CONSUMER PROTECTION ON MOBILE BANKING TRANSACTIONS IN TANZANIA:
A CRITICAL ANALYSIS OF THE LAW
CONSUMER PROTECTION ON MOBILE BANKING TRANSACTIONS IN TANZANIA:
A CRITICAL ANALYSIS OF THE LAW

By

Eunice Magali Kangole

A Dissertation Submitted in Partial Fulfillment of the Requirement for the Award of Master’s Degree of Laws (Commercial Law) of Mzumbe University
Mzumbe University

2016
CERTIFICATION

We the undersigned, certify that we have read and hereby recommend for acceptance by the Mzumbe University, a dissertation entitled *Consumer Protection in Mobile Banking Transactions in Tanzania; A Critical Analysis of the Law*, in partial fulfillment of the requirements for award of the degree of Master of International Law of Mzumbe University.

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Major Supervisor

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Internal Examiner

Accepted for the Board of Faculty of law

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DEAN FACULTY OF LAW
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I, Eunice Magali Kangole, declare that this thesis is my own original work and that it has not been presented and will not be presented to any other university for a similar or any other degree award.

Signature ___________________________

Date________________________________

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DEDICATION

This research is devoted to my grandfather Thobias Constantine Kangolle. You encouraged me to study hard; May your Soul Rest in Eternal Peace. Amen
### ABBREVIATIONS AND ACRONYMS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tr>
<td>Art</td>
<td>Article</td>
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<tr>
<td>ATM</td>
<td>Automatic Teller Machine</td>
</tr>
<tr>
<td>BAFI</td>
<td>Banking and Financial Institution</td>
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<tr>
<td>BOT</td>
<td>Bank of Tanzania</td>
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<tr>
<td>Cap</td>
<td>Chapter of the Laws</td>
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<td>Edn</td>
<td>Edition</td>
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<td>EPCA</td>
<td>Electronic Postal Communication Act</td>
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<td>H.C.D</td>
<td>High Court Digest</td>
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<tr>
<td>Ibid</td>
<td>Ibidem</td>
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<tr>
<td>ICT</td>
<td>Information and Communication Technology</td>
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<tr>
<td>IDT</td>
<td>Innovation Diffusion Technology</td>
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<tr>
<td>IMEI</td>
<td>International Mobile Equipment Identity</td>
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<tr>
<td>L.R.T</td>
<td>Law Report of Tanzania</td>
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<tr>
<td>MNO</td>
<td>Mobile Network Operator</td>
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<tr>
<td>NGO</td>
<td>Non-Governmental Organisation</td>
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<tr>
<td>NMB</td>
<td>National Microfinance Bank</td>
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<tr>
<td>NPS</td>
<td>National Payment System</td>
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<tr>
<td>Op cit</td>
<td>In the work Mentioned</td>
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<tr>
<td>OPT</td>
<td>Online One Time Password</td>
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<td>Para</td>
<td>Paragraph</td>
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<td>PDA</td>
<td>Personal Digital Assistance</td>
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<tr>
<td>SEM</td>
<td>Structure Equation Model</td>
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<tr>
<td>SIM</td>
<td>Subscriber Identity Module</td>
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<tr>
<td>T.L.R</td>
<td>Tanzania Law Report</td>
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<tr>
<td>TAM</td>
<td>Technology Acceptance Model</td>
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<tr>
<td>WAP</td>
<td>Wireless Application Protocol</td>
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ABSTRACT

One aspect of electronic banking is the mobile banking which it’s adoption by various communication companies such as Tigo, Vodacom, Airtel, Halotel and Zantel, which gear the habits for deposits and quick transfers of money or payments via electronic payments services. The adoption of electronic banking by CRDB bank and other banks like NMB evidently indicates the role played by electronic banking in the country.

Mobile banking has been discussed by many scholars; the concept of consumer protection in mobile banking has not been sufficiently explored neither in consumer protection laws nor banking legislations of Tanzania. The extent of banking and financial institutions in the contemporary world of ICT implies that it is no longer possible to handle online consumer protection issues without having an effective and efficient regulatory framework and sectorial laws addressing the same.

Tanzania legal system does not provide suitable consumer protection when it comes to mobile banking. There is a tremendous technology development in banking services but the banking laws do not catch up the speed of these developments. The consumer protection legislations and the banking and financial institution laws of Tanzania are not sufficient enough in protecting consumers in electronic banking transactions.

This research concentrated to explore the laws that govern and regulate the mobile banking systems and how the consumers are protected from the risks likely to happen. Although e-banking has been discussed by many scholars.

Therefore Tanzania legal system does not provide suitable consumer protection when it comes to mobile banking. There is a tremendous technology development in banking services but the banking laws do not catch up with the speed of these developments.
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CHAPTER ONE
GENERAL INTRODUCTION AND BACKGROUND TO THE PROBLEM

1.1 Introduction

In an effort to create cashless society in Tanzania many innovative payment systems has emerged but the most important thing is not about how they work individually, but is on how they have been able to interact between one another and add more value to the way people transact.\(^1\)

The mobile payment systems (Vodacom M-Pesa, TigoPesa, Airtel Money and others), the mobile banking payment systems (CRDB Sim-Banking, NMB Mobile and others) and the point of sales vendor machines payment systems (Max Malipo, Pay Point and others) create the three-component business model for digital transactions in Tanzania.\(^2\)

All the three systems are integrated. The mobile banking systems are working with the mobile money systems, the mobile money systems are integrated with the point of sales systems and the point of sales system are integrated to the banks. Recently there have been trends of banks to collaborate up with mobile network operators in providing digital transaction services. For example, CRDB bank one of the biggest banks in Tanzania has collaborated up with major Mobile Network Operator’s in Tanzania to allow people to move money between their bank accounts and the mobile money accounts.\(^3\)

People now can deposit and withdrawal money from their bank accounts using their mobile phones. “The partnership between financial institutions and telecom companies has supported significantly the efforts to reach the under banked population in the country.” Now this research is focusing to explore on the laws that govern and regulate the Mobile banking systems and how the consumers are protected from the risks likely to happen.

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\(^2\) *Ibid*

\(^3\) *Ibid*
1.2 Background to the Problem

Electronic banking in Tanzania started during the 21st century after the introduction of internet by the Information and Communication Technology (ICT) which caused dramatic revolution in the old traditional methods of transactions which has necessitated most banks and financial institutions in most countries introduce the use of such technology in most commercial activities. ⁴

One aspect of electronic banking is the mobile banking which it’s adoption by various communication companies such as Tigo, Vodacom gear habits for deposits and quick transfers of money or payments via electronic payments services. The adoption of electronic banking by CRDB bank evidently indicates the role played by electronic banking in the country. ⁵

Mobile money services in Tanzania developed in a regulatory environment without a National Payment Systems Act and existing guidelines for electronic payment schemes did not provide adequate guidance on mobile financial services. When Mobile Network Operator (MNO) first approached the Bank of Tanzania (BOT) with proposals for providing m-payment services, the BOT advised them to partner with commercial banks to deliver these services. ⁶

The role of the partner commercial bank would be to house a trust account in which Mobile Network Operators would deposit mobile payment funds. In this arrangement, the commercial bank (an entity traditionally under the jurisdiction of the central bank) would seek a “letter of no objection” from the Bank of Tanzania that would allow the mobile

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payment service to operate. A company would then be appointed to oversee the account and the Bank of Tanzania would reserve the right to audit or check the trust account.  

At the same time Mobile Network Operators were becoming increasingly interested in expanding their range of services beyond simple payments, commercial banks were reacting uneasily to this expanded role for the Mobile Network Operator, and their loose partnerships with Mobile Network Operators became weak. The Bank of Tanzania, on the other hand, was convinced the mobile phone had the potential to bring financial services to the poor and expand outreach to the remotest parts of the country.  

The Bank was willing to promote financial services outside the traditional banking sector, including m-payment and m-banking schemes, and identified Mobile Network Operators as a partner in this endeavor. The first step was to bring these new and emerging financial service providers into the regulatory fold. The Bank of Tanzania wanted to adopt a regulatory framework for mobile financial services that would both strengthen and institutionalize the role of Mobile Network Operators and serve as a road map for implementing and managing new technologies in the financial sector.  

To do this, the Bank of Tanzania looked to a banking institution with experience regulating mobile financial services. The Bangko Sentral ng Pilipinas (BSP) in the Philippines was one of the early movers in issuing regulatory guidelines for the issuance of electronic money, a critical aspect of enabling mobile financial services, and the staff of BoT’s Department of Oversight and Policy from the Directorate of the National Payment System (NPS) was interested in visiting the bank to learn from their experiences.  

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7 Supra note 5. See also http://www.bot-tz.org/Adverts/PressRelease/pdf Retrieved on 31 July 2015  
10 Supra note 7
The mobile communications sector is growing very fast in Tanzania. According to Tanzania Communication Regulatory Authority there is about 31.86 millions of mobile phone subscribers have registered for mobile payment services.\footnote{Klein A. (2012) Simple; Mobile Handsets are Weak Link in Latest online Banking fraud Scheme. \url{https://securityintelligence.com/sim-ple-mobile-handsets-are-weak-link-in-latest-online-banking-fraud-scheme/} Retrieved on 15th August 2015} Despite the industry’s significant contribution to Tanzania’s social-economic development, such developments have been both blessing and disguise to people, institutions and Government.\footnote{Ibid}

As technology advances Criminals also struggle to find a new way of doing fraud. For instance International Business machines corporations (commonly referred to IBM) recently uncovered two online banking fraud schemes designed to defeat one time password (OTP) authorization systems used by many banks.\footnote{Ibid} Unlike a previously discovered attack, which involved changing the victim’s mobile number to redirect OTPs to the fraudster’s phone, these new scams allow cyber criminals to steal the actual mobile device subscriber identity module (SIM) card.\footnote{Ibid}

In the first attack, the Gozi Trojan is used to steal international mobile equipment identity (IMEI) numbers from account holders when they log in to their online banking application. The bank is using an OTP system to authorize large transactions.\footnote{Ibid} Once they have acquired the IMEI number, the criminals contact the victim’s wireless service provider, report the mobile device as lost or stolen and request a new SIM card.\footnote{Ibid}

With this new SIM card, all OTPs intended for the victim’s phone are sent to the fraudster-controlled device. In the Gozi configuration file that analysts obtained, the malware uses a web injection that prompts victims to enter their IMEI number before they can access their online bank account.\footnote{Ibid} The fraudulent injection explains how to retrieve

\begin{thebibliography}{10}


\end{thebibliography}
the IMEI number, which can be found on the phone’s battery or accessed by dialing *#06# on the device keypad.18

The second attack combines online and physical fraudulent activities to achieve the same goal. This online banking fraud scheme was discovered in an underground forum. First, the fraudster uses a Man in the Browser (MitB) or phishing attack to obtain the victim’s bank account details, including credentials, name, phone number, etc. Next, the criminal goes to the local police department to report the victim’s mobile phone as lost or stolen.19 The criminal impersonates the victim using his or her stolen personal information (e.g., name, address, phone number, etc.). This allows the fraudster to acquire a police report that lists the mobile device as lost or stolen.20 The criminal then calls the victim to notify him/her that mobile phone service will be interrupted for the next 12 hours. In the meantime, the criminal presents the police report at one of the wireless service provider’s retail outlets. 21

The SIM card reported as lost or stolen is deactivated by the mobile network operator, and the criminal gets a new SIM card that receives all incoming calls and OTPs sent to the victim’s phone number. This allows the fraudster authorize the fraudulent transactions that he/she executes. Since accounts protected by OTP systems typically have higher transfer limits and are less scrutinized, they are more lucrative.22

This explains why criminals are willing to go to great lengths to gain access to them. The one common thread in both online banking fraud schemes is that they are made possible by compromising the Web browser with a MitB attack to steal the victim’s credentials.23 By combining stolen personally-identifiable information with clever social engineering

19 Ibid
20Ibid
21 Ibid
23 Supra note 15
techniques, criminals using these attacks don’t need to trick users into verifying fraudulent transactions.\textsuperscript{24}

They are able to bypass out-of-band authentication mechanisms like SMS-delivered OTPs by authorizing these transactions themselves.\textsuperscript{25} For example it was reported by the citizen /All Africa Global Media that five people, believed to be students of the University of Dar es Salaam, have appeared before the Kibaha District Court in Coast Region, charged with stealing TZS 20.3 million from NMB Bank.\textsuperscript{26}

The accused were alleged to have stolen the money, property of NMB Bank Rufiji Branch, at different times in 2011 through the mobile phone system. They were alleged to have stolen TZS 9.03 million, TZS 4.9 million, TZS 5 million, TZS 900,000 and TZS 450,000 respectively.\textsuperscript{27}

The prosecutor told the magistrate that the accused stole the money, property of two NMB clients. It was alleged that they stole the money at different times using mobile phones through the Airtel network services, formerly known as Zain. At the same time the Police were also investigating claims from other 20 NMB customers, who claimed to have lost money from their accounts in the same branch.\textsuperscript{28}

1.3 Statement of the Problem

Laws that regulate Banking system has provided for the protection of consumers by providing with cancellation right at the time when the agreement is concluded and the

\textsuperscript{24} Klein A. (2012) Simple; Mobile Handsets are Weak Link in Latest online Banking fraud Scheme. https://securityintelligence.com/simple-mobile-handsets-are-weak-link-in-latest-online-banking-fraud-scheme/ Retrieved on 15\textsuperscript{th} August 2015

\textsuperscript{25} Ibid

\textsuperscript{26} http://www.africaprogresspanel.org/publications/policy-papers/2015-africa-progress-report?gclid=Cj0KEQjwzZe8BRDguN3cmOrs4_dgBEiQAijjYFjAYjgrJDzALkXTFvPO63F1RX6VtEvsp78xN5LEaAgX48P8HAQ retrieved on of 27\textsuperscript{th} June 2015.

