

# REVIEW OF THE LEGAL FRAMEWORK ON DIGITAL COMMERCE AND ELECTRONIC CONSUMER PROTECTION IN TANZANIA'S DIGITAL ECONOMY

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## Abstract

Digital commerce (E-C) and electronic consumer protection in Tanzania's digital economy are two very crucial and important phenomena that work hand in hand in digital realm. They have been established by the Information and Communication Technology (ICT) advancements which in turn have revolutionized the global marketplace. The buying and selling online has been ushering in numerous e-challenges, that are demanding for more and new e-enactments to regulate them in the digital marketplace. Certainly, existing offline laws cannot regulate ICT field satisfactorily. The present regulating laws were enacted before digital era, meaning that they were not tuned for digital commerce. Hence, the need to scrutinize the current existing laws that are governing digital arena and identify the legal gaps therein. Internet and other related advances of ICT are rapidly changing the marketplace. Certainly, laws ameliorate the legal grounds by giving certainties and predictability forcing Tanzania to have a comprehensive and enforceable legal framework.

**Keywords:** Consumer protection, digital commerce, digital economy, banking and commercial laws, marketplace.

## 1.0 Introduction

This article provides a scrutiny of legal frameworks for digital commerce and consumer protection in digital economy, as people do businesses, trade and offer services in this commercial arena in Tanzania. The advent of digital economy and electronic commerce has emerged as a transformative force for reshaping traditional modes of businesses by ushering in e-transactions, cross border transactions and consumer interactions worldwide. Like in many other developed and developing countries, Tanzania is experiencing the profound impacts of digital revolution. Tanzania has been embracing digital developments, opportunities including e-challenges and risks. Hence, it is only imperative to regulate e-commerce and e-consumer (EC) protection for a better tomorrow.

The concept of e-consumer protection is a comparatively modern one. Yet, the laws which attempted to enforce fair trade and competition have a very long history dating as far back to 19<sup>th</sup> Century. This is when prevention of monopoly and discriminatory pricing arose and affected many traders. However, the introduction of digital commerce has revolutionized the global marketplace, interfering with rules and regulations and the way things operate. Hence, the

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need for new e-enactments, through reviews and reforms in order to cope with the advancements of technologies. The information and communication technologies (ICTs) that have introduced e-transactions may be defined as the use of electronic networks to exchange information, products, services and payments for commercial and communication purposes between individuals, business individuals, organizations, governments and institutions.<sup>1</sup> These developments cannot be ignored because of the great impacts, opportunities and other benefits that have been ushered in making E-Commerce easy to reach, has wide choices, borderless barriers, no physical establishments such as brick-and-mortar and wider range of quality goods and services and the list could go on.

Therefore, this article examines some selected Tanzanian consumer protection laws such as the Fair Competition Act (2003),<sup>2</sup> which has established the Fair Competition Commission and the Fair Competition Tribunal; the Tanzania Communication Regulatory Authority Act (2003); the Electronic and Postal Communications Act (2010); the Electronic Transactions Act (2015); the Tanzania Communication (Consumer Protection) Regulations (2005); and the Cybercrime Act (2015), just to name a few. These laws are examined in the context of the Constitution of the United Republic of Tanzania (1977). The article strives to examine the extent to which consumers are both constitutionally and legally protected in Tanzania and whether there are gaps existing in the law. The article proceeds to interrogate a prime question: whether there is a discrete stand-alone legal framework for digital commerce and e-consumer protection legislation in Tanzania. Before examining these pieces of legislation, the article ventures to expound who is to be protected in digital commerce and how would this improve digital economy of the nation.

## **2.0 Main Players in Digital Commerce: e-Consumers and the Need for their Protection**

The main players in EC field are the consumers, who also require legal protection. They play a central role in the digital marketplace and their protection is crucial for fostering trust, promoting fair trade practices and ensuring the long-term success of online markets that improve global economy. According to the Fair Competition Act (2003), a “consumer” is:

[...] a person who purchases or offers to purchase goods or services otherwise than for the purpose of resale but does not include a person who purchases any goods or services for the purpose of using them in the production or manufacturing of any goods or articles for sale.<sup>3</sup>

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1 Uganda Law Reform Commission, *A Study Report on Electronic Transactions* (Kampala: ULRC, 2004).

2 Act No. No. 8 of 2003 (Cap. 285 R.E. 2023).

3 The Fair Competition Act of 2003, s. 2 (b), p. 20.

This definition is quite clear but it has some limitations in the marketplace for market players and/or consumers. Some prominent individuals such as J.F. Kenney (former President of the United States of America) and Mahatma Gandhi have tried to give some insights of who is a consumer/customer. For example, President Kennedy once stated that:

Consumers by definition, include us all. They are the largest economic group in the economy, affecting and affected by almost every public and private economic decision.<sup>4</sup> [...] Two thirds of all spending in the economy is by consumers. But they are the only important group in the economy and who are not effectively organized, whose views are often not heard [...]. We cannot afford [to] waste in consumption any more than we can afford inefficiency in business or government. If consumers are offered inferior products, if prices are exorbitant, if drugs are unsafe or worthless, if consumers are [not] enabled to choose on an informed basis, then [their] dollars are wasted, [their] health and safety may be threatened, and the national interest suffers.<sup>5</sup>

