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**An Appraisal of the Legal Framework for Product Recall and
Redress for Victims of Recalled Products in Tanzania**

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Abstract

Product recall in consumer protection laws is a remedy for rescuing the general public from harmful or hazardous goods supplied for consumption. When the goods are recalled from the market, the individual victims of the recalled product are entitled to compensation from the supplier of the defective goods. The Fair Competition Act [CAP. 285 R.E. 2023] (FCA) is the principal consumer protection law that regulates product recalls and remedies to the victims of recalled products in Mainland Tanzania. However, the findings of this article show that the FCA does not establish a clear procedure for product recalls and compensation to victims of recalled products. There are no prescribed consumer product safety and information standards whose infringement forms the basis for recall and redress to the victim. This article, therefore, recommends reform of the product recall legal framework to establish a clear mechanism for recalling unsafe products and to assist individual victims in obtaining redress. It also recommends prescribing consumer product safety standards as required under sections 49(2) and 50(2) of the FCA and empowering the Fair Competition Commission (FCC) to recall defective products from the market and facilitate redress to the victims of the recalled products.

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Key Words: Consumer, Victim of Recalled Product, Product Recall, and Right to Redress

1. Introduction

A product recall refers to the return of products due to defects, safety issues, or failure to meet mandatory safety standards that could substantially harm users or the environment.¹ Consumer protection laws do penalise manufacturers or distributors for failure to make a recall for a product with a safety issue.² The United Nations Guidelines for Consumer Protection state that if manufacturers or distributors fail to recall the product within a reasonable time, the consumer should be adequately compensated.³ This entails that when manufacturers fail to recall a product timely, its distribution and consumption are inevitable. Thus, consumers who suffer damage associated with the consumption of a defective product have to be compensated.

Consumer remedy is part of a product recall.⁴ John and Bortoli argue that the firm should provide remedies to rectify defective products when the product is recalled from the market.⁵ In addition, Mafael and others argue that the firms are responsible for correcting the defective product, such as free repair, exchange, or refund in place of the recalled product.⁶ When the manufacturer or supplier fails to repair, refund, or compensate, the consumers are entitled to seek such redress in the appropriate redress forum. For instance, in the case of *Haviland v McNeil Consumer Healthcare*,⁷ consumers

¹ Kumar V, 'Product Recalls in European Textile and Clothing Sector—A Macro Analysis of Risks and Geographical Patterns', *Stats* (Vol.5, 2022)1045, <https://doi.org/10.3390/stats5040062>, accessed on 10 January 2024.

² Ibid.

³ Guideline 19 of the United Nations Guidelines for Consumer Protection, first adopted by the General Assembly in resolution 39/248 of 16 April 1985, later expanded by the Economic and Social Council in resolution 1999/7 of 26 July 1999, and revised and adopted by the General Assembly in resolution 70/186 of 22 December 2015(UNGCP).

⁴ Raithel S, Hock SJ and Mafael A, 'Product Recall Effectiveness and Consumers Participation in Corrective Actions', *Journal of the Academy of Marketing Science* (Vol. 52, 2023) p4, <https://doi.org/10.1007/s11747-023-00967-x>, accessed on 10 January 2024.

⁵ Ni J, 'Learning from Failure: The Implications of Product Recalls for Firm Innovation', *Journal of Supply Chain Management* (Vol. 59, 2023) 42, <https://doi.org/10.1111/jscm.12306>, accessed on 10th January 2024; Bortoli V, 'Effects of Voluntary Product Recall on Consumer's Trust', *BBR-Brazilian Business Review* (V.14, No.2, 2017) 206, <https://www.scielo.br/j/bbr/a/XQ95cypK4dJrPtZYhDZqvjt/?format=html&lang=en>, accessed on 10 January, 2024.

⁶ Mafael A, Raithel S and Hock SJ, Managing Customer Satisfaction After a Product Recall: The Joint Role of Remedy, Brand Equity, and Severity', *Journal of the Academy of Marketing Science* (Vol. 50, No.1, 2022) 176, <https://doi.org/10.1007/s11747-021-00802-1>, accessed on 10 January 2024.

