

**ANALYSIS OF CONSUMER LEGAL PROTECTION IN
MOBILE MONEY TRANSACTION SERVICES IN TANZANIA**

**ANALYSIS OF CONSUMER LEGAL PROTECTION IN
MOBILE MONEY TRANSACTION SERVICES IN TANZANIA**

By

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**A Dissertation submitted to the Faculty of Law in Partial Fulfillment of the
Requirements for the Master of Laws Degree (L.L.M - CL) of the Mzumbe
University.**

2019

CERTIFICATION

We, the undersigned, certify that we have read and hereby recommend for acceptance by the Mzumbe University dissertation entitled; *Analysis of Consumer Legal Protection in Mobile Money Transaction Services in Tanzania*, in partial fulfillment of the requirements for award of Masters Degree in Commercial Law (L.L.M) of Mzumbe University.

Thisday of2019

Signature

Major Supervisor: DR. JOHN UBENA

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Internal Examiner

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I, **Doreen D. Mutagwaba** do hereby declare that, this work entitled “*Analysis of Consumer Legal Protection in Mobile Money Transaction Services in Tanzania,*” is original. This dissertation has never been presented elsewhere. Each part of it is a product of my own research and where other individual’s work has been used, references have been provided. I declare that it will never be presented anywhere else, and all rights of it are reserved to me.

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Firstly it is by God's grace and blessings that I have managed to accomplish this dissertation. It is not going to be possible to mention the names of all who have contributed however, I would honestly wish for them to accept my wholehearted appreciation for their helpful assistance. For these few I wish to name and express my appreciations:

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I remain accountable for any weaknesses that may be found in this work. To God is Glory.

DEDICATION

I devote this dissertation to my beloved father MR. DIDACE MUTAGWABA. I profoundly thank him for the love, motivation, moral and financial support to the accomplishment of this dissertation. May God keep blessing him.

ABBREVIATIONS AND ACRONYMS

AML	Anti Money Laundering
EAC	East African Community
EU	European Union
GSM	Groupe Speciale Mobile Association
HTTP	Hypertext Markup Language
ICT	Information and Communication Technology
ID	Identity Card
IT	Information Technology
KYC	Know Your Customer
MF	Mobile Fund
MFS	Mobile Financial Service
MM	Mobile Money
MMT	Mobile Money Transfer
MNO	Mobile Network Operator
MTN	Mobile Telecommunication Network
SIM	Subscriber Identification Module
UNCTAD	United Nations Conference on Trade and Development

ABSTRACT

This dissertation attempted to make an analysis on the effectiveness of the legal frameworks governing mobile money transaction services in Tanzania. It observed the law and practice on how consumers are protected towards availability and the use of such services in our country. In that regard, it focused on challenges of implementation of the existing laws and regulations on the mobile payments as a newly introduced payment system that is reaching a large number of banked and unbanked.

This study was guided by its objective and attempted to assess the effectiveness of the regulatory framework in place in the protection of consumers of mobile money transactions. Questions were formulated that guided through in obtaining the necessary information relating to the problem. In obtaining such data the methodology employed was descriptive research design. The collection of primary data was done using methods of questionnaire and interview where as for the secondary data the method used was documentary review.

The study revealed that the use of mobile phones in making money transactions is a technology that is widely adopted and preferred by the majority of people in making several transactions. The consumers of such services face several challenges in the mode of the services mostly being loss of money in their mobile money accounts. It is from the data collected from the field where the researcher makes conclusions and makes recommendations on how the consumers of mobile money services may be protected.

STATUTES

PRINCIPAL LEGISLATIONS

Bank of Tanzania Act, 2006 [Act No. 4 of 2006]

Banking and Financial Institution Act, 2006 [Act No. 5 of 2006]

Cybercrimes Act, 2015 [Act No. 14 of 2015]

Electronic and Postal Communications Act, 2010 [Act No.3 of 2010]

Electronic Transactions Act, 2015 [Act No. 13 of 2015]

Fair Competition Act, 2003 [Act No. 12 of 2003]

National Payment Systems Act, 2015 [Act No. 4 of 2015]

SUBSIDIARY LEGISLATIONS

Payment Systems (Licensing and Approval) Regulations, 2015

Payment Systems (Electronic Money) Regulations, 2015

CASES

**VODACOM (T) LIMITED & THE NATIONAL MICROFINANCE BANK VS
MWANSA JONAS, Consolidated Civil Appeal No. 1 and 2 of 2016 TZHC at
Mbeya (Unreported)**

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CHAPTER ONE

GENERAL INTRODUCTION AND BACKGROUND OF THE STUDY

1.1 Introduction

The common use of mobile phones has evolved from being a mean of personal communication device to become also a platform for commerce. It is a device that enhances productivity, facilitating financial transactions, and making life more convenient and efficient to its users. Money transactions by use of mobile phones are growing very fast. This is due to the reason that such mobile transactions offer fast and at a lower cost with assessable transactions anywhere without going to the bank. As a result new form of world is emerging whereby most of the activities are done by the assistance of this technology.¹ Some activities could not have been done effectively due to distance between two areas. At the moment, information technology can link distant operations to appear as if they are in close proximity.

There have been several payment system innovations in Tanzania as an effort of creating a cashless society which enables people to make transactions.² To that end, the Tanzania Parliament have been in efforts in enacting laws that would guide and cope with such advancements in protecting the rights of its consumers and the institutions responsible. In the absence of such or inefficiency of the existing laws, consumers are at risk in taking part to such advanced transactions by use of mobile phones. Thus, this study is focusing to explore on the laws that govern and regulate the mobile money payment systems and how the consumers are protected from the risks likely to happen.

¹ Mbamba, U (2004) *Electronic Commerce in the Tanzanian Context: Implications for small and medium enterprises in developing countries*; Mkuki na Nyota publishers at pg.6

² Jumanne. R, (2014) *Tanzania moving towards cashless society through mobile innovations*, Tanzania Commission for Science and Technology, E-newsletter Issue No 36 at www.cosctech.or.tz. Retrieved on 12th September, 2017

1.2 Background to the Study

Electronic transactions in Tanzania started during the 21st century after the introduction of internet by the Information and Communication Technology (ICT). This 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.³

One of the aspects of the electronic transactions is the mobile money services which it is adopted by various communication companies such as Vodacom, Tigo with gear habits for deposits and quick transfers of money or payments via electronic payments services. This has also led to a connection of the communication companies and banks in the adoption of electronic banking.⁴

Mobile money services in Tanzania developed in a regulatory environment without a National Payment Systems Act and the existing guidelines at that time 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.⁵ 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 payment service to operate. A company would then be appointed to oversee the

³ UNCTAD Information Economy Report (2011) *The Prospects and Barriers of E-Commerce Implementation in Tanzania*. Retrieved on 11 October, 2019 from <http://www.tzonline.org/pdf/liberalisationofthebankingindustry>. p4.

⁴ Ibid

⁵ Afi-Alliance for financial Inclusion, (2011) *Mobile Financial services: The bank of Tanzania learns from the Bangko sentral-ng-pilipinas* <http://www.afi-global.org/library/publications/knowledge-exchange-insights-bank-Tanzania-learns-bangko-sentral-ng-pilipinas> . Retrieved on 14th October 2019

account and the Bank of Tanzania would reserve the right to audit or check the trust account.⁶

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 that mobile phone had the potential to bring financial services to the poor and expand outreach to the remotest parts of the country.⁷

The Bank was willing to promote financial services outside the traditional banking sector, including mobile payment and mobile banking schemes, and identified MNOs as a partner in this endeavor. The first step was to bring these new and emerging financial service providers into the regulatory fold. The BOT wanted to adopt a regulatory framework for mobile financial services that would both strengthen and institutionalize the role of MNOs and serve as a road map for implementing and managing new technologies in the financial sector.⁸

To do this, the BOT 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. The BOT expected that the learning from the visit would provide an important input for the revision of existing guidelines for electronic payment schemes and upcoming regulations on mobile payments, a part of the Bank's "Project on Developing an Effective Regulatory Framework for Branchless Banking". To focus the knowledge exchange visit and maximize their experience,

⁶ Supra note 5

⁷ Ibid

⁸ Ibid

the staff identified several specific learning needs. BOT's biggest priority was to gather information and lessons that would assist them in amending and enhancing its existing oversight policy on mobile financial services to incorporate new MNOs, and adding agents as a critical part of the mobile financial services framework.⁹

In 2007 some telephone operators like Vodacom in Tanzania started implementing m-commerce by introducing the new technology of money transfer through m-pesa (mobile e-money) system. The said system helped the money to be converted into electronic money and the money is sent through SMS.¹⁰ This cheap e-money transfer is sent through an agent and the recipient can get the money anywhere even in rural areas. The transfer service was quickly picked up for use as an informal savings account system and electronic payment mechanism for bills, goods and services.¹¹ From here other mobile money developed and by 2018 Tanzania had six mobile money providers which are M-Pesa under Vodacom, Tigo pesa under Tigo, Airtel money under Airtel, Ezy pesa under Zantel, Halo pesa under Halotel and TTCL.¹²

Mobile money services been preferred by the majority, to maintain consumer trust is critical to the growth of mobile money services. Consumer concerns around data privacy and security impact trust. The mobile money providers hold vast amounts of data, including ID, transaction history and geographical location among other data. There is thus a need for the government and wider ecosystem to collaborate to ensure that practical solutions enable consumers to make informed and effective choices, balancing each individual's desire for privacy with their desire to access financial services.¹³

⁹ Supra note 5

¹⁰ Ibid.

¹¹ Mobile money services: "A bank in your pocket": An overview of trends opportunities. ACP Observation on Migration ACPOBS/2014/BN13 Retrieved from <https://publications.iom.int/pdf> on 22nd October,2019

¹² Tanzania Mobile Money retrieved from <https://www.tanzaniainvest.com> on 22nd October, 2019

¹³ GSMA (2018); *Mobile money Policy and Regulatory Handbook* retrieved from www.gsma.com/mobilemoney on 20th October, 2019

The services through mobile money transactions require the integration of at least two major business industries in the country, namely, the telecommunication industry on the one hand and the banking industry on the other. In Tanzania the two industries are regulated separately. While the former is regulated by the Tanzania Communications Regulatory Authority¹⁴ the latter is regulated by the Bank of Tanzania (BOT).¹⁵ Lack of integration leaves consumers of the service at crossroads when a problem arises in the mobile money service. Fraudsters have not spared those using mobile services. It is common knowledge that fraudulent Sim swap is prevalent in the country and this practice has caused loss of millions of money to a lot of people through mobile money. In spite of the advantages alluded to above the financial viability of the service needs to be monitored. At the moment the service remains unregulated and that is dangerous for the sustainability of the economy of the country.¹⁶

Apart from the risks alluded to above there are problems connected with the use of mobile services. Tanzania is a third world country; while it cannot run away from technological developments sweeping across the world, it is handicapped due to many reasons including poverty; as new technology is expensive. In addition there is the problem of illiteracy as technology needs highly qualified personnel to manage. There is also the problem of poor infrastructure. Most of the time new technology takes a poor country unawares and it is forced to adapt to keep up with the globalization phenomenon. With that situation service providers and customers find themselves in a confusing legal environment towards solving problems when they arise as the service stands unregulated.¹⁷

¹⁴ Tanzania Communications Regulatory Authority Act, 2003 and the Electronic & Postal Communications Act, 2010.

¹⁵ The Bank of Tanzania Act, 2006.

¹⁶ Mramba, C and Nditi, N, Legal regulation of mobile money transfer service in Tanzania, journal 1710-5210-1-PB.pdf accessed from <https://www.journals.udsm.ac.tz> on 8th June, 2018.

¹⁷ Ibid

1.3 Statement of the Problem

Mobile money service is one among of fast growing sub-sector and widely used to transfer money across users and to store money for short and medium term as savings account. It being adopted by the majority of the population, there is a need to extend and regulate risks encountered by consumers to this emerging sector.