\textsuperscript{27} Ibid

\textsuperscript{28} See: Ally A, (2012) legal challenges brought by the development of ICT in Tanzania; An assessment of the growth of mobile banking services, Open university of Tanzania. In http://repository.out.ac.tz/1037/1/Hatiya_Chitanda.pdf; also http://www.isaca.org/chapters9/Tanzania/Pages/default.aspx, retrieved on 27\textsuperscript{th} June 2015
consumer has not received any material benefit from the transaction. But the electronic transactions for financial services are excluded from enjoying the right. Moreover protection data privacy of the customers of electronic communication or postal services and it excluded the financial transaction services according to the definition of the term “consumer” as defined by the Act. The banking laws do not protect the consumers against risks involved in the use of mobile banking.

The law is silence on who to be responsible in case of loss to the consumer’s account is it the bank or the telecommunication companies then this cause these two institutions throw the ball to each other when they are faced with the consumer on complain. Moreover the banking law has not provided for the rights of these mobile banking consumers.

In adding to that the banking laws has not provided for the redress in case these liabilities of protection of the data and confidentiality is not well handled what should be the consequence to the banks and redress for the consumers of mobile banking. Now this work intends to explore the Tanzanian mobile banking legal framework focusing on the protection of consumers in mobile banking transaction.

1.4 Objective of the Research
1.4.1 General Objective
This research intended to explore the Tanzanian mobile banking legal framework focusing on the protection of consumers in mobile banking transaction particularly electronic money transfers from mobile banking accounts to banking accounts and vice versa. This research focused in CRDB Sim banking and NMB mobile.

1.4.2 Specific Objectives
The research was carried to achieve the following objectives:

i. To critically explore the rights of mobile banking consumers and scrutinise to what extent are well protected.

29 Section 30 of the Electronic Transaction Act, No. 13 of 2015.
30 Section 30 (5) (a) of the Electronic Transaction Act, No.13 of 2015.
31 The Electronic and Postal Communication Act No. 3 of 2010.
ii. To scrutinize the laws and policies related to electronic banking in order to know their efficiency in protecting the consumers of mobile banking

iii. To examine the challenges facing the mobile banking users in Tanzania, in the course of transacting from their bank account through the mobile phones and/or affecting transfers.

iv. To examine the institutional framework of mobile banking in order to know whether they are effective in handling complaints lodged by consumers of mobile banking.

1.5 Significance of the Study
This research is important to legal professionals, law enforcers and the entire commercial world as it examined to what extent the consumers of mobile banking are well protected under the current legal regime. The study eventually enlightened them with the strength and weakness of the law and proposed the way forward.

This research is also important to the general public as most of them are mobile banking users. With this research the entire public will be in a position to appreciate the extent of protection that they are supposed to enjoy when using their mobile banking through the mobile phones. They will also be in a position to know the risks which may likely be encountered in course of dealing with their mobile banking.

1.6 Research Questions
This research is governed by the following questions;

i. Do the existing laws relating to mobile banking provide appropriate protection to consumers?

ii. Does the Tanzania institutional framework effective enough in handling complaints lodged by consumers of mobile banking

iii. Does Tanzania need specific law for the protection of mobile banking consumers?

iv. What are the challenges facing the mobile banking consumers in Tanzania, in the course of transacting their funds from their bank account through their mobile phones?
1.7 Literature Review

Frederick M.J & Bruce J (2008)\textsuperscript{32} the authors in this paper illustrated that financial transactions that are based on wireless handsets may soon prove to be as pervasive as Internet-based financial applications. Recent surveys indicate that as many as seven percent of mobile phone customers use their handsets for mobile banking. While mobile banking technology is still in a developmental stage, that is most certainly true for the legal and regulatory framework that governs these services. They went on further stating that Financial Institutions find today's environment for these services to be far different from the Electronic Funds Transfer networks of last century, which evolved using essentially open standards designed around one phone company.

Today, the communications platform is dramatically different; each community is served by multiple wire line, wireless and cable carriers; and, there are wide arrays of vendors trying to promote their proprietary mobile banking products. Moreover, there are no uniform regulations or even industry guidelines to consult for anyone interested in offering mobile banking services to their customers. More over the authors suggested that Mobile Banking services must have the ability to track each transaction throughout the payment stream, recreate the path of commerce, and allocate responsibility for errors, including unauthorized transfers.

All of this must be documented on a periodic statement with the information required by Regulation in consumer transactions. The researcher has explored the gap that exist in banking laws and consumer protection laws on protection of consumers in case of unauthorized transfers and errors during transfers.

Banges L. Soderberg, B (2008).\textsuperscript{33} the authors’ pointed out that, the essence of legal and regulatory frameworks on the mobile banking saying that they set the rules of the game. In both the cases of retail banking and telecommunications as separate areas of regulation,

\textsuperscript{32} Frederick M and Bruce J (2008) Mobile banking: challenges and opportunities.
policies and regulation have matured not at all to perfection, but to a level where major uncertainties in most places are removed.

In mobile banking however, policies are still to a large extent to be formulated. Central banks are, by and large, aware of the currently unbanked millions, and are reluctant to prematurely crack down on sustainable, commercial initiatives that may bring financial services to currently unbanked people. Moreover the author pointed out that both in South Africa and Kenya have noticed a carefully positive attitude, when at the same time central banks must look after important obligations such as consumer protection and anti-money laundering measures.

Mobile banking services are new animals on the financial services savannah, and policy makers and central banks are still figuring out what the risks and the benefits are. Telecommunications regulators seem to generally take the position those mobile operators already are licensed to transfer information over mobile networks, and that this license also includes financial information.

Regulatory risks pertaining to telecommunication regulation is hence small, given that the operator in question looks after its general license commitments.

Mandopi (2010)\textsuperscript{34} evaluates in his article how the law compels banks and financial institutions to disclose customers’ accounts details and information when suspected that those accounts are owned or has connection with the commission of a terrorist acts. Mandopi is mindful that to protect consumers, there need be confidentiality regarding their financial account information on transactions they make, their names and any other information in the knowledge of the bank or financial institutions.

He acknowledges that most people deposit their money and transact via banks simply because they believe their money and information are secured.\textsuperscript{35} He adds that, Tanzania


\textsuperscript{35} \textit{Ibid}
banking laws and financial institution legislations have enacted provisions requiring these entities to abide with the principle of confidentiality. 

However, Mandopi points out that there is a conflict between the banking legislation and the terrorism Act which shows the duty of confidentiality to consumers banking and financial accounts is not absolute since these institutions have the power to suppress terrorists finances on a mere suspicion something that threatens consumers.

He recommended that banks and financial institutions should be trained on forensic knowledge of investigation and detection of terrorist financing. That is to say, to a certain trivial extent the author has invoked an ICT aspect in his work which offers little protection to consumers after harm has befallen them. It is quite unfortunate that Mandopi wrote his article in the era of ICT and yet has left out to address how consumer’s accounts may be tapped or intercepted by terrorists via networks and access consumers finances through mobile banking to facilitate their acts of terror something that pose threat to the consumers. The researcher in here has attempted to cover the aspects of consumer protection in mobile banking.

Cheeseman. H (2010). Explained that, on electronic funds transfer system (EFTS) stating the computers and electronic technology have made it possible for banks to offer electronic payment and collection systems to bank customers and this is supported by the contracts among and between customers, banks, private clearing houses and other third parties.

He pointed out the Automated teller machine (ATM) and debit cards. He went further explaining online banking as many banks permit their customers to check their bank statements online and pay bills from their bank accounts by using personal computers and internet. Furthermore he pointed on the Electronic Funds Transfer Act.

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37 Prevention of Terrorism Act, No. 2 of 2002
To regulate consumer electronic funds transfers. He also highlighted the consumer rights provided by this Act. The author further discussed on the Funds transfer procedures that banks and customers usually establish security procedures (e.g. codes, identifying numbers words) to prevent unauthorized electronic payment orders. That to protect the bank from liability for unauthorized electronic payment orders, the security procedure must be commercially reasonable.

If the bank verifies the authenticity of a payment order by complying with such a security procedure and pays the order, the customer is bound to pay the order, even if it was not authorized. The customer is not liable if it can prove that the unauthorized order was not initiated by an employee or other agent or by a person who obtained that information from a source controlled by the customer.

The author in this book noted the rights of the consumer where our banking laws does not provide for such when coming to funds transaction through mobile banking which the researcher think is the point to note.

Mambi A.J (2010) Proclaims that the possibility of Electronic banking raising issues on the question of privacy as bank records of a customer’s debit card transaction will amount to confidential. He also revealed his further worry on the possibility if the customer’s PIN obtained by third part observing the number when they key into ATM.

The author admitted that there is misuse of ATM cards and several incidents have been reported, however due to inadequacy of the law to cope with technological advancement the alleged criminals are just being charged with theft and economic sabotage instead of cybercrime. It is the author’s view that generally electronic banking seems to pose security challenges involving technological and legal measures for protecting privacy, cybercrimes and other related financial crimes.

The writer has only focused on the e-banking through the ATM and failed to focus on the risk faced by the mobile banking consumers which the researcher has addressed in this research.

Lukumay (2011)⁴⁰ in his dissertation he ventured to expound on the lack of legal framework regulating e-banking technologies in Tanzania banking industry. He observed challenges facing consumers such as theft and fraud in consumer activated e-banking transaction and recommended for enactment of an efficient legal framework that will address the issues of consumers in e-banking with a view to build confidence and trust to consumers in e-banking transactions.

Lukumay calls upon other researcher’s to venture in addressing the legal challenges posed by non-consumer activated e-banking transaction and unique problems faced by mobile banking and internet banking, ATMs, an omission that the current study partly address. One among the unique legal problem which the researcher has ventured is the protection of mobile banking consumers.

Kimei (2012)⁴¹ has argued in his article that banks are expanding into new areas of business and offer more sophisticated financial products and services such as internet banking and mobile banking, which give rise to legal conflicts or disputes to consumers. He further observes that, there are no codified rules governing consumer protection in e-banking in Tanzania, save for use of ‘implied terms’ of contract established at common law which calls for exercising reasonable care and skill in the issuance of e-banking services and products.⁴²

Aiming at showing alternative schemes in resolving banking disputes the author is concerned that the increasing array of use of technology in banking services has brought risks associated with these services and that the current legislation governing banking and

⁴²Supra note 46 at p48
financial services are inadequate in protecting consumers in e-banking. Kimei argues that consumer protection is one of the core pillars in dealing with banking and financial services disputes. The researcher in this study has paid fair attention on mobile banking conflicts dispute settlement institutions that have brought risks associated with mobile banking something that the author has not addressed.

Putnis J (2013) in his book he has shown how a review of banks in Tanzania has influenced the mobilization of significant financial resources and competition in financial services market; the reforms have enhanced the quality and efficiency of credit allocation. Moreover the author has highlighted the prudential regulations of the banks and the conducts of business.

He concluded by stating that the outlook for the banking industry in Tanzania is very positive and there are appealing opportunities for newcomers to the sector. Currently, there is a positive trend in lending to SMEs that is producing greater confidence in their growth potential among financial institutions and, more generally, in the economy as well, which is generating a positive spiral.

In addition, the government is also introducing new laws that are expected to enhance lending activities. Despite the nice discussion made by the author he did not direct his mind on the electronic banking which has currently taken abode in banking transactions and is the concern of this research.

World Bank (2013) highlighted on the awareness of the BoT for the need for a strengthened financial consumer protection framework. That there are several ongoing initiatives aimed at the establishment of an adequate financial consumer protection

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system. The World Bank explained the regulations that govern the protection of the consumers.

It further argued that the current regime contains a number of gaps and inconsistencies of particular note are the absence of requirements for transparency, clear, and comparable disclosure of key terms and conditions, applicable interest rates, fees and charges; a standard method for calculation of interest; regular account statements; and minimum 10 point font for complex disclosures and clear and comprehensible language. Further, there is no requirement for a Key Facts Statement and the requirements for giving notice of changes to terms and conditions, fees and interest rates are insufficient.

The author went on recommending that the legal framework for financial consumer protection in the banking sector needs to be clarified and strengthened. Detailed financial consumer protection provisions should be included in the Banking and Financial Institution Act as well as in specific regulations and guidelines issued by the BoT. There should be a comprehensive disclosure regime applied to banking products and services.