⁷ *Haviland v McNeil Consumer Healthcare*, No. 10–2195 of 2 May 2010, <https://case-law.vlex.com/vid/in-re-mcneil-consumer-885745387>, accessed on 23 May 2025.

filed a complaint in the court asserting economic injuries arising out of the recall of over-the-counter children's drugs by McNeil.⁸

In Mainland Tanzania, the FCA provides for product recall, but there are no prescribed mandatory consumer safety standards on which the recall is based. Also, neither the FCC nor the court is empowered, by the FCA, to order the recall of a defective product from the market. Also, the FCA does not empower the FCC or the court to provide redress to the victim of the recalled product. The amendments made to the FCA in 2024 exclude the court from handling consumer infringements and empower the FCC to handle them.⁹ Nevertheless, no amendments were made to section 53, which empowers the Minister for Industries and Trade to recall unsafe products and order the supplier to redress the victims of a recalled product by way of repair, replacement, and refund.¹⁰

The problem addressed in this article is demonstrated through the following instances. On 22 December 2020, the Association of Traders in Bukoba submitted a complaint against Jielong Holding Company for manufacturing and supplying edible oil, alleged to be frozen, hence not capable of being measured and sold in the measurement of one litre.¹¹ The Association, among other things, requested the FCC's intervention and evaluation of the safety issues that might have been associated with consuming the alleged edible oil.¹² The FCC acted on the complaint on the 4 May 2021, when it physically visited the field and found Tanzania Bureau of Standards (TBS)'s directives to all suppliers of alleged defective oil to return the defective oil to the manufacturer. However, no directives for refund or compensation to the affected individual were issued.¹³ Additionally, in 2020, the FCC received fifteen complaints of a similar nature in which all the complainants requested a refund of money paid for the purchase of the defective motorcycle, famously known as *Bajaj*, alleging a faulty engine and gearbox.¹⁴ Although consumer safety concerns existed, the FCC neither initiated an investigation to recall the product nor ordered compensation for victims of the faulty

⁸ Ibid.

⁹ The Fair Competition (Amendment) Act, No. 13 of 2024, s 2.

¹⁰ Ibid.

¹¹ Complaint Letter from the Association of Traders in Bukoba dated 22 December 2020, available at FCC complaint database of 2020/2021.

¹² Ibid.

¹³ The letter from TBS with reference number MZA/HA.70/85/02/345 dated 27 April 2021; the letter with Reference number BMC/M.10/18/VOLVII/19 from Bukoba Municipal dated 30 December 2020.

¹⁴ *Rosemary J Mmari v Fair Deal Auto PVT Limited*, Complaint Number, CD 136/195/02'D/33 of 2020, *Mwarimwashi Group v Fair Deal Auto PVT Limited*, Complaint Number, CD 136/195/02'D/34 of 2020, *George Gugwa v Fair Deal Auto PVT Limited*, Complaint Number, CD 136/195/02'D/41 of 2020, *Marco Matari v Fair Deal Auto PVT Limited*, Complaint Number, CD 136/195/02'D/42 of 2020, *Amosi Kora v Fair Deal Auto PVT Limited*, Complaint Number, CD 136/195/02'D/43 of 2020, *Matiku Mwita Gimonge v Fair Deal Auto PVT Limited*, Complaint Number, CD 136/195/02'D/44 of 2020 and *Silvesta N Chungulu v Fair Deal Auto PVT Limited*, Complaint Number, CD 136/195/02'D/52 of 2020.

products. Therefore, this Article examines the adequacy of the legal framework governing the recall of products and the redress to the victims of recalled products. In this study, redress means the relief that the victim of a recalled product should get, and it includes compensation, repair, replacement, and refund.

2. Background on the Legal Framework for Product Recall and Redress for Victims of Recalled Products in Tanzania

The Tanzania legal framework for product recall and redress for victims of recalled products falls under the legal framework for consumer protection. Different political and economic phases have shaped the development of consumer protection law in Tanzania. Colonialism, post-colonialism, centrally planned economy, and free market economy have influenced the development of consumer protection in Tanzania.¹⁵ The British colonial regime enacted the Control of Price Ordinance of 1920.¹⁶ The legislation criminalised the sale or purchase of any items subject to price controls at amounts exceeding the designated maximum price.¹⁷ Various other statutes were enacted to safeguard consumers in different respects. These encompassed regulations governing contracts for the sale of goods,¹⁸ standards for the weights and measures of products available for purchase,¹⁹ the sale of adulterated food,²⁰ the sale of dangerous food and drugs,²¹ and prohibitions against misleading business practices.²² In addition, both criminal law and the English law of torts were employed to protect consumer rights.²³

During the post-independence period, the state was the sole provider of goods and services and oversaw consumer affairs. In 1973, the Government passed the Regulation of Prices Act²⁴ to protect consumers against high prices for some goods and services.²⁵ This was followed by deregulating the government institutions that were responsible for controlling trade. Significant measures to protect consumers were established in 1994 when the Fair-Trade Practices Act was enacted.²⁶ The Act repealed the Regulation of Prices Act²⁷ and established a Trade Practice Tribunal to hear appeals on unfair

¹⁵ Mwenegoha T, 'Dissemination of Consumer Law and Policy in Tanzania', *Journal of Consumer Policy* (Vol. 41, No. 4, 2018) 438.