There are two institutions that are responsible in regulating mobile money transactions with one objective among others to protect consumers which are the BOT and TCRA. The telecommunication companies are neither banks nor financial institutions to be regulated with same laws guiding such institutions. The question to posed, are the existing legislations in Tanzania sufficient in consumers protection in mobile money? Therefore, a researcher saw that this was a problem, which she carried out a study, and accessed out legal regime and find out if at all the existing laws are framed in a way of protecting consumers. Thus, the purpose of this report was to access Tanzania's legal regime in order to find out if the regime was efficiently framed to protect consumers of mobile money service and again to review Tanzania's legal regime in order to establish efficiency of the law in protecting consumers of mobile money service.

1.4 Objectives of the Study

The researcher was guided by the following general and specific objectives:

1.4.1 General Objective

The researcher generally aims at assessing the effectiveness of the legal framework of the mobile money services focusing to the protection of consumers in such services.

1.4.2 Specific Objectives

The research also aimed at achieving the following objectives:

- i. To assess to what extent are mobile money services consumers' rights protected.
- ii. To examine the nature of consumer relationship with the mobile money service providers in mobile money transactions.
- iii. How the existing laws encounter challenges facing consumers through the mobile money transaction services in Tanzania.

1.5 Research Questions

The researcher will be guided by the following questions:

- i) To what extent is the legal framework governing mobile money transaction service protecting its consumers?
- ii) How effective are the institutional frameworks in regulating the mobile network operators in improving mobile money services to its consumers?
- iii) What challenges do consumers face in the course of service through mobile money transaction services?

1.6 Justification of the Study

Mobile Money Transactions (MMT) has operated in a widely unregulated environment since the innovation was introduced in Tanzania. The laws that existed by the time of emergence of the services had not been formulated with a prediction of this innovation behind the minds of the legislators since it had not been foreseen by them that such would come up, hence the laws do not address MMT services. Thus, while looking at the beneficial impact of the innovation there was a need to put attention on areas that have posed challenges in terms of regulation and what regulations ought to be put in place in order to protect the consumers who are using such services and cope with the current situation. There is also a need to point out in

the various existing laws the areas that need changes so as to ensure MMT is covered by them. These formed the main part of the research work.

1.7 Significance of the Study

- i. This dissertation has analysed the laws available and the lacuna that needs to be filled up where the government and TCRA are suggested with best solutions to improve the mobile money services and the protection of its consumers.
- ii. This work has increased the awareness and ability of understanding to consumer of mobile money service in Tanzania in relation to their protection. The report is of significance as its findings used as a source of reference in academic purpose and public at large.
- iii. The dissertation identified the connection between service providers and consumers of mobile money service. Example TCRA in ensuring such connection it provides legal awareness and education to enable them to get basic legal protection that is satisfactory to meet their needs in electronic transaction.
- iv. Lastly, the study is of utmost importance because it identified the weakness of existing laws in assuring the protection of mobile money transaction services consumers and therefore it came up with proper recommendations which will help in the due process of filling the present *lacuna* of existing laws in Tanzania.

1.8 Literature Review

Until now, literature on mobile money transactions are few however the researcher managed to review the few available literatures and made review in relation to the problem at hand.

Buku W. M and Mazer, R¹⁸ stipulates that the extreme growth of Mobile Financial Services (MFS) makes it the most financial increase contributor in the market. This has helped the unbanked population to enjoy such services as they are also cheap and easily accessible. The authors pointed out that fraud was reported by the consumers and agents to be one of the challenges that consumers begin to have doubts in the use of such services. The main factor pointed out by the authors was that of regulatory supervision and the risk on its enforcement. They reported that there are markets with inadequate mobile money regime which may lead to transactions that are not well regulated, resulting to fraud, money laundering, and other criminal activity¹⁹. The authors suggested that the providers ought to work together and that an appropriate regime should exist in order to cover up such challenges. The study revealed out that consumers are at risk especially with security at the agents when getting services. The procedure used and the environment of delivering service by agents are not well secured.

Odieng, O. P²⁰ discussed on the impact of the mobile money and financial regime in the African countries being Tanzania, Kenya, Uganda and Nigeria. He contended that for the provision of mobile financial services to succeed regulators should create a conducive environment for the Mobile Network Operators (MNOs). There should be regulation that would address critical issues affecting the sector of financial system. The author pointed out AML, security and consumer protection as main

¹⁸Buku W. M and Mazer, R (2017): *Fraud in Mobile Financial Services: Protecting Consumers, Providers, and the System*. Available at www.cgap.org retrieved on 20th August 2017

¹⁹ibid, P.2

²⁰Odieng, O. P. (2015). *Regulatory Impact on Mobile Money and Financial Inclusion in African Countries- Kenya, Nigeria, Tanzania and Uganda* available at <https://www.cgdev.org/pdf>. Retrieved on 21st August, 2017

issues that need to be recognised in the regulation so that its consumers can be protected.

According to, **Duggal Pavan**²¹, ‘Electronic authentication’ and ‘mobile physical security’ is one of legal challenges that mobile money faces, so far there is no unanimity pertaining to user identification/password authentication at a global level²². Should the physical device be lost or misplaced what are the legal implications as far as mobile money is concerned is unanswered issue yet in the mobile banking. Another legal challenge on mobile money is on data transmission, encryption and storage because in most jurisdictions, the subject of encryption (which is very essential in mobile banking) has not been adequately addressed; as far as data protection is concerned, it has been observed that different countries have varied parameters on the legal and regulatory frameworks and other countries do not have at all data protection laws and policies.

Moreover, the author has written on the challenge of missed payments, missed payment can happen when customer submits the payment but the mobile device or mobile network provider or the Bank fails to process it causing inconveniences and in some cases exposing the customer to liability for the delay in effecting the payment. Furthermore, Mobile banking crimes are also on the rise and in case of fraudulent use of mobile banking facilities, who will be liable, is it the bank, customer or mobile network operators (MNOs). During the study it was determined that network is of much necessity in conducting services. There is a need of efficient network for the operation of services and notification to customers be on time.

The author has discussed on the challenge of consumer protection as far mobile payment is concerned as banks and telecommunications companies tend to escape from any potential liability mainly on missed payments and mobile crime transactions. Analyzing what the author wrote in his book, it is observed that the emerging mobile banking technology has left a lot of unanswered questions as far as

²¹Duggal, Pavan (2013): *Mobile Banking & Mobile Law*; Saakshar law publications; pg 404

²²Ibid, pg. 405-406

regulatory and legal context is concerned. Most issues and challenges discussed are relevant in India and Asia but the same have much relevance in developing countries, particularly those countries that have adopted the mobile banking technology, Tanzania being one of such countries.

According to **Knowledge@Wharton and Ernst & Young**²³ which discussed on the challenges of regulating mobile money and how to keep it safe; the book noted down that once there is an intention of developing mobile money, there must be authorities that would create regulatory environment.²⁴ The book further notes down that the current legal and regulatory regime is still immature to provide guidance and govern the mobile money transactions. Generally, the whole mobile financial services industry is new and the world is in the process of establishing the fundamentals.

One of the challenges is who to regulate the mobile financial services because the industry cuts across a number of sectors, there are arguments that it should be regulated by the telecommunications regulators because it also involves the telecommunications companies; others argue that it should be regulated by the financial sector regulators (Central Banks) because it involves financial transactions through the banks and others argue that it should be based on the activity which implies there can be multiple regulators for mobile banking. So far, there appears to be a sense of regulatory uncertainty in the mobile banking. The study revealed that the BOT regulates the financial institutions whereas telecommunication companies are regulated by TCRA. Mobile money services then are regulated by these two institutions despite the fact that neither of the regulators seem to be concerned with mobile money.

²³Knowledge@Wharton and Ernst & Young (2013). *Mobile Banking: Financial Services Meet the Electronic Wallet*; (Kindle Locations 682-684). University of Pennsylvania. Available at <https://www.mobile.banking.s3-website-us-east-1.amazonaws.com> retrieved on 22nd August, 2017

²⁴Ibid, pp 649-650.

In addition, there is question of compliance to the laws on Anti money laundering and aid to terrorism, mobile financial services industry in general is vulnerable to the money laundering, and compliance and law enforcement agencies find themselves in a difficult situation in tracking such illegal activities; because in mobile money transactions involves different institutions and operators are involved. This makes the process less transparent compared to that used by banks.²⁵ The book has also discussed on the issue of vulnerability of the mobile phones and the security of the mobile banking as a whole; the mobile banking provider's servers could be compromised to hackers during data transmission causing non-delivery of the money to the ultimate beneficiary, in some cases, mobile phone could be lost or misplaced raising the question of where the liability will lie-is it to customer, bank or mobile network operator-MNO.

Mobile money transactions leave some trails behind and if there are no data protection laws consumers' private data could be compromised and may end up in the hands of unscrupulous persons. Therefore, it is then recommended to have data protection laws in place that will provide guidelines on how the data being transmitted, stored, will be protected. The authors have also discussed on the Know Your Customer (KYC) requirements highlighting how less strict are the regulations at the expense of compromising Anti Money Laundering (AML) laws and other laws.

From the above paragraphs it has been observed that there is a need to have proper regulatory environment that will address the key issues and the challenges of mobile money transactions. It is important to determine what and how will the mobile network operators be managed without compromising other laws like those on Anti Money Laundering and terrorism and the same time the technology should not cause compromising of customers' data. As crimes are perpetrated in the convectional banking context so do the mobile money transactions can be subject to the crimes. Hackers may attack the telecommunications company systems. In case of crimes or

²⁵Supra note 23

other irregular events, who is liable is an issue discussed and so far the banks and MNOs try to play smarter at the expense of the customers.

UNCTAD²⁶ conducted a comparative study in the East African Community that focused on the existing regulations and platforms for the development of mobile money services. The study portrays that the concept of consumer protection caters several legal regimes including competition, banking and telecommunications. These legal regimes in addressing consumer protection also address the protection of consumers against acts of fraud and the manner in which the flow of information is processed. The study revealed that the EAC central banks are concerned with the protection of consumers in financial sector where as the regulators for telecommunication covers the consumer protection matters pertaining to communication. Despite all these, there is currently no comprehensive multi-sectoral consumer protection legislation or mandated authority in any of the EAC countries.

Mollel, A.²⁷ urges that ICT gains magnitude at most cases in all sectors of development. Such developments are replacing the traditional modes of services that were manually conducted. The author however contends that the development in application for the use of ICT is seriously blocked in most countries due to lack of legal and regulatory subject that is comprehensive enough. The challenges pointed out by the author includes security, authenticity and integrity of electronic records.

In the policy brief of the Consumers International prepared by **Simpson R**²⁸, it stipulated that at most cases there lacked a specific legal framework that concurrently engage the main partakers when it comes to the provision of mobile transaction services, being the bank, the network provider and the mobile device

²⁶UNCTAD: *Mobile Money for Business Development in the East African Community. A comparative study of existing platforms and regulations*-GE.12-50897-June 2012-1,260 available at <https://unctad.org> retrieved on 21st August 2017.

²⁷Mollel, A. (1996): *The legal and regulatory framework for ICT in developing countries: Case study of ICT and the law of evidence in Tanzania*, pp 1-16. Available at [http://cs.joensuu.fi/ipid2008/abstracts/Mollel Andrew ICT4D PAPER.pdf](http://cs.joensuu.fi/ipid2008/abstracts/Mollel_Andrew ICT4D PAPER.pdf) retrieved on 20th August 2017

²⁸Simpson, R.; *Mobile Payments and Consumer Protection; Consumers International*, January, 2014. Pp.7-8 available at <https://www.consumersinternational.org.pdf> retrieved on 18th August,2017

manufacturer. However in practice, the contract that a consumer enters with a mobile network provider is a normal contract that does not offer a right to compensation or redress to the money lost during transactions or as a result of technical faults.

Further the work stipulates that due to the emergence and confusion in e commerce, mobile money transactions seem to lack specific legal regime regulating such services. It was urged that the service providers acts as both a party and judge where matters arising for consumer protection arises²⁹. Other issue raised in this work is how a consumer's money is treated in case where one's account becomes dormant for instance where the owner of a mobile phone is dead and the PIN to the mobile wallet was only known to the deceased.³⁰

Ubena, J³¹ recognises the role of ICT in societal development whereby it mushrooms the, mobile telecommunication operators in Tanzania such as Tigo, Airtel, Vodacom and TTCL mobile. On the other hand the government is embracing the technology by virtue of e-government. The author however submits that, “despite adoption and recognition of ICT developments, the problem become serious where the legal system is either not alerted of the dangers of unregulated technology development and application or is too slow to adapt to the changes. ICT brings challenges to legislator and regulators particularly due to ICT changes and convergence. The paper displayed out some of the challenges related to the development of ICT one being cybercrimes. The author came out with conclusion that lack of legislation to address the challenges; it scares ICT investors and retards ICT deployment resulting into under development of ICT, e-commerce and e-government”. It was thus recommended for Tanzania to have broad electronic communication legislation, either amending the existing law or by enacting a new legislation.

