HARMONISATION OF CONSUMER PROTECTION LAWS IN MOBILE MONEY TRANSACTION ACROSS EAST AFRICAN COMMUNITY, A COMPARATIVE STUDY OF KENYA AND TANZANIA

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A DISSERTATION SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE DEGREE OF THE MASTER OF LAWS OF THE OPEN UNIVERSITY OF TANZANIA

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CERTIFICATION

The undersigned certifies that he has read and hereby recommends for acceptance by the Open University of Tanzania a research paper titled ñHarmonisation of Consumer Protection Laws In Mobile Money Transaction Across East African Community. A Comparative Study of Kenya And Tanzaniaò in partial fulfilment of the requirements for the Award of Masters Degree (LL.M) of the Open University of Tanzania.

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DECLARATION

I, Masanja Martine Ramadhani, do hereby declare that this research is my own original work and that it has not been presented to any other University for a similar or any other degree award.

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Signature

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Date

DEDICATION

This work is dedicated to my parents, my mother Paulina Kamanija and my late father Martine Ramadhani for their moral and material support. Also to my loving family especially my wife Selina Sulley and my son Alvin Masanja Martine for their unconditional love and support throughout the whole period of my studies at the Open University of Tanzania. There was a time they missed me when they wanted my presence. May God bless them richly.

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ABSTRACT

This study presents critical analysis of Harmonisation of Consumer Protection Laws in Mobile Money Transaction Across East African Community. A Comparative Study of Kenya and Tanzania. The research generally, tries to analyse the laws that regulate mobile money transactions, its effectiveness and loopholes thereof. The main target being to regulate mobile payment system in order to protect consumers and to augment the reliability of National Payment Systems by ensuring that consumers have a good way of discovering and managing all risks related to mobile transactions. All regulatory gaps should be minimized to ensure consumer protections. Security challenges on consumer protection in mobile transaction have also been evident. It is not easy to determine the party responsible for addressing the problems that arise in the transactions process, the procedure for seeking redress, and the types of remedies which can be obtained. There is also inadequate regional coordination in the current legal framework governing mobile transfer across East Africa community between M-pesa Kenya and Tanzania. There are potential overlaps between the existing regulatory tools and mobile infrastructures between the two countries. Laws were enacted by each country without taking into consideration the issue of cross boarder mobile remittances. Despite the fact that Kenya and Tanzania have enacted laws governing national payment system, they still fail to keep up with the changes occurring in the mobile money industry. The fact that the laws in these countries have not been harmonised, poses a great challenge in the coordination of cross border mobile transactions.

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The Kenyan National Payment System Act No.39 of 2011.

The National Payment System Regulations of 2014.

LIST OF ABBREVIATION

AFI	Alliance for Financial Inclusion
AML	Anti Money Laundering
ATM	Automated Teller Machine
BOT	Bank of Tanzania.
CAP	Chapter
CAK	The Competition Authority of Kenya
CBA	Commecial Bank Africa.
CFT	Combating the Financing of Terrorism
CGAP	Consultative Group to Assist the Poor
COMESA	Common Market for Eastern and Southern Africa
CRDB	Cooperative Rural Development Bank
DFS	Digital Financial Service
DSS	Decision Support System
DSTV	Digital Satellite Television
EAC	East African Community
EAHC	East Africa High Commission
EACSO	East African Common Services Organisation
FSDT	Financial Sector Deepening Trust Tanzania
GDP	Gross Domestic Product
GMSA	Global Mobile System Association
GIS	Geographical Information System
KCB	Kenya Commercial Bank
KES	Kenyan Shillings

KYC	Know Your Customer
MFI	Microfinance Institutions
MFS	Mobile Financial Services
MMU	Mobile Money for Unbalanced
MNOs	Mobile Network Operators
MOU	Memorandum of Understanding
MSF	Mobile Financial Services
NFC	Near Field Communication
NFE	New Field Communication
NFIF	National Financial Inclusion Frame work
NPS	National Payment System
NPSD	National Payment System Directorate
PCI	Peripheral Component Interconnect
PIN	Personal Identification Number.
RE	Revised Edition
SADC	Southern Africa Development Community
SIM	Subscriber Identity Module
SMES	Small and Medium Enterprises
SMS	Short Message Service
STK	Sim ToolKit
TCRA	Tanzania Communication Regulatory Authority.
TPB	Tanzania Postal Bank
USD	United State Dollars
U.S	United States