¹⁶ Control of Price Ordinance [Cap 110 of the Laws of Tanganyika Vol. II].

¹⁷ Ibid, ss 3, 4 & 9.

¹⁸ Sale of Goods Ordinance [Cap. 215].

¹⁹ Weights and Measures Ordinance [Cap. 426].

²⁰ Meat Hygiene Ordinance [Cap.432].

²¹ Food and Drugs Ordinance (Cap. 93).

²² Penal Code (Cap. 16).

²³ Mniwasa EE, 'The Protection of Rights of Consumers of Goods in Tanzania: A Law-based Approach', *The African Journal of Finance and Management* (Vol. 25, No. 1, 2016) 41.

²⁴ Regulation of Prices Act, No. 19 of 1973.

²⁵ Ibid, ss 9(2)(a), 13(1)(a) & 8(1)(a)(iv).

²⁶ Mugyabuso E, 'The Industrialisation of the Economy in Tanzania: A Case for Reforms of the Consumer Protection Legal and Institutional Frameworks', *The Tanzania Lawyer Journal* (Vol. 1 No.2, 2019)9.

²⁷ Fair-Trade Practices Act No. 4 of 1994, s 116.

trade practices.²⁸ In 1994, the Fair Competition Act was enacted. The Act was repealed by the Fair Competition Act of 2003.²⁹ The Act regulates, among other things, product recall and remedies for victims of recalled products.

In 1975, the Standards Act³⁰ was enacted. The Act established the Bureau of Standards as the National Standards Institute and became operational on 16 April 1976.³¹ Subsequently, it was renamed Tanzania Bureau of Standards under Act No. 1 of 1977.³² On the 20 March 2009, the Standards Act No. 3 of 1975 was repealed and replaced by the Standards Act No. 2 of 2009.³³ The Act introduced product recall in the absence of harmonisation with the FCA of 2003.³⁴

In 2003, the Tanzania Food, Drugs, and Cosmetics Act was enacted.³⁵ The Act established the Tanzania Food and Drugs Authority (TFDA) to regulate and control food, cosmetics, medicines, medical devices, herbal drugs, and poisons.³⁶ It empowered TFDA to make regulations to recall products that do not comply with the Act.³⁷ The law was later amended in 2019 by the Tanzania Medicines and Medical Devices Act.³⁸ This amendment was made after the shift of responsibilities of regulating food and cosmetics to the TBS.³⁹ This shift also resulted in the change of name TFDA to Tanzania Medicines and Medical Devices (TMDA).⁴⁰ Although the FCA, Standards Act, and Tanzania Medicines and Medical Devices Act (TMDA Act) regulate product recalls, there is no procedure available for a victim of a recalled product to seek redress for loss suffered as a result of consuming goods subject to recall.

3. Product Recall and Redress of the Victims of a Recalled Product

In Mainland Tanzania, the Fair Competition Commission (FCC) under the FCA, the Tanzania Bureau of Standards (TBS) under the Standards Act, and the Tanzania Medicines and Medical Devices Authority (TMDA) under the TMDA Act are empowered to recall unsafe products from the market. Such power is exercised in

²⁸ Ibid, s 4.

²⁹ Ibid, s 102.

³⁰ Act No. 3 of 1975.

³¹ Tanzania Bureau of Standards (TBS), 'Historical Background', <https://www.tbs.go.tz/pages/historical>, accessed on 15 January 2026.

³² Ibid.

³³ Ibid.

³⁴ See the Standards Act of 2009, s 25.

³⁵ Tanzania Medicines and Medical Devices Authority, 'TMDA Profile', <https://www.tmda.go.tz/pages/tfda->, accessed on 15 January 2026.

³⁶ The Tanzania Food, Drugs, and Cosmetics Act of 2003, s4 and the long title.

³⁷ Ibid, s 122(x).

³⁸ Cap. 219.

³⁹ The change in legislative framework which was done through the Finance Act, No. 8 of 2019.

⁴⁰ Tanzania Medicines and Medical Devices Authority, 'TMDA Profile', <https://www.tmda.go.tz/pages/tfda->, accessed on 15 January 2026.

measures for consumer protection. The question of how the victim of recalled products is protected is discussed hereunder.

