recoverable discussed above will apply.

There are certain established types of loss or "heads" of damage;

Pecuniary loss: The basic pecuniary loss suffered by a consumer to whom substandard goods or services have been supplied is the loss of his bargain, in the sense that goods or services of the standard contracted for are worth shs z whereas the goods or services actually provided are worth less than shs $*$ therefore, in general his loss in monetary terms can be calculated by reference to the difference between the value of the goods or services of the appropriate standard and the value of the goods or services in fact supplied.

Damage to property: The defect in the goods supplied or services performed may be such that it is within the reasonable contemplation of the supplier or performer that it will cause damage to the property or other goods of the energy consumer and in that event damage will be recoverable.

⁶⁸ (1854)9 EX.341

⁶⁹ (1949) 2 KB 528

Thus if petrol is supplied containing some explosives, as the result of which damage is caused to a car when the petrol is placed in the car near fire, damages are recoverable for the cost of redecorating the car. A smaller result would follow if property were damaged due to defective installation of a central heating system or a poorly effected roof repair. Likewise damages would be recoverable for damage caused to a house as the result of a fire caused by a defect in the wiring electricity in that house by Umeme officials.

Personal injuries: A supplier of defective goods or services will be liable in damages for personal injuries caused by the defect to the consumer with whom he contracted such damages will include, where relevant compensation for pain and suffering, loss of expectation of life, disfigurement and loss of earnings as in a claim for personal injuries in an action for negligence.

Consequential expenses: Any expenditure incurred as a consequence of the breach by the supplier will be recoverable, provided of course if it satisfied the basic rule. Therefore if a hired a solar panel has a defect which renders it inappropriate to use it would be within the reasonable contemplation of the supplier that the hirer would hire an alternative and the cost of the further hire would be a recoverable expense. Likewise recoverable are medical and other expenses incurred by a purchaser as a result of injury caused by the supply of defective goods. And should the buyer of defective goods be obliged to pay damages to a third party who has suffered damage as a result of the defect, the buyer can recover from the supplier the damages paid to the third party together with the cost of defending the third party's action if it was reasonable to do so. Such situation might arise if, for example, the purchase of a solar panel with defective wires resulted as a result of the defect and injured a person or damaged his property.

Physical inconvenience: Significant physical inconvenience caused by a supplier's defective performance may also give rise to damages. Most of the cases concern the defective provision of a service, though there is no reason why similar damage should not arise in connection with the supply of goods. In **Hobbs Vs London and South Western Railway Company**⁷⁰ the plaintiff recovered damages for the inconvenience of being obliged to walk over four miles home after the defendant's train had taken him to the wrong station. Cockburn L.CJ said that such

⁷⁰ (1875) LR 10 QB 111

inconvenience "must be taken to be reasonably within the contemplation of the parties; because if a carrier engages to put a person down at a given place, and does not put him down there, but put him down somewhere else, it must be in the contemplation of everybody that the passenger put down at a wrong place must get to the place of his destination somehow or other. If there are means of conveyance for getting there, he may take those means and make the company responsible for the expenses; but if there are no means the carrier must compensate him for the personal inconvenience which the absence of those means has necessitated.

4.9 Conclusion

The law on energy consumer protection has given so many remedies to the energy consumers. In case of poor quality and or substandard goods the energy consumers can go to court to seek for damages in respect of the poor quality goods consumed or delivered to them. This therefore protects the energy consumers from violation of their rights to quality goods.

However there are challenges facing the laws on energy consumer protection especially on its implementation. The enforcement of the law on consumer protection is very poor and sometimes the law relies heavily on the penal sanctions which do not benefit the energy consumers themselves hence resulting to some consumers abandoning seeking for legal redress from court and conceding the infringement of their rights in quality goods thereby creating a negative impact on the law of protection of energy consumers in Uganda.

CHAPTER FIVE

FINDINGS, RECOMMENDATIONS AND CONCLUSIONS

FINDINGS

5.0 Introduction

Chapter five presents the summary of the main findings from which certain recommendations are drawn. It draws attention to the various problems energy consumers face. Some suggestions have been put forward to improve and make the laws and institutions more effective.

The main findings of the study are as follows

The energy laws in place do not suit conditions in Uganda and as such, the rights of the energy consumer are prejudiced. Examples include the doctrine of privity, exclusion clauses.

The remedies available to the buyer are not suitable and are inadequate. The buyer would expect defective to be replaced or the return of the purchase price. However, the seller is not under a duty to replace or return the goods or the purchase price. The remedies available have no suitable deterrent effect on the fraudulent or unfair practices of the sellers.