On the other hand, Mahatma Gandhi once said that:

A customer/consumer is the most important visitor in our premises. He is not dependent on us; we are dependent on him. He is not an interruption in our work, he is the purpose of it. He is not an outsider in our business, he is part of it.<sup>6</sup>

It should be noted from the outset that; even in the developed country like the USA, there was lack of statutory protection for consumers as they bought and consumed goods or products. This challenge was addressed for the first time in 1879 when Hendrick B. Wright of Pennsylvania made the first concerted push for a national legislation that would govern adulteration and misbranding of food and drugs.<sup>7</sup> From there on until the adoption of the Wiley Pure Food and Drug Act in 1906, nearly 200 measures were introduced in the US Congress to protect the public from adulteration and misbranding of food and drugs.<sup>8</sup> Fortunately, President J.F. Kennedy, during his tenure in office, gave it another big push. By his above-quoted Labour Day speech to the Congress (made on 15 March 1962), all had been put into open and an expression of importance had been imbedded among the people as seen hereinabove. Thereafter, several enactments and amendments were made to the law to protect consumers in

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4 In his 15th March 1962 Labour Day Speech, President J. F. Kennedy also remarked that: 'Consumers are the largest economic group, affecting and affected by almost every public and private economic decision. Yet they are the only important group whose views are often not heard.'

5 <https://www.presidency.ucsb.edu/ws/iiiiiindex.php?pld-9108>.

6 <http://Linkedin.com.businesses>.

7 The Root of Consumer Protection in America – <https://portal.ct.gov> > DCP > History – March 8th, 1637, Colonial records of Connecticut, Hartford, 1636 – 1665, Vol.

relation to safety of food, meat, fuel, insecticides, medical products, apparatus and vehicles, just to mention a few.

Nevertheless, as far back as the Greek and Roman eras, “measure for measure” was a key operating principle in the marketplace then, making weights and measures the earliest form of consumer protection<sup>9</sup> besides monopoly and discriminatory pricing provisions that came later, and the principle of “caveat emptor” (buyer beware).

To date, it is of great concern to protect consumers, especially in the ICT era. It is clear that various legal aspects of the law are being interfered with and reforms and reviews are necessary in order to have a smooth playground with new enactments to regulate the concerns of e-consumers who have been affected or will be affected in this commercial e-arena in the future. Online environment is different from offline environment and even e-laws are somehow different from offline or traditional laws and this is the reason why traditional physical laws cannot serve adequately to regulate e-issues satisfactorily. Therefore, using offline laws on e-commerce issues and contracts is a big flaw as e-commerce has created new features and characteristics in this commercial arena in Tanzania and in the world at large.

Most of the e-transactions are done through technology advances such as the Internet and Worldwide Websites. Tanzania is a special case because most of her e-transactions are transacted through mobile transactions.<sup>10</sup> The use of the Internet in Tanzania through computers and other ICT gadgets is regarded to be expensive in spite of the country having installed an optic fibre since 2009. A huge number of consumers in Tanzania have no computers or laptops.<sup>11</sup> It is a well-recognized fact that mobile phone services have spread throughout the country even in the deep rural areas including mobile money transfer services or payments which can be accessed by any customer’s mobile phone.<sup>12</sup>

At this juncture, therefore, we proceed to examine the law regulating EC in Tanzania, starting with the principal legislation: the Fair Competition Act (2003).

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9 *Ibid* p. 1.

10 Mwenegoha, T., PhD Thesis on the Development of Consumer Protection Laws in Tanzania for Electronic Consumer Contracts, Univ. of Bonn, Germany, 2015, p.140.

11 *Ibid*. p. 140.

12 *Ibid*.

### 3.0 Overview of the Laws Regulating Digital Commerce in Tanzania for Consumer Protection

It should be noted from the onset that; although Tanzania has enacted numerous laws and regulations to govern digital commerce in the country, they are not sufficient to regulate the current digital transactions that include digital commerce, financial inclusion and artificial intelligence (AI).<sup>13</sup> Tanzania has attempted to improve her laws by using the international best practices such as those adopted by the United Nations (UN) Commission and International Trade Laws (UNCITRAL) and the UN Conference on Trade and Development (UNCTAD)'s Model Law to produce the current Tanzania Fair Competition Act (2003) and other e-laws presently being in force in the country. However, this has not been done comprehensively. Hence, the legal loopholes in the scattered legislation in digital commerce and e-consumer protection, as considered below. It is clear that the identified gaps in the law in digital commerce and e-consumer protection have many challenges and risks that require proper law review and reforms after thorough studies so as to ensure a smooth marketplace in relation to digital commerce and e-consumer protection in Tanzania.