3.1 The Fair Competition Act

The purpose of the FCA is to enhance the well-being of individuals by fostering and safeguarding robust competition in markets, while curbing unfair and deceptive business practices to ensure consumer protection.⁴¹ The FCA established the FCC to enforce compliance.⁴² The function of the FCC, among others, is to promote public knowledge, awareness, and understanding of the obligations, rights, and remedies available under the FCA.⁴³

The FCA vests power to recall an unsafe product in the Minister for Industry and Trade.⁴⁴ A temporary and permanent ban on goods may be imposed if such goods cause injury to consumers.⁴⁵ Also, the products are recalled from the market if they do not comply with a prescribed consumer product safety standard.⁴⁶

The notice of product recall may be issued requiring the supplier to inform the public of the manner in which he undertakes to: one, repair the goods; two, replace the goods; and three, refund to a person to whom the goods were supplied.⁴⁷ Where the supplier fails to comply with the undertaking to repair, refund, and replace the goods declared to be unsafe by the Minister for Industry and Trade, the consumer is not directly provided with a forum and procedure to submit the complaint to the Minister.

A person is deemed to have suffered loss or damage if the goods supplied to him do not comply with the prescribed consumer product safety standards.⁴⁸ At the time of writing this Article, no prescriptions of consumer product safety standards were made under the FCA, meaning that the victim of a recalled product cannot establish infringement and loss suffered in the absence of those standards.

The FCA does not define product recall. However, it recognises two types of recalls, namely voluntary and mandatory product recalls.⁴⁹ Voluntary product recall occurs when the manufacturer or supplier of products or goods willingly agree to remove the defective product from the market.⁵⁰ The recall is undertaken by the supplier when the goods may cause injury to consumers.⁵¹ The supplier is required to

⁴¹ The FCA, s 3.

⁴² Ibid, ss 62 & 65(1).

⁴³ Ibid, s 65(2)(c).

⁴⁴ Ibid, s 53.

⁴⁵ Ibid, ss 49 (5) & 49(6)(b).

⁴⁶ Ibid, s 49(1).

⁴⁷ Ibid, s 53(1)(b)(iii)(aa), (bb) & (cc).

⁴⁸ Ibid, s 49(8).

⁴⁹ Ibid, ss 53 and 56; United Nations Conference on Trade and Development, *Manual on Consumer Protection* (United Nations 2018) 68, https://unctad.org/system/files/official-document/ditccplp2017d1_en.pdf.

⁵⁰ Ibid.

⁵¹ The FCA, s 56(1).

notify the FCC in writing within two days after conducting a voluntary product recall.⁵² The notice of voluntary product recall should state the goods subject to recall and the nature of the defect in the goods.⁵³ A supplier who fails to make a notification of voluntary product recall commits an offence and is liable on conviction, to a fine of up to one million shillings or to imprisonment for a term not exceeding twelve months.⁵⁴ If the supplier is a body corporate, then it will be liable to a fine of up to five million shillings.⁵⁵ The fine does not go to the victim of goods subject to recall. In fact, the FCA does not have power to oblige a supplier who undertakes voluntary product recall to compensate consumers for losses associated with the recalled product.

A compulsory product recall is when the manufacturer or supplier of products or goods is ordered to remove from the market the allegedly defective product that can cause death or grievous bodily injury.⁵⁶ The FCA obliges the supplier to comply with the product recall order issued by the Minister for Industries and Trade requiring them to do either of the following: (a) refraining from supplying goods which may cause injury to consumers; (b) refraining from supplying goods which does not comply with prescribed consumer product safety standards; (c) refraining from supplying goods which there are temporary or permanent ban; (d) to take action to prevent the goods causing injury to consumers; (e) to recall the goods; (f) to disclose to the public the nature of a defect in the goods identified, the circumstances in which the use of the goods is dangerous, and the procedures for disposing of the goods; and (f) to inform the public the manner the supplier undertakes to repair the goods, replace the goods, and refund a person to whom the goods were supplied.⁵⁷ Consumers are deemed to have suffered loss by the failure of the supplier to comply with the notice.⁵⁸ The law is silent on the remedies available to consumers in case the supplier fails to fulfill the said undertaking to consumers (refunding, replacing, or repairing the goods subject to recall). A product recall, whether voluntary or mandatory, cannot serve as a basis for disclaiming liability.⁵⁹ The liability for the defect existing at the time of placing the product in the market must remain in full.⁶⁰

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid, s 56(2).

⁵⁵ Ibid.

⁵⁶ Covey FM and Bruce HS, 'A New Consumer Remedy: Product Recall', *Loyola Consumer Law Reporter* (Vol. 1, No. 1, Fall 1988) 7, <https://heinonline.org/HOL/welcome>, accessed 14 March 2023.

⁵⁷ The FCA, ss 53, 54 & 55.

⁵⁸ Ibid, s 55.

⁵⁹ United Nations Conference on Trade and Development, *Manual on Consumer Protection* (United Nations 2018) 68, https://unctad.org/system/files/official-document/ditccplp2017d1_en.pdf.