²⁹Simpson, R.; *Mobile Payments and Consumer Protection; Consumers International*, January, 2014. Pp.7-8 available at <https://www.consumersinternational.org.pdf> retrieved on 18th August,2017

³⁰Ibid

³¹Ubena, J. Why Tanzania still need broad Electronic Communications Legislation? *Law Reformer Journal*, Vol.2”, No1, 2009, posted on 16, August 2010

1.9 Research Methodology

Under this section, the general framework on how the study was conducted is being discussed. This provides for the general framework on how the study was conducted. In it we study various steps that were adopted by a researcher in studying his research problem along with the logic behind them.³² This section describes the research design, area of study, data collection and data analysis technique. This research is partly a field research and partly a doctrinal research design.

1.9.1 Research Design

Research design deals with the structural aspect of the research and provides for the analysis on the organization of the study to attain a certain end. The research design describes how the researcher is going to find answers to the research questions. The researcher employed a qualitative research design. It can be used when collecting information about people's attitudes, opinion, habits or any of the variety of education or social issues.³³ The researcher used this design as to the time given to conduct the research in order to cover a wider area.

1.9.2 Scope of the Study

For a broader generalization, this study required a large amount of empirical data. For example, it was of interest to carry out a comparative study between the available mobile operators available, but due to financial constraints and time, the research was carried out in Dar es Salaam city only" covering the M-Pesa mobile network operator.

³² Kothari, C.R. (2004). *Research Methodology*, (2nd Ed). New Delhi: New Age International (P) Ltd. at p8

³³ Supra note 32, pg. 31

1.9.3 Sampling and Sample Selection

Here it includes the exact plan of getting a sample from the population given. It includes the researcher's procedure and technique adopted by the researcher in choosing items from the sample. A sampling design also sets out a sample size that base on the focus of the study.³⁴

A total number of 60 respondents were randomly selected from the literate members of the public of different age and classes, 10 legal professionals were also randomly selected from Ilala District Court, 10 agents of mobile money services and 15 respondents from Vodacom offices where distributed with questionnaires.

1.9.3.1 Sampling Procedure

The researcher must decide the type of sample to be used i.e., he must decide about the technique to be used in selecting the items for the sample. In fact, this technique or procedure stands for the sample design itself. Obviously, he must select that design which, for a given sample size and for a given cost, has a smaller sampling error.

1.9.3.2 Random Sampling

This refers to the method of sample selection made randomly from finite population. This technique gives every possible sample combination an equal chance or probability of being selected and be included in the sample. It is a sampling method without replacement.³⁵

The researcher chose this technique in order to acquire a good number of individuals to be studied. The names of respondents were jotted down on small pieces of papers and the respondents and other members of the public also will be jotted down. Then a researcher chose one mobile network operators, four officials from the Vodacom mobile company, six mobile agents, five SIM card registrar and twenty five

³⁴ Supra note 32, p9

³⁵ Ibid

members of the public. Therefore taking into account the nature of the study the researcher will be able through this technique, to have 45 respondents.

1.9.4 Data Collection Methods

In the collection of data, the researcher employed field research as well as library research in the collection of data. Primary data as well as secondary data was collected in meeting the objectives under the study. In specific, the subsequent methods were employed in the collection of the necessary information of the study.

1.9.4.1. Questionnaire Survey

This method is used to collect data from large scatted population. It is a list of question to be answered by a group of people, especially to get facts or information about their view.³⁶ The advantage of questionnaire to this research is that they helped the researcher to get the respondents who do not have time for the interview with the researcher following the availability and time they have in their official capacity. More specifically questionnaires where used to the members of the public in this study. The researcher prepared a questionnaire guide which acted as a tool to obtain information from the selected respondents.

1.9.4.2 Interviews

It is an oral and systematic conversation between the interviewer (researcher) and interviewee with an aim of obtaining relevant information in relation to the study. Through an interview the researcher may also learn from the interviewee through the facial expression, gestures and pauses of the environment. Researcher opted for this tool in data collection so that she could elaborate the questions to the interviewee clearly and also on her side she would gather the relevant information as it is simple and less time consuming. Interview was conducted to the TCRA institution, agents

³⁶Krishnaswami, O. R. and Ranganatham, M., (2005), *Methodologies of Research in Social Sciences*, (3rd Edn.), Himalaya Publishing House, Delhi p. 184

of mobile services and at Vodacom offices where few respondents were able to respond to the questions addressed.

Mediated interview was to some extent employed³⁷ particularly to advocates and scholars, using synchronous method of interview.³⁸ In this method, telephone call was employed. Though mediated interview has its limitation such as facial expression, physical appearance, tone of voice and even the sites that the respondent choose to sit, however because the study was not based with emotional study it was effective.

1.9.4.3 Documentary Review

This is a way of collecting data by reviewing existing documents³⁹ such as published articles, journals, reports, dissertations, case laws and government publications. It is worth noting that, it is important to start reviewing secondary data so as to have personal opinion and comment on primary data as given by various respondents. Having gathered the opinion and analytical comment of various authors, then it becomes easier to proceed with the review of primary data. The review of secondary data covered the collection of data from the Mzumbe University Library, the National Library of Dar es Salaam, relevant articles and journals.

³⁷Trace, S. (2013). *Qualitative Research Methods: Collecting Evidence, Crafting Analysis, Communication Impact*, Communication Impact, 1st Ed, Wiley – Blackwell, United Kingdom, p. 163 it is stated by author that, this kind of an interview do not occur face to face but via technological media such as telephone, a computer or other hand – held devices.

³⁸This method include telephone or webcam conversation and internet text based chat, which is different from asynchronous methods which parties can participate on an interview at different times, such as emails, internet forums and bulletin boards or social networking sites. See Trace J. S (2013) P, 163 – 164, see also Ayling & Mewse, 2009.

³⁹ Uddim J, A. (2010). *Documentary Research Methods: new Dimension*, Indus Journal of Management & Social Sciences Vol. 4, issue 1: (1-14) p. 3, available at <http://ideas.repec.org/s/iijh/journal.html>, retrieved on 12th August 2017 at 1129hours.

1.9.4.4 Media and Search Engines

In pursuing the study, materials available via the internet were also consulted. This was made possible by the use of media such as newspapers, television, and radio as well as the search engines. The reason for the deployment of this method in collecting data was the need to fill the gap from the information collected using other methods.

1.9.5 Data Collection Instruments

The study also applied some instruments for purposes of aiding in the collection of data. The following instruments have been put in place to collect data:

1.9.5.1 Interview Guide

This instrument was used by the researcher during interviews with the respondents to guide her in the collection of data. The interview guide included a number of guiding questions to be asked by the researcher which in one way or another reflects the research questions and the objectives of the study.

1.9.5.2 Questionnaires

The study also used questionnaire as an instrument for the collection of data in the field. The questionnaires were printed with the questions to be filled with the targeted respondents.

1.9.6 Data Processing and Analysis Techniques

Data analysis refers to the collection and organization of the data so that the researcher comes to a better conclusion.⁴⁰ The researcher used qualitative data analysis, which is the process in which we move from the raw data that will be collected as part of the research study and use it to provide explanations,

⁴⁰ Marie, C.H. (2005): *Choosing qualitative Research. Primary for Technology Researchers, Journal of Technology Education*, Vol.9, No.1 of 1997, p. 56.

understanding and interpretation of the phenomena, people and situations which are under the study. The aim of analyzing qualitative data was to examine the meaningful and symbolic content of that which is found within. The researcher aimed at trying to identify and understand concepts, situations and ideas.⁴¹

1.10 Chapterization

This dissertation consists of an accumulation of five chapters and the following is a brief chapterization of each chapter;

Chapter one introduces the research topic as it carries the general introduction and theoretical foundation of the research topic. Thus, it portrays where the problem of the research bares its origin and this is on the part of the background research problem. It develops into providing the outstanding point on part of the statement which introduces the topic. The chapter makes a reference to literatures of several scholars and authors who have addressed their findings and views on the regulation of mobile money services and the protection of its consumers in that sector. The chapter ends by making a demonstration of the means mainly for collection of data.

Chapter two is comprised of the important key concepts in the research study. This enables the reader to understand the key terminologies of the concepts used. Further one will be aware of the importance to the existence of mobile money service laws.

Chapter three discusses on the general overview of the regulatory framework for the mobile money transaction services and the protection of its consumers.

Chapter four provides for data analysis, findings and the discussion of the data that was collected from the field. The researcher combines, edit and interpret the obtained information before coming to the general conclusions

⁴¹ Available at http://www.researchproposalsforhealthprofessionals.com/qualitative_data_analysis1.htm accessed on 4th August, 2017 at 10:05am

Chapter five concludes the contents of the four chapters. Therefore the topic provides for general summations as it provides for conclusion and recommendations. The conclusion observes the entire legal framework depending from the results analysed in chapter four.

CHAPTER TWO

CONSUMER PROTECTION IN MOBILE MONEY TRANSACTION SERVICES IN TANZANIA; AN OVERVIEW

2.1 Introduction

Under this chapter the researcher provides for the general concepts used in this research as stated and construed by different authors. Literary conceptual framework entails a set of definitions, values and meanings of different key terms. In relation to this topic conceptual framework explains concepts, opinions, and theories, principles, experience relating to consumer's protection of mobile money services.

2.2 Meaning of Consumer

According to the law of Electronic Transaction Act of 2015⁴² defined the term consumer to mean, "any person who intends or enters into an electronic transaction services with a supplier as the end user of goods or services offered by the supplier".

In the Fair Competition Act of Tanzania the term consumer is not defined. Referring to Oxford dictionary it terms a word consumer as consumerism and defines it to mean the protection or promotion of the interests of consumers.⁴³ The Black's Law dictionary on the other side gives for the definition of consumerism by meaning, "efforts of parties to protect the consumer from contracts that would take away their rights in business..."⁴⁴ The definition given by the Law dictionary defines a consumer in relation to goods as, "any person who might wish to be supplied with the goods for his own private use or consumption"⁴⁵

⁴² Section 3 of the Act

⁴³ Oxford Dictionaries, Oxford Dictionary Online (17 January 2017) retrieved from <http://www.oxforddictionaries.com/definition/english/consumerism> on 1st October, 2017

⁴⁴ The Law Dictionary, The Law Dictionary Featuring Black's Law Dictionary Free Online Legal Dictionary 2nd Ed (4 November 2013); Available at <http://thelawdictionary.org/consumerism> accessed on 1st October, 2017

⁴⁵ Oxford dictionary of law (6th Edn:2002) pg 54

Mambi⁴⁶ defines the term consumer to mean “any person who pays to consume goods and services produced” is consumer. In the book of S.R. Myneni,⁴⁷ he defined the word consumer to mean a person who consumes. From the definitions stipulated above, it can be noted that by the term consumer it covers any individual who uses goods and services of certain economy. Thus, any person who is capable of buying any commodity or services can be called a consumer.

2.3 Consumer Protection

It refers on the placed measures set by the government in ensuring that the consumers are aware of their rights, which they are in position to make decisions in acquiring the necessary services. Such measures also protect a consumer from deceptive and unfair practices by providing access to the mechanisms to be employed in resolving disputes.

By the term consumer protection it means a manner in which a consumer is defended against the unfair practices conducted by sellers and the producers⁴⁸. Many countries protect their consumers by enacting different laws that address consumer protection. These laws protect all consumers even for those who are not capable of defending themselves.

Coming to the mobile money transaction (MMT) services the concept of consumer protection is not well discussed in either the financial or the telecommunication sector. Consumer protection links to the idea of forming consumer organizations and consumer rights in helping the consumers to make best choices in the market and receive help in handling consumer complaints⁴⁹.