#### 3.1 The Constitution of the United Republic of Tanzania (1977)

The Constitution of the United Republic of Tanzania of 1977 (the Constitution of Tanzania') is the supreme law of the land in Tanzania and all laws, whether written or unwritten, are subordinate to it. Thus, no law is, however remotely, to prevail over the Constitution. All other laws, even if they have been unanimously enacted by Parliament, cannot override the Constitution. Therefore, all such laws have to conform and be consistent with the Constitution. According to Article 64(5) of the Constitution of Tanzania,<sup>14</sup>

[...] this Constitution shall have the force of law in the whole of the United Republic [of Tanzania] and in the event any other law conflicts with the provisions contained in this Constitution, the Constitution shall prevail and that other law in the extent of the inconsistency with the Constitution shall be void.

In other words, the Constitution is the basic law from which all other laws and institutions derive their authority and it is only fair to see whether this mother law does offer rights to her people including consumers. Through the Bill of Rights that was incorporated in the Constitution in 1984,<sup>15</sup> Tanzania's Constitution guarantees basic rights and fundamental freedoms of the citizens, and consumer rights are no exemption. In particular, Article 8(b) and (c) of the

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13 Hornby, A.S., Oxford Advanced Learner's Dictionary, 4th Ed., Oxford University Press, 1989 Walton Street, Oxford OX2 6DP, p.56, *Artificial Intelligence* or AI abbr. study of capacity of machine to stimulate intelligent human behaviour - is also a branch of computer science focused on creating machines or software that can perform tasks that require human intelligence such as robots, scanning machines and MRI.

14 See also Article 4 of the Zanzibar Constitution.

15 The Bill of Rights is set out in Articles 12-29 of the Constitution of Tanzania.

Constitution stipulates that the objective of the Government is to ensure the 'welfare of the people and shall be accountable to the people.'<sup>16</sup>

It is also stipulated in Article 11(1) and (2)(c) of the Constitution of Tanzania that: 'without prejudice to those rights, the State Authority shall make provisions to ensure that every person earns his livelihood.'<sup>17</sup> As such, the State Authority should apply this provision to ensure that consumers are protected from unfairness and ill doers as they do their businesses; hence, the need for entrenching a conducive legal framework that will govern consumer rights in the digital transactions and e-commerce arena. This goes with the rationale of intervention in the consumer marketplaces. It is necessary for the government to intervene in markets (including e-markets) to promote general economic fairness and consumer welfare. This means that the government should endeavour to ensure that there are equal and adequate opportunities to all persons in e-commerce, as well. Therefore, there is a need to enact new and stand-alone effective and enforceable e-legal framework, instead of having laws scattered in different legislation, as is the case now in Tanzania. Regrettably, the rights reserved in the Constitution are not enough to safeguard the whole consumer protection institution without there being enacted a specific law governing e-commerce.

Article 30(2)(b) of the Constitution of Tanzania provides for 'public defence, safety, peace, morality, order and public health.'<sup>18</sup> All these rights would make a lot of sense if they would be included in the consumer protection legal framework and this could include issues of disputes and redress mechanisms. However, in the arena of dispute resolution and redress very little has been enacted in most of the consumer protection laws; although, under Article 13(6)(a), it is stipulated that: 'a person shall be entitled to a fair hearing and to the right of appeal or other legal remedy against decision of the court or of the other agency concerned.' This is a very important point that should be given a strong emphasis in the consumer protection legal framework. Therefore, it is clear that the Constitution offers a framework around which consumer protection rights should be premised. Unfortunately, it cannot be relied upon entirely for it addresses only a few rights and a limited area compared to the needs of the consumers as they perform digital commerce that would improve the national economy.

### **3.2 The Fair Competition Act (2003)**

The Fair Competition Act (2003) is the principal statute for the protection of consumer rights in Tanzania. It serves as a cornerstone for, and it is a

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16 *Ibid.*

17 *Ibid.*

18 *Ibid.*



comprehensive legal framework that addresses, consumer protection concerns and rights. Although this law is not obviously tailored for e-commerce, it safeguards consumer rights against unfair trade practices, misleading advertisements and vulnerability to consumers from unscrupulous traders and competition. In the realm of e-commerce, it forms the foundation and basis for consumer protection especially under Parts III-IX.<sup>19</sup>

In particular, Part III of the Fair Competition Act (2003) deal with 'misleading and deceptive conducts.' However, there is need for improvements specifically in addressing the unique changes and challenges that consumers face in online transactions such as fraud prevention, data privacy and cyber security, dispute resolutions and redress mechanisms in Tanzania.<sup>20</sup> While Part IV deals with 'unfair business practices' such as bait advertisements, payment before delivering, harassment and coercion;<sup>21</sup> Part V regulates unconscionable conduct.<sup>22</sup> In addition, Part VI deals with implied conditions in consumer contracts and this regulates issues of conflicts of laws, liabilities, encumbrances and quiet possession, quality and fitness, warranties, rescission and standard contracts.<sup>23</sup> Whereas Part VII regulates manufacturer's liabilities and obligations, non-compliance, none repairs and refunds, unsuitable goods and false descriptions just to name a few;<sup>24</sup> Part VIII deals product safety and product information;<sup>25</sup> and Part IX deals with product recalls.<sup>26</sup>

It is very clear that the Fair Competition Act (2003) has taken great care for the protection of consumers and this has been its objective. However, it should be remembered that; at the time of its enactment, Tanzania had not started putting a lot of emphasis on technological advancements or had few experiences on e-commerce contracts, so the act was not tailored for electronic commerce transactions.<sup>27</sup> The fibre-optic connections that took off the ground in 2009 gave light to more of e-transactions in Tanzania and the whole of East Africa, as considered below. It is a fact that the Fair Competition Act (2003) is more for offline transactions besides its being aligned to the UNCTAD Model Law with most of its guides.