⁶⁰ Ibid.

3.2 The Standards Act

The Standards Act empowers the Minister for Industries and Trade to require the supplier of any defective commodity certified by TBS to recall such commodity.⁶¹ Also, the Minister is empowered to require the supplier of any defective commodity to notify the public that the supplier undertakes to repair the defective commodity or replace the defective commodity, or refund a person to whom the commodity was supplied, the price of the commodity.⁶² If the supplier fails to comply with the order of the Minister, he commits an offence and on conviction, shall be liable to imprisonment for a term not less than two years, or to a fine not less than fifty million shillings and not exceeding one hundred million shillings or to both.⁶³ Nevertheless, the victims of the recalled product get nothing from the penalties imposed on the supplier for failure to comply with the order.

The procedure for recall, seizure, and disposal of substandard products certified by the TBS is described in the Standards (Recall, Seizure and Disposal of Products) Regulations.⁶⁴ The Regulations empower TBS to investigate defective products.⁶⁵ After the investigation, TBS must notify the Minister of Industries and Trade for approval to recall the product.⁶⁶ When the recall order is issued, the supplier is obliged to prepare a weekly progress report and a final report on the implementation of the recall order.⁶⁷ The reports must, among other things, include reconciliation between delivered and recovered quantities of the commodity, detailed causes of the defect, and corrective and preventive actions undertaken.⁶⁸ The Regulations are silent on the procedures for redress to the victim of recalled products.

3.3 The Tanzania Medicines and Medical Devices Act

The TMDA Act empowers TMDA to attend to and, where possible, take legal measures on complaints made by consumers against manufacturers of products regulated under the Act.⁶⁹ This includes complaints from the victim of a recalled product. Section 122(1)(v) of the TMDA Act empowers the Minister responsible for health to make regulations on the recall of products that do not comply with the TMDA Act.

The regulations providing for product recall are the Tanzania Food, Drugs and Cosmetics (Recall, Handling and Disposal of Unfit

⁶¹ The Standards Act [Cap. 130 R.E. 2023], s 50(1).

⁶² Ibid, s 50(1)(c).

⁶³ Ibid, ss 50(2) and 51 and 53.

⁶⁴ The Standards (Recall, Seizure and Disposal of Products) Regulations, 2021, Government Notice No. 682.

⁶⁵ Ibid, r 4(1).

⁶⁶ Ibid, r 4(2).

⁶⁷ Ibid, r 4(3)(c).

⁶⁸ Ibid.

⁶⁹ The Tanzania Medicines and Medical Devices Act [Cap.219 R.E. 2021], s 5(1)(0).

Medicines and Cosmetics) Regulations⁷⁰ and the Tanzania Food, Drugs and Cosmetics (Control of Medical Devices) Regulations, 2015. The Regulations define recall to mean the removal of specific batch or batches of a medicinal product or cosmetics from the market for reasons relating to deficiencies in the quality, safety, or efficacy.⁷¹

The TMDA, on its own motion, has the power to order the recall of a medicinal product from the market if that medicinal product or cosmetic is deficient in quality, safety, or efficacy.⁷² Also, the Regulations impose the duty on the manufacturer, registrant, or importer of a medicinal product or cosmetic to voluntarily initiate a recall of any medicinal product or cosmetic after receiving complaints from users or upon proof after investigation that such product has caused or is about to cause injury to the health or safety of patients, users, or other persons.⁷³ The recall of the product is classified into three groups namely: Class one, which is for defective, dangerous or potentially life threatening medicinal products or cosmetics that predictably or probably could result into serious health risk or adverse events or death; Class two, which is for medicinal products or cosmetics that possibly could cause temporary or medically reversible adverse health problem or mistreatment; and Class three, which is for medicinal products or cosmetics that are defective and are unlikely to cause any adverse health reaction or which do not comply with the requirements of the TMDA Act, in terms of the requirements of printed packaging material, product specification or labelling.⁷⁴ The maximum time for recalling classes one, two, and three is fourteen, twenty-one and thirty days, respectively.⁷⁵

Before undertaking recall, the manufacturer and the importer of a medical device is required to provide the TMDA with, among other things, the name of each person to whom the affected medical devices were sold by the manufacturer or importer and the number of units of the device sold to each person.⁷⁶

Neither the TMDA Act nor the Regulations provide for redress to the victim of a recalled product. The Act and the Regulations do not provide direction on how the victim of recalled product can be

⁷⁰ 2015 GN. No. 313.

⁷¹ The Tanzania Food, Drugs and Cosmetics (Recall, Handling and Disposal of Unfit Medicines and Cosmetics) Regulations, 2015 GN. No. 313, r 3.