⁴⁶Mambi, A.J (2014): *Information and Communication Technologies and Cyber Law* at p. 133

⁴⁷ S.R. Myneni (2010): *Consumer protection Law*; (1stedn.) at Pg. 28

⁴⁸ Available at http://www.thetimes100.co.uk/downloads/theory/consumer_protection.pdf accessed on 5th October,2017

⁴⁹Bugoti, F. L: *Concept of consumer protection in Tanzania* available at www.scribd.com Accessed on 20th November, 2017

2.4 Mobile Money

This term refers to a method of transfer of cash using mobile phones. A subscriber transforms cash into e-value via a mobile phone or an agent and is then able to transfer this e-value to another subscriber via a cell phone. The mobile money can be used to purchase airtime, pay bills, utilities, and other items or simply withdrawn by the recipient also through an agent. Mobile money is lauded largely because it provides a secure, cheaper and more convenient means to send and receive money.⁵⁰

Mobile money may also mean the service of transferring money which is mobile phone based⁵¹. It is used for faster financial services to the consumers that do not use banking system by the use of IT tools that operate in non banking environment.⁵² Mobile money services accelerate the speed of money transfer as funds move in electronic instead of the physical form.⁵³To transfer money, a mobile phone user registers with a mobile money agent and then deposits cash.⁵⁴ This cash is shown as e-money in an e-wallet on the sender's SIM card⁵⁵. The e-money can be sent to the receiver's phone. The e-money balance can be converted back into cash by the receiver on visiting an agent.⁵⁶

⁵⁰Klein and Mayer, 2011: *Mobile Banking and Financial Inclusion: The Regulatory Lessons: Policy Research*, Available at <https://elibrary.worldbank.org>. Accessed on 18th November,2017

⁵¹Upadhyay, P.; Jahanyan, S: *Analyzing User Perspective on the Factors Affecting Use Intention of Mobile-Based Transfer Payment*. *Internet Res.* 2016, 26, 38–56. Available at <https://www.researchgate.net/pdf> retrieved on 20th November,2017

⁵² Ibid

⁵³Morawczynski, O: *Exploring the Usage and Impact of “transformational” mobile Financial Services: The Case of M-PESA in Kenya*. *J. East. Afr. Stud.* 2009, 3, 509–525. Available at <https://www.tandfonline.com> retrieved on 20th November, 2017

⁵⁴Bisht, S.S.; Mishra, V: *ICT-Driven Financial Inclusion Initiatives for Urban Poor in Developing Economy: Implications for Public Policy*. *Behav.Inf. Technol.* 2016, 35, 817–832. Available at <https://www.tandfonline.com> retrieved on 20th November, 2017

⁵⁵Morawczynski, O: *Exploring the Usage and Impact of “transformational” mobile Financial Services: The Case of M-PESA in Kenya*. *J. East. Afr. Stud.* 2009, 3, 509–525. Available at <https://www.tandfonline.com> retrieved on 20th November, 2017

⁵⁶ ibid

2.5 Tanzania Mobile Money Providers

Tanzania has six mobile money providers where Vodacom with M pesa, Tigo with Tigo Pesa, Airtel with Airtel Money, Zantel with Ezy Pesa Halotel with Halo Pesa and TTCL. By early 2007 Vodacom-Tanzania mobile company introduced a Vodafone M-PESA as a new mobile money transfer service in partnership with Vodafone Group. With M-PESA, Vodacom customers could convert cash into electronic money at an authorized M-PESA agent. However, the mobile money transfer in Tanzania has been a common objective for almost all the mobile companies in Tanzania. This could be seen through the introduction of M-banking system by the telecommunications companies namely M-Pesa, Tigo Pesa, Airtel money Ezy –Pesa and Halo-Pesa. Vodacom Tanzania started offering mobile financial services in 2008 with its M-PESA brand; Zain now Airtel followed with Zap Money (Airtel Money) and the third to join the race was Zantel with Z-Pesa, now Ezy Pesa. In 2010, Tigo officially launched its mobile money product – Tigo Pesa bringing the number of telecommunication companies to four competing in the ‘non-bank led model’, in offering mobile financial services in the market. It is recognised as one of the payment methods by the Bank of Tanzania (BoT)⁵⁷ and Tanzania Communications Regulatory Authority (TCRA).

Tigo launched its first Tanzania mobile insurance services in 2012 known as Tigo Bima. These services offered life and hospitalization coverage. The Tigo consumers from Tanzania and Rwanda also enjoyed as first consumers to use international MMT services with instant currency conversion⁵⁸ Halotel became the fifth mobile money provider with Halo Pesa in the year 2016.

⁵⁷ Section 6 of the Bank of Tanzania Act

⁵⁸ Accessed from <https://www.tanzaniainvest.com/mobile-money> on 18th October, 2017

2.6 The Concept of Mobile Money Transfer

The concept of Mobile Money Transfer (MMT) refers to the use of a mobile phone in transferring money to a different account either by depositing or withdrawing money in the mobile wallet, or in paying bills. In the electronic commerce realm it can be referred as the purchase of items whether physical or electronic by the use of mobile device.⁵⁹

2.7 Mobile Financial Services

This term Mobile Financial Services or MFS refers to all kinds of financial services that are being offered by the use of a mobile phone. There are three leading forms of MFS which are mobile money transfer, mobile banking and mobile payments.⁶⁰

2.8 Mobile Money Transfer (MMT)

This refers to the services where a consumer uses a mobile phone to send and receive money. It may also mean an act of a consumer in transferring money electronically from one individual to another by the use of a mobile phone. MMT services include both domestic transfers, cross border, remittances and international transfers.⁶¹

Mobile money does not intend to replace the existing electronic payment system offered by banks but rather they do save the disbursements that were undertaken through payment of cash. By the use of mobile money, a consumer is easily able to safely store, withdraw or transfer the money electronically without travelling to the bank.⁶²

⁵⁹Information accessed from <http://www.businessdictionary.com/definition/mobile-money.html#ixzz2iiNglcbE> on 18th October, 2017

⁶⁰ Information retrieved from <http://blogs.worldbank.org/psd/e-money-mobile-money-mobile-banking-what-s-the-difference> on 18th October, 2017

⁶¹ Ibid

⁶² Tanzania Mobile Money Assessment and case study. Examining cash payment streams and their Electronic Alternatives among USAID Implementing partners, February 2013, Article retrieved from <https://www.academia.edu/pdf> on December, 2, 2017

CHAPTER THREE

LEGAL FRAMEWORK GOVERNING CONSUMER'S PROTECTION IN MOBILE MONEY SERVICES IN TANZANIA

3.1 Introduction

In the growth of mobile money transaction (MMT) it does not only depend on the conduciveness of its services but also the regulatory environment governing mobile finance. Despite the fact that mobile transactions are performed in an automatic environment where there is no any direct. Hence, there is a need of new legal regime that would comply with the requirement and features of MMT. In this chapter the researcher discusses the available legal regime governing mobile money services (MMS) in Tanzania.

3.2 The Current Regulatory Framework

When discussing the legal regulation of mobile money service in Tanzania, two institutions, namely, the Bank of Tanzania (BOT) and Tanzania Communications Regulatory Authority (TCRA) have the responsibility of regulating mobile money transfer with a view to, among others, protecting consumers.

The business of money depositing and withdrawal is a major act of banks and other financial institutions. The Bank of Tanzania Act, 2006 gives a clear distinction between a financial institution and a bank. According to the definition given by the BOT Act the bank is an entity engaged in banking business. Section 3 of the Act gives the definition of banking business to mean, "a business that involves receiving funds from the public by accepting deposits that are being paid on demand or at a fixed period of time or after a notice or any operation of the same kind through frequent sale or placing bonds, certificates, notes or securities and use such funds in whole or part, for loans or investments for account of and the risk of the person dealing with such business"

The Act defines a “financial institution” in section 3 to mean:

“An entity engaged in the business of banking, but limited as to size, locations served, or permitted activities, as prescribed by the Bank or required by the terms and conditions of its license”.

The business of banking ran by banks and financial institutions are regulated by the Bank of Tanzania which puts strict compliance guidelines to safeguard customer funds.

However, in the recent years financial transactions have also been assumed by mobile phone operators who are regulated by a different regulator, the Tanzania Communications Regulatory Authority (TCRA). Unfortunately, TCRA regulates telecommunication services only and thus leaving the financial aspect of mobile business by the mobile operators unregulated. As mentioned out above, money transactions have a double effect in the mobile wallet and bank account at some point. As a result, this affects the liquidity of both the mobile operator and the bank. It becomes necessary that mobile money transactions need to be monitored and regulated properly for the sustenance of the economy and adhering to customer protection.

3.2.1 Regulatory Roles of the Bank of Tanzania in the Mobile Money Service

The principal functions of the Bank of Tanzania are well outlined under section 5 of the Bank of Tanzania Act, 2006. Firstly, the Bank is enjoined to exercise the functions of a central bank, 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 of licenses and to deal, hold and manage gold and foreign exchange reserves of Tanzania.⁶³

⁶³Section 5(1) of the BOT Act, 2006.

Secondly, the Bank has the responsibility to compile, analyse and publish the monetary, financial, balance of payments statistics and other statistics covering various sectors of the national economy.⁶⁴ Thirdly, in the pursuit of its objectives and in the performance of its tasks, the Bank is endowed with the status of being autonomous and accountable as provided for under subsection (3) of section 5 of the Bank of Tanzania Act.

Apart from the principal functions, a Bank is vested with supervisory and regulatory powers in respect of clearance system⁶⁵ and settlement system⁶⁶ as it is stipulated under section 6 of the Bank of Tanzania Act, 2006. to quote;

“6.–(1) The Bank shall–

(a) Regulate, monitor, and supervise the payment, clearing and settlement system including all products and services thereof; and

(b) Conduct oversight functions on the payment, clearing and settlement systems in any bank, financial institution or infrastructure service provider or company.

(2) The Bank may–

(a) Participate in any such payment, clearing and settlement systems;

(b) Establish and operate any system for payment, clearing or settlement purposes; and

⁶⁴ Section 5 of the BOT Act, 2006

⁶⁵ ‘clearing system’ means “a set of procedures whereby banks or financial institutions present and exchange data or documents relating to funds or securities transfer to other financial institutions at a clearing house and includes a mechanism for the calculation of participants’ bilateral or multilateral net positions with a view to facilitating the settlement of their obligations on a net or gross basis (section 3 of the BOT Act, 2006)

⁶⁶ ‘Settlement system’ means “an arrangement established and operated by, or under the control of the Bank for the discharge of payment obligations and settlement obligations between settlement system participants” (section 3 of the BOT Act, 2006)

(c) Perform the functions assigned by or under any other written law for the regulation of payment, clearing and settlement systems”

Referring to subparagraph (b) of subsection (1) of section 6 it appears that the Bank of Tanzania is vested with power to conduct oversight functions on the payment, clearing and settlement systems in any bank, financial institution or infrastructure service provider or company. Mobile money operators and companies are probably included under that section. However, the Bank of Tanzania is yet to make regulations under section 70 for operationalization of its powers.

The primary objectives of supervision and regulation of banks and financial 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.⁶⁷ The Bank of Tanzania despite being aware of the fact that mobile phone operators, although not licensed to do banking business as required by law,⁶⁸ take deposits from the general public,⁶⁹ for unknown reasons has kept mute on this. The Bank of Tanzania should have reacted to this as soon as it became aware of the practice to maintain the stability, safety and soundness of the financial system and to reduce the risk of loss to depositors.⁷⁰

The provision in the Banking and Financial Institutions Act, 2006 under Section 6(2), it criminalizes accepting of deposits from the public by any person who has not been licensed by the Bank of Tanzania to engage in banking business. And, section 65 of the same Act clearly empowers the Bank of Tanzania to carry out investigations to satisfy itself about the legality of the activities of such person.

⁶⁷ Section 5 of the Bank and Financial Institutions Act, 2006

⁶⁸ Section 4, Section 6 and section 7 of the Bank and Financial Institutions Act, 2006

⁶⁹ Sections 24-25 of the Bank and Financial Institutions Act, 2006

⁷⁰ Sections 31-35; impose special duties as per sections 43-44; protect rights of depositors as per section 53 and exercise power of seizure under section 58 impose default fine under section 66 of the Bank and Financial Institutions Act, 2006.