For example, sections 8 and 9 of the Fair Competition Act (2003), which deal with anti-competitive agreements, are in conformity with the Model Law; so is section 10 that forbids dominance in trade or business. IN addition, section 93

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19 Fair Competition Act, 2003, Parts III – IX.

20 *Ibid.* S 15, s. 20 and s. 21, pp. 21 -25.

21 *Ibid.* s. 22 – s.24, pp. 26 -27.

22 *Ibid.* s. 25, pp. 27.

23 *Ibid.* s. 26 – s. 41, pp. 53.

24 *Ibid.* s. 42 – 53, pp. 54.

25 *Ibid.* ss. 54 64.

26 *Ibid.* s.71 – 75 pp. 63 – 67.

27 Mambi, A.J., ICT Law Bk., p. 13.

protects the consumer's right to be heard and to be informed so as to make an informed decision or choice while buying commodities. While Parts V-VII of the Fair Competition Act (2003) deal with redresses, Parts VIII – IX deal with safety of products and obligations of sellers and buyers, just to mention a few.<sup>28</sup> All these points have given this law a lot of weight; but, currently, the most important need is to review the entire law and come up with a new legislation that also entrenches the e-legal framework, which contain provisions that ensure effectiveness and enforceability of e-commerce in accordance with acceptable international norms.

Additionally, the Fair Competition Act was enacted to enhance the welfare of the people of Tanzania as a whole by promoting and regulating competition including consumers' protection under section 3. Hence, this law strives to improve the economic growth, to be efficient and fair. However, under section 5 of the Fair Competition Act, competition in Tanzanian markets is more concerned with geographical market by stating that:

[...] the process where by two or more persons try to supply or attempt to supply the same or substitutable goods or services to the persons in the same relevant geographical market; or acquire or attempt to acquire the same substitutable goods or services from the persons in the same relevant geographical market.

It is clear, therefore, that the Fair Competition Act is more concerned with the consumer protection than e-commerce. Nonetheless, the Internet has no boundaries and so there is need for amendments of this law to regulate the digital commerce in the cyberspace rather than concerning itself with only geographical markets. It should be noted that e-marketing and e-commerce have no physical boundaries. Hence, this is a gap in the law, which should be addressed in order to ensure that e-transactions and e-contracts are operated smoothly at both the global and domestic levels.

Under the Fair Competition Act, there are institutions that have been created – such as the Fair Competition Commission (FCC) – that deal with promoting and protecting effective competition in trade and commerce and protecting consumers from unfair and misleading market conduct and to provide for other related matters.<sup>29</sup> This institution also investigates, controls and evaluates restrictive business practices, abuse of dominant positions and mergers in order to achieve equity and efficiency in the economy. There is also established the Fair Competition Tribunal (FCT), which is a quasi-judicial body that deals with dispute resolution, including appeals, concerning consumer protection. In

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28 Fair Competition Act, 2003.

29 Section 62(1) of the Fair Competition Act (2003).



addition, this law has established the National Consumer Advocacy Council (NCAC) that deals with protecting consumers' rights.<sup>30</sup>

However, the law does not provide for how these institutions can deal with issues relating to e-transactions and distance contracts. As Mambi posits it:

The laws governing this area will be affected by the developments of e-commerce (including e-consumers) as they have to be changed to overcome the probable legal barriers and implications and risk such as security, transaction costs, limitation of users and privacy over the internet or online contracts.<sup>31</sup>

Therefore, there is need to come up with an effective, comprehensive and enforceable legal framework that will provide mandatory requirements for e-consumers to safeguard them from all the cybercrimes of hacking, snooping, theft, deceit, loss of money including privacy and security interferences.

### **3.1 The Electronic and Postal Communication Act (2010)**

The Electronic and Postal Communication Act (2010), which is commonly known or abbreviated as EPOCA, was enacted in 2010. It is one of the recent e-laws that covers more areas of e-issues than any other law, especially so on consumer protection. In particular, the enactment of the EPOCA strives to keep the Tanzania

[...] abreast with developments in the electronic communications industry; to provide for a comprehensive regulatory regime for electronic communications service providers and postal communications service providers, to establish the Central Equipment Identification Register for registration of detachable SIM card and built-in SIM card mobile phones [...] and to provide for transitional provisions, consequential amendments and other related matters.<sup>32</sup>

In the main, the EPOCA repealed and replaced two pieces legislation: the Broadcasting Services Act<sup>33</sup> and the Tanzania Communication Act.<sup>34</sup> The EPOCA is a very important legislation in regulating the conducts of electronic and communication firms and information providers, since it protects people's personal information and interests that are confidential. The EPOCA also amended the Tanzania Communication Regulatory Authority Act (2003)<sup>35</sup> and the Fair Competition Act (2003).<sup>36</sup> In effect, the EPOCA was enacted for three

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30 Fair Competition Act, 2003.