CHAPTER ONE

GENERAL INTRODUCTION AND BACKGROUND TO THE STUDY

1.1 General Introduction

The East African Community (EAC) is a Regional intergovernmental organization composed of six countries in the African Great Lakes region in eastern Africa. These countries are Burundi, Kenya, Tanzania, Rwanda, Uganda and South Sudan. Paul Kagame, the president of Rwanda, is the EAC's chairman. The organisation was founded in 1967 collapsed in 1977 and was revived on 7th July 2000.[1] In 2008, after negotiations with the Southern African Development Community (SADC) and the Common Market for Eastern and Southern Africa (COMESA), the EAC agreed to an expanded free trade area including the member states of all three organizations. The EAC is an integral part of the African Economic Community.

The EAC is a potential precursor to the establishment of the East African Federation, a proposed federation of its members into a single sovereign state.[2] In 2010, the EAC launched its own common market for goods, labour and capital within the region, with the goal of creating a common currency and eventually a full political federation.[3] In 2013, a protocol was signed outlining their plans for launching a monetary union within 10 years. In September 2018 a committee was formed to begin the process of drafting a regional constitution.

Kenya, Tanzania, and Uganda have cooperated with each other since the early 20th century. The customs union between Kenya and Uganda in 1917, which Tanganyika

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[1]ñ*East African Community – Quick Facts.*ò *Eac.int. Archived from the original on 19 March 2009.* Retrieved 1 July 2010.

[2] ñ*A political union for East Africa? – You say you want a federation."* The Economist. *9th February 2019.* Retrieved 4 August 2019.

[3] ñFACTBOX-East African common market begins. *Reuters. 1 July 2010.* Retrieved 1 July 2010.

joined in 1927, was followed by the East Africa High Commission (EAHC) from 1948 to 1961, the East African Common Services Organization (EACSO) from 1961 to 1967, and the 1967 to 1977 EAC.[4] Burundi and Rwanda joined the EAC on 6 July 2009.[5]

Inter-territorial co-operation between the Kenya Colony, the Uganda Protectorate, and the Tanganyika Territory was formalised in 1948 by the EAHC. This provided a customs union, a common external tariff, currency, and postage. It also dealt with common services in transport and communications, research, and education. Following independence, these integrated activities were reconstituted and the EAHC was replaced by the EACSO, which many observers thought would lead to a political federation between the three territories. The new organisation ran into difficulties because of the lack of joint planning and fiscal policy, separate political policies and Kenya's dominant economic position. In 1967, the EACSO was superseded by the EAC. This body aimed to strengthen the ties between the members through a common market, a common customs tariff, and a range of public services to achieve balanced economic growth within the region.[6]

In 1977 the EAC collapsed. The causes of the collapse included demands by Kenya for more seats than Uganda and Tanzania in decision-making organs, disagreements with Ugandan dictator Iddi Amin who demanded that Tanzania as a member state of the EAC should not harbour forces fighting to topple the government of another

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[4] ñFrom Co-operation to Communityò. *eac.int. Archived from the original on 10 May 2008.*

[5] ñEAC Update E-newsletterò. *www.eac.int. Directorate of Corporate Communications and Public Affairs. Archived from the original on 26 April 2012. Retrieved 10 December 2011.*

[6] ñEast African Economic Communityò. C*rwflags.com. Retrieved 1 July 2010.*

member state, and the disparate economic systems of socialism in Tanzania and capitalism in Kenya.[7] The three member states lost over sixty years of co-operation and the benefits of economic of scale although some Kenyan government officials celebrated the collapse with champagne. Presidents Daniel Arap Moi of Kenya, Ali Hassan Mwinyi of Tanzania and Yoweri Kaguta Museveni of Uganda signed the Treaty for East African Co-operation in Kampala on 30 November 1993 and established a Tri-partite Commission for Co-operation.[8] A process of re-integration was embarked on involving tripartite programmes of co-operation in political, economic, social and cultural fields, research and technology, defence, security and legal and judicial affairs.