Several of these improvements could be undertaken in the short term through regulations, not necessarily extensive legal changes. In addition, banks should be required to establish an internal dispute mechanism and to systematically gather, analyze, and share complaints data with the BoT.

Di castri Simone & Gidvans Lara (2014), the authors discussed on the growth of mobile money in Tanzania and the policy enabled and market led in Tanzania. They stated that the strong performance of mobile money in Tanzania has been driven by the market and enabled by a regulatory environment that promotes digital financial inclusion. In Tanzania growth and usage of mobile money payment infrastructure has provided an opportunity for increased access to other services such as saving, credit, insurance (risk mitigation),

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pension (long term saving) and securities (saving for investment), mapping clearly to the concept of core enablers.

He went on saying Tanzania does not have an all-encompassing electronic payment system. The growth of mobile base payments platform system through mobile money offers a great infrastructure from which both basic and advanced financial services can be delivered to majority of Tanzanians. He further stated that in Tanzania the regulator made a progressive decision to let regulation follow innovation and support financial inclusion while managing risks.

The author pointed out that the approach has enabled the country’s mobile money market to flourish. By engaging closely with Mobile Network Operators (and their respective partner banks), the Bank of Tanzania has been able to offer the private sector a degree of freedom in rolling out new products, responding with sufficient safeguards where necessary. When Vodacom and Zantel approached the NPSD at the BoT in 2008, the regulators had to determine how to regulate these newly proposed payments services.

The author explained the amendment of the Bank of Tanzania Act at Section 6 of 2003 which granted the BOT the power to regulate, monitor, and supervise the National Payments System, including payments products and clearing and settlement systems products. However, the existing regulations provided limited guidance for the private sector. Tanzania lacked broader legislation for payment systems, and the Electronic Payment Scheme Guidelines of 2007 only covered risk management for banks and other financial institutions.

Even in the absence of regulation, the Bank of Tanzania was inclined to progress. Deployments were subject to Bank of Tanzania oversight and the (prudential and non-prudential) regulatory requirements for the provision of the services. The author further noted the need for coordination between the regulators and within the regulatory bodies themselves.
The author described various efforts done by the Bank of Tanzania to monitor, and supervise the National Payments System, including payments products and clearing and settlement systems products following innovation and support financial inclusion while managing risks. This author failed to turn his eye on the legal aspect and how the right of the consumers is being assured.

Masamila B. (2014)\textsuperscript{47}, In this article the author demonstrated that mobile banking was introduced by E- fulusi Africa limited in partnership with FMBE bank through Mobipawa platform. Mobipawa was operator of independent platform that allowed subscribers to transfer, receive, save and withdraw money as well as purchase goods and services through the use of mobile phones.

He continued mentioning the m-pesa being one of the mobile money transfer platform that can be operated by MNO in emerging market where customers are able to send money to any other mobile customer via a simple text-based transactions. As to recently Vodacom Tanzania and commercial banks of Africa have launched a banking service named M-pawa that allows Tanzanians who are M-pesa customer to save and borrow money on their mobile phones.

The other mobile banking as mentioned is Tigo Pesa, AirtelMoney, Ezy-Pesa. The author has also mentioned the institutions and regulations governing financial legislation that influences the operations of Mobile Banking within the United Republic of Tanzania together with telecommunication regulations that influence the conduct of mobile banking operations within The United Republic of Tanzania. Notwithstanding the good presentation of the writer, he failed to pay attention on the gap provided by the regulations concerning the protection of the customer on mobile banking transactions.

\textsuperscript{47} Masamila B. (2014). State of Mobile Banking in Tanzania and Security Issues: \textit{International journal of network security & its applications(IJNSA)} Vol.6, No.4
1.8 Research Design and Methodology

This part is about the framework in which the study was carried out. This part describes the research design, study area, sample size and sampling procedure, sources of data, methods of data collection, which included both primary data and secondary data and data analysis.

1.8.1 Research Design

This study is purely analytical and a qualitative research whereby banking laws and consumer protection laws have been analyzed plus data gathered from mobile banking consumers, banking officials and lawyers. The banking officials involved was NMB Bank, Wami Branch Morogoro officials, CRDB, Morogoro Branch officials, BoT headquarters in Dar es Salaam officials and some lawyers based in Morogoro.

1.8.2 Sampling and Sampling Procedure

The selection of respondents based on purposive sampling. The selection of priority has focused on professionalism and expertise whereby relevant respondents such as bankers, lawyers and consumers have been visited due to their significance and involvement in the matter concerned.

The general public who are the users of the mobile banking services were involved in collection of data concerning the matter. Basically, the selection of respondents focused on collecting information and data relating to mobile banking and protection of consumers. The purposive sampling method has been used to the professional respondents such as bankers, lawyers, and consumers. In addition to that the convenience sampling method was employed to study the units that will be available and willing to share the information concerning the subject matter at the time of data collection.

1.8.3 Sample Size

This research was conducted in Tanzania; the targeted population was located in Morogoro and Dar es Salaam regions. Taking into account the objectives of the research, time available for carrying out the research and the cost involved the targeted respondents
were 10 bankers from CRDB and NMB respectively, 20 members of the public who are NMB and CRDB customers, 20 lawyers and 10 officers of respective department of Bank of Tanzania.

1.8.4 Sources of Data
The researcher used both primary and secondary data. Primary data from the field was expected to provide the information basing on reality and experience that has revealed the extent of the problem. The researcher also conducted an intensive review of secondary data such as books, journals, articles and other relevant materials with the view to appreciate what had been said by others on the subject, and establish the existing gaps. Consequently, the researcher has been able to address the existing gaps and their practical solution.

1.8.5 Methods of Data Collection
In this study the researcher collected data by using the following methods, the questionnaires during primary data collection and documentary review during secondary data.

1.8.5.1 Primary Data
Primary data refers to that information that the researcher collects or gathers directly from the respondents. For the purpose of collecting primary data, the researcher conducted field research to the relevant institution such as NMB Bank, Wami Branch Morogoro, CRDB, Morogoro Branch, BoT headquarters in Dar es Salaam. The researcher used interview and questionnaires as data collection method.

1.8.5.1.1 Interview
This method took into account personal and group interviews of mobile banking consumers. Personal interview involves the use of open and closed questions to mobile banking consumers while group interviews involves the interview of small groups of mobile banking consumers so as to understand their concerns and expectations regarding the mobile banking issues of their protection. The researcher choose this method because
it is easy to get data as you can elaborate in case the respondent does not understand the question or gives incorrect answer.48

1.8.5.1.2 Questionnaires Survey
The researcher had supplied questionnaires to the relevant personnel from the aforementioned institutions that have rich knowledge on mobile banking matters, and collected necessary information and ideas concerning the protection of consumers using mobile banking in Tanzania.

The questionnaires which were supplied contains structured and unstructured questionnaires, open ended question which gave the respondents complete freedom of giving their views and providing information related to the problem at hand, the researcher chose to use questionnaires method because of the respondents intended seems to be occupied in a sense that it is difficult to get their attention but with questionnaires it is simple as they can fill it at their own time.49

1.8.5.2 Secondary Data
(i) Documentary Review
The researcher in conducting this research visited different libraries whereby the analysis of the problem was done through statutes, cases, textbooks, journals, articles, reports on other related study and other relevant materials available. The researcher visited Mzumbe University library, the library of University of Dar es Salaam, Jordan University College Library, Geem Attorneys Law Chambers, Morogoro Resident Magistrate Court, The Bank of Tanzania(Dar Es Salaam), CRDB Bank, Mandela Branch and Morogoro Branch and NMB Bank Wami Branch and Uluguru Branch.

(ii) Electronic Sources
Internet search was employed through visiting relevant websites with relevant information on mobile banking matters, online journals, reports and other useful materials was visited.

48 See sample of scheduled interview on Appendix IV
49 See sample of questionnaires on Appendix I to III
1.8.6 Data Processing and Analysis

The researcher has conducted careful study of the data collected for the purpose of properly editing, classifying, and summarizing and evaluating them. The collected data was scrutinized and examined in details before analyzed. This assisted the researcher to determine whether the data collected are accordance with the objective of the study.

Data collected through structured questionnaires and scheduled interview was coded by assigning symbols to each response and categories. This enabled the researcher to translate data into symbols which can be counted.

1.9 Data Quality Control

Efforts were made to warrant vital and solemn data gathering and scrutiny processes. The research was conducted to confirm that the information and data attained were authentic and reliable. Responses that were irrelevant to the study were not included in analysis in order to control the quality of data. However the study used more than one data collection methods in order to get valid and reliable data.

1.10 Area of Study

The researcher conducted this research in Morogoro and Dar es Salaam regions. The researcher opted for these regions for the purpose of collecting customer’s experience on the matter.

1.11 Limitation of the Study

Problems were experienced by the researcher in carrying out of this study. These factors limited the researcher in getting information relating to the problem. Hereunder are the factors;

1.11.1 Availability of Respondents

Most of the respondents were busy in their day to day activities, these led to postpone and non-reply of the questionnaires collected before them. Some respondents responded to the questionnaires but did not answer all questions.
1.11.2 Time and Financial Impediments
The researcher did not have enough finance to travel all places around Tanzania to get relevant information concerning the study. Moreover the delay of some of the responses during data collection affects the researcher in the whole process of report writing.

1.12 Scope of the study
This research focused on examining various laws in Tanzania so as to see to whether or not the rights of the mobile banking consumers are well protected. The research was limited to mobile banking consumers who are enjoying the CRDB Simbanking and NMB Mobile services.

1.13 Conclusion
The Tanzania consumer protection regime has been through a long journey of discovery and learning. It is also evident that there is still a lot to be done to reach satisfactory results. The current consumer protection offered in the country has a lot of flaws and needs to be revamped. This system, which has failed to fulfill its purpose, cannot satisfactorily and successfully address financial transaction on mobile banking consumer protection issues. The discussion in this study reveals why current measures are not the answer and will highlight measures to be taken in order to successfully address financial transaction on mobile banking consumer protection in Tanzania.
CHAPTER TWO
CONSUMER PROTECTION IN MOBILE BANKING TRANSACTIONS IN TANZANIA; AN OVERVIEW

2.1 Introduction
This chapter provides extensive understanding of consumer protection in mobile banking, the researcher will discuss in-depth the theories and concepts on the law and practice relating to mobile banking in Tanzania; furthermore the researcher will explain the development and crucial aspects relating to the protection of consumer in mobile banking.

2.2 E-banking
The term e-banking refers to provision of banking services and the initiation and performance of payments, accessing money, transmitting and depositing through the banking system by electronic means, other advanced technologies and through a variety of access devices and links of communication.50

The services provided includes, using of ATM machines, the internet or mobile phone it allows the consumers access most of the services offered by banks or financial institutions directly.51 Some writers reason that; e-banking have empowered financial transactions which can be accessed everywhere inside or outside the country, at home, from the internet or telephone.52

2.3 Mobile Banking

Mobile banking is a subset of electronic banking which underlies not only the determinants of the banking business but also the special conditions of mobile commerce. Mobile Banking has been gaining increasing popularity amongst various sections of the society for past few years, having recovered from the shock of the dot-com burst.\textsuperscript{53} Mobile Banking refers to provision and availment of banking and financial services with the help of mobile telecommunication devices.

The scope of offered services may include facilities to conduct bank and stock market transactions, to administer accounts and to access customized information.\textsuperscript{54} With mobile technology, banks can offer services to their customers such as doing funds transfer while travelling, receiving online updates of stock price or even performing stock trading while being stuck in traffic.\textsuperscript{55}

Mobile banking (also known as M-Banking, SMS Banking etc.) is a term used for performing balance checks, account transactions, payments, credit applications via a mobile device such as a mobile phone or Personal Digital Assistant (PDA). It is the convenient, simple, secure, anytime and anywhere banking.\textsuperscript{56} Mobile banking is the latest in the series of technological wonders of the recent past.\textsuperscript{57}

2.4 Consumer

Consumer as defined under section 2 of the Fair Competition Act refers to a person who utilizes goods or services. The section reads: \lq\lq consumer\rq\rq includes any person who


purchases or offers to purchase goods or services otherwise than for the purpose of resale but does not include a person who purchases any goods or services for the purpose of using them in the production or manufacture of any goods or articles for sale.” Thus, to end users of banking services in electronic banking are consumers of banking services offered by banks and financial institutions as permissible under the Act. 58 Thus to say, among other things mobile banking can be used by consumers, financial institutions, telecommunication companies and corporations. 59

2.5 Consumer Protection in Mobile Banking
The concept of consumer protection in mobile banking is an integration of two pieces of legislation where the Bank of Tanzania Act 60 and the BAFI Act 61 establish the banks or financial institution mean while providing for their operation the Fair Competition Act 62 is the consumer protection law in Tanzania that deals with protection of end users from unfair trade and commerce activities.