31 Mambi, J.A., *ICT Law Book*, *op. cit.* p. 137.

32 Long title of the Electronic and Postal Communications Act (2010).

33 CAP. 306 R.E. 2002.

34 CAP. 302 R.E. 2002.

35 CAP. 172 R.E. 2002.

36 CAP. 205 R.E. 2002.

key reasons: (i) to address the new challenges posed by technologies, particularly the convergences of technologies; (ii) to harmonize and consolidate communication laws in order to avoid conflicts in implementing them; and (iii) to introduce the Central Equipment Identification Register (CEIR) and the SIM Card registration.

However, this dynamic law has not addressed the challenges facing e-consumers' welfare and e-transactions, which involve cross-border issues, including dispute resolutions and redress mechanisms in e-commerce.<sup>37</sup> Therefore, this law has not cured the e-consumers' problems satisfactorily. Whereas Part II covers licence/licensee issuance and cancellation, payments, and convergences; Part III regulates postal communication services. Part IV deals with competition and conducts and regulates Central Equipment Identification Register and SIM Card registration and regulation. While Part V that deals with enforcement of the provisions of the EPOCA, Part VI enacts offences, penalties and compliance; Part VII contains miscellaneous provisions relating to the admissibility of documents and regulates land and other regulation mechanism. Finally, Part VIII lays down consequential amendments.

Through a quick observation, the provisions abovementioned do not cover the concerns of the e-consumers as such. The Act covers one side of the coin but leaves the other. Hence, the need arises for a new enactment that will cater for the issues of e-consumers since the EPOCA is more of communication industry giving less attention to e-commerce and e-consumer protection. Inopportunately, the EPOCA has not observed the issues of cybercrimes and e-pricing which is very a critical gap in this law. Therefore, although the EPOCA has introduced many improvements and has been applauded by many commentators domestically, the law does not fully protect e-consumers.

### **3.2 The Tanzania Communications (Consumer Protection) Regulations (2005)**

The Tanzania Communication (Consumer Protection) Regulations (2005) are more or less an elaboration of the Tanzania Communication and Regulatory Authority Act (2003); particularly Parts VII, VIII and Part IX. Under these Parts, the TCRA Act deals with manufacturers, suppliers and businesses of regulated goods and services and enquires in relation to any matter connected with supply, possible supply or purported supply of goods or services complaints and enquires especially in Part VIII.<sup>38</sup> The Tanzania Communication (Consumer Protection) Regulations (2005) particularize customer care system in the telecommunication domain. Under Regulation 3, a consumer in the realm of communication is defined as 'a customer of electronic communication or postal

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<sup>37</sup> The Tanzania Communication (Consumer Protection) Regulation (2005).

<sup>38</sup> Section 40 of the Tanzania Communications Regulatory Authority (2003).

services.’<sup>39</sup> This provision has narrowed the meaning of a consumer in the context of communication. Hence, it does not cover all consumers. The customer or consumer talked about is for postal telecommunications services and telecommunication as a product. These Regulations also covers more of service providers, operators and their customers who are the consumers, but it does not cover e-consumer satisfactorily.

Effective and enforceable regulatory measures and self-regulatory codes on supplies, advertisements and marketing of goods to consumers online should be regarded as the only way forward to protect consumers for it could serve both purposes. This is the reason why, henceforth, there should be a stand-alone and discrete e-enactment for e-consumer protection in order to manage the ICT environment properly. However, this ought to be taken seriously in Tanzania just like in other countries such as U.S., U.K., Malaysia and South Africa, to name a few. However, the Tanzania Communication (Consumer Protection) Regulations (2005) indirectly provide for consumers’ right to information including clear terms and conditions under Regulation 8(1) such as: ‘licensee shall provide a clear and understandable description of available services and the terms, conditions, rates and charges for services.’ In the same vein, Regulation 8(2) also stipulates that: ‘a basic postal and electronic communication operator shall regularly publish or arrange to be published directories as guide for the services they offer.’

It is necessary that the contracting parties should enter into ‘contract for services’ offered in order to protect the consumer. However, if this is not done, it makes the provider stronger. All necessary information should be included in the published information and if it is missing, it gives loopholes for providers to escape the wrongs committed and other problems and this affects the consumers.

Therefore, e-commerce, being an online business, is mostly done through social media in Tanzania such as *Twitter*, *Instagram*, *WhatsApp* and *LinkedIn* whereas payments (money transfers or bills) are increasingly being paid through mobile money programmes such as *M-Pesa*, *Airtel Money*, and *Mixx by Yas*, on delivery.<sup>40</sup> All these e-commercial activities need to be fully regulated by law. It is doubtful whether the available laws for protecting offline consumers would be effective and enforceable, when applied to online and e-transactions. It should be noted that the offline statutes have not been tailored for the new e-commerce environment purposes. This is due to the fact that some of these laws were have been inherited from the colonizers and the more recent ones that have been enacted for the purposes of competitive markets and the complications of

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<sup>39</sup> The Tanzania Communication (Consumer Protection) Regulations (2005).