In 2007 the BoT issued the guideline known as the Electronic and Postal Guideline scheme of 2007 which allowed Mobile Network Operators to offer payment services through mobile transfer. However, these guidelines only covered risk management for banks and other financial institutions, largely ignoring the role of mobile Network Operators. From beginning, Mobile Network Operators were required to partner with banks to receive “letters of no objection”, which enabled the BoT to guarantee that consumer funds are protected in the banking system.⁷¹ However this body is not much concerned with mobile a transaction that is why when it happens the companies send a report to the BoT, Bank of Tanzania directs it to TCRA. Due to this chain it becomes difficult to questions if there is any unclear information with regards to electronic money transactions through mobile phones, for instance in case of illegal transactions.

3.2.2 Regulatory roles of the Tanzania Communications Regulatory Authority in the Mobile Money Service

The Tanzania Communications Regulatory Authority (TCRA) is the telecommunication regulatory authority in the country established under section 4 of the Tanzania Communications Regulatory Authority Act, 2003.

“TCRA has been enjoined to perform the following duties:⁷²

- (a) Promote effective competition and economic efficiency;*
- (b) Protect interests of consumers;*
- (c) Protect the financial viability of efficient suppliers;*
- (d) Promote the availability of regulated services to all consumers including low income, rural and disadvantaged consumers;*
- (e) Enhance public knowledge, awareness and understanding of the regulated sectors including*

⁷¹ Clyde & Co LLP (2014): *Mobile financial services in Tanzania: the current and future status of the legal and regulatory framework* at p.2. Accessed from <http://www.lexology.com/library/detail.aspx?g=99da90fe-780e-4238-b236-d61d038955de> on 10th January, 2018

⁷²Section 5 of the Tanzania Communication Regulatory Authority Act, 2003.

(i) The rights and obligations of consumers and regulated suppliers;

(ii) The ways in which complaints and disputes may be initiated and resolved;

(iii) The duties, functions and activities of the Authority”.

Under section 6 of the same Act,⁷³ TCRA has further been vested with, among others, the following functions:

“(a) To conduct the functions conferred on the Authority by sector legislation;

(b) Subject to sector legislation to-

(i) Issue, renew and cancel licences;

(ii) Establish standards for regulated goods and regulated services;

(iii) Establish standards for the terms and conditions of supply of the regulated goods and services;

(iv) Regulate rates and charges;

(v) Make rules for carrying out the purposes and provisions of this Act and the sector legislation;

(c) Monitor the performance of the regulated sectors including in relation to -

(i) Levels of investment;

(ii) Availability, quality and standards of services;

(iii) The cost of services;

(iv) The efficiency of production and distribution of services, and

(v) Other matters relevant to the Authority;

(d) To facilitate the resolution of complaints and disputes;

⁷³ TCRA Act, 2003

(e) To disseminate information about matters relevant to the functions of the Authority;

(f) To consult with other regulatory authorities or bodies or institutions discharging functions similar to those of the Authority in the United Republic of Tanzania and elsewhere.”

Referring to telecommunications sector, like any other consumers they too have their rights. The TCRA⁷⁴ provides for such rights. These include;-

A right of **Access**; it is explained that it is a right of a consumer to have access to the basic communication services at a reasonable price. Access to communications services at an affordable price is a fundamental human right specifically the basic services such as telephone and postal. The government and TCRA are responsible in making sure that services are available to every individual by employing proper policies and the issued licenses assures good services to all areas and individuals.⁷⁵.

A consumer has a right to **Information** especially the understandable information that is clear at pre-contractual stage. This information has to be adequate, helpful and accurate on the services and choices being offered by the service provider or operator in facilitating the making of proper informed choice. The information to the consumer has to specify what is being included and what is not and with clear statement on the quality of services to be provided⁷⁶. It is a requirement made by the TCRA to the service providers or operators that consumers have a right to be informed and be assisted in the term of use of the services.

The other right is of **Quality of Service**. It is required for every consumer to have a quality of service that relates to the costs of the service. In implementing this right, TCRA enacted service quality guidelines of which each service operator or provider has to comply with⁷⁷.

⁷⁴ Available at www.tcra.go.tz/customer/ConsumerRights.pdf accessed on 10th January, 2018

⁷⁵ Ibid

⁷⁶ Ibid

⁷⁷ Ibid

A consumer is entitled to **Fairness** in the mode of services given by the operator or service provider. All consumers should be treated equally where the TCRA requirement is that where there is any denial in the access of service given by an operator should only be due to the consumer's non compliance with the terms and conditions of the operator's service agreement or any other justified cause. This fairness right is also extended to consider for treatment among groups of consumers. The terms of service stipulated by the mobile operators or service providers should be fair enough to the consumers as well in both its requirements and expectations⁷⁸

Moreover, a consumer has a right to lodge a **Complaint** resulting from complaints against the quality or quantity, delay and tariffs depending on the nature of the services been provided⁷⁹.

Redress is another consumer right that requires an effective system for handling complaints. TCRA requires every service provider or operator to set up mechanism that would resolve consumers' complaints and where a consumer is not satisfied with the service provider or operator's redress mechanism, may refer the complaint to TCRA⁸⁰.

Every consumer has a right to **Safety and security** of the services where a service provider must maintain the safety and security of services to its consumers by making sure that all of his equipments meet the health safety for use by the consumers. In the use of such services, a consumer should not be at any risk as a result of the fault caused by the service provider but rather on the consumer's own negligence or fault⁸¹.

It is a right of every consumer to **Privacy** since TCRA has set confidentiality as a requirement to the service providers or operators by making sure that they do maintain the confidentiality of all communication contents received to them in the

⁷⁸ Available at www.tcra.go.tz/customer/ConsumerRights.pdf accessed on 10th January,2018

⁷⁹ Ibid

⁸⁰ Ibid

⁸¹ Ibid

course of serving a consumer. Such information shall not be disclosed to any third party without a written consent of the authority or by the order of the competent court of the law.

Right to **notification of termination of service**. Consumers have a right to be notified on the termination of services especially at termination of basic services or internet access. The authority requires the service providers such as the ones concerned with internet access to provide prior notification to the public and its consumers on an intention to cease in providing such service⁸²

A consumer of mobile services has a right of **Representation** where a consumer may make representations to the ones regulating, delivering or governing the services provided to them. The TCRA-CCC initiates public consultations in public where consumers are invited to make their representations⁸³.

Another consumer's right is **Billing Information**. It is a right of a consumer to have access of the billing information and where a consumer is not happy with his bills may make some follow ups to the service provider and discuss the details of his bills⁸⁴.

The **Electronic Postal and Communications Act, 2010 (EPOCA, 2010)** on the other hand, has further elaborated and strengthened the functions and duties of TCRA by establishing its licensing obligation to the operators.⁸⁵ Through these powers TCRA is enjoined to issue unique codes to the telecommunication operators for the operation of the mobile money service.⁸⁶ Further it provides some unique codes to the banks which are basically regulated by the Bank of Tanzania for the purpose of providing mobile money service.⁸⁷ This may happen even without any

⁸² Available at www.tcra.go.tz/customer/ConsumerRights.pdf accessed on 10th January, 2018

⁸³ Ibid

⁸⁴ Ibid

⁸⁵ Section 4 of the EPOCA, 2010

⁸⁶ For instance, M-Pesa code: *150*00#

⁸⁷ These may be in the form of Internet banking, sim-banking and mobile banking services. There are services like NMB Mobile (this has been one the earliest mobile banking service in the country) and

communication between the mobile telephone operator and the banks in some services. The mobile phone operators are not capable of establishing if their customers are enrolled in the mobile banking service. In this regard the telephone mobile operators' network and that of the banks are connected in a way that access to the sim card is the access to the bank account of the customer by use of the PIN (password) that is originally set by the customer when enrolling with the service. Because of illiteracy of most customers on the risks associated with the use of the service, thieves use fraudulent ways to get the information of the customer to access their accounts online. This has been happening and many people from villages to towns have lost millions of money on such kind of incidences. The problem arises when the customer needs to recover his lost money. He would not know who to face; the bank or the mobile phone operator? If he goes to the bank he will be told that his money was stolen through his mobile phone and that they are not responsible. If he tries to approach the mobile phone operator the reply will be that the operator has no access to his bank account and after all he deposited the money with the bank and thus he should claim the money from the bank where he deposited the money. This is so because the service is not regulated; no one wants to take ownership of the problem and escapes it through blaming another while the customers are losing their money.

3.2.3 Regulatory Roles of the National Payment System, 2015 in the Mobile Money Service

In 2015, Tanzania enacted the National Payment System Act, which mostly contains regulatory content, but explicitly allows the use of electronic means when providing payment services.⁸⁸ In this law the liability of the MNO is limited in several ways, for instance in losses that arise from particular circumstances, even if known to the

there is also CRDB Sim-Banking just to mention a few. NMB Mobile Code:*150*66#; and CRBD Sim banking code:*150*03#; these are given by the TCRA

⁸⁸Section 3 of the National Payment Systems Act, 2015

operator.⁸⁹ The mobile network operator is also not liable for technical malfunctions resulting from circumstances beyond reasonable control.⁹⁰

The National Payment Systems in Tanzania are regulated by the BOT. The central bank has the power to grant or refuse approvals, and also has the mandate to regulate, supervise, investigate and oversee operations in the country. The BOT work in hand with other regulators in order to implement the provisions of the Act and its regulations.

This Act provides for the legal framework for payment systems to operate in Tanzania. It was enacted with a view of addressing new electronic and mobile money transfers. The Act defines Payment System to mean:-

“A facility consisting of payment instruments, banking and transfer of money procedures, interbank funds transfer systems or payment system provider’s system that ensures circulation of money”⁹¹

The Bank of Tanzania is vested with power to administer registration, administration and regulation of the payment system services rendered by banks, non-banks, and financial institutions. All service providers providing payment system services are to be registered by the BOT. The new regulatory framework on payment systems in Tanzania commenced on 1st day of July, 2016.⁹²

Moreover, in provision of payment system services, non-bank and non-financial institutions like Telecommunication Companies are required to separate telecom services from electronic money services. This is mainly to set up a separate legal entity that is in form of a trust for issuance of electronic money. For the issuance of

⁸⁹ Clause 16.1 of the Vodacom M-Pesa Consumer Terms and Conditions of Use

⁹⁰ Clause 16.1 of the Vodacom M-Pesa Consumer Terms and Conditions of Use

⁹¹ Section 3 of the National Payment System Act

⁹² Information accessed from <https://breakthroughattorneys.com/payment-systems-services> posted on November 8, 2017

electronic money, a trust account to be maintained by the trust entity must be opened for management of customers' money.⁹³

Payment Systems in Tanzania are regulated by the following legislation:

1. The National Payment System Act, 2015 (The Act);
2. Payment Systems (Licensing and Approval) Regulations, 2015 (The Licensing Regulations);
3. Payment System (Electronic Money) Regulations, 2015 (Electronic Money Regulations).

In Tanzania, the Electronic Money Regulations specify the authority of the Bank of Tanzania to approve and license e-money issuers and handle customer complaints⁹⁴ among other responsibilities.

3.2.4 Regulatory Roles of the Electronic Transaction Act, 2015

Part VI particularly in section 28 (1), (2) and (3) of the Electronic Transaction Act, it provides for the consumer protection. In order to protect the consumer, the supplier who wishes to supply goods or services electronically is required to provide proper information to consumer. Likewise the supplier is also required to give enough opportunity to consumer before receiving the goods to review and correct any mistake, where supplier contravene this provision is the violation of consumer's right and therefore consumer may within fourteen days cancel transaction.

⁹³ Information accessed from <https://breakthroughattorneys.com/payment-systems-services> posted on November 8, 2017

⁹⁴ Customer complaints may also be referred to FCC or to TCRA (Electronic Money Regulations, 2015), p.15.

3.3 Conclusion

It has been pointed out above, that while the laws are clear on the functions, duties and powers conferred on the regulators, namely the Bank of Tanzania with regard to the banking business and the Tanzania Telecommunications Regulatory Authority, with regard to the telecommunication industry, neither regulator seem to be much concerned with mobile money services (MMS). Since the MMS deal with money, one would expect the Bank of Tanzania to be primarily involved in its regulation. With regard to the communication part, TCRA has been empowered to issue license; however, such license does not cover monetary transactions. This being the case it seems there is a grey area. It is submitted that the grey area should be addressed by the Bank of Tanzania in collaboration with the Tanzania Communications Regulatory Authority.