Thus to say, due to the legal issues that have been brought by the development of ICT in the banking business the rights of consumers has not been addressed well by the pieces of legislations pointed above under chapter one on the statement of the problem. These consumer rights of data privacy and confidentiality are the key elements to mobile banking transactions and the laws identified with lacunae in this study have not addressed on how consumers will seek redress for complaints for failure to protect internet data, privacy and confidentiality in mobile banking transactions.

2.6 Mobile Money Transfer
Mobile payment, also referred to as mobile money, mobile money transfer, and mobile wallet generally refer to payment services operated under financial regulation and performed from or via a mobile device. Instead of paying with cash, check, or credit cards,

58 See Section 24 of the BFIA No. 5 of 2006.
59 Supra note 53, p. 2.
60 Act No 4 of 2006.
61 Act No 5 of 2006.
a consumer can use a mobile phone to pay for a wide range of services and digital or hard goods.

Although the concept of using non-coin-based currency systems has a long history, it is only recently that the technology to support such systems has become widely available. Among the services available to the users of m-money are domestic and international money transfers, mobile payments (airtime top-ups, merchant payments, utility bill payments, and salary transfers), and mobile banking (balance inquiries, withdrawals, and deposits).

Currently, there are four m-money products on the market: Vodacom M-Pesa, Tigo Pesa, Airtel Money and Ezy Pesa (Zantel Z-Pesa). In addition, the National Microfinance Bank (NMB) offers a mobile application, “Pesa Fasta,” which allows its customers to use their mobile phones to send money to any person in Tanzania, who does not have a bank account.

Internet payment systems refer to the various methods by which individuals and companies doing business online collect money from their customers in exchange for the goods and services they provide. A number of different forms of payment exist for online purchases, and more are being developed all the time. After all, it is in the best interest of both consumers and merchants to make electronic commerce as safe and easy as possible.

2.7 Importance of Mobile Banking

Mobile banking has a lot of advantages for both providers and those who avail the services. It has really become multi beneficial. Banks do not require much investment and they do not even have to modify their existing infrastructure. Banks can send the message in fewer efforts to a huge number of people.

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Mobile banking also helps Banks to form good relations with their customers. In mobile banking, Banks get valuable data about the customers which help them in effective customer's relationship management practices. It facilitates quick feedback and helps in customer retentions and customer loyalty.65

Mobile phones provide a way to reach out to people in isolated areas. When banks have customer database, they can use SMS advertising to give information about their service to their existing customers. This helps in the communication and promotion of new customers. Customers enjoy anytime anywhere banking with the help of their mobile phones.

They need not stand in the queues or face the employees whom do not. Mobile banking is cost effective for bankers and customers. The information can also be stored automatically in mobile as a proof in the form of SMS as proof, whether sent or received.66

2.8 Mobile Banking Security Issues

As customers demand frictionless online experiences, especially on mobile devices where there is a particular demand for speed and responsiveness, organizations need to match the roll out of functionality to perform riskier transactions with their ability to authenticate the device, the application and the user, in ways preferred by the customer, and permitted by local laws and regulations.67

Fraud controls are matched to the risk of specific customer actions, and necessarily depend on the authentication, integrity and secrecy of customer credentials and identity, as well as the assets stored on the device itself. The mobile device in which the control or

66 Petrova. K, Mobile banking: Background, services and Adoption.
asset resides/executes needs to be considered a hostile environment, both from the perspective of reverse engineering attack and ultimately compromise.\textsuperscript{68}

Today, for the cautious user with a non-tampered (or “jail broken”) device, who uses apps from official stores, the threat is currently relatively low. Little vulnerability in underlying platform security has been exploited by banking malware. Nevertheless, the risk remains that as mobile become the predominant channel for accessing banking services, malware (and increasingly, targeted social engineering) will appear.\textsuperscript{69}

Consequently, organizations will need to make the choice as to whether to invest for the current threat landscape, or in a more strategic architecture that will survive and evolve as threats materialize. Designing an end-to-end mobile channel architecture is no different to any other architecture in a fast-changing, technology-driven domain. However an organization that has implemented a more monolithic or poorly structured solution may find it in an architectural dead-end and may not be capable of an effective response to a change in the external landscape.\textsuperscript{70}

An architecture that is most likely to survive into the future and protect the investment is one that can evolve in response to the different threat vectors and new technologies in a more incremental, reliable and agile manner. Other critical drivers affecting mobile security strategy and, in turn, architecture arises out of the following complex, dynamic, overlapping and interconnected eco-systems, covering: Online and digital identity providers, Payment providers and dis-intermediaries, Banking, Mobile platforms and services.\textsuperscript{71}

\textsuperscript{68} Petrova. K, Mobile banking: Background, services and Adoption. \url{http://staff.elena.aut.ac.nz/Krassie-Petrova/Postprints/PetrovaGBATA02.pdf} retrieved on 23rd May 2016.


\textsuperscript{70} supra note 17

\textsuperscript{71} KPMG, (July 2015), Mobile banking 2015, UBS. \url{http://www.agefi.fr/sites/agefi.fr/files/migrate/etudereference/EYJCKGNASL_KPMG-UBS%2520Global%2520Mobile%2520Banking%2520Study%2520Final%2520Full%2520Report.pdf}, retrieved on 05th June 2016.
Advantages of Mobile Banking

Mobile banking offers various advantages to banks as well as customers; foremost Mobile banking enables banks to reduce cost of courier, communication and paper works. It reduces costs in setting up a branch and the resources to process transactions. Moreover mobile banking helps in improving services: as there is a direct contact between customers and banks, banks can improve their services on the basis of customer’s feedback.

Increases customer loyalty: using M-banking customers need not to go in banks branches for fund transfer or for information, which creates a good relationship between banks and customers which helps in increasing loyalty towards the banks. Broader customer base: with mobile banking banks can reach a broader customer base beyond their geographical base and area of operations.

Mobile banking has much benefit to him as customers have online access to their bank accounts. Unlike traditional banking, consumers can perform banking transactions at anyplace. Safe and secure transaction: mobile banking reduces the risk of fraud. An SMS is send by bank whenever customer withdraws money from his/her bank account. It has secured pin code which is known by the user, and also has a check digit without it no one can deposit money.

2.10 Reason for Protection of Banking

Banking has always been regarded as special and thus been given differentiated regulatory treatment. The specialities of the banks are partly explained by the peculiarity of its function such as deposit taking, lending and therefore it must be well regulated.

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73 Ibid.
74 Op cit.
75 Ibid.
76 Loc cit.
77 Binamungu ,C.S Regulation of Banking Business in Tanzania .p 22
Regulation and supervision is done for many reasons. Generally, to protect the economy due to the fact that the broad range of activities banks undertake directly extend to and affect various areas of the economy. Specifically, the justifications why the law is important in regulation of the banking business include customer deposits-taking, customers deposit-lending and other related activities which banks have a unique and central role in financial markets across the world.\(^78\)

The power that the bank has in accepting deposits has made bankers to become the principle agents or middlemen in a number of financial transactions as well as in any countries payment system. Due to this, most payments in Tanzania, especially at this era when foreign capital is heavily encouraged, involve a bank at some point. This payments system plays a vital role in enabling goods and services to be exchanged throughout the economy.\(^79\)

However when the bank does the first function above it has to deal with a vast range and types of borrowers on the one hand, and with the flexibility with which banking institutions can handle them. Banks are key lenders to business sector as well as to individuals; therefore, they determine how an available large portion of credit is to be allocated across the country. Regulation and supervision provides Dos and Don’ts that make it done fairly.

A combination of these activities makes it apparent how much the banking system can affect the comprehensive supply of money and credit in a country. Due to this, banks are made very decisive links in the monetary mechanism and in influencing the overall condition of the economy. Considering this importance of banks to the economy and the level of trust customers place in them, it is in no way a surprise to find that governmental regulation and oversight have to extend too many aspects of banking.


Banking is an industry having strong public policy implications. Thus, the general public, bankers and the government have all played roles in developing the present system of banking laws and supervision. Owing to that regulatory system has been responsive to many different needs of the public.80

4.11 Protection of Depositors’ Funds

Depositor protection is the most basic reason of the law/ regulation and supervision. This is true in three aspects: that the public makes a substantial amount of financial transactions through banks, that many business men, firms as well as individuals do hold a very significant portion of their funds in these banks and lastly that banking activities pose a good number of peculiar dangers to customers funds deposited with a bank.

These dangers arise out of the following facts, one that, in most cases customers basically make use of banks when they draw and cash cheque and when they carry out other financial transactions which necessarily require them to maintain a deposit account. As a result of maintenance of these deposit accounts, customers become banks creditors and become tied to the fate of their bank. Should the bank fail, the customer fails also.

In other businesses a customer never becomes a creditor of the firm; he simply pays for goods and services there at. The individual bank depositors have a significant difficulty protecting their interests than customers of other types of businesses. When they decide to open an account with any bank, they usually make a more general judgment about the condition of the banks, which is sporadically prone to error.

It is rather difficult to make a thorough and precise assessment of a bank’s financial soundness from the view of these bank expensive buildings or from the lengthy period of time the same has been in business. On this account banking laws contain many provisions which are calculated to protect the funds of the depositors.81

80 Supra note 82
2.12 Protecting Consumer and General Public Rights.
Banks deals with various people who includes not only their customers but also other people who are not the customers, it is also true that the banks existence also felt by general public under which they operate thus law or regulation is the matter of essence so that the banks effect an equal and non-discriminatory treatment of all the consumers of its services though he is not a depositor especially during this time when there are mounting complexities of financial instruments that come with the uniqueness of individual customers.\textsuperscript{82} Many parties apart from consumers may also be concerned with a bank in its corporate social performance.

2.13 Lesson from European Regime; Focus on United Kingdom
In United Kingdom, protection for mobile banking consumers refers to providing consumers’ confidence and safeguarding depositors’ or consumers’ financial data and privacy free web bug attacks and unauthorized gathering of consumers’ information. In Tanzania the terminology might have similar definition but the consumer protection law does not ascribe such meaning hence it remains a debatable subject that is very controversial and the concept of consumer protection in mobile banking needs to be addressed immediately.\textsuperscript{83}

With regard to protection of consumers in United Kingdom and Tanzania basically refers to safeguarding banking customer’s or consumer’s deposits. Nothing is explicit as to protection of their financial data privacy and confidentiality once there is breach. United Kingdom has managed to protect its mobile banking consumers compared to Tanzania despite the fact that most of its principal legislations are out of date, however via its European Union where a number of directives are passed whenever there is a crucial issue facing the whole region including the infringement of data privacy.

Both the United Kingdom and Tanzania have enacted legislations to protect banking consumers. In the case of United Kingdom, the most relevant Act is the Financial Services

\textsuperscript{82} Read sections, 26(1), 48(1) (3) (a) (b) (c), 48(4) (a) (b) (c), of the BFIA, 2006.
\textsuperscript{83} Fair Competition Act No 8 of 2003.
and Markets Act and the Consumer Protection Act.\textsuperscript{84} Under the Financial Services and Markets Act it establishes the Financial Services Authority which regulates consumer finances in UK. The Financial Services Authority in respect to consumer protection creates a compensation scheme for protecting consumers. Although not mobile banking consumers but it can be argued that the scheme intends to cover even mobile banking consumers.

In Tanzania the relevant legislation is the Fair Competition Act which establishes the FCC/FCT and the NCAC that are responsible for regulating and protecting consumer’s interests including of banking consumers.\textsuperscript{85} These institutions lack jurisdiction to adjudicate e-banking consumer grievance cases and have also proved reluctance in protecting mobile banking consumers simply because most of the Tanzanians are not aware of the existence of the stakeholders protecting consumers in Tanzania and those who are aware of the same fear to institute any suits for redress.

\textbf{2.14 Conclusion}

This chapter has provided a deep discussion on all issues relating to consumer protection on mobile banking. However the chapter has discussed the development of mobile banking and some crucial aspects on matters relating to protection of mobile consumers. However the chapter discussed how developed countries with organized banking and consumer protection law address the issues relating to protection of consumers. This chapter has discussed concepts like mobile banking, consumer, and consumer protection in mobile banking, mobile money transfer and other concepts. These concepts have bearing on consumer protection on mobile banking, and will bring positive assistance to understand this study its usefulness to the reader in the next chapters to come.


\textsuperscript{85} Section 2 of the Fair Competition Act No 8 of 2003.
CHAPTER THREE
ANALYSIS OF LEGAL FRAMEWORK RELATING TO CONSUMER PROTECTION IN MOBILE BANKING

3.1 Introduction
This chapter examines the laws relating to protection of consumers in banking transaction activities available in Tanzania. Particularly by pointing out and analyzing the lacuna in the banking laws and the consumer protection legislations in relation to protection of mobile banking consumers and their inadequacy. This chapter initially, provides an analysis of the legislative policy to the regulation of mobile banking activities and thereafter discusses the effectiveness and ineffectiveness of the banking laws and consumers laws in protection of mobile banking consumers.

3.2 The Constitution of the United Republic of Tanzania
The Constitution of the United Republic of Tanzania, under Article 16 provides inter alia that, the privacy of a person, his family and matrimonial life shall be respected and protected. Despite the fact that the Constitution does not categorically point out the protection of person’s internet data privacy, yet it is safe to say that the constitution requires protection of person’s own privacy whether in the internet or offline.