The EAC was revived on 30 November 1999, when the treaty for its re-establishment was signed. It came into force on 7 July 2000, 23 years after the collapse of the previous community and its organs. A customs union was signed in March 2004, which commenced on 1 January 2005. Kenya, the region's largest exporter, continued to pay duties on goods entering the other four countries on a declining scale until 2010. A common system of tariffs will apply to goods imported from third-party countries. On 30 November 2016 it was declared that the immediate aim would be confederation rather than federation.[9]

1.2 Background of the Study

Mobile money simply means transfer of funds between banks or accounts, deposit or withdraw funds, or pay bills by mobile phones, purchase items, whether physically

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[7] East African trade Zone off to Creaky start, *Christian Science Monitor*, 9 March 2006
[8] ñHistory of the EACò. *EAC Archived from the original on 21 December 2016.* Retrieved 20 December 2016.
[9] ñEast African Nations agree to disagreeò. *All Africa. 30 November 2016.* Retrieved 20 December 2016.

or electronically by mobile phone.[10] In broader sense, mobile money is the money stored using the Subscriber Identity Module[11] in a mobile phone as an identifier as opposed to an account number in conventional banking.[12] Notational equivalent is the value issued by Mobile Network Operators (MNOs) and is kept in a value account on the Subscriber Identity Module (SIM) within the mobile phone that is also used to transmit, transfer or payment instructions, while corresponding cash value is safely in a bank. The balance on the value account can be accessed via the mobile phone, which is also used to transmit instant transfer or payment instructions.[13]

M-Pesa is a mobile phone-based money transfer, financing and microfinancing service, launched in 2007 and 2008 by Vodafone for Safaricom and Vodacom the largest mobile network operators in Kenya and Tanzania respectively.[14] M-Pesa allows users to deposit, withdraw, transfer money and pay for goods and services (Lipa na *M-pesa* [Kenya] or *Lipa kwa M-pesa* [Tanzania]-literary means *Pay by M-pesa*) easily with a mobile device.[15]

Mobile money services in Tanzania and Kenya started when there were no laws governing National Payment Systems for mobile payments and there was no adequate regulation of mobile payments.[16] Mobile phone companies in Tanzania are regulated by the Tanzania Communication Regulatory Authority (TCRA), which

[10] The Blackǒs Law Dictionary, 2nd Edition.
[11] Hereinafter refered to as the SIM.
[12] Ojiji 26; Legal Issues in Mobile Money Transactions.
[13] *Ibid.*
[14] CCK report on the 2nd quarter ICT sector statistics for 2011/2012.17th April 2012.
[15] Saylor M The Mobile Wave :How Mobile Intelligence will change Eveything Vanguard Press 2012 Pg. 304.
[16] CCK report on the 2nd quarter ICT sector statistics for 2011/2012. 17th April, 2012.

was established by the Tanzania Communication Regulatory Authority Act[17] and the Electronic Postal Communication (Licencing) Regulations.[18] The main function of these two bodies in relation to M-Banking, is to ensure that the mobile companies perform to their required standard whenever a financial transaction is carried out via their services. Tanzania Communication Regulatory Authority Act[19] is mainly concerned monitoring the performance of mobile companies alone. The financial nature of the transaction is outside of their reach and is usually left to the Bank of Tanzania (BOT) to handle. These legislations alone would not be able to cover M-Banking as only the performance of the MNOs are considered under these frameworks.[20]

The Tanzania Communication Regulatory Authority[21] and the Bank of Tanzania[22] enjoy a good working relationship as of this moment. TCRA and BOT have a Memorandum of Understanding (MOU)[23] between them as to the regulation of mobile money transfer services. This MOU was formed purely from an administrative point of view and does not mean that they are co-regulators. However, the imminent MPR was aimed at providing a system for regulatory and supervisory coordination between the two bodies.[24]

The BOT Act was amended in 2006 to give the Bank of Tanzania (BOT) powers to administer and regulate non- bank entities in offering payment services. Section 6 of

[17] 2003.
[18] 2011.
[19] No.12 of 2003.
[20] Mobile Financial Services in Tanzania:The Current and Future status of the Legal and Regulatory Framework Clyde & Co LLP July 2014.
[21] Hereinafter referred to as the TCRA.
[22] Hereinafter referred to as BOT.
[23] Hereinafter referred to as MOU of 2008.
[24] Ibid.

the Act provides that;

> ñ*The BOT is empowered to regulate, monitor, and supervise the payment, clearing and settlement system together with all products and services thereof as well as conduct oversight functions on the payment, clearing and settlement systems in any bank, financial institution or infrastructure service provider or company within Tanzania*ò.[25]

In 2007 the Bank of Tanzania issued the Electronic Payments Schemes Guidelines[26] which allowed MNOs 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 MNOs. From the beginning, MNOs were required to partner with banks to receive ñletters of no objectionò, which enabled the Bank of Tanzania to guarantee that consumer funds are protected in the banking system, backed with 100% liquidity prerequisite.