<sup>40</sup> <https://commerce.dti.gov.ph>.

the telecommunication commercial realm. Hence, the need to re-examine the EPOCA and other e-laws to see what they offer for adequate consumer protection purposes including the Constitution of Tanzania. It is urged that when the process for adopting a new Constitution for Tanzania is revamped, there is need to embrace a specific provision protecting consumers rights both physically and in the realm of e-commerce and obligate the legislature to enact a framework legislation for that purpose.<sup>41</sup>

### 3.3 The Electronic Transactions Act (2015)

The Electronic Transactions Act (2015)<sup>42</sup> is the principal law for online transactions or e-transactions. Under this law, e-transaction is defined to mean: 'a transaction or set of transactions of a commercial or non-commercial nature that takes place electronically.'<sup>43</sup> Viewed in a broader sense, e-transaction can be defined as:

[The] use of electronic networks to exchange information, products, services and payments for commercial purposes between individual and businesses, between businesses themselves, between individuals themselves, within government or between the public or private organisations, and the government and between business government and between business and government.<sup>44</sup>

While a consumer, in this case, 'means any person who enter in an e-transaction with supplier as the end user of goods or services offered by the supplier.'<sup>45</sup> In e-transaction, a consumer may be involved in hiring goods or services or use the cyberspace to purchase goods and services offered by suppliers for the purpose of using them in their domestic use, in production or manufacturing of any goods or articles for sale.<sup>46</sup> Therefore, a consumer is not only a buyer but he/she can also be a seller and also a hirer of goods and services.

One of the most important and crucial thing that this legislation has done is to give weight to the data messages and their admissibility in courts of law as evidence<sup>47</sup> and also securing of e-signatures in Tanzania, making them legally

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41 For example, Article 46 of the Constitution of Kenya (2010) specifically protects consumer rights and obligates Parliament to enact legislation ensuring fair, honest, and decent advertising, and providing for consumer protection. These rights are also reflected in other laws, with the Consumer Protection Act (2012) consolidating many of this constitutional guarantee.

42 Act No. 13 of 2015.

43 Section 3 of the Electronic Transactions Act (2015).

44 <https://www-globalscienceflcjournal.com>> GSJ Vol. 10 Issue 09/09/2022.

45 *Ibid.* s. 3

46 Fair Competition Act, 2003.

47 Section 18(2) of the Electronic Transactions Act sets out the procedure on how electronic evidence and data messages can be tendered in and admitted by the court. See particularly *Onesmo Nangole v. Dr Stephen Lemomo Kiruswa & Others*, Civil Appeal No. 117 of 2017 [2017] TZCA 137 (31 August, 2017); and *Ezekiah T. Oluoch v. Chama cha Walimu Tanzania*, High Court of Tanzania at Dodoma, Labour Revision No. 11 of 2021 (Unreported).

enforceable by stating that: 'no data message on the fact that it is a data message should be denied legal effects, validity and enforceability on the ground that it is in e-format.'<sup>48</sup>

Another point to note is that; with all the reviews and amendments that have been made, digital commerce in Tanzania is growing rapidly and successfully. Hence, the need to put all the efforts needed to enact clear, effective and enforceable legislation so that people could catch up with the rest of the advanced nations internationally and locally without stresses, delays and disputes in digital economy arena. These e-transactions in digital economy have been promoted by the introduction of fibre-optic, international submarine cables since in 2009. It has brought vital changes into the Internet market which had previously hinged on costly satellite connections through different countries abroad and in East African countries, making it very expensive for developing countries such as Tanzania to grow economically.<sup>49</sup>

Nowadays, the Internet is available and affordable, whether one has a computer or a mobile phone. It has become ubiquitous. There were about 50.15 million mobile connections in Tanzania in January 2021, equivalent to 82.7 % of the total population.<sup>50</sup> Unfortunately, if it were not for COVID 19, this figure would have been much higher. Many researchers had to lay down their tools.<sup>51</sup> This has made Tanzania very unique and famous in mobile commerce even countries like China have been trying to explore the system that Tanzania has adopted.<sup>52</sup> In Tanzania very few people have computers, laptops or tablets/iPhones as abovementioned. There were 15.6 million internet users in Tanzania by January 2022. This makes about quarter of the Tanzanian population according to the present 66.46 million in January, 2023.<sup>53</sup> Therefore, if there would be unique and articulated legal framework for e-consumer protection in Tanzania, there would be dynamic advances economically and competition would also be realized very quickly and comfortably internationally and locally.

Tanzania Internet penetration rate stood at 31.6% of the total population at the start of 2023.<sup>54</sup> Kepios analysis indicates that internet users in Tanzania increased by 606 thousand (+3.0 %) between 2022 and 2023.<sup>55</sup> Most of them used

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48 *Ibid*, section 18.

49 Mambi, J.A., Dr/Prof. in his book on ICT 2010, p. 171 stated that the Government of Tanzania plans to deploy and use fibre-optic cable (introduced in 2009) technology in a wider range to facilitate e-government implementations. It consists of hundreds of strand glass that use light to transmit data at a first speed, with less interference and better data security.