That is, the inclusion of privacy protection right is significantly in that all the laws that involve sensitive personal information to include financial data in mobile banking transaction must be consistent with this right.

3.3 Principal Legislations: The Banking Laws
Laws applicable in the current banking transactions are the Bank of Tanzania Act and the Banking and Financial Institutional Act. These banking laws with regards to the BoT Act establishes the Bank of Tanzania which is the Central Bank that sets policies for

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86 Act No.2, of 1977, as amended from time to time.
87 Act No 4 of 2006.
88 Act No 5 of 2006.
89 Act No 4 of 2006.
supervision of other banks and financial institutions among other things. On the other hand the BAFI Act\textsuperscript{91} regulates other established banks and financial institutions with a view of maintaining safety and reducing risks in banking transactions among other things.\textsuperscript{92}

3.3.1. The Bank of Tanzania Act, No. 4 of 2006

This is an Act which establishes the Bank of Tanzania (BoT) and provides duties and regulations of the Bank under its provisions. It is necessary to mention this Act here even though it does not deal with consumer regulations. This is because the Act establishes the Central Bank of Tanzania which is vested with powers to regulate all other banks, financial institutions and payments systems amongst others.\textsuperscript{93}

The Bank has the function of regulating, monitoring and supervising the payment, clearing and settlement systems including all products and services, conducting oversight functions on the payment, clearing and Settlement systems in any bank, financial institution or infrastructure service provider or company.\textsuperscript{94}

Furthermore, the Act gives powers to the Bank to participate in any such payment, clearing and settlement systems; establish and operate any system for payment, clearing or settlement purposes; and perform the functions assigned by or under any other written law for the regulation of payment, clearing and settlement systems. The provisions of the Act also vest the Bank with other powers such as those of the banker and fiscal agent of the government.

The Bank deals with issuance of money, exchange rates and all other finance matters. Even though the BoT is overseer of all finance matters in the country, it had no

\textsuperscript{90} See Preamble to the BoT Act No 4 of 2006.
\textsuperscript{91} Act No 5 of 2006.
\textsuperscript{92} See Preamble to the BFIA No 5 of 2006.
\textsuperscript{94} Ibid
provision for regulating mobile payments services until very recently when it enacted the Guidelines on Agent Banking for Banking Institutions, 2013.

The guidelines also provide for matters of governance and the operational requirements of service providers and their agents. These are commendable efforts, as regulation of agents of bank institutions play an important role in consumer protection. The guidelines address the gap in financial institution regulation which had previously existed.

However, these Guidelines do not address mobile banking consumers concerns raised in this thesis. It is revealed that Tanzania lacks broader legislation of payment systems. The BoT had issued Electronic Payment Scheme Guidelines of 2007; however, these only addressed and covered risk management for banks and other financial institutions.

It can be argued that things have not changed and there is still a big gap in regulating financial activities from mobile phone service providers. This is for general consumers in Tanzania. There is a need for extensive measures addressing this area. Mobile payments and operations are widening every day and if they remain unregulated, consumers are likely to suffer.

Under section 5 of the BoT Act\textsuperscript{95} provides for the general objectives of the Act which reads as follows:

\[ The \textit{principal functions of the Bank shall be to exercise the functions of the central bank and, without prejudice to the generality of the foregoing, to formulate, implement and be responsible for monetary policy, including exchange rate policy, to issue currency, to regulate and supervise banks and financial institutions including mortgage financing, development financing, lease financing, licensing and revocation licenses and to deal, hold and manage gold and foreign exchange reserves of Tanzania.}\textsuperscript{96}\]

The above provision does not empower the central bank to supervise regulation of electronic finances which includes mobile banking and as to whether finances regulated

\textsuperscript{95} Act No 4 of 2006.

\textsuperscript{96} Section 5 (1) of Act No 4/2006.
under section 5 and risks encountering consumers in conventional banking activities can similarly be regulated under the same law.

By virtue of section 6 of the BoT Act\textsuperscript{97} it empowers the Central Bank with powers to regulate and supervise other banks and financial institutions. Section 6 (1) and (2) paragraph C reads as follows:

\begin{quote}
The Bank shall regulate, monitor, and supervise the payment, clearing and settlement system including all products and services thereof; and conduct oversight functions on the payment, clearing and settlement systems in any bank, financial institution or infrastructure service provider or company.
\end{quote}

The provision goes on to say “The Bank may perform the functions assigned by or under any other written law for the regulation of payment, clearing and settlement systems”

Moreover, section 16 of the BoT Act\textsuperscript{98} imposes an obligation to staff of the Bank not to breach the confidence of their customers. The section reads:

\begin{quote}
Except for the purposes of the performance of his functions, when so required by law or authorized by the Board, no member of the Board or staff of the Bank shall disclose any information relating to the Bank or to any transaction or customer of the Bank acquired in the course of employment or the discharge of his duties.
\end{quote}

The obligation imposed to staff of the Bank is vague and cannot at all offer protection to consumers who have engaged in mobile banking transactions. Protection of information in conventional means of banking is far more different to information protection in mobile banking. Bank employees face difficulty in upholding the obligation to maintain secrecy relating to banking activities mostly where the transaction involves is one of electronic banking.

\textbf{3.3.2. The Banking and Financial Institutional Act; No 5 of 2006}

Section 5 of the BFIA\textsuperscript{99} provides for the key objectives of the Act which include supervision and regulation of the banks and financial institutions in Tanzania. The section reads: “The primary objectives of supervision and regulation of banks and financial

\textsuperscript{97} Supra note 94.
\textsuperscript{98} Act No. 4 of 2006.
\textsuperscript{99} Supra note 92.
institutions by the Bank are to maintain the stability, safety and soundness of the financial system and to reduce the risk of loss to depositors.”

This law has enumerated the powers of the Bank towards banks and financial institutions of Tanzania which are the ones that were issued with guidelines requiring banks and financial institutions to maintain safety and sound financial system which includes reduction of risk of loss to consumers; but this protection has not been expressly extended to mobile banking transactions something that has led to further violation of consumer rights.

Generally, the BFIA\textsuperscript{100} provides for the establishment of the banks and financial institutions and provides for how these banks and financial institutions operate. Nevertheless, section 24 of the BFIA itemizes activities permissible to be carried out by the banks or financial institutions as follows:

\begin{quote}
A licensed bank or financial institution may engage in any or all of the following activities, directly or through a separately incorporated subsidiary as determined by the Bank, subject to any limitation in the license issued to such bank or financial- (d) Money transmission services; (p) Other activities determined by the Bank to be customary banking practices or incidental to the banking business \textsuperscript{101}
\end{quote}

Among other permissible activities the two pointed above are relevant in mobile banking transactions and consumer protection. On money transmission services, mobile banking transactions may be included here and on other activities incidental to banking business mobile banking is one among the incidental banking businesses however the law does not expressly provide for the protection of consumers in these money transmission services or incidental banking businesses.

\textsuperscript{100} See Preamble to the BFIA No 5 of 2006.
\textsuperscript{101} Section 24 of the Banking Financial Institution Act, No. 5 of 2006.
Additional, section 48 of the BFIA\textsuperscript{102} requires that every bank or financial institution to uphold fidelity and secrecy as according to the law, practices and the custom among bankers not to reveal consumers information.

It is however difficult to ensure secrecy in mobile banking transactions since persons with the knowhow of ICT have proved to have the ability of tapping information from technological devices that are used as medium of financial transactions to gather financial data and commit e-money fraud.

The provision quoted above is also insufficient to protect consumers in mobile banking transactions since auditors, advisors, officers and employees of banks or financial institutions are required to make a written declaration of fidelity and secrecy before assuming their duties.

However, such requirement cannot at all work where mobile banking is the service offered by the banks or financial institutions. The reason to this is based on the nature of how mobile banking transactions operate and the ability of people with the knowhow to tap data from electronic transactions pose a challenge on ensuring the protection of mobile banking consumers.

3.4 The Fair Competition Act, No 8 of 2003

The relevant law relating to protection of end users of goods and services in Tanzania is the Fair Competition Act.\textsuperscript{103} In its preamble the statute aims at achieving effective protection of consumers in commerce among other things.\textsuperscript{104} Section 2 of the Fair Competition Act\textsuperscript{105} defines the term services to include banking rights, benefits, privileges or facilities.

The list of services that need protection under this consumer protection legislation does not expressly at all mention mobile banking activities or its facilities as to how the law is

\textsuperscript{102} Supra note 93.
\textsuperscript{103} Act No 8 of 2003.
\textsuperscript{104} See Preamble to the Fair Competition Act.
\textsuperscript{105} Op cit
to protect the existing problem of breach of confidentiality in the banking business that arise from unfair terms and conditions at a certain point of time. The section reads:

"service" includes any rights (including interests in, and rights in relation to, real or personal property), benefits privileges or facilities and without limiting the generality of the foregoing, includes the rights, benefits, privileges or facilities provided, granted or conferred under any contract for or in relation to: (a) The performance of work, including work of a professional nature, whether with or without the supply of goods; (b) The provision of, or the use or enjoyment of facilities for, amusement, entertainment, recreation, education or instruction; (c) Insurance; (d) Banking; (e) Lending of money...\textsuperscript{106}

The list of services above is vague and narrow in the context of protecting consumers who engage themselves in mobile banking transactions that involve infringement of consumer’s rights on protection of mobile banking transactions.

The ineffectiveness of the Fair Competition Act\textsuperscript{107} is that it has failed to protect consumers in mobile banking transaction since it only deals with protection of consumers of goods and services from certain trade practices that are misleading,\textsuperscript{108} misleading and deceptive conduct,\textsuperscript{109} unfair business practices\textsuperscript{110} without directing its aims as a framework law in protection of consumers in mobile banking transactions.

3.5 Cybercrime Act, No. 4 of 2015.

Cyber Crimes Act\textsuperscript{111} was enacted to make provisions for criminalizing offence related to computer systems and information communication Technologies. It laydown the foundations for investigation, collection and use of electronic evidence and for matters related therein. Likewise the Act does not provide clearly for crimes concerning financial transactions on mobile banking especially on transactions from the bank account through the mobile phones.

\textsuperscript{106} Supra note 104.
\textsuperscript{107} Ibid.
\textsuperscript{108} Part II of FCA No.8/2003.
\textsuperscript{109} Ibid, Part III.
\textsuperscript{110} Ibid, Part IV.
\textsuperscript{111} No 4 of 2015.
3.6 Electronic and Postal Communication Act No 3 of 2010.

The EPCA\textsuperscript{112} aims at regulating electronic communications service providers among other things. These providers offer internet electronic services via mobile phones and websites, thus put them under the obligation to protect data privacy of their customers.

This Act has provided for the definition of Electronic Communication on service to mean any service the purpose or effect of which is to enable or facilitate electronic communication. Moreover the Act has defined the word “consumer” or services to mean any person who uses electronic communication or postal product or services. And “mobile telephone to mean a mobile apparatus or mobile terminal equipment which is capable of connection to a cellular telecommunication system and which is used by a customer to transmit or receive indirect communications over such telecommunications system.

Therefore by all these definition the Act shows that it never intended to financial transaction done via mobile telephone rather to transmit or receive indirect communications.

However, according to Section 89 of EPCA requires every mobile phone subscriber’s information to be stored with the TCRA database. This law does not provide for how such subscriber information is to be protected in the internet since recently registration of mobile phone and SIM cards is also conducted online and so does banking activities. Also, the duration of storage of the information is not known and whether it is protected the same is not said under the law.

That is, database can be accessed via internet too and under section 89 and 91 of EPCA further requires every data of a subscriber be stored in the database, yet protection of the information privacy is not addressed by the law. The failure to protect ordinary consumer’s information is a green light that even mobile banking data is far worse at stake.

\textsuperscript{112} Act No 3 of 2010.
3.8 Tanzania Communications Regulatory Authority Act

This Act establishes the Tanzania Communications Regulatory Authority (TCRA) for the purpose of regulation and overseeing telecommunications matters. The TCRA also regulates broadcasting, postal services and other telecommunication services such as providing for allocation and management of the radio spectrum, covering electronic technologies and other information and communication Technologies (ICT) applications. The Act also regulates consumer affairs in telecommunication matters. This Act does not provide for any offences. Issues of fraud, misleading actions, unreasonable and high charges, mistakes and errors, spam, unfair terms and conditions, language and insufficient information are not addressed.

It should be noted here that the Act was enacted before online commerce became popular in Tanzania. Consequently the Act’s focus is telecommunication services as the products and services offered to consumers. For instance, whereas the Act regulates internet products and services offered to consumers, the focus is internet itself as a product, hence internet coverage and distribution rather than consumer products and services offered through the internet.

As a result, protection of e-consumers is not fully covered. The Act empowers the TCRA to deal with the matters arising from the Act. The Authority’s duties are to issue, renew and cancel licenses; to establish standards for regulated goods and regulated services and standards for the terms and conditions of supply of the regulated goods and services; to regulate rates and charges; to monitor the performance of the regulated sectors; and to facilitate the resolution of complaints and disputes.