Energy consumer protection laws also impose criminal liability on the seller; legislations like the National Bureau of Standards Act⁷¹, Weights and Measures Act⁷² among others impose fines and terms of imprisonment. The fines are in many cases so minimal to be punitive effect and the terms of imprisonment are too short to be a deterrent. Even the statutes that provide for long terms of imprisonment are never implemented.

The litigation process is too long, time wasting and costly. This is due to the technicalities involved. Energy consumers do not understand such detailed arguments of the legal process and are not encouraged to seek litigation. Besides the burden of proof on the consumer is too hard to discharge. Energy consumer cannot be in position to know the secrets for production process. The litigation process favors the manufacturer or producer more than the consumer.

The institutional framework meant to enforce the law is also inefficient. The inspectors charged with this duty are usually too few to discharge it effectively and in many cases have been

⁷¹ Uganda National Bureau of Standards Act Cap 327

⁷² Weights and measures Act .

reported and corrupt. Most of the institutions are underfunded and lack skilled personnel and up to date machinery. The only association of consumers (the UCPA) is not given the legal power to bring collective or class action for or on behalf of the consumers, it cannot fend for the disadvantaged consumers in court.

As far as the energy consumers are concerned most of them are illiterate and ignorant of their rights, duties and responsibilities, for instance one the consumers interviewed did not even know effectively to use “yaka”. There is also negligence on the part of the energy consumers; they lack the zeal to enforce their rights which lack vigilance frustrates the consumer protection cause.

In addition to this, there is poverty; most energy consumers *live in abject poverty, that their major concern is the availability of fuel rather than the quality of fuel.

The role of government has not been significant as far as energy consumer protection is concerned. The government has pursued policy of investment and liberalization while the energy consumer protection laws have not been revised or reformed. These laws today cannot check the level of abuse by investors, sellers’ manufactures or producers.

5.1 Recommendations

The need for new energy consumer law.

There should be enhanced a uniform and comprehensive law to protect energy consumers. This has been taken on by the Uganda Law Reform Commission. This law should cover all goods and services supplied under energy sector. This applies to all goods on the market whether by private individuals or for resale⁷³.

This law should provide a framework under which sub-legislations should operate. Furthermore, it should provide for general provisions for consumer rights, information, and contractual protection and consumer associations among others⁷⁴. Special attention should be given to the remedies under these various laws and as far as the sale for goods is concerned, the protection sections like the implied terms should be made unconditional. The following should also be addressed;

⁷³ Danish Product Safety Act, SI (1)-(3).

⁷⁴ African Model Law for Consumer Protection

5.2 Reforms of the law

5.2.1 Doctrine of privity

There is a need for dropping the doctrine of privity to allow action whether or not the user is the actual purchaser. It is not realistic to think that a consumer transaction simply involves the purchaser and the trader. There is nothing more common than for a family member to purchase goods for the rest of the family. In the United Kingdom where the doctrine originated the right to enforce liability is not confined to the buyer⁷⁵. If the nature of the goods is such that it can endanger one's life then any consumer can sue on it.

5.2.2 Exemption / Exclusion Clauses

Such clauses were established to limit the manufacturer's liability; they are introduced on the basis of "freedom of contract". These are used against the consumer including energy consumer who does not have equal bargaining power with the manufacturer or supplies. In countries like Zimbabwe for example, consumer protection laws have adopted protection clauses to agreements on contracts to be constructed most favorably to the benefit of the consumer⁷⁶. This should be adopted in Uganda so as to protect energy consumers

Exclusion clauses should be abolished in the Uganda energy consumers' protection laws; this is the only way an ordinary energy consumer can get protection against the manufacturers and sellers or suppliers.

5.2.3 Settlement of disputes

In most cases the buyer wants simple remedies and in most cases he is not willing to use the court system because of procedural rigidities, expense and time involved. Therefore before recourse to court, proof and simple dispute resolution should be sought. Disputes between consumers and businessmen may be settled in the following ways:

- (i) Consultation and conciliation with businessmen
- (ii) Appeal to consumer organizations and administrative departments concerned.
- (iii) Submission to arbitrating organs for instance ombudsman for arbitration.

⁷⁵ Owels P. product Liability Case book, US and UK

⁷⁶ Sihamya B, "Model Law for Africa"

- (iv) The last resort should be to start legal proceedings before the consumer court in this case the small claims court⁷⁷.

Before the dispute is taken to courts, the given forms of dispute resolving should be sought.