50 <https://datareportal.com > reports -digital 2021>.

51 *Ibid*.

52 The Citizen Newspaper - TISSN 0856-9754 No. 4444 - Wednesday, 6th Dec. 2017 - Dar es Salaam - title Money Transfers and Payments online - Direct payments.

53 <https://datareportal.com > DataReportal - Global Digital Insights.y>

54 Internet Live stats. Internet Users by country (Tanzania 2014) - K<https://www..Internet-live.stats.com/Internetusers.b4.country >>

55 *Ibid* Kepios analysis , 14/02/2023.

mobile phones to perform their e-commerce, reaching all corners of the country and also tried to exploit cross borders internationally. These M-Commerce transactions are very practical and more often used in Tanzania as consumers do their e-commerce. These mobile transactions/online or e-transactions use Media Platforms such as Twitter, Instagram, Face-book, WhatsApp and Websites just to mention a few. They can show their products, services and also advertise them to customers/consumers. Consumers can make orders through these websites, write emails and use phones for communication and other services such as payments can be done through the same mobile or cell phones, debit or credit such as *Visa Cards* or *Master Cards* or through financial institutions, such as the banks, *Money Gram*, *Western Union* or Financial Service Providers (FSP), just to name a few. At this point the consumers and the Financial Service Providers, have to be very careful for these information-based products or devices may be targets of crimes. They may also be used to commit serious crimes by cyberspace criminals and could become a major threat to e-commerce and e-consumers may suffer great losses and become victims of other damages.

Therefore, security, concealment, trust and privacy (personal information put in the payment cards) are important and sensitive issues that require protection mechanisms. Hence, the need to protect the devices as well as their users as they do e-commerce using e-transactions in businesses and offering services. Unfortunately, the Tanzania Electronic Transactions Act (2015) falls short of these demands because this legal framework does not address these issues squarely, making it unsatisfactory. It addresses duties and obligations of Manufacturers to suppliers and suppliers to consumers, leaving out consumers to consumers in e-commerce that include e-businesses, e-traders and individual buyers and sellers (C2C). There are situations when a consumer may buy from a supplier not for his use but for sale to another consumer or for the use of another person in his/her household. This has been unregulated and so cannot meet the concerns of consumers.<sup>56</sup> This makes Tanzania a safe harbour for fraudsters.

Furthermore, the Cybercrime legal framework being used presently, require amendments for it has not addressed these cyberspace crimes efficiently. The present two e-Acts also do not address the dispute resolutions and redress mechanisms adequately. Therefore, there is great need to enact legislation that will cover most if not every issue concerning consumer protection or at least have some good amendments to replace or repeal the present e-transaction laws, in order to include particularly, the unaddressed issues concerning the e-

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56 <https://www.academia.edu>> Cyber Contracts in Tanzania under the e-Transactions Act No. 13 of 2015 – Dissertation by Magalla, A.P.



consumer protection rights in e-commerce such as security, privacy, redress just to name a few, in order to have a balanced free market.

If one would have to go with the unified theory of acceptance and use of technology (UTAUT),<sup>57</sup> the Government of Tanzania and key stakeholders should accept the unified legal developments in other countries that have adopted the norms set out in the UNCITRAL Model law in 1996 and elaborated by the United Nations Convention on e-Communications in International Contracts (UNCECIC) in 2005,<sup>58</sup> in order to come up with stronger legislation that would also be implemented for proper competition internationally.<sup>59</sup>

However, the acceptance of UTAUT and DOI (the theory of diffusion of innovations), have been examined and their perspective and usefulness in EC and e-consumer protection experienced in the developed countries that are developing ICT properly, should be adopted. Hence, the e-consumer protection laws in Tanzania should not be scattered in different statutes for there is need to peruse and understand the uptakes of EC globally so as to comprehend properly the consumer protection perspectives and rights because of the cross-border issues of e-contracts, jurisdictions, disputes resolutions and redress mechanisms and other relate matters and improve the legal frameworks to cover international issues for there is need for recognition of e-environment marketplaces internationally.

### 3.4 The Cybercrimes Act (2015)

A primary effect of cybercrime is financial gains in most cases.<sup>60</sup> Cybercrime can include 'many different types of profit-driven criminal activities, including ransomware attacks, e-mail and internet frauds, and identity fraud, as well as attempts to steal financial account, credit card or other payments card information.'<sup>61</sup> Hence, the need for an adequate legal framework. Currently, there have been huge and numerous increases of crimes through the use of information and communication technologies (ICT) in this digital era in Tanzania and the world over. As a result of these cyberspace crimes, Tanzania has enacted the Cybercrimes Act (2015),<sup>62</sup> which provides for the legal framework for e-crimes. It also addresses the increasing challenges posed by cyber-related offenses in the digital age. Its broad aim is to protect individuals, businesses, organizations and the government from cyber-related threats such as hacking, data theft, data mining, and distribution of offensive and misleading

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57 *Ibid.*

58 UNCECIC established rules and accepted practices that define the characteristics of a valid e-contract, gave guidelines for the acceptable use of digital signatures for legal and commercial purposes and supports the use of computer evidence in legal disputes over the validity of a contract.