Since 2012 the Bank of Tanzania has taken a progressive approach in designing a regulatory framework that has considerably contributed to the growth of a competitive market where MNOs are contributing to the progression of electronic finance systems. In 2011 Kenya enacted the National Payment System Act No.39 of 2011 which regulated National Payment in the country and is supported by the National Payment System Regulations 2014. Tanzania enacted the National Payment System Act in 2015 and the payment system (Licensing and Approval) Regulation 2015 and the Electronic Money Regulation 2015 to govern national payment system but most of the Mobile money transfer services companies have not complied with the requirement of the law.[27]

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[25] Ibid.
[26] 2007.
[27] Compliance with the new law to commece on 1st July 2016 according to the Public Notice issued on 17th March 2016 by the governor of Bank of Tanzania Prof Benno Ndulu available at the Bank of Tanzania website visted on 17th April 2016.

The Bank of Tanzania is given the power under the provisions of section 4 of the National Payment System[28] to regulate, supervise, investigate and oversee the operation of payment system in Tanzania. The Central Bank of Kenya is empowered under Section 17 of the National Payment System Act[29] to promote the establishment, regulation and supervision of efficient and effective payments, clearing and settlement systems in Kenya.

In Tanzania, mobile banking services are to the greater extent offered by Mobile Network Operators (MNOs), although there are also some banks which also offer mobile banking services. The MNOs which are very active in Mobile banking are Vodacom Tanzania through M-Pesa, TiGo Tanzania through Tigo Pesa, Airtel though Airtel Money and Zantel through Easy Pesa or Z-Pesa. The banks offering mobile banking include NMB Bank Plc, CRDB Bank Plc, Akiba Commercial Bank, Exim Bank Tanzania Limited, Amana Bank, Standard Chartered Bank, Tanzania Postal Bank(TPB), Kenya Commercial Bank (KCB) and Commercial Bank of Africa (CBA). In brief, Tanzania is a market where both models of mobile banking ónon-bank based modelô and óbank based modelô co-exist, however ónon-bank based modelô run by MNOs is more popular with wider coverage than óbank-based modelô.

The key services offered MNOs through mobile banking include money transfers, cash in /cash out, airtime top ups and utility bills payments (water, electricity, DSTV and the like) and payments of taxes and other government fees. Banks offer almost the same services as MNOs with exception that bank offer money transfers to bank

[28] 2015.
[29] No.39 of 2011.

account holders and non-bank account holders. However, mobile banking services offered by the banks are still not very popular to those offered by the MNOs because of the restricted access through limited branch ATM network and strict KYC issues.

Mobile money describes the use of mobile phones to pay bills, remit funds, deposit cash, and make withdrawals using e-money issued by banks and non-bank providers such as telecommunication companies. This service currently exists in over 80 developing countries and is growing rapidly, particularly in Africa. It enables many people without access to financial servicesð known as the unbankedð to access an increasing range of financial services, from payments, to savings and loans. Mobile money enables customers to use e-money which is issued by an œ-money issuerô usually a telecommunication company but sometimes a bank. While precise terminology tends to vary across countries and literature, e-money is typically defined as a type of stored value instrument or product that: (i) is issued on receipt of funds; (ii) consists of electronically recorded value stored on a device such as a server, card, or mobile phone; (iii) may be accepted as a means of payment by parties other than the issuer; and (iv) is convertible back into cash.[30]

The concepts of stored value and convertibility distinguish e-money from credit cards, retail gift cards, airtime and other payment instruments that are not readily convertible. Customers can make payments and transfers by sending short message service (SMS) mobile notifications to each other. E-money accounts are credited

[30] Mobile Financial Services Working Group, *Mobile Financial Services: Basic Terminology,* ALLIANCE FOR FIN. INCLUSION (Aug. 1, 2014), http://www.afi-global.org/library/publications/mobilefinancial-services-basic-terminology-2013. *See also* K. Lauer & M. Tarazi, *Supervising Nonbank EMoney Issuers*, CONSULTATIVE GRP. TO ASSIST THE POOR 1 (July 2012), http://www.cgap.org/publications/supervising-nonbank-e-money-issuers

when e-money is received from others and debited when payments are made. Customers convert their cash for e-money at cash merchants, which tend to be retail outlets such as shops and petrol stations. These customers can then use this e-money to make payments to each other and can later convert any remaining balance on their e-money account for cash.[31] Mobile money was launched in Kenya in 2007 and has grown very rapidly throughout many developing countries, particularly in Africa.