CHAPTER FOUR

DATA PRESENTATION, ANALYSIS AND DISCUSSION OF FINDINGS

4.1 Introduction

The researcher under this chapter presents the data collected from the field from telecommunication company, Vodacom particularly, M-Pesa Agents, and Tanzania Communications Regulatory Authority (TCRA), when dealing with customers using mobile money transaction services. The users of these services, consumers were also asked of their views as well.

The chapter further will present the data collected where the questionnaires and scheduled interview will guide the discussion of the collected data in relation to the research questions of this study. The researcher gathered all the relevant information from the identified four groups without considering their academic background or financial status because most of the consumers are from all classes in society. The researcher distributed a total number of 50 questionnaires and 30 of them were positively responded for the researcher to come up with conclusions.

4.2 Data Collected from Tanzania Communications Regulatory Authority (TCRA)

The researcher had an opportunity to interview the TCRA-CCC executive secretary Miss Mary Shayo who positively gave responses to the questions laid down to her. She clearly explained that the TCRA mainly concerned with communication services and deal with consumer complaints pertaining to communication problems incurred. Once money transaction is involved, the matter is to be resolved by the BOT. The researcher was guided by mainly three research questions;

- i) To what extent is the legal framework governing mobile money transaction service protecting its consumers?

- ii) How effective are the institutional frameworks in regulating the mobile network operators in improving mobile money services to its consumers?
- iii) What challenges do consumers face in the course of service through mobile

In responding to the question as to what extent is the legal framework protecting consumers, Miss Shayo was of view that despite there being the National Payment System Act, it does not cover up all the needs to deal with its consumers. The existing laws enacted under the BOT that is the National Payment System and the Electronic money regulation address the consumer rights and redress mechanism once a consumer is encountered with any problem. “The law is too general”. Miss Mary urged that the consumers of mobile money services are of large number that approximately they can receive 100 customer care calls pertaining to complaints regarding mobile money services. Once there is a specific law she believes specific complaints and challenges incurred by the consumers would be resolved.

It was explained that the BOT is the one responsible with monetary issues where as TCRA supervise the telecommunication companies, thus the coordination among the two help in dealing with complaints addressed to them. Most complaints are addressed to TCRA since large number of people is not aware of the fact that BOT is the one mainly concerned with money transactions.

She added for there to be inadequacy in protecting mobile money service consumers through the existing laws and they keep on pointing out the problems reported from time to time and propose them to the telecommunication companied so that they may work on resolving common problems facing the consumers.

In responding to the challenges faced by consumers in MMS, it was explained that, the public is not much aware on the limits and main functions of TCRA. Miss Shayo explained that all complaints concerning mobile money transactions are to be addressed to the MNO or the BOT and in some cases the police. It is difficult to explain it to a consumer reporting his complaint and at time they do think that TCRA acts negligently in helping its consumers.

It was said that the main challenge that is normally reported is the wrong sending of money to unintended person. In solving such complaints it may take more than a day and some times a week later. She explained that this matter is already proposed to the MNO of which efforts have already been initiated as that of displaying a name of the one receiving the money before finalizing transactions. Before it was that a consumer of one MNO when sending money to a different MNO for instance from an M-Pesa account to Tigo pesa account, the receiver's name was not displayed. This matter has already been addressed and to some extent complaints to this kind of nature have been reduced.

When replying the question on the effectiveness of the institutions operating MMS the interviewee explained that there is no specific institution dealing with mobile money services thus any institution reported with the matter it will either refer the consumer to another agency or if competent to resolve it, it may be worked upon.

The statics for the TCRA they may approximately receive 100 calls of complaints pertaining mobile money services and they would advise the consumer to consult the MNO, the police or BOT depending on the nature of the complaint. Since there is no specific regulatory regime dealing with mobile services then the institutional framework are not effective enough in resolving consumer's complaints. Each institution has its manner of dealing with their consumers and the time frame is also different hence, confuses the consumers and leaving complaints not successfully handled.

4.3 Data Collected from Consumers.

The researcher distributed the questionnaires randomly to different consumers as the questions were in both Swahili and English language depending on the nature of the respondents. The questions were well addressed by a total of 30 respondents and can be discussed as follows;

All the respondents accepted to be using the mobile money services in one way or another and they preferred it more than the banking system. However, the majority are of view that there is a need for specific law that would only address mobile money services since it is mostly used by many as long as one owns a mobile phone.

Table 4.1: Respondents statistics on the legal regime governing MMS

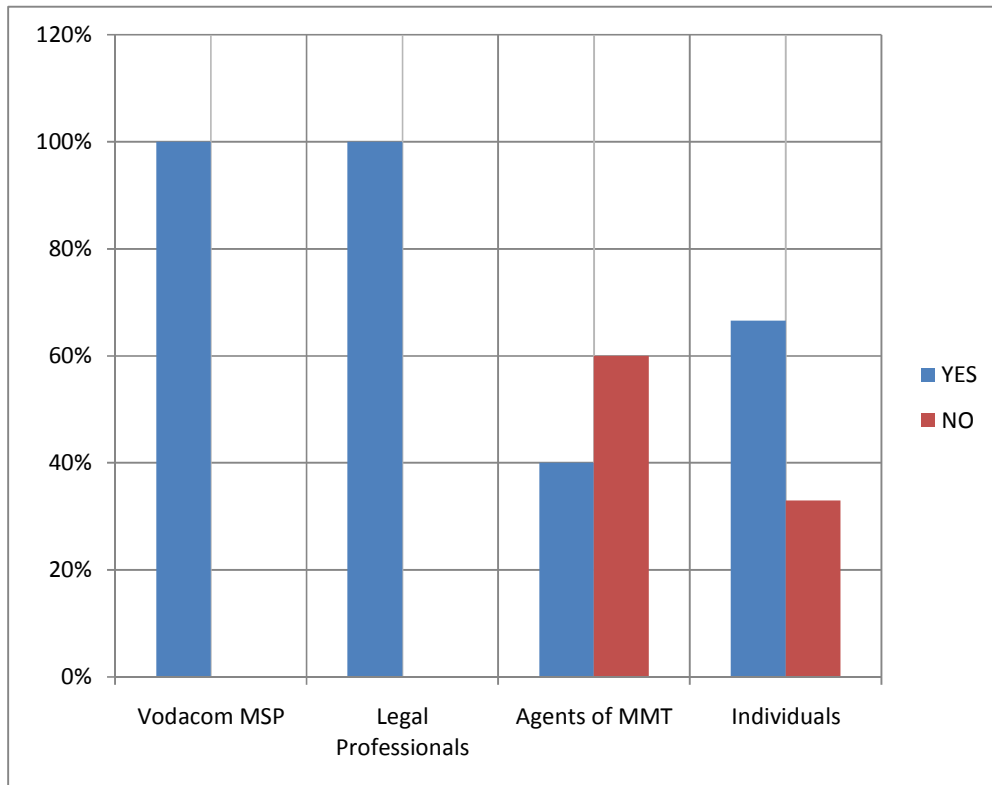
RESPONDENTS	FREQUENCY	(%)	YES	(%)	NO	(%)
Vodacom MSP	10	100%	10	100%	0	0%
Legal Professionals	10	100%	10	100%	0	0%
Agents of MMT	10	100%	4	40%	6	60%
Individuals	30	100%	20	66.66%	10	33.33%
TOTAL	60	100%	44	73.33%	16	26.66%

Source, Field Data November, 2018

From table 4.1 above the majority of the respondents were of the view that there is a need for specific law on mobile money service because it is not well known to them where they should address their complaints. It was explained that it takes more than a day for a matter to be resolved. The process takes time in such a way that one may give up on the process since much time and cost may further be incurred by a consumer just to resolve the other problem. Thus, there is a need or specific law that would address all the consumer rights pertaining to mobile money services.

On the other hand for those who said there was no need for the specific law they believed that TCRA is the institution responsible for mobile money services and it is the matter of the public to be educated on the proper procedure to be followed and being aware with terms of the MNOs.

Figure 4.1: Developed from Table 4.1 on respondents statistics



Source: Field Data, November 2018

The above findings imply that there is a need for a specific regime that would address the consumer complaints and all necessary matters related to the use of mobile money transactions. The majority of the respondents the legal professionals and officers from Vodacom mobile money services and other members of the public are of view that there is a need of special regime that would address mobile money transaction services.

In answering to the question on the challenges faced during MMT services, the researcher imposed two questions that would dispose two facts at a time. That was whether the existing laws are efficient enough in addressing challenges encountered by the consumers and what challenges that they are mostly faced with in the use of mobile money services.

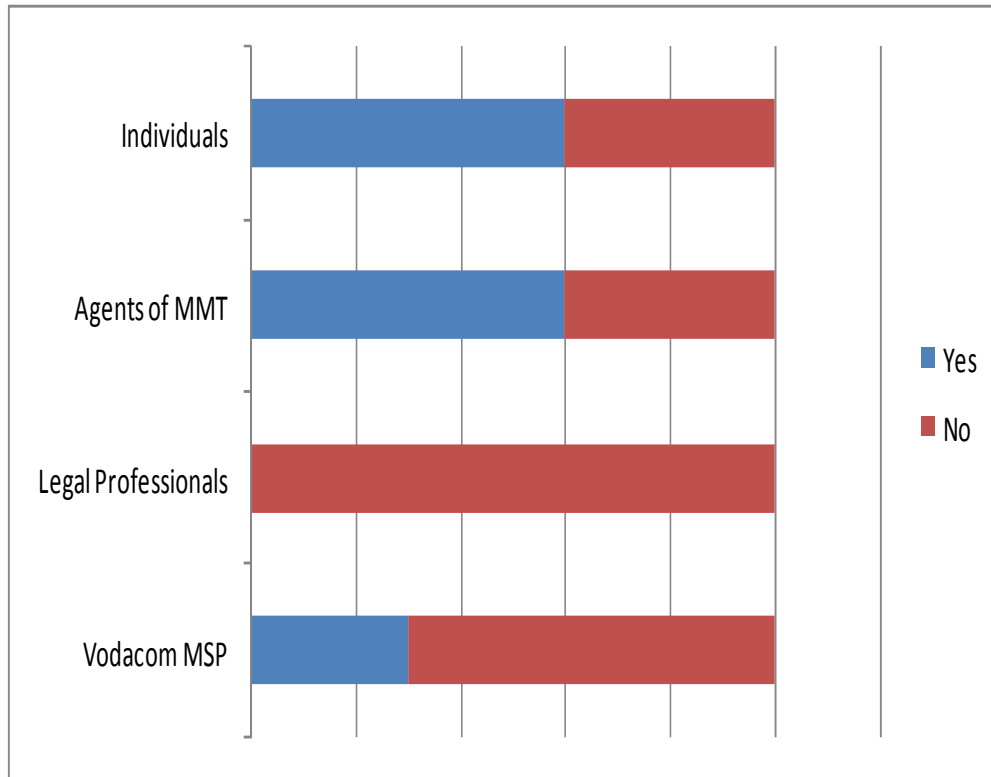
Table 4.2: Effectiveness of the legal framework protecting the consumers of MMS

Respondents	Frequency	(%)	Yes	(%)	No	(%)
Vodacom MSP	10	100%	3	30%	7	70%
Legal Professionals	10	100%	0	0%	10	100%
Agents of MMT	10	100%	6	60%	4	40%
Individuals	30	100%	18	60%	12	40%
TOTAL	60	100%	27	45%	33	55%

Source, Field Data November, 2018

From the responses obtained from the field, the ones who affirmatively answered the question said that the terms are clear and that in every service there are guidelines that lead the consumer in getting services. The two respondents have never encountered challenges using mobile money services and thus find them being effective.

Figure 4.2: Developed from Table 4.2 on respondents statistics



Source; Field data, November, 2018

The 55% who said that the existing legal framework was not efficient enough was due to the challenges that they have encountered in the use of mobile money services. The main complaint was on the charges in interoperability transactions. The other challenge is the duration of time taken to be resolved with the matter. One may be informed to wait for 48 hours for the matter to be resolved without considering the urgent need of the consumer with the money at hand that has been reported to be lost or wrongly sent to another person not intended.