59 S. 2.7.7 of Unified Theory of Acceptance and Use of Technology (UTAUT).

60 <https://www.techtarget.com> p. 23.

61 *Ibid.*

62 No. 14 of 2025.

information and to regulate activities and behaviours in the fast-growing cyberspace arena in Tanzania.

Therefore, the Cybercrimes Act lays down the legal framework to combat various cybercrimes, safeguarding integrity, confidentiality and availability of computer systems, data digital infrastructure and ensure security of electronic communications in the country. This legislation also outlines various offenses and corresponding penalties that carry quite hefty fines and imprisonment for violators. It also gives power to law enforcers or authorities to investigate and prosecute cybercrimes, while also setting guidelines to protect nationals from cyber threats. This law may allow authorities to infringe on personal privacy without sufficient checks and balances especially in case where warrants for data access may not be rigorously enforced. However, there are critics on potential misuse to stifle free speech, especially given some provisions that criminalize the publication of false or misleading information. Despite these concerns, the legislation remains crucial tool in Tanzania efforts to control and navigate the challenges during this digital age by promoting cybersecurity. The question to ask remains whether the Cybercrimes Act (2015) is adequate enough to regulate all cybercrimes in the country as people do their buying and selling including giving services in digital and e-commerce. Hence, the need arises to address the shortcomings or gaps in the law.

#### **4.0 Some Shortcomings in the Law Regulating Digital Commerce and e-Consumer Protection**

Apart from the foregoing challenges, there are also numerous shortcomings in the law regulating digital commerce and e-consumer protection in Tanzania. For example, the Cybercrimes Act (2015) does not define a cybercrime. However, the law vaguely sheds some light on cybercrime in the Preamble, which states that, this law was enacted to: 'make provisions for criminalizing offences related to computer systems and Information and Communication Technologies; to provide for investigation, collection and use of electronic evidence and for matters related therewith.'<sup>63</sup> Hence, the ambiguity and vagueness in quite a number of provisions leaving gaps for broad interpretation of these provisions. For example, the terms such as false information, indecent content and offensive communication are not clearly defined leaving potential misuse by law enforcement authorities and agents making it easy to target individuals or entities based on subjective interpretation.<sup>64</sup> There is also abuse of powers by the law enforcers as they can dig deep into personal or private information as they monitor or investigate online issues.<sup>65</sup>

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63 Preamble to the Cybercrimes Act (2015).

64 *Ibid* section 3.

65 *Ibid* sections 31, 32 and 35.

There are many concerns that these investigating powers are exercised could be abused for political or personal purposes that may lead to violations of privacy, data protection and other consumer rights threats especially to the social media platforms. This has been seen in today's life in issues concerning DP World of Dubai for the Dar es Salaam Harbour Agreements. People have been harassed and even arrested and detained and prosecuted under the Act for expressing their opinions or publishing content that authorities deem false or harmful. Hence, suppressing dissent and restrict free speech. This has led to concerns that the Act could be used to intimidate or silence critics and progress in ICT innovations and digital commerce and this would slow the international business relationship or compatibility as it would interfere with best practices preferred in developed and developing countries such as Tanzania.

These shortcomings highlight the need for reforms to the Cybercrimes Act (2015) in order to ensure that this legislation is effective, comprehensive and enforceable legal framework.

## **5.0 Conclusion**

This article has examined the developments of e-commerce (EC) and e-consumer protection laws. It has traced how economic, social and political conditions from the Western developed countries and Institutions have influenced the developing countries including Tanzania to do well in EC by protecting consumers' rights. Tanzania has tried to improve her laws by using the international best practices such as UNCITRAL and the UNCTAD to enact the current Tanzania Fair Competition Act (2003). However, this has not been done comprehensively. Hence, the legal loopholes in the scattered legislation in EC and e-consumer protection as seen in the scrutinized statutes hereinabove. It is clear that the identified gaps in law in these two fields have many challenges and risks that require proper law studies, so as to have a smooth marketplace.

Therefore, safeguarding consumers within the realm of electronic commerce in digital commerce is paramount for fostering trust, confidence, success and expanding of digital economy. There is need to enhance consumers in order to sustain the growth of online markets. It is also clear that dispute resolution and redress mechanisms, two areas of great importance have not been properly addressed or regulated as they have no legal frameworks despite the Alternative Dispute Resolution system existing currently. In conclusion one can say that the current landscape and emerging challenges and risks are not satisfactorily addressed. They require to be leveraged technologically because of the rapid advancements of technologies and innovations.

As such, there is a need for regulatory frameworks and collaborative efforts among stakeholders and lawmakers. This can only be done through effective

enforcements including implementations of the laws. E-laws to protect vulnerabilities to consumers should be reviewed, revised, amended and new legislation be enacted where need be, so as to be able to mitigate risks and challenges at the same time build trust, confidence, and economy growth in order to move forward. Hence, continued research proactive rules, policies, and innovative solutions are essential to cultivate a safe and conducive environment for digital commerce that will empower consumers to navigate digital transactions with confidence, trust and security afforded by an effective enforceable legal framework