Between 2007 and 2013, mobile money grew from nothing to a thriving sector with 219 live mobile money services with 61 million active accounts in 84 countries.[32] In the month of June 2013, mobile money customers performed 431 million transactions totaling $7.4 billion.[33] There are more registered mobile money accounts than bank accounts in nine countries and there are now 886,000 registered agents. Mobile money creates novel regulatory challenges because it enables a variety of non-banks to perform functions traditionally provided by banks.

In particular, mobile network operators (MNOs) are increasingly providing payment services with little direct involvement of banks. Retail outlets such as shops and petrol stations are serving as ócash merchantsô that enable customers to convert their cash for e-money and vice versa, a conversion function traditionally provided by

[31] Timothy Lyman, Mark Pickens & David Porteous, *Regulating Transformational Branchless Banking: Mobile Phones and Other Technology to Increase Access to Finance (Focus Note no. 43)*, CONSULTATIVE GRP. TO ASSIST THE POOR 3 (Jan. 15, 2008), http://www.cgap.org/sites/default/files/CGAP-Focus-Note-Regulating-Transformational-Branchless-Banking-Mobile-Phones-and-Other-Technology-to-Increase-Access-to-Finance-Jan-2008.pdf.

[32] Claire Pénicaud & Arunjay Katakam, *State of the Industry 2013: Mobile Financial Services for the Unbanked*, GSMA (Feb. 2014), http://www.gsma.com/mobilefordevelopment/wp-content/uploads/2014/02/SOTIR_2013.pdf.

[33] *Id*. at 28. Note that óactive accountsô mean accounts that have been used in the last 90 days. Claire Pénicaud & Arunjay Katakam, *State of the Industry 2013: Mobile Financial Services for the Unbanked,* GSMA 16 (Feb. 2014), http://www.gsma.com/mobilefordevelopment/wp-contnet/uploads/2014/02/SOTIR_2013.pdf.

bank branches or automatic teller machines (ATMs). Prudential regulation is generally designed for traditional banking institutions and therefore cannot be easily applied to these non-banking service providers because they do not intermediate deposits. This raises the question of how mobile money service providers should be regulated.

Regulatory frameworks need to respond to mobile money in two particular ways. First, regulators need to take an *'enabling approach'*, which involves a variety of activities that aim to help mobile money to grow safely. For example, in designing mobile money-related policy and regulation, a regulator should work closely with government departments (particularly those that relate to finance and development), regulators from other sectors (particularly telecommunications) and the mobile money sector. Secondly, regulators need to adopt a *'proportionate approach'* when designing regulation. This means the costs of regulation to the regulator, market participants and consumers should be proportionate to the benefits and risks of mobile money. A proportionate approach aims to guard against overly burdensome regulation that may stifle the development of this sector.

1.2.1 Mobile Money: A New Frontier of Financial Services

1.2.1.1 The Promise of Mobile Money: Tackling Financial Exclusion

Mobile money is an important tool for poverty reduction because it offers a means of addressing the impasse that exists between banks and poor households. Many banks do not find it economically attractive to make banking infrastructure and financial services available in poor communities.[34] This is because high transaction costs relative to small transaction value sizes make it unprofitable for banks to service this population. Similarly, poor people can be reluctant to access formal financial services due to the inconvenience and high cost involved in accessing these services relative to the more local and informal alternatives they have traditionally used, as well as issues of mistrust of formal banking institutions.

For this reason, around 2.5 billion adults are currently excluded from the formal financial system and are subject to ófinancial exclusion.ô[35] This group tends to be described as the óunbanked.ô[36] Providing the unbanked with access to financial services, known as ófinancial inclusionô, is now recognised as an important mechanism for alleviating poverty and promoting a countryôs broader economic development.[37] Financial inclusion aims to provide the unbanked, and low-income households and business more generally, with a range of financial services that they can use to smooth their consumption and insure themselves against óeconomic shocksô, such as illness, accidents, theft, and unemployment.