Furthermore, the authority has powers necessary to perform its functions, among them the power obtain documents and evidence, conduct inquiries and investigate into complaints or other issues. As mentioned, telecommunication is seen as a commodity in itself to the extent that the Authority’s duties are limited in regulating charges, issuing and cancelling communication licenses and regulating supply of the telecommunication goods such as telephone airtime and internet bandwidths.
Neither the Act nor the Authority addresses matters of online commerce and e-consumer transactions. Currently the Act is silent on allowing TCRA with direct protection of mobile banking consumers.

3.8.1 The Tanzania Communications (Consumer Protection) Regulations, 2005
These regulations were enacted in 2005 under the provisions of the Tanzania Communications Regulatory Authority Act. The regulations set out consumer protection provisions which need to be followed by service providers and other stakeholders while dealing with consumers of telecommunication.

It should also be noted here that the lawmakers have addressed telecommunication as a product or service by itself and the regulations are limited to that perspective. Consequently, consumers who use telecommunication as a medium for transactions are rendered with little protection. This is evident from the meaning of a consumer given in the regulation where they are defined and limited to a ‘customer of electronic communication and postal services’.

These regulations do not address problems of fraud, misleading or deceptive conduct, language, unreasonable and high charges, mistakes and errors, spam, unfair terms and conditions. However, they have addressed the issue of insufficient information and information on terms and conditions. The regulations require a licensee to provide a clear and understandable description of available services and the terms, conditions, rates, and charges for those services.

3.9 Electronic Transactions Act, No. 13 of 2015
This is an Act to provide for the legal recognition of electronic transactions, e-government services, and the use of information and communication technologies in collection of evidence, admissibility of electronic evidence, to provide for the facilitation of use of secure electronic signatures and to provide for other related matters.
This Act has provided for the protection of consumer but this Act has protected only those consumers who use the electronic transaction for goods or services for sale, hire or for exchange electronically. Section 30 of the Act has provided for cancellation right where by a consumer may within seven days or longer period specified in the agreement, after receiving the goods or conclusion of agreement and the consumer has not received any material benefit from the transaction, cancel the agreement for supply of goods or provision of service. But under section 30 (5) (a) the Act provides that this cancellation right is not applicable to the electronic transactions for financial services.

3.10 Policy Deliberations

According to section 21 of the Bank of Tanzania Act\textsuperscript{113} particularly paragraph 3 to 6 calls for the need of submitting a monetary policy statement after every six months. The 2014/2015 Monetary Policy is examined to identify as to whether it has addressed any consumer protection objective and policy statement in mobile banking transactions.

The general objective of the Monetary Policy Statement of Tanzania 2014/15 is of maintaining low and stable inflation, while continuing to enhance access to banking services for the under-banked. Among other things the policy statement is a statutory document of Bank of Tanzania that specifies policy targets, reasons for adopting those targets and measures to achieve the targets.\textsuperscript{114}

As the general objectives of the monetary policy appear, they clearly point out that there is no concern as to protection of e-banking mobile banking consumers especially in mobile banking as this research is concerned, the concept of mobile banking is neither articulated nor expressed anywhere.

Additionally, the policy acknowledges that several banks partnered with telecommunication companies to offer financial services using mobile phones, that

\textsuperscript{113} Act No 4 of 2006.
\textsuperscript{114} Ibid
facilitate convenient, cost effective and reliable fund transfer and payment system for settling various obligations.\textsuperscript{115}

In ensuring there is economic development the Bank issued guidelines on agent banking in February 2013 which allowed banks to extend their outreach through retail outlets, which allows banks to deliver financial services to a wider range of customers at low costs due to introduction and adoption of various financial innovations.\textsuperscript{116} Hence, due to these financial innovations the policy makes it clear and affirms that requirements of best practice and management of risks arising thereof highly calls for reviewing various regulations and enacting new ones.\textsuperscript{117}

The monetary policy statements propose for amendment and enactment of regulations to e-banking service transactions. Thus, the policy statement as a guideline to the banks and financial institution is silent on the issue of protecting consumers in mobile banking transactions.\textsuperscript{118}

\textbf{3.11 Conclusion}

This chapter has presented a critical analysis of the domestic laws starting with the Constitution of the United Republic of Tanzania\textsuperscript{119} and principal legislations including the banking laws and consumers protections laws both having bearing with protection of mobile banking consumers in Tanzania. Moreover this chapter presented a discussion on policy consideration on the matters relating to the protection of mobile banking consumers as addressed by BoT.

\textsuperscript{115} Act No 4 of 2006.
\textsuperscript{116} Act No 4 of 2006.
\textsuperscript{117} Ibid.
\textsuperscript{118} Ibid.
\textsuperscript{119}[Cap 2 R.E 2002].
CHAPTER FOUR
DATA PRESENTATION, ANALYSIS AND DISCUSSION OF FINDINGS

4.1 Introduction
In this chapter the researcher presents data collected from various sectors dealing with mobile banking and protection of customers thereof; data were collected from Bank of Tanzania, Dar es Salaam Headquarters, National Micro Finance Bank, Morogoro Branches, CRDB Morogoro Branches, Lawyers based in Morogoro, Dar es Salaam and Consumers.

This chapter will present and discuss data collected through questionnaires and scheduled interview which will testify the research questions of this study. The researcher extensively gathered information from these four groups without regard to their academic background or financial status. A total number of 70 questionnaires were distributed and 55 of them were responded.

4.2 Data Collected from Bank of Tanzania (BoT)
A number of ten questionnaires were submitted to BoT (Dar es Salaam Headquarters) in this case representing a banking regulatory authority; these questionnaires were distributed to different officers including the officers from National Payment system department. Out of ten which were distributed to BoT (Dar es Salaam Headquarters) questionnaires seven were brought back which made the efficient of 70%.

4.2.1 Whether Tanzania need a specific law on mobile banking
Responding to the first question, 80% of the respondents generally answered that the need is too great. The Head of National Payment department pointed out that electronic banking service has recently made financial transaction easy and that mobile banking services are not that different from conventional banking services only that mobile

\[120\] Whether Tanzania need a specific law on mobile banking.
banking service uses telecommunication devices such as internet and mobile phones for sending, receiving, storing money and making minor purchases.\textsuperscript{121}

He further clarified that, the Bank asserts that it has responsibility of supervising banks and financial institutions together with telecommunication companies who offer electronic banking services via mobile phones.\textsuperscript{122} Due to the importance of electronic banking services in Tanzania the Bank is in the last move to prepare guidelines that will recognize these services and regulate them. Technically, he added, the guidelines have already been prepared and completed waiting for the financial stakeholders to discuss them and give their observations so that can be used officially.\textsuperscript{123}

Another respondent\textsuperscript{124} pointed out the regulations made by the bank of Tanzania, mentioning the electronic money regulations, and the payment systems licencing regulation that they did not mentioned specifically the term mobile banking but she believe through general interpretation of customers, even mobile banking consumers have to be taken abode.

Further she went on explaining the current trend of electronic banking services in Tanzania. She contends that electronic banking services began at 2007 by Mobipawa via E-Fulusi Company.\textsuperscript{125} On April 2008 telecommunication companies such as Vodacom and Zantel introduced M-PESA and Z-PESA e- money services. Then came ZAP (now Airtel Money) from Airtel and TIGO-PESA from TIGO.

These services are mostly provided by telecommunication agents around Tanzania. But currently similar services have been adopted by financial banks like CRDB, NMB and there are possibilities of transferring the money from bank account to Mpesa which mark

\textsuperscript{121} Interview with Steven Mahendeka, the Head of National Payment System BoT (Dar es Salaam) on 06\textsuperscript{th} April 2016.
\textsuperscript{122} BoT (2014) Brochure on Mobile Financial Services titled, \textit{Huduma za Kifedha kwa Njia ya Simu Nchini, Kurugenzi ya Mifumo ya Malipo ya Taifa.} BoT
\textsuperscript{123} \textit{Op cit.}
\textsuperscript{124} IT Specialist, BoT (Dar es Salaam).
\textsuperscript{125} See also supra 133.
the protection of these mobile banking consumers be very complicated because the guideline do not provide specifically the protection of mobile banking consumers.

4.2.2 Whether the existing legal regime is adequate enough to protect mobile consumers

The response to the second question,\textsuperscript{126} five respondents gave an affirmative answer. This affirmative response from five respondents is equivalent to 85% of the respondents. In response of this question,\textsuperscript{127} one of the senior officers of BoT said that, BoT is responsible for supervision of Banks and financial institutions only while telecommunication companies are under supervision of TCRA. Hence for telecommunication companies and banks to operate mobile banking services they must be partners.

She went on saying that after this partnership between the banks and telecommunication companies, a trust account is opened and supervised by the BoT. She went on pointing specific regulation which will govern this transaction to include Electronic money regulation and payment system licencing and approval regulation. But despite these arrange but she still recommends that the mobile banking consumers must be protected by the consumer protection law which still there is a lacuna.

She finalise by saying that, the existing legal regime is not adequate enough to protect mobile consumers thus why currently law reform commission of Tanzania is reviewing legal framework governing consumer protection in Tanzania and she believe much emphasis should also be given to mobile banking consumers.

4.2.3 Concerning the Challenges Facing the Consumers of Mobile Banking

On this question 90% of the respondents pointed out number of challenges facing the consumers when using mobile banking. These challenges include charges which are very high, and awareness to the part of the public on the use of mobile banking is very low.\textsuperscript{128}

\textsuperscript{126} Whether the existing legal regime is adequate enough to protect mobile consumers.

\textsuperscript{127} Interview with Senior system analyst, BoT (Dar es Salaam) on 06\textsuperscript{th} April 2016.

\textsuperscript{128} Supra note 127
However it has been contended that the public does not trust the product because they think the security is not satisfactory, but the problem of electric especially in rural area poses another challenge to these mobile banking consumers.129

Other challenges for consumer of mobile banking include transferring of funds to unintended beneficiary, the process of getting back the fund takes more than 24 hours to seven days and sometimes the sender maybe unable to get back the fund.130

Moreover the interviewees keep on telling the researcher that there is a problem in interoperability between banks/MNOs and other stakeholders in financial services, one of the interviewer give an example for the difficulties which face the consumers when unfortunately he/she transferred funds to unintended beneficiary the procedure to be refunded may take 24 hours to 7 days and sometimes consumer may fail to get back the funds completely.

4.2.4 Whether Tanzania Institutional Framework Effective Enough in Handling Complaints Lodged By Consumers of Mobile Banking

Responding to the last question, three respondents said that the institutions are not well prepared in handling complains lodged concerning mobile banking consumers. These institutions including the Fair Competition Tribunal, (FCT) Fair Competition Commission (FCC) and the National Consumer Advocacy Council (NCAC) lack jurisdiction to adjudicate mobile banking consumer grievance cases and have also proved reluctance in protecting mobile banking consumers simply because most of the Tanzanians are not aware of the existence of the stakeholders protecting consumers in Tanzania and those who are aware of the same fear to institute any suits for redress.

Moreover the respondents keeps on saying that even the ordinary court of Tanzania such as the District Courts, Residents’ Magistrates Courts and the High Court, particularly the

129 Interview with System Analyst, BoT (Dar es Salaam) on 06th April 2016.
130 Supra note 124
High Court (Commercial Division) have rarely or never received cases on mobile banking consumer protection.

4.3 Data Collected from Consumers
The researcher conducted scheduled interview and distributed questionnaires to some consumers of mobile banking. The researcher distributed a total of 20 questionnaires but 17 respondents manage to return the complete filled questionnaires. These respondents were located at different areas, particularly in Dar es Salaam and Morogoro regions.

4.3.1 Whether Customers know their rights when using mobile banking
To start with the first question on the rights of mobile banking consumers 11 respondents said they did not know exactly their rights but the banks are the only institution which they believe are responsible to protect their rights meaning protecting the funds which they have deposited.

One respondent added that in mobile banking there is an invisible third party called SELECOM where by customers are not aware, you will come to know of him when you encounter problem. He narrated his story that he paid the electricity bill through mobile banking but he never received his token for a month then when he went to bank to ask for it he was told that the problem is not with the bank but with this third party who does the transmission. Now this is the problem the consumers most of the times doesn’t know whom they are dealing with. He concluded by saying that, if consumers were protected then this could have been settled by the law.

4.3.2 Challenges Facing Consumers When Using Mobile Banking In Tanzania
On response to the question 13 respondents point out the problem of mobile network and contend that, sometimes you may have a very urgent matter and fail to transfer fund simply because there is not network either on the side of telecommunication company or on the side of the bank. 3 respondents added that the problem of network is always

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131 Whether Customers know their rights when using mobile banking.
132 Programmer officer PELUM, Tanzania.
133 Challenges facing consumers when using mobile banking in Tanzania.
massive during weekends when the banks are not operating and hence brings a lot of inconveniences to the mobile banking consumers.