The other challenge that was given by the majority is the network problem where notification for the completeness of transaction was successfully made. One may make transactions to the other person but the notification message may not be received on time due to network problems. In other circumstances services may fail to operate due to network failure. Consumer may be forced to find other sources due to network problem to the mobile money system. The right of a consumer to access the services on time is being violated to such circumstances. It was added that even though matters can be addressed via customer care line 100, the customer care line may have a jam and that there are several advertisements that are time wasting before getting the service. This troubles the consumers at times especially when the line is busy.

The mobile money (MM) agents are the intermediaries and offer services to the customers. However, it is reported from the field that some of the agents have been taking advantage of their customers and steal from them. Some of the customers are not aware on the processes of withdrawing money, or cannot use smart phones, or cannot read, thus having put trust to the agents they take advantage of that.

Some respondents had security concerns related to the locations of agents and lack of privacy at agent shops. Some agents are located in some very filthy places that even as you go there to transact you could be attacked. This makes a customer doubt of his or her security. People might be sitting idle and chatting while you withdraw your money but you cannot be sure who they are, they could end up following you and robbing you. At times I feel uncomfortable because when you go

the agents and you need to withdraw money there is no privacy because some of them have other businesses. And when you walk there they ask you loudly how much you want to withdraw, so there is that lack of privacy.

The researcher also imposed a question to determine whether the consumers of mobile money services are aware of their rights in such services. Vodacom M Pesa has its terms of services of which a consumer at registration has to be aware of such terms before agreeing them or enter into the contract.

Table 4.3: Respondents awareness of their rights

Are you aware of your rights as a consumer of mobile money services?	Frequency	Percentage
Yes, I know	2	6.66%
No, I don't know	28	93.33%
TOTAL	30	100%

Source, Field Data November, 2018

Data stipulates that the majority of the consumers 93% are not aware of their rights as consumers of mobile money services. Mobile phones are used as means of communication thus it is a device that anyone can afford. The services on mobile money are not easily displayed to the consumers as the matter of fact one is automatically connected with the mobile money services once a sim card is registered. The majority believe that if there are specific rights of the consumers then they would be explained to them at the time of registration or in any manner by the responsible MNO.

4.4 Data collected from Vodacom.

The researcher distributed questionnaires at Vodacom offices in Dar es Salaam where a total of 10 questionnaires were distributed to the respondents working there as customer consultants and 5 questionnaires were collected back.

The researcher posed question to the respondents on how the existing laws protect their consumers. In replying to this question four of the respondents addressed that there is a need for specific law that will address all matters pertaining to mobile

money services. One of the reasons stipulated in the questionnaire was that the M-pesa system has its terms of use to their consumers however it is not enough to handle the complaints received per day. If there was a specific law it would simplify even a manner of dealing with complaints from consumers. All the necessary requirements under the mobile money services would be addressed by the law.

The one respondent submitted that there are already laws guiding the telecommunication companies and mobile money service providers in their operations to maintain that services are well served to the consumers. It was a matter of letting the public aware of such laws, and for them to know their rights and obligations otherwise the laws of the country recognise the mobile money transaction where the Electronic Transactions Act and the National Payment System Act were mentioned to be relevant to the case at hand.

Vodacom being a telecommunication company and having M Pesa as a mobile operator, the researcher framed a question wanting to know as an institution what is their role in protecting consumers' rights. It was explained by the respondents that the system set by Vodacom there is a department dealing with customer care where a consumer dials 100 for any consultation of services. It was supplemented that the desk for dealing with the consumer is active for 24 hours. It is for the consumer to report the matter to their centre and the matter will be resolved immediately. For complicated situations the consumer would have to wait for 21 days later and once serious it may be forwarded to the commission or police depending with the nature of the claim. It was however added that the M pesa have their limits to liabilities as it is stipulated in their terms and conditions to consumers such as loss of money as a result of network problems. In such circumstances they would help a consumer to the best of their efforts but they cannot be held liable as the matter pertaining to network coverage or failures in not under their control.

The other thing noted was that mobile money services are that which a consumer goes through a step process before finalizing the transactions. The process guides over a consumer where at any time one may decline transactions. Before finalizing

the transaction the consumer is required to verify the transaction by giving out a PIN number of which is secretly known to himself. The PIN number protects the consumer from unnecessary transactions in cases where a mobile phone is stolen or under a stranger. Thus, every consumer has to keep the PIN number safely and it is not something to be shared with any other person.

Referring to the question on the challenges faced by MM consumers; the challenges were briefly stated where the network problem was mentioned by all the respondents. Complaints on mobile services as a result of mobile network is of a great number since transactions do fail or the assurance message that the transaction was successfully made is not given. At matter that are urgently needed a consumer may fail to get services due to network problem.

The other challenge noted recently is that of fraud where one acts as an M pesa agent dealing with system update and a consumer is required to provide his personal information or PIN number so that his account may be updated. Complaints of such a nature have increased recently replacing that of wrongly sending money to unintended person.

4.5 Data collected from documentary review.

The researcher consulted other secondary sources of data to the study as explained in chapter one of this work. This includes data from different authors of articles and journals, online sources and posts.

In responding to the question to what extent the legal framework protects MM consumers; the researcher came across a paper written by Clara Mramba and N.N.N. Nditi⁹⁵ where it examined the need for legal regulation of mobile money transfer services in Tanzania. It was noted that mobile money transfer services are supposed to be regulated by two institutions, the Bank of Tanzania on the financial aspect and the Tanzania Telecommunications Regulatory Authority on the telecommunication

⁹⁵ Mramba, C and Nditi,N, Legal regulation of mobile money transfer service in Tanzania, journal 1710-5210-1-PB.pdf accessed from <https://www.journals.udsm.ac.tz> on 8th June,2018.

aspect. The authors pointed out that the two institutions ought to work in collaboration in order to protect the consumers of the services. It was concluded that there is no legal framework to regulate mobile money transfer services in Tanzania and hence there is a need for such legal framework in order to protect consumers of such services.

Responding to the question on the challenges faced by MMT consumers, the researcher reviewed the report given by Asterius Banzi,⁹⁶ which reports on how criminals have invaded MMT platforms. The government has alerted the citizens to be aware of the fraudsters who have invaded the mobile money. It was reported by the police and TCRA that the fraud is conducted at different forms but the common reported one is on calls to people being told that they have won non-existent prizes. It was further reported that some individuals were asked to give out their PIN numbers here after a while their money were stolen, said Mr. Mwakyanjala. He added that in some cases a victim would receive a message from telco's informing that they mistakenly received money in their accounts and it is required to be refunded. It was suggested that once an individual receives a phone call instructing to send the money back even if it is from a person known to you, one should first confirm by calling that person using another number before making some transactions.

The researcher came across one case resolved by Mambi, J at Mbeya in **VODACOM (T) LIMITED & THE NATIONAL MICROFINANCE BANK VS MWANSA JONAS**⁹⁷ where the court held the appellants liable and ordered for the respondent to be awarded for both special and general damages. In this case the respondent had sued the appellants at the district court of Chunya at Chunya where he alleged that his mobile phone which was connected to mobile banking was illegally accessed by unknown person here his bank account was accessed and some

⁹⁶ Fraud hits Tanzania's mobile money transfer posted on Friday 10th February, 2017 available at www.theeastafrican.co.ke/business/Fraud-hits-Tanzania-mobile-money-transfer-/2560-3807992-jjhX3c/index.html accessed on 5th June, 2018.

⁹⁷ Consolidated Civil Appeal No. 1 and 2 of 2016, (Unreported)

money from his account was withdrawn. The decisions of both courts were in favour of the respondent as he managed to prove his claim against the Appellants.

In reference to the objective of the study, on the role of the legal regime protecting mobile money consumers, the researcher went through the existing laws that in one way or other covers the demands of the mobile money transfer services consumers. It is pointed out in the third chapter that the National Payment System Act, 2015 was enacted with the purpose of dealing with MMT and all payment transactions. Under the MMT not only the NPS Act is involved but also the BOT Act, BFIA, TCRA, Electronic transactions Act, Cyber Crimes Act and the Fair Competition Act. The National System Regulations⁹⁸ has addressed customer protection concept under Part XI where it provides for display and disclosure of charges and fees under section 44. The redress and complaint handling process is stipulated under section 45.⁹⁹

“The following activities shall not be performed by a mobile money agent: -

- (i) Carrying out a transaction when there is a mobile money system failure;*
- (ii) Carrying out a transaction on behalf of a customer (e.g. sending money to another customer or paying a bill on behalf of a customer); and*
- (iii) Charging any fees directly to the customers (agency commission should be paid to the agents by the mobile money service provider).”*

Despite the fact that the agents are prohibited from such acts, it was reported from the field that agents sometime carry out transactions on behalf of a consumer. This mainly happens where consumers are illegitimate and needs support.

⁹⁸ Payment System (Electronic Money) Regulations, 2015

⁹⁹ Ibid

During the study it was found that there are two types of agents with different roles. The first are field registration agents who are tasked to register or signing up new customers. The second type of agents is cash-in/cash-out agents that deal only with money transactions. This has contributed to increase of fraud as one may not use a real identity during registration or where one uses a SIM card not registered by his/her real name. It is from this point where the rules of KYC in MMT can be questioned.

4.6 Conclusion

Under this chapter the researcher has presented data collected from the field from various sectors and respondents of all class. The data was collected through questionnaires and scheduled interview which later analysed and discussed. In the whole process of data collection the researcher encountered some challenges one being the willingness of the respondents to answer the questionnaires. Despite all that the answers obtained helped the researcher to make inferences and conclusions of the study.

CHAPTER FIVE

SUMMARY, CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

In this chapter the researcher makes a summary of the findings, make general conclusion and recommends on the legal framework and suggest proper course to be taken in making sure that the consumers of mobile money services are effectively protected. This chapter is divided into three parts where section 5.2 provides the summary of the findings, section 5.3 presents the conclusion of the study and section 5.3 presents the recommendations of this research.

5.2 Summary

The main purpose of the research was to analyse the existing legal regime on how mobile money service consumers are protected from risks and challenges happening in course of service.

Mobile money transaction system is an emerging development that has been adopted by the majority of consumers of all class from both rural and urban areas. Its services only require a use of mobile phone with a registered sim card. As an emerging aspect it has not been much explored by the scholars however as for the existing literatures they do contend that there is a need of specific regulatory framework that would address the mobile money transaction services and its consumers.

The researcher collected data via questionnaire, interview guide and documentary review. The four questions formulated guided over the researcher throughout the field in collecting data. The questions were;

- i) To what extent is the legal framework governing mobile money transaction service protecting its consumers?

- ii) How effective are the institutional frameworks in regulating the mobile network operators in improving mobile money services to its consumers?
- iii) What challenges do consumers face in the course of service through mobile money transactions?

To start with the first question to what extent is the legal framework governing mobile money transaction service protecting its consumers it aimed at knowing whether the existing legal regime protects the mobile money consumers. 90% of the respondents were not aware of their rights as consumers of mobile money services and that the law available does not effectively protect them. There were a number of challenges stipulated by the respondents of which cannot be addressed by either the BOT or TCRA as the main institutions dealing with mobile money transaction system. Further, the researcher aimed at knowing the extent and necessity of specific law that would address mobile money transaction services. The findings show that 95% of the respondents were of the view that a specific legal regime addressing mobile money transaction services was of quite importance. It is believed that the confusion of where exactly the matter is to be addressed can be resolved once such services have its own legal regime that addresses its issues.

Coming to the second question how effective are the institutional frameworks in improving the mobile money services and controlling over the mobile service providers, researcher aimed at assessing the effectiveness of the existing institutions. Under this question the main subjects were the BOT, TCRA and Vodacom telecommunication company. Bank of Tanzania deals with monetary issues unlike the TCRA that have a department dealing with consumer services and complaints; under the BOT such service is not available. Thus, for a consumer having any complaints that is to be addressed by the BOT it is likely for him not to be heard under the consumer's desk. Under Vodacom there is a consumer's desk that is available 24 hours via mobile phone where a consumer can address his complaint and be helped. The time frame for resolution will depend on the nature of the complaint.

Lastly on the question what challenges do consumers face in the course of service through mobile money transactions, the researcher aimed at knowing whether consumers face any challenges in the course of mobile money transaction services? The question was affirmatively responded where several challenges were listed out mainly being due to network failure or problems, fraud, time consuming in resolving the complaints, as well as confusion as to where to address the matter.