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[34] Claire Alexandre, Ignacio Mas & Daniel Radcliffe, *Regulating New Banking Models That Can Bring Financial Services to All*, 54(3) CHALLENGE 116, 118 (2010), *Available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1664644.

[35] *The Imperative of Financial Inclusion*, UNITED NATIONS SEC'Y-GEN.ôS SPECIAL ADVOCATE FOR INCLUSIVE FIN. FOR DEV., http://www.unsgsa.org/about/financial-inclusion (last visited Feb. 7, 2015). Definitions that relate to people with difficulties accessing financial services can be found at: Elaine Kempson, *Financial Services Provision and Prevention of Financial Exclusion*, EUROPEAN COMMISSION (2008), http://www.bristol.ac.uk/media-library/sites/geography/migrated/documents/pfrc0807.pdf and Andrew Leyshon & N. Thrift, *Geographies of Financial Exclusion: Financial Abandonment in Britain and the United States,* 20(3) Transactions Inst. Brit. Geographers 312, 312ï41 (1995).

[36] *See Who Are the Unbanked?: Uncovering the Financial Inclusion Gap*, THE WORLD BANK,http://siteresources.worldbank.org/EXTGLOBALFIN/Resources/8519638-1332259343991/world_bank3_Poster.pdf (last visited Feb. 7, 2015) for a discussion of the composition of the unbanked.

[37] The focus on financial inclusion is seen in many international forums: G20 Summits, the Global Policy Forum (GPF) of AFI, BTCA, FATF, and the Basel Committee on Financial Inclusion.

An economic shock can be severely detrimental to the unbankedês already precarious financial position, making it more difficult for them to move out of poverty. In many developing countries, economic shocks can take a wide variety of forms beyond traditional financial or economic crisis; they can also be health-related emergencies, crop failures, livestock deaths and farming-equipment expenses.[38] Financial inclusion also aims to assist the unbanked and low-income groups to save and borrow which in turn can enable them to invest in education and asset generating activities such as enterprises.

Proponents of mobile money argue that by using this service, particularly in its payments form, poor households can shift away from informal to formal financial services and reduce their reliance on cash.[39] Furthermore, once customers begin using mobile money, they can move from payments to accessing a range of other financial services such as deposits and loans. Early evidence of usage patterns of mobile money services provides credence to this view; however, many schemes are still in their infancy. For example, tentative evidence from Africa suggests that customers are beginning to use e-money as a form of savings by storing their cash with a mobile money provider (Provider).[40] Customers can later withdraw that money from the Provider in a manner similar to withdrawing money from a bank.

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[38] Jake Kendall & Rodger Voorhies, *The Mobile-Finance Revolution*: *How Cell Phones Can Spur Development*, FOREIGN AFFAIRS (2014), http://www.foreignaffairs.com/articles/140733/jakekendall-and-rodger-voorhies/the-mobile-finance-revolution.

[39] *Why Shift to Electronic Payments,* BETTER THAN CASH ALLIANCE, http://betterthancash.org/why-e-payments (last visited Feb. 7, 2015).

[40] U.N. Conference on Trade and Dev., *Mobile Money for Business Development in the East African Community: A Comparative Study of Existing Platforms and Regulations*, 27, U.N. Doc. UNCTAD/DTL/STICT/2012/2 (2012), *available at* http://unctad.org/en/PublicationsLibrary/dtlstict2012d2_en.pdf.

Customers are also using mobile money to access regular savings and loans provided by banks, primarily through partnerships between MNOs and banks or microfinance institutions (MFIs) (MNO-bank/MFI partnerships). A particularly well-established MNO-bank/MFI partnership operates in Kenya between Safaricom and Tanzania between Vodacom (the Vodafone subsidiary), which provides a mobile money product called óM-Pesaô and the Commercial Bank of Africa (CBA). Collectively, Safaricom, Vodacom and CBA provide óM-Shwariô and óM-Pawaô respectively.