5.2.4 Remedies

The amount of damages awarded to a successful consumer should be related to purpose effect of deterrence. These damages should be large in financial value so that the manufacturer finds it cheaper to provide good quality goods than pay damages or compensation. In the People's Republic of China, business dealers whose commodities cause injury must pay medical expenses during treatment, loss of income for working hours when one was sick and in case of death, pay funeral expenses, compensation for the death and cost of living for dependants. Though this may not be easily applicable in Uganda, amount of damages should be increased so that their effect is felt especially in the department of electricity which is dangerous

5.2.5 Imprisonment

Imprisonment should be as a last resort as a remedy when all others have failed. When it is used as a penalty, the terms of imprisonment should be long enough to have a punitive effect. One year should be the shortest term.

5.2.6 Inspectorates

Inspectorates should be merged most of the activities of inspectors for example tests, inquiries, prosecutions all coincide at one time, under the various duties upon one trader in respect of one article it makes no sense to separate for example inspectors of electricity and those of solar. The advantage of combining the various inspectors has effect of relieving the economy in travelling time between places of inspection.

Furthermore, the most effective deterrent to noncompliance is the knowledge that there is active enforcement. United control will eliminate confusion and chance efficiency. The creation of an inspector's team for each particular legislation wastes a lot of manpower. The best alternative is set up a united force of inspectors for efficient and effective enforcement on consumer legislation⁷⁸.

⁷⁷ Law of Consumer Protection of People of China Art. 34

⁷⁸ Nayeya, "Consumer Protection" Page 61

5.2.7 Role of Government effort / policy

The government should put in more effort in as far as energy consumer protection and regulation is concerned. As a major source of funding, it should be able to effectively fund the institutions, it should ensure smooth running of institutions instead of interfering with their activities. Government should in addition take a positive role of fronting and advocating for the revision of energy consumer protection legislation. The government of Uganda when granting investment licenses to investors should ensure they meet all necessary standard and prerequisites.

A system should be established for having the views of energy consumers reflected in public administration. This is to contribute to the formation and execution of policy to protect energy consumers.

5.3 Conclusion

The laws relating to energy consumer protection are ineffective and expose energy consumers to a lot of abuse, victimization and a number of unfair trade practices. The process of litigation, remedies available in one way or another prejudice the position of the energy consumer. The situation is worsened by the energy consumers' ignorance, poverty and illiteracy.

The researcher looked at the different institutions or bodies and examined their role in promoting energy consumer rights, their limitations and constraints in performing their roles. Some of the core concerns of the energy consumer in Uganda were looked at and the main ones include rampant sale of substandard, underweight, adulterated and counterfeit goods on the market.

The researcher also examined the efforts of Government through its various statutory bodies as well as the efforts of private associations such as Uganda Consumer Protection Association to enhance energy consumer protection.

Therefore there is a need for concerted effort from all sectors of the public and individuals efforts. These should assist in educating the energy consumers, advocating for reform in the laws, recognition of energy consumer rights, adoption of a more liberal litigation process taking into consideration the state of affairs of the ordinary energy consumers. This cannot be undertaken by leaving out the producers or sellers. To encourage them, tax holidays and establishment of a good relationship between energy consumers, manufacturers and sellers is vital. These should be geared at attaining effective energy consumer protection, in Uganda.

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The monitor, “President Museveni writes to the energy minister not to renew the Umeme contract because of high prices on electricity in the country, 27th April 2018.

APPENDICES

APPENDIX A

Questionnaire to establish awareness, attitude of the consumers towards the law and institutions of energy consumer protection and the effort the energy consumers put to ensure that their rights are not violated.

What do you understand by energy consumer?

Are you aware of any laws meant to protect energy consumers? If yes, give examples.

Are you a member of any consumer organization?

What do you understand by the term energy consumer protection?

Have you had any problem(s) with goods or services you consumed (as to quality, quantity, price, delivery etc, and give a brief account).

Did you take any steps to solve this problem/what steps did you take

Do you know of any rights and responsibilities of the consumer? If yes give examples.

What recommendations would you give to make energy consumer laws and institutions in Uganda more effective?

APPENDIX B

INTERVIEW GUIDE

Mainly used to interview the officials in consumer protection organizations, in general and also to a certain extent specifically those in energy sector.

1. Background information that led to the establishment of the institution.
2. What duties is the institution charged with as far as consumer protection is concerned?
3. What achievements and success have you had?
4. What are the problems and limitations you get in carrying out your work.
5. What suggestions would you make to improve the quality of your work and effectiveness of the institution?