⁷² *Ibid*, r 5(1). Read also the Tanzania Food, Drugs and Cosmetics (Control of Medical Devices) Regulations, 2015, r 66(1).

⁷³ The Tanzania Food, Drugs and Cosmetics (Recall, Handling and Disposal of Unfit Medicines and Cosmetics) Regulations, r 5(3); the Tanzania Food, Drugs and Cosmetics (Control of Medical Devices) Regulations, 2015, r 66(2).

⁷⁴ Tanzania Food, Drugs and Cosmetics (Recall, Handling and Disposal of Unfit Medicines and Cosmetics) Regulations, r 8(1); the Tanzania Food, Drugs and Cosmetics (Control of Medical Devices) Regulations, 2015, r 67(1).

⁷⁵ Tanzania Food, Drugs and Cosmetics (Recall, Handling and Disposal of Unfit Medicines and Cosmetics) Regulations, r 8(2); the Tanzania Food, Drugs and Cosmetics (Control of Medical Devices) Regulations, 2015, r 67(2).

⁷⁶ Tanzania Food, Drugs and Cosmetics (Recall, Handling and Disposal of Unfit Medicines and Cosmetics) Regulations, r 5(2)(g) & the Tanzania Food, Drugs and Cosmetics (Control of Medical Devices) Regulations, r 66(3)(f).

compensated or how the product taken from the consumer can be replaced, refunded, or repaired. Although section 5(1)(o) of the TMDA Act empowers the TMDA to attend to consumer complaints made under the Act, there is no legal mechanism that expressly provides for how the victim of the recalled product under the TMDA Act can be compensated.

4. Challenges of Recalling Defective Products and Redressing the Victims of the Recalled Products

Consumer protection laws such as the FCA and the Standards Act provide remedies for the victims of recalled product. However, seeking a remedy under those laws is faced with the following challenges:

4.1 Lack of mechanisms to enforce the available remedies

The FCA empowers the Minister to order the suppliers to inform the public how they undertake to repair, refund, or replace the recalled goods to whom they supplied.⁷⁷ However, the law does not state the forum where the victim can enforce their rights when the manufacturer does not comply with the undertaking. Similarly, the law is silent on how the victim of recalled product may enforce their rights if they are not satisfied with the undertaking carried out by the manufacturer. On the other hand, sections 69 and 59 of the FCA invite consumers to submit a complaint to the FCC for redress, but such an invitation is limited to the submission only. The complaint submitted under the FCA is considered to have been initiated by the FCC.⁷⁸ This means that upon submission, the victim of the recalled product must wait until the FCC decides to conduct an investigation. The FCC will not investigate or deal with the complaint if the same is pending or has been determined by another authority.⁷⁹ Since the power to issue product recall order is vested in the Minister for Industries and Trade, submission of the complaint to the FCC will be considered as having been dealt with by another competent authority. Besides, the law does not provide whether the victim of recalled product may move the jurisdiction of the court or FCC by using the Minister's recall order as evidence to claim damages associated with consuming the product subject to recall.

4.2 Absence of procedures facilitating the victim of a recalled product to seek redress

The study observed that there are several regulations that are part and parcel of carrying out product recall and redressing the victims. These legal instruments include regulations prescribing consumer

⁷⁷ The FCA, s 53(1)(e).

⁷⁸ The Competition Rule of 2018, r 10(2); the Consumer Procedures of 2022, procedure 12(3).

⁷⁹ Ibid, r 10(5), the Consumer Complaint Handling Procedures 2022, procedure 12(5), the Standard Form (Consumer Contracts) Regulations 2014, r 28(3).

product safety standards under section 49(2) of the FCA; regulations prescribing product information standards under section 50(2) of the FCA; Minister's declaration on consumer product safety standards for section 49 of the FCA; and consumer product information standards for purposes of section 50 of the FCA.⁸⁰ These instruments have never existed since the enactment of the FCA in 2003. One of the grounds to recall the product from the marketplace is when such a product does not conform to the prescribed consumer product safety standards.⁸¹ Since there is no prescribed consumer product safety standards, no recall or redress is possible under the FCA.

Although the FCA vests power in the Minister for Industries and Trade to redress consumer infringement associated with the supply of unsafe goods, it does not provide the mechanisms that consumers can use to refer a complaint to the Minister. Where the supplier fails to comply with the undertaking to repair, refund, and replace the goods recalled, the consumer is not provided with the procedure to access the Minister as a forum for matters related to product recall. There are no clear procedures on what the consumer can do when the supplier fails to comply with the undertaking to repair, refund, and replace the goods in accordance with the notice issued by the Minister.