4.4 Data Collected from Crdb and Nmb Bank
The researcher distributed questionnaires to Crdb and Nmb Bank based in Morogoro Municipal. A total of 20 questionnaires were distributed to respondents who are working with these respective banks and 15 questionnaires were collected back.

4.4.1 Whether Tanzania need a specific law on mobile banking
Responding to the question a total five respondents who answered the questionnaires responded that they don’t know if there is a specific law regulating the mobile banking services. This is very surprisingly seeing the bankers who provide very tantalizing services to their consumers does not know the law which regulate the service which they provide to their customers. Other six (6) respondents said that, there are banking laws which regulate and protect mobile banking consumers but the specific name of the law, they are not aware.  

4.4.2 What extent mobile banking consumers are protected?
Response to the question as to ten (10) of respondents as the majority pointed out that the consumers of mobile banking are highly protected, they went on providing that bank protects their customers who use this mobile banking services by providing to them precautions during registration, moreover consumers are always advised and directed to protect their password, furthermore the consumers are registered via ATM machines only and that only one service provider is allowed to be registered e.g. If Vodacom is registered then Tigo will not be allowed.

Other measures which the banks do is to provide education to the consumers on how to keep their PIN safe, by sending messages to consumers and the use of cctv camera during pre-stages registration of mobile banking.

134 Interview with Zmanda Chamgunda, Banker, NMB Bank, Wami Branch Morogoro on 16th January 2016.
135 Interview with Abias Victor, Retail Account Manager, CRDB, Morogoro Branch. 16th January 2016.
4.4.3 Whether the existing legal regime is adequate enough to protect mobile consumers

In response to the question, six (6) respondents said that, the regime is adequate although there are rare cases which have been forwarded concerning mobile banking consumers. However four respondents added that, since the existing legal regime is based on existing laws which in one way or another could have not foreseen the recent development of mobile banking, then there is a need for the existing legal framework to be amended to cover issues of protection of mobile banking consumers.

4.4.4 Challenges Facing the Consumers of Mobile Banking

Responding to the question 12 respondents said that there are great possibility of doing errors when utilizing the mobile banking services work either in the side of banks or telecommunication companies.

Technically if the error occurred the opportunity to correct the errors is very difficult. Two respondents pose the challenge of network, and it has been a normal practice in Tanzania for such a problem. At times there is no mobile network available, Mobile phones needs to be compatible for mobile banking operations, there is no human interface or service, executive, whom you can contact in case of queries, lack of acknowledgement/receipt of the transaction at times, anyone can use my details in case one lose mobile phone.

4.5 Data Collected from the Lawyers

The researcher distributed a total of 20 questionnaires to lawyers and advocates based in Morogoro and Dar es Salaam 14 questionnaires we collected back.

4.5.1 Whether Tanzania need a specific law on mobile banking

On response of the first question\textsuperscript{136} twelve (12) the respondents responded to the affirmative, they said that the existing legal regime is not adequate enough to protect the rights of consumer in mobile banking, hence due to the fast development in the banking sector Tanzania need a new law like other jurisdiction which will cater for this lacuna.

\textsuperscript{136} Whether Tanzania need a specific law on mobile banking.
Other two respondents were with another view that, not all the times if there is a lacuna in a certain development of the law, another law should be enacted, and to avoid having small pieces of legislation which in one way or another they might be dealing with similar discipline, it’s worth making amendment in the existing law. They suggest that Consumer protection laws and banking laws should be amended to accommodate the problem.137

4.5.2 Whether the existing legal regime is adequate enough to protect mobile consumers nine

In response to the question (9) respondents commented that, it’s obvious that, if Tanzania need another piece of legislation due to the existing lacuna then directly the rights of the consumers cannot be adequately protected by the existing legal regime.138

Eight respondent pointed out the existing of some tribunal like the Fair Competition Tribunal, Fair Competition Commission and the National Consumer Advocacy Council, but still the respondents argue that these tribunals can work effectively when it come to the protection of mobile banking consumers if and only if the laws protecting the mobile banking consumers are put into place.

One respondent139 stated that most of the mobile banking consumer and other parties involved in transactions may not fully understand what legal framework applies to particular transactions, to what extent they are protected, where to channel their complains and what liabilities are to the parties in the case of problems or what types of dispute resolution mechanism or redress should be available to mobile banking consumers in the event of the any problem.

They keep on arguing that, sometimes this can be difficulty even to a local lawyer who is not an expert of these two branches of law, banking laws and consumer protection laws.

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137 Interview with Marwa Wambura, An Advocate based in Morogoro, on 21st January 2016.
138 Interview with Anney Nahum, Assistant Lecturer, Jordan University College 04th February 2016.
139 Interview with Asifiwe Alinanuswe, An Advocate based in Morogoro on 07th February 2016.
4.5.3 Challenges Facing the Consumers of Mobile Banking

In response to the question concerning the respondents commented the challenges are many, starting with the first challenge on the security of mobile phones. They said that still not all Tanzania have been registered and one can trace their whereabouts if something wrong happens. In these matters if a person is having or can have the PIN of your phone can access the funds without being noticed. Hence registration of simcard with the mobiles should be reconsidered.

Another challenge which the respondents pointed out is the out flood of counterfeit products including the mobile phones, although there is a move to deal with counterfeit phones, this problem contributed to the difficulties of tracing the culprit in case of problems. Moreover most of the mobile bank consumers have less knowledge on the use of their phones which still create a lot of mistakes on their side.

The respondents added that the biggest challenge is the legal lacuna on the protection of the innocent consumer if problems arise as still the law is not clear on what should be done in case of incorrect transfer of funds. The banks they said its within 24hours to seven days but this is only when the transfer of fund can be recovered and due to the above two challenges, then when the fund is transferred to a wrong person then there are great chances of failure to be recovered.

Another respondent identified the obstacles for poor mobile banking in the country as a challenge to be fear of security risks on the part of the consumers, influx of mobile viruses and other form of malware and poor privacy in data protection. The respondents keep on explaining that for fear of security risks such as viruses and other form of malware is due to the reason that, handheld devices can receive viruses from multiple channels through internet applications technologies such as WAP, Wi-Fi, Instant Messaging (IM) and Bluetooth, which leads to lack of end-to-end security.\textsuperscript{140}

\textsuperscript{140} Interview with Kay Zumo, Legal Officer, Geem Attorneys, Law Firm Based in Morogoro on 13\textsuperscript{th} February 2016.
One of the respondent concluded that, the biggest challenge is the network problems; she confessed that, she is among the mobile bank consumers and she had an experience of failure of network in most of the times and hence failed to conduct any transaction. She added that, most of the weekends the network problems becomes excessive and consumers are always left in big dilemma incase if a person is having an emergence and needs cash.¹⁴¹

### 4.6 Implication, Inferences and limitation of the findings

The legal framework currently in place does not effectively protect consumers of mobile banking. This finding has been supported by 85% of the respondents as shown on page 46 of this report. The implication of this finding is that either the current legal framework needs amendments or there is a need for a specific law on mobile banking as pointed out by the respondents when responding to the question “whether Tanzania needs a specific law on mobile banking”. 80% of the respondents answered in affirmative as shown on page 52 of his report.

The respondents of this study were 60 in total. Given the total number of all Tanzanians this sample is not representative. Because of financial and time constraints it was not easy to have more respondents as this study would not be manageable. However, the findings of these research can still be generalized because the truth is that the legal framework that is place now is not effective and thus any respondents’ objective answers would be the same even if it were to increase the number of respondents. The respondents chosen for this study were experts in the area, professionals, and victims who have been affected by the present legal framework on mobile banking. So these findings are objective and thus can be generalized. All research questions raised for this study were answered by the respondents and thus contributed to the findings of this study. There are no new questions which call for further research.

¹⁴¹ Interview with Easter Mdegipala, Assistant Lecturer, Jordan University College. 08th February 2016.
4.7 Conclusion
This chapter presented the data which were collected from various offices. The data were collected through questionnaires and scheduled interview, the data were analysed and discussed. The questions which were asked by the researcher had direct inference to the research questions which guide this research and the aim is to test the them from the data collected. The process of data collection has showed some challenges. The researcher circulated questionnaires to various sector but not all were collected back.
CHAPTER FIVE
SUMMARY, CONCLUSION AND RECOMMENDATIONS

5.1 Summary
This research involves the protection of consumer of mobile banking in Tanzania. The research concentrated on analysis the laws that govern and regulate the mobile banking systems and how the consumers are protected from the risks likely to happen.

Mobile banking has been discussed by many scholars; the concept of consumer protection in mobile banking has not been sufficiently explored neither in consumer protection laws nor banking legislations of Tanzania. The extent of banking and financial institutions in the contemporary world of ICT implies that it is no longer possible to handle online consumer protection issues without having an effective and efficient regulatory framework and sectoral laws addressing the same.

Tanzania legal system does not provide suitable consumer protection when it comes to mobile banking. There is a tremendous technology development in banking services but the banking laws do not catch we the speed of these developments. The consumer protection legislations and the banking and financial institution laws of Tanzania are not sufficient enough in protecting consumers in electronic banking transactions.

The law is silence on who to be responsible in case of loss to the consumer’s account is it the bank or the telecommunication companies then this cause these two institutions throw the ball to each other when they are faced with the consumer on complain. Moreover the banking law has not provided for the rights of these mobile banking consumers. Banking laws have been enacted only to provide for data protection and confidentiality of the banking services.

In adding to that the banking laws has forgotten to provide for the redress in case these liabilities of protection of the data and confidentiality is not well handled what should be the consequence to the banks and redress for the consumers of mobile banking.
In Tanzania, laws that regulate Banking system include but not limited to Bank of Tanzania Act\textsuperscript{142} together with its regulations, Banking and Financial Institutions Act,\textsuperscript{143} Law of Contract Act,\textsuperscript{144} The Penal Code,\textsuperscript{145} The Fair and Competition Act,\textsuperscript{146} and the Evidence Act.\textsuperscript{147}

These laws are supposed to regulate banking system in Tanzania but there is a great lacuna in legal system covering electronic banking especially to mobile banking hence it has created a gap which leads to difficult in seeking redress in case of complaints to the mobile banking consumers.

This research presented and discussed the data collected through questionnaires and scheduled interview which will testify the research questions of this study. The researcher extensively gathered information from the banking officials including NMB Bank, Wami Branch Morogoro officials, CRDB, Morogoro Branch officials, BoT headquarters in Dar es Salaam officials and some lawyers based in Morogoro without regard to their academic background or financial status. A total number of 70 questionnaires were distributed and 55 of them were responded.

This researcher was guided with four research questions which are

i. Do the existing laws relating to mobile banking provide appropriate protection to consumers?

ii. Does the Tanzania institutional framework effective enough in handling complaints lodged by consumers of mobile banking?

iii. Does Tanzania need specific law for the protection of mobile banking consumers?

iv. What are the challenges facing the mobile banking consumers in Tanzania.

\textsuperscript{142} No 4 of 2006
\textsuperscript{143} No 5 of 2006
\textsuperscript{144} Cap 345 of 2002
\textsuperscript{145} Cap 16 of 2002
\textsuperscript{146} No 8 of 2003
\textsuperscript{147} Cap 6 of 2002
For the first question which says do the existing laws relating to mobile banking provide appropriate protection to consumers? This question intended to explore whether the existing laws provide any kind of remedies and protection to consumers of mobile banking. 80% of the respondents who were lawyers and professionals from Bank of Tanzania were of the view that, the existing legal regime is not adequate enough to protect mobile consumers thus why currently law reform commission of Tanzania is reviewing legal framework governing consumer protection in Tanzania. They commented that much emphasis should be given to mobile banking consumers when these laws will be reformed. They however added that, BoT is only responsible for supervision of Banks and financial institutions while telecommunication companies are under supervision of TCRA. Hence there must be a partnership between the banks and telecommunication companies with a trust account to be supervised by the BoT. they pinpointed some regulation like Electronic Money Regulation and Payment System Licencing and Approval Regulation which deals with this kind of partnership but these regulations does not provide adequate protection to mobile banking consumers.

For the second question which says Does the Tanzania institutional framework effective enough in handling complaints lodged by consumers of mobile banking, the purpose of this question was to explore to what extent the institutions for dispute resolution have been assisting in protection of mobile banking consumers. Respondents were of the view that, that the institutions are not well prepared in handling complains lodged concerning mobile banking consumers.

They pointed out the institutions to include, the Fair Competition Tribunal, (FCT) Fair Competition Commission (FCC) and the National Consumer Advocacy Council (NCAC) and added that these institutions proved unwilling to entertain disputes relating mobile banking consumers simply because most of the Tanzanians are not aware of the existence of the stakeholders protecting consumers in Tanzania and those who are aware of the same fear to institute any suits for redress.
For the third question which says *Does Tanzania need specific law for the protection of mobile banking consumers?* Most of the Advocates based in Morogoro representing the group of lawyers 55% were of the view that the existing legal regime is not adequate enough to protect the rights of consumer in mobile banking, hence due to the fast development in the banking sector Tanzania a need for a new law is inevitable.