5.3 Conclusion

It is learnt from the field findings that there is a lack of coherence in consumer protection and market oversight. The split in responsibility has made it difficult for regulators to take a strategic view of priorities across the entire financial services sector. Decisions are driven by different legal duties and powers of individual regulators such as the TCRA and the BOT.

When it comes to money transaction matters over the use of a mobile phone, most consumers are unaware of the correct institution or entity that they would address their complaints. Lack of understanding stems from the fact that the different bodies (banks, MNOs and agents) whose operations are often overseen by different regulatory bodies also operate under different sets of regulations.

The main concern of the consumers is the safety of their money in mobile accounts. Where there is any problem connected to the money transactions the consumers are at much concern making sure that the problem is resolved within a reasonable time. The fact that there are representatives at the mobile money service provider dealing with consumers with complaints, in one way it gives a consumer a confidence of addressing his/ her problem. Therefore, it is important to take a favorable approach for resolving complaints arising from mobile money services.

In mobile money services the term 'trust' means, "*a) trust in the brand itself, as one with which customers will be comfortable entrusting their funds, b) trust that the service's technology (e.g. mobile network connectivity) will function as promised, c)*

trust that Agents will do what they are supposed to with customer funds and transactions, and d) trust that individual transactions will be fulfilled as expected'.

Customer's trust is potential in mobile money services. It was found that fraud and making a transaction to the wrong number as the major risking factor of mobile money services in Tanzania. The challenges in MMT services are fraud, a swap of SIM card, fake money, fake transaction request text message, PIN leakage and unfaithful workers. These are among the risk associated with MMS in Tanzania facing mobile money customers.

Each provider in Tanzania uses a similar system that generally involves multiple levels of agents. Providers are to ensure a high quality of service. There must be significant attention paid to recruitment, training, and monitoring to ensure that agents are well prepared to manage the customer relationship.

Moreover, the researcher went through the Terms of Service (ToS) for M-pesa and Tigo pesa. All terms however, hold the customer solely responsible for most forms of fraudulent activities. Each of these services holds the customer responsible for the safety and security of their password. The Vodacom and Tigo companies also hold the customer responsible for protecting their SIM cards as well as their mobile phones. The law provides for a complaint system to ensure the customer protection rights and that are to be solved within 21 days but the providers make it clear that erroneous transactions are not grounds for dispute. M-pesa and Tigo pesa terms are less clear on the subject of liability. This still leaves a consumer at risk since another party to the dispute tends to exclude itself from liabilities.

5.4 Recommendations

From the field study findings and conclusions made by the researcher, the following are suggestions that need to be taken into consideration in addressing the problem;

One is the enactment of specific department/ institution or law on mobile money transaction services since the existing laws under the BOT, the TCRA and consumer

protection are not effective enough to address the consumers of mobile money transaction services. Furthermore, since MNOs are not regulated by traditional regimes applying to financial institutions, it is desirable to consider setting up provisions on qualification and supervision to treat them separately. Availability of ask desk for only mobile money consumers would even speed up the resolution mechanisms.

Two, mobile communication companies in Tanzania as service providers should also provide education to the mobile money transaction services consumers so that they may be aware on how and where they can report their claims if any.

Three, mobile money service providers should include in their contracts the full consumer rights provided under existing law. This is because the terms of services, M-Pesa to the case at hand tend to protect the operator than a consumer.

Lastly, the BOT, through its supervisory and oversight role, should ensure that it does what it can under existing statutory authority to ensure that existing consumer protections are applied to new payment methods.

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APPINDICES

APPENDEK I QUESTIONNAIRES

THE OBJECTIVES AND PURPOSE OF RESEARCH

I am **Doreen D. Mutagwaba**, a student pursuing Masters of Laws in Commercial law (LLM-CL) at Mzumbe University Morogoro Tanzania. Now I am conducting a research on *“Legal Analysis of Consumer Protection in Mobile Money Transaction Services in Tanzania”* One of the methods of collecting data is questionnaires and interviews. I humbly request for your contribution and participation in this research by answering the questions which I put forward to you and giving your knowledge, views and experience on this very important legal study which will help the researcher to write comprehensive and a compulsory research report in partial fulfillment of the requirement of the Masters of Laws in Commercial law (LLM-CL) in the University. All the information you are giving will be confidential and will be used for this academic purpose only.

1. What do you understand by the term, Consumer’s protection of mobile money service?

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.....
.....

2. Why most of the people prefer to use mobile money accounts instead of Financial Institutions like Banks?

.....
.....
.....

3. Is it important for the consumers of mobile money service to be protected by law against any wrongful act leading to loss of money?

A. Yes ()

B. No ()

If 'yes' or 'no', please explain.

.....
.....
.....

4. Are you aware of any law/statute which provides mandatory right of consumer's protection of mobile money service in Tanzania?

A. Yes ()

B. No ()

If yes, to what extent is the mandatory right of consumers of mobile money service in Tanzania being protected?

.....
.....
.....
.....

5. Do you agree that some consumers of mobile money service are incurring financial loss in a cause of using mobile money service?

I. In what circumstances consumers of mobile money service experience loss of their money?

.....
.....
.....

II. Suggest ways to prevent the continuation of loss of money of consumers of mobile service.

.....
.....

6. Do consumers know proper procedures to be followed in making claims against loss of their money?

I. Yes ()

II. No ()

a. If yes, explain the procedures

.....
.....
.....
.....

b. If no, what should be done to create consumers of mobile money service awareness about the threat of losing their money?

.....
.....
.....
.....

How can consumers of mobile service be effectively protected from any act leading them to losing money?

.....
.....
.....

7. a. where do the consumer's claims reported?

.....
.....
.....

b. where mobile money consumer's claims commence?

.....
.....
.....

8. Do you think claimants of mobile money service succeed in their claims against loss of money?

.....
.....
.....

9. Are the service providers responsible in protecting consumers of mobile money service against any resulting into losing money?

I. Yes ()

II. No ()

If yes, to what extent?

.....
.....
.....

If no, how safety is a consumer of mobile money service in a circumstance where the service provider is not responsible with wrongful acts against his/her consumers?

.....
.....
.....

How do the service providers be responsible in protecting consumers of mobile money service?

.....
.....

THANK YOU FOR YOUR COOPERATION

APPENDIX II
INTERVIEW GUIDE FOR RESPONDENTS

Dear Respondents, I am Doreen D. Mutagwaba, student pursuing Masters of Laws in Commercial law (LLM-CL) at Mzumbe University Morogoro. I kindly request your response on questionnaires attached herewith in my research study which is part and parcel of partial fulfillment of the requirement of the award of Masters of Laws in Commercial law (LLM-CL). Your information will be confidential and will be used for academic purpose only.

PART A

QUESTIONNAIRES FOR LEGAL PROFESSIONALS

1. What do you understand by the phrase consumer protection in mobile money transaction services?

2. Do Tanzania have legal regime that addresses the mobile money services? If yes mention them.
.....

3. Are you aware of the terms of services of Vodacom Telecommunication Company?

If your answer is affirmative, comment on the terms of services with relation to the knowledge you have on consumer protection.

.....

4. What factors contribute to the challenges facing consumers of mobile money transaction services.....
.....
.....

5. Justice delayed is justice denied, do you think consumers access justice on time without delay when addressing their claims to the mobile service providers?.....

6. Do you prefer mobile money services or the banking services? Give reason to your answer

PART B

QUESTIONNAIRES FOR SERVICE PROVIDERS

1. Who is a consumer of mobile money transaction service? Give your brief understanding

.....
.....
.....

2. What laws of the country govern the mobile money transaction services?

.....
.....

3. Shortly describe the relationship between the consumer and the mobile service provider. What binds the relationship?

.....
.....
.....

4. How do you address the claims reported by the consumers of mobile money transaction services? To what rate do you receive complaints per day?..

.....
.....

5. What are your duties pertaining to consumer protection under mobile money transaction services?

.....
.....
.....

6. Do you think the consumers of mobile money services are aware of their rights and responsibilities when dealing with your services? How do you make sure that the consumers are well aware of the terms of services?

.....
.....
.....

7. What challenges do you face in dealing with consumers of mobile money services?.....

.....
.....
.....
.....

PART C

QUESTIONNAIRES FOR AGENTS OF SERVICE PROVIDERS

1. What do you understand by the term, Consumer's protection of mobile money service?

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.....
.....

2. As an agent of service providers, how can you assist consumers of mobile money service to resolve their claims once it occurs in course of money transaction

.....
.....
.....

3. Do you think claimants of mobile money service can succeed in their claims against loss of money? If yes or no explain how

.....
.....
.....

4. In your experience, what are the procedures to be followed by consumers of mobile money service to enforce their infringed rights

.....
.....

5. What challenges do consumers encounter in mobile money transaction services?

.....
.....

THANKS FOR YOUR COOPERATION.

APPENDIX III

DONDOO KUHUSU UPATIKANAJI WA HAKI KATIKA MASUALA YA MIAMALA YA PESA KWA KUTUMIA HUDUMA YA SIMU YA MKONONI

Mimi ni mwanafunzi wa chuo kikuu cha Mzumbe, Morogoro ninayefanya mafunzo ya sheria kwa njia ya vitendo katika mkoa wa Dar es Salaam. Naomba ushirikiano wako kujibu maswali kuhusu upatikanaji wa haki ya mtumiaji wa miamala ya pesa kwa kutumia huduma ya simu ya mkononi ili kufanikisha utafiti wangu ambao ni sehemu ya kuhitimu masomo ya shahada ya uzamili katika sheria (LLM). Taarifa utakazo toa ni siri, zitatumika kwa lengo la masomo peke yake na si vinginevyo.

SEHEMU A

MASWALI YA UTAFITI KWA WATUMIAJI WA MIAMALA YA PESA KWA KUTUMIA HUDUMA YA SIMU YA MKONONI

(Research questionnaires for consumers of mobile money service)

MAELEKEZO: Weka alamayavema (✓) mahali panapo sitahili ([])

1. Unaelewa nini kuhusu upatikanaji wa haki katika masuala ya miamala ya pesa kwa kutumia huduma ya simu ya mkononi?.....
2. Ni hasara gani ambayo mtumiaji wa huduma ya simu ya mkononi anaipata anapo kosea kutuma pesa sehemu nyingine?.....
3. Unafikiri mtumiaji wa huduma ya simu kwa njia ya mtandao katika kutuma na kupokea pesa anaweza kufanikiwa anapopeleka malalamiko yake kwa watoa huduma au mahakamani? NDIYO [] au HAPANA []
4. Je, namba 100 ya mtoa huduma kwa wateja ndiyo njia pekee na sahihi kurudisha pesa ya mteja iliyo potea wakati akituma au kutoa pesa?
NDIYO [] au HAPANA []
5. Je, TCRA kama taasisi inayo simamia mitandao ya simu Tanzania huwa inawa saidia mawakala wa mitandao ya simu kutatua migogoro ya wateja wanapo poteza pesa wakitumia huduma ya simu? NDIYO [] au HAPANA []

6. Je, mteja anaweza kupeleka kesi yake moja kwa moja mahakamani?

NDIYO [] au HAPANA []

SEHEMU B

MWONGOZO WA MASWALI YA MTAFIGITI KWA WATUMIAJI WA MIAMALA YA PESA KWA KUTUMIA HUDUMA YA SIMU YA MKONONI

(Interview guide for consumers of mobile money service)

1. Unajua nini kuhusu upatikanaji wa haki katika masuala ya miamala ya pesa kwa kutumia huduma ya simu ya mkononi?
2. Wewe kama mtumiaji wa huduma ya simu ya mkononi katika kutuma na kupokea miamala ya pesa, unatambua kwa jinsi gani unaweza kudai haki zako unapokuwa umeibiwa pesa yako kwenye simu au kutuma sehemu nyingine kimakosa?
3. Je unajua sehemu ya kupeleka malalamiko yako unapokuwa umepoteza pesa zako, ama kuibiwa au kukosea wakati unatumia huduma ya simu ya mkononi?
4. Je unatambua vyombo vyenye mamlaka ya kulinda haki yako?

ASANTENI KWA USHIRIKIANO WENU