The architecture of the FCA entails that the complaint associated with unsafe goods under the FCA is initiated by the Minister *suo moto* and not consumers. The FCA states that 'where... it appears to the Minister that the goods are goods of a kind which will or may cause injury to any person... the Minister may...require the supplier...to recall the goods...'⁸² Also, the observation of the FCC complaint database from 2007 to 2025, revealed that since the FCA came into force in 2007, the Minister had never ordered recall or redressed any victim of recalled product under the FCA.

The findings of this study further reveal that the laws regulating product recall provide for remedies such as repair, refund, and replacement. These remedies are not achievable because of inadequate procedures. For instance, redress under the FCA for the supply of unsafe goods cannot easily be obtained because there are no consumer product safety standards. Also, under the Standards Act and the TMDA Act, there are no procedures that assist the victim of recalled product in seeking redress before the TBS and the TMDA, respectively.

4.3 Absence of redress and inspection mandate

The FCC and TBS under their respective laws have no direct mandate for redressing the victim of a recalled product; such power is vested in the Minister for Industries and Trade.⁸³ As explained

⁸⁰ The FCA, s 51.

⁸¹ *Ibid*, s 53(1)(ii).

⁸² *Ibid*, s 53(1)(a)(i) and (b)(i) & (ii).

⁸³ *Ibid*, s 53 and the Standards Act, s 50.

earlier, the redress under the Minister faces the challenge of the absence of a clear mechanism for handling complaints. Also, the TMDA Act does not empower the TMDA to redress the victim of recalled product.

Moreover, under the FCA, neither the Minister nor the FCC can inspect the goods that infringe consumer protection provisions. Section 71(5) of the FCA and Rule 15 of the Competition Rules⁸⁴ empower the FCC to inspect the premises, but such power is limited to documents, not goods. The power to inspect goods and documents is different. Inspecting goods for safety issues may involve procedures for sample collection and laboratory testing; however, documents do not require laboratory testing. Moncuit and Moriarty contend that there are cases where business records are kept in the homes of directors or other people working for an undertaking.⁸⁵ To safeguard the effectiveness of inspections, officials and other persons authorised should be empowered to enter any premises where business records may be kept, including private homes.⁸⁶

In several cases, the FCC has failed to redress complainants because of the absence of locus standi in inspecting, recalling, or seizing the product that infringes consumer protection provisions under the FCA. These include the following complaints: *Rosemary J Mmari v Fair Deal Auto PVT Limited*,⁸⁷ *Mwarimwashi Group v Fair Deal Auto PVT Limited*,⁸⁸ *George Gugwa v Fair Deal Auto PVT Limited*,⁸⁹ *Marco Matari v Fair Deal Auto PVT Limited*,⁹⁰ *Amosi Kora v Fair Deal Auto PVT Limited*,⁹¹ *Matiku Mwita Gimonge v Fair Deal Auto PVT Limited*,⁹² and *Silvesta N Chungulu v Fair Deal Auto PVT Limited*.⁹³ All complainants alleged to have purchased defective motorcycles, famously known as *Bajaj*. The FCC did not order redress, but administratively referred them to TBS, which also lacks the power to order redress.

4.4 Overlapping mandates

The Minister for Trade and Industry has the power, under the FCA and the Standards Act, to recall unsafe products from the market and

⁸⁴ The Competition Rules, 2018.

⁸⁵ Moncuit A and Moriarty C, 'Article 21: Inspection of Other Premises – Commentary', in Prete L and others (eds), *Regulation 1/2003 and EU Antitrust Enforcement: A Systematic Guide* (Kluwer Law International 2022) 492, <https://www.kluwercompetitionlaw.com>, accessed on 8 March 2025.

⁸⁶ Ibid.

⁸⁷ Complaint Number, CD 136/195/02'D/33 of 2020.

⁸⁸ Complaint Number, CD 136/195/02'D/34 of 2020.

⁸⁹ Complaint Number, CD 136/195/02'D/41 of 2020.

⁹⁰ Complaint Number, CD 136/195/02'D/42 of 2020.

⁹¹ Complaint Number, CD 136/195/02'D/43 of 2020.

⁹² Complaint Number, CD 136/195/02'D/44 of 2020.

⁹³ Complaint Number, CD 136/195/02'D/52 of 2020.

order redress to the victims of the recalled product.⁹⁴ Also, the Tanzania Medicines and Medical Devices Authority (TMDA), has the mandate to recall unsafe products from the market and attend to consumer complaints.⁹⁵ However, there is no legal mechanism harmonising the mandates of recalling and attending victims of recalled product vested in the TMDA and the Minister for Industries and Trade.