They proposed that during enacting of a new law or amendment of the existing law there is great the need to learn like other jurisdiction like United Kingdom and South Africa so as to redress the existing lacuna but bearing in mind the prevailing social and cultural differences between the respective jurisdictions.

Nevertheless 45% of these respondents were with a view that, not all the times if there is a lacuna in a certain law, another law should be enacted, and to avoid having small pieces of legislation which in one way or another they might be dealing with similar discipline, it’s worth making amendment in the existing laws. They suggest that Consumer protection laws and banking laws should be amended to accommodate the problem.

For the last question which says *what are the challenges facing the mobile banking consumers in Tanzania*, respondents from BoT and other financial banks like CRDB and NMB pointed out number of challenges which included complaints from customers that charges are very high, and little awareness to the part of the public on the use of mobile banking. They added that the public does not trust the product because they think the security is not satisfactory, but then again the problem of electric especially in rural area poses another challenge to these mobile banking consumers.

Other challenges for consumer of mobile banking include transferring of funds to unintended beneficiary, the process of getting back the fund takes more than 24 hours to seven days and sometimes the sender maybe unable to get back the fund.

Similar challenges pinpointed out are influx of mobile viruses and other form of malware and poor privacy in data protection. The respondents keep on explaining that for fear of
security risks such as viruses and other form of malware is due to the reason that, handheld devices can receive viruses from multiple channels through internet applications technologies such as WAP, Wi-Fi, Instant Messaging (IM) and Bluetooth, which leads to lack of end-to-end security.

One of the respondent concluded that, the biggest challenge is the network problems; she confessed that, she is among the mobile bank consumers and she had an experience of failure of network in most of the times and hence failed to conduct any transaction. She added that, most of the weekends the network problems becomes excessive and consumers are always left in big dilemma incase if the person is having an emergence and needs cash.

5.2 Conclusion
Telecommunication and banking sectors are technologically growing very fast in Tanzania. Despite their significant contribution to Tanzania’s social-economic development, such developments have been both blessing and disguise to people, institutions and Government. There is a tremendous technology development in banking services and telecommunication services but the banking laws does not cope with these changes. The consumer protection laws and the banking laws proved to be insufficient enough in protecting mobile banking consumers.

The findings in this study verified the legal and operational shortcomings that are present in the protection of mobile banking consumers. The defects could only be administered by enactment of a legislation that regulate the service and monitor all its external and internal transactions relating to mobile banking. The absence of a sustainable regulation in mobile banking services put the consumers on the risk of shielding their funds.

The conclusion which came out of this study clearly indicates that the banking laws and consumer protection laws must be changed to meet the requirement of current mobile consumers legal regime, however harmonisation of some regulations which regulate these sector like TCRA and BoT. so as to fix gaps. Moreover awareness to the mobile banking consumer to be done by the respective organs and readiness and political willingness of
the policy makers and government official to deal with matters relating to mobile banking protection.

This is a true fact that cannot be undermined by the legal framework or the legislature, by only putting in place a concrete and substantial regulation. The legal framework in Tanzania that governs the different aspects of money in Tanzania did not expressly provide for such protection.

This was a negative implication that denoted the reasoning that the different pieces of legislations do not entirely recognize mobile banking but rather they only govern incidentally certain aspects that mobile banking services engages in.

The concrete conclusion on the legal framework was that it was not efficient enough to handle the operations of mobile banking and hence required to codify all the aspects in a single parliamentary legislation. In simple words there is no organ that regulates mobile banking protection of consumers in Tanzania.

5.3 Recommendations
Based on field findings, literatures, comments as well as lessons from other jurisdictions this research has come up with the following recommendations.

5.3.1 Enactment of specific law on mobile banking.
The present laws which include banking laws and consumers protection do not provided for provisions relating mobile banking and in addition has not provided for protection of consumers on mobile banking. There is a need for enacting Mobile Banking Act which will address all the gaps and lacuna which are existing in the prevailing banking laws and consumer’s laws. However this law should harmonize the gaps of enforcement of the rights of consumers which appears between BoT, TCRA and FCC.
5.3.2 Amending the laws on money payment system
The existing laws should be amended to cure the lacuna which has been pointed out. The Banking laws, Consumer Protection laws and telecommunications laws should be amended and harmonized to solve the gap of protection of mobile banking consumers. These amendments should recognize mobile banking consumer’s rights.

Moreover the existing consumer protection laws and regulations should address issues of liability of mobile banking providers on the failure to abide with consumer data privacy and confidentiality in mobile banking transactions.

5.3.4 Provision of Awareness to Mobile Consumers
Viable education should be provided to the mobile banking users plus the banking officials on handling of matters relating to mobile baking. Moreover awareness to the mobile banking consumer should be done by the respective organs meaning the responsible ministry, the banking and financial institutions and telecommunication companies. This awareness should stick much on the rights and protection of mobile banking consumers and appropriate procedures to follow when a problem rise.

5.3.5 Political Willingness
There must be serious readiness and political willingness of the policy makers, law makers, law enforcers and government official to deal with matters relating to mobile banking protection. This will also include solving and handling issues in the right and reasonable time. For example mobile banking is a new technology introduced to the financial system then all these officials were supposed to react so as to cover the situation In due time like amendment of the laws, and making of new policy which cater for the current need.
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APPENDICES

APPENDIX I: QUESTIONNAIRE TO THE BANK OF TANZANIA

PREAMBLE
Dear Respondent, I am Eunice Kangole a candidate of Mzumbe University Morogoro, pursuing a Master Degree in Laws (LLM-Commercial Law) for the year of study 2014/2016 with Re No . The information sought in this questionnaires relates to the research titled: *Consumer Protection in Mobile Banking Transactions in Tanzania; A Critical Analysis of the Law.*

The success of the this research depends much on your extremely treasured support, in that regard, may I request your precious and valuable limited time to respond to the questionnaires put before you to the best of your knowledge. This is an academic research and the information will be used for academic purposes only. I declare that the information obtained will be for academic purpose only.

*Thank you in advance*

PART A

PARTICULARS OF THE RESPONDENT

NAME (not necessary you may provide if you wish)……………………………

GENDER:………………………………………………

AGE: between a) 18-30 years
b) 31-45 years c) 45 and above

OCCUPATION:……………………………………………………………

ADDRESS………………………………………………………………

DATE ………………………………………………………………………

PART B

Questions to know the respondent knowledge and perception about Mobile banking;

1. Have you ever heard about mobile banking?

……………………………………………………………………………………
2. Do you think people should use it?

3. Do you think Mobile banking is trustworthy?

PART C

I. Does the Bank of Tanzania have the responsibility of supervising banks and financial institutions together with telecommunication companies who offer mobile banking services? If Yes/No Give Reasons

II. Do you think Tanzania need a specific law on mobile banking? If Yes/No Give Reasons

III. Do you think the existing legal regime is adequate enough to protect mobile consumers? If Yes/No Give Reasons

IV. Do you think Tanzania institutional framework are effective enough in handling complaints lodged by consumers of mobile banking, If Yes/No Give Reasons

V. Are there any guidelines made by the Bank of Tanzania to regulate mobile banking services? If Yes/No Give Reasons

VI. What are the challenges encountered mobile banking consumers in Tanzania.

VII. Do banks and financial institutions use bilateral agreements to determine rights and liabilities of consumers in mobile banking services?

VIII. Does the use of the security measures adopted by banks and financial institutions which is a form of self-regulation have legal justification?
IX. What is your recommendation concerning protection of rights of consumers in mobile banking.

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APPENDIX II: QUESTIONNAIRE TO THE CRDB BANK

PREAMBLE
Dear Respondent, I am Eunice Kangole a candidate of Mzumbe University Morogoro, pursuing a Master Degree in Laws (LLM-Commercial Law) for the year of study 2014/2016 with Re No . The information sought in this questionnaires relates to the research titled: Consumer Protection in Mobile Banking Transactions in Tanzania; A Critical Analysis of the Law.

The success of this research depends much on your extremely treasured support, in that regard, may I request your precious and valuable limited time to respond to the questionnaires put before you to the best of your knowledge. This is an academic research and the information will be used for academic purposes only. I declare that the information obtained will be for academic purpose only.

Thank you in advance

PART A
PARTICULARS OF THE RESPONDENT
NAME (not necessary you can give if you wish)………………………………
GENDER:………………
AGE: between a) 18-30 years
b) 31-45 years c) 45 and above
OCCUPATION:…………………………………………
ADDRESS………………………………………………..

DATE ………………………………………………………………….

PART B
Questions to know the respondent knowledge and perception about Mobile banking:
1. Have you ever heard about mobile banking?
……………………………………………………………………
2. Do you think people should use it?
……………………………………………………………………
3. Do you think Mobile banking is trustworthy?

PART C
I. Are there any complains relating to Mobile Banking, from Mobile Banking Consumers in your Bank.

II. How do you deal with these complains?

III. How are the mobile banking consumers protected from these frauds when transacting through Sim-banking?

IV. What is the position of the law concerning the protection of customers using Sim-banking?

V. Do the banks have an obligation under the law to establish the identity of prospective consumers before joining them into mobile banking services?

VI. Does the use of the security measures adopted by your bank which is a form of self-regulation have legal justification?

Who do you think is responsible to file the complaint where there is grievance in an mobile banking transaction?

VII. Has Simbanking increased the rate of fraud in banking sector?

VIII. What is your recommendations concerning protection of rights of consumers in mobile banking?
APPENDIX III: QUESTIONNAIRE TO THE NMB BANK

PREAMBLE
Dear Respondent, I am Eunice Kangole a candidate of Mzumbe University Morogoro, pursuing a Master Degree in Laws (LLM-Commercial Law) for the year of study 2014/2016 with Re No . The information sought in this questionnaires relates to the research titled: Consumer Protection in Mobile Banking Transactions in Tanzania; A Critical Analysis of the Law.

The success of the this research depends much on your extremely treasured support, in that regard, may I request your precious and valuable limited time to respond to the questionnaires put before you to the best of your knowledge. This is an academic research and the information will be used for academic purposes only. I declare that the information obtained will be for academic purpose only.

Thank you in advance.

PART A
PARTICULARS OF THE RESPONDENT
NAME (not necessary you can give if you wish) ………………………………

GENDER:……………………………………………………

AGE: between a) 18-30 years

b) 31-45 years c) 45 and above

OCCUPATION………………………………………………

ADDRESS……………………………………………………

DATE …………………………………………………

PART B
Questions to know the respondent knowledge and perception about Mobile banking;
1. Have you ever heard about mobile banking?
………………………………………………………………………………

2. Do you think people should use it?
………………………………………………………………………………

3. Do you think Mobile banking is trustworthy?
PART C

I. Are there any complains relating to Mobile Banking, from Mobile Banking Consumers in your Bank.

II. How do you deal with these complains?

III. How is the mobile banking consumers protected from these frauds when transacting through NMB Mobile?

IV. What is the position of the law concerning the protection of mobile banking consumers using NMB Mobile?

V. Has NMB Mobile increased the rate of fraud in banking sector?

VI. What do you think should be done?
APPENDIX IV: QUESTIONNAIRE TO THE LAWYERS

PREAMBLE

Dear Respondent, I am Eunice Kangole a candidate of Mzumbe University Morogoro, pursuing a Master Degree in Laws (LLM-Commercial Law) for the year of study 2014/2016 with Re No . The information sought in this questionnaires relates to the research titled: Consumer Protection in Mobile Banking Transactions in Tanzania; A Critical Analysis of the Law.

The success of the this research depends much on your extremely treasured support, in that regard, may I request your precious and valuable limited time to respond to the questionnaires put before you to the best of your knowledge. This is an academic research and the information will be used for academic purposes only. I declare that the information obtained will be for academic purpose only.

Thank you in advance.

PART A

PARTICULARS OF THE RESPONDENT

NAME (not necessary you can give if you wish)

GENDER: ............

AGE: between a) 18-30 years  
  b) 31-45 years  
  c) 45 and above

OCCUPATION:.................................................................

ADDRESS..............................................................................

DATE .................................................................................

PART B

1. Have you ever heard about mobile banking?
   ....................................................................................

2. Do you think people should use it?
   .....................................................................................
3. Do you think Mobile banking is trustworthy?

PART C:
I. Does the Bank of Tanzania have the responsibility of supervising banks and financial institutions together with telecommunication companies who offer mobile banking services? If Yes/No Give Reasons

II. Do you think Tanzania need a specific law on mobile banking? If Yes/No Give Reasons

III. Do you think the existing legal regime is adequate enough to protect mobile consumers? If Yes/No Give Reasons

IV. Do you think Tanzania institutional framework are effective enough in handling complaints lodged by consumers of mobile banking, If Yes/No Give Reasons

V. Are there any guidelines made by the Bank of Tanzania to regulate mobile banking services? If Yes/No Give Reasons

VI. What are the challenges encountered mobile banking consumers in Tanzania.

VII. Do banks and financial institutions use bilateral agreements to determine rights and liabilities of consumers in mobile banking services?

VIII. Does the use of the security measures adopted by banks and financial institutions which is a form of self-regulation have legal justification?

IX. What is your recommendation concerning protection of rights of consumers in mobile banking.