4.5 Lack of awareness

Assessment of access to justice by consumers commences with the question of whether consumers know about a route to bring a complaint or whether such a route exists.⁹⁶ Awareness of a dispute resolution mechanism and the availability of sources of advice are essential for access to justice.⁹⁷ The United Nations Guidelines categorically insist that consumers will be able to file a complaint to the competent authority only if they are well educated on their rights and obligations.⁹⁸ The FCC baseline survey report of 2020 indicates that only eleven percent of the 2550 household respondents in Mainland Tanzania had heard about the FCC and FCA.⁹⁹ Taking into account that the majority of the consumers are not aware of the existence of the FCA as a framework regulating product recall, they cannot seek redress for its infringement.

4.6 Complexity of the consumer complaint handling procedures

The United Nations Guidelines for Consumer Protection (UNGCP) provides for establishing or maintaining of legal and/or administrative measures to enable consumers to obtain redress through formal or informal procedures that are expeditious, fair, transparent, inexpensive and accessible.¹⁰⁰ The UNGCP emphasises that consumer procedures should take particular account of the needs of vulnerable and disadvantaged consumers.¹⁰¹ The available redress forums should be accessible to all consumers to provide simple, speedy, inexpensive, and understandable justice complementary to the regular court system.¹⁰² The procedure for handling complaints

⁹⁴ See The FCA, s 53(1)(c) and (e) and the Standards Act [Cap. 130 R.E. 2023], s 50(1)(a) & (c).

⁹⁵ The TMDA Act, s 5(1)(o), The Tanzania Food, Drugs and Cosmetics (Control of Medical Devices) Regulations, r 66(1); the Tanzania Food, Drugs and Cosmetics (Recall, Handling and Disposal of Unfit Medicines and Cosmetics) Regulations, r 5(1).

⁹⁶ Graham C, 'Improving Courts and ADR to Help Vulnerable Consumers Access to Justice', in Riefa C and Saintier S (Eds.), *Vulnerable Consumers and the Law, Consumer Protection and Access to Justice* (Routledge Publication 2021) 158.

⁹⁷ Ibid.

⁹⁸ UNGCP, guideline 42.

⁹⁹ FCC, 'The Tanzania Mainland, 2020 Consumer Protection and Counterfeit Survey', 17.

¹⁰⁰ UNGCP, guideline 37.

¹⁰¹ Ibid.

¹⁰² The Model Law for Consumer Protection in Africa of 1996, art 32(1).

under the FCA is complex and prolonged. Handling of consumer complaints under the FCA, among other things, is guided by the Consumer Complaint Handling Procedures of 2022. The procedures start from the stages of investigation of complaints, issuance of case statements, provisional findings, oral representation, settlement procedures, and issuance of a final decision. Consumer complaints that start from the stage of investigation are estimated to be concluded within 239 days.¹⁰³

5. Conclusion

The provisions for recalling defective products from the market are stipulated under the FCA, the Standards Act, and the TMDA Act. Also, penalties for infringers of the product recall order and suppliers of defective products have been provided under the above laws to deter such conduct. However, no available procedures to guide victims of recalled products to seek redress from the Minister for Industries and Trade, as the responsible forum with the mandate to order recall of products from the market and to order redress. Therefore, the FCA, Standards Act, and TMDA Act are not sufficient in ensuring recalling unsafe products and redressing the victims of recalled products. The Article concludes that the victim of a recalled products cannot be adequately compensated due to the absence of mechanisms to enforce the available remedies and overlapping mandates.

6. Recommendations

The FCA should be amended to provide procedures to guide the individual victims of recalled goods to seek their redress in the available redressal forum. All instruments that facilitate recall and redress should be enacted. These include: regulations prescribing consumer product safety standards under section 49(2) of the FCA; regulations prescribing product information standards under section 50(2) of the FCA; and the Minister's declaration on consumer product safety standards for section 49 of the FCA and consumer product information standards for purposes of section 50 of the FCA.

Since the FCA is the main consumer protection law in Mainland Tanzania, the TMDA Act and the Standards Act should be amended to allow victims of recalled products access to redress under the FCA. Similarly, since the FCC is the administrator of the FCA¹⁰⁴ in handling complaints related to unsafe goods, the TBS, TMDA, and other responsible institutions, should provide technical assistance in evidence gathering, analysis, and confirmation of alleged defective goods. Also, the FCA should be amended to mandate the FCC to conduct market surveillance, enter into promises with alleged defective goods, inspect, investigate, recall the product, and order redress to the victims of recalled products.

¹⁰³ Consumer Complaint Handling Procedures of 2022, procedures 12(4), 15(1), 22(2), (4) & (8), 23(4), 24(1) - (2) & 27(2)(3).

¹⁰⁴The FCA, s 65(1).

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