This products work in the following way: M-Shwari and M-Pawa customers can access savings by transferring funds from their mobile money account with Safaricom to a linked bank deposit provided by CBA. Customers can also access loans through M-Shwari and M-Pawa as Safaricom and Vodacom store information on the payment history of customers of their M-Pesa product and determines a credit score based on that history.[41] The CBA then uses this score to assess the creditworthiness of customers and to provide loans to customers deemed creditworthy. óGoodô borrowers are also able to graduate and access larger loan facilities. Similar partnerships exist in Ghana, and Malawi.[42]

1.2.1.2 The Regulatory Challenge: An Enabling Approach and Proportionate

As an area that currently operates largely outside the regulatory protections of traditional banking services, mobile money generates a variety of risks which raise

[41] Simone di Castri, *Tiered Risked-Based KYC: M-Shwari Successful Customer Due Diligence*, GSMA (July 8, 2013),http://www.gsma.com/mobilefordevelopment/tiered-risk-based-kyc-m-*shwarisuccessful-customer-due-diligence.*

42 Arunjay Katakam, Mobile Credit and Savings Services Gaining Traction Using Different Models, GSMA (July 17, 2014), http://www.gsma.com/mobilefordevelopment/mobile-credit-andsavings- services-gaining-traction-using-different-models.

the question of how the sector should be regulated. For example, in May 2012, it emerged that employees of Telco MTN Uganda had stolen around $3.5 million from an account used to store cash which had been incorrectly sent through its mobile money service.[43] Further, in January 2014, Safaricom blacklisted 140,000 users after they defaulted on their M-Shwari loans.[44] As mobile money continues to grow, mobile money providers will hold ever larger amounts of customersô funds.

The loss of such funds will have a greater impact on the local economy and cause increased economic hardship to individual mobile money account holders, undermining the objective of broadening financial inclusion. It may also increase the costs of using mobile money services as losses will be passed on to customers, which may also undermine its use in banking the unbanked. Existing financial system and banking regulations are unlikely to be directly appropriate to mobile money systems because they aimed at financial institutions particularly banks, rather than the MNOs and cash merchants that are central to mobile money. Two concepts have been identified as particularly important to developing the effective regulation of mobile money.

a) An Enabling Approach

The first is an enabling approach in relation to regulatory objectives and activities. In established banking markets, regulators are required to monitor and reduce risks

[43] *See* Jeff Mbanga, *Uganda: How MTN Lost Mobile Billions*, THE OBSERVER (May 24, 2012), http://allafrica.com/stories/201205250847.html. *See also* Steve Candia, *Cyber Crime Increases by 14 percent: Police Report*, THE NEW VISION (Aug. 2, 2013), http://allafrica.com/stories/20130.html; Winfred Kagwe, *Safaricom Gains Big in SIM Switch-offs*, THE STAR (Aug. 1, 2013) http://allafrica.com/stories/201308011261.html.

[44] George Ngigi, *CBA Blacklists 140,000 Safaricom loans defaulters*, BUS. DAILY (Jan. 26, 2014), http://www.businessdailyafrica.com/CBA-blacklists-140-000-Safaricom-loansdefaulters.

caused by the activities of banks and other financial service providers. In contrast, in many countries in which mobile money is operating, regulators are also assigned the objective of extending banking and financial services to poor households, particularly the unbanked, or in other words, of promoting financial inclusion.

This regulatory objective is becoming increasingly common: regulators and central banks in over 60 countries have either a dedicated financial inclusion strategy, financial inclusion as part of their institutional mandate, or a dedicated financial inclusion unit in their regulatory institution.[45] The mandate of financial inclusion is usually aligned with and pursued in tandem with efforts to achieve financial stability, integrity, and consumer protection because they are seen as complementary objectives.

In order to promote financial inclusion, regulators are encouraged to engage in an ćenabling approachô to designing regulatory arrangements that are required for mobile money to develop. This differs from the traditional role of regulators, particularly central banks.[46] An enabling regulatory approach aims to permit market players to explore different outsourcing arrangements and products in order to provide an environment in which innovation and growth are encouraged.[47] An example of an enabling approach to regulation involves a regulatorð particularly a

[45]Dr Subir Gokarn, Financial Inclusionð A Consumer Centric View (Mar. 21, 2011), *available at* http://rbi.org.in/scripts/BS_SpeechesView.aspx?Id=555.
[46] Eva G. Gutierrez & Sondeep Singh, *What Regulatory Frameworks Are More Conducive to Mobile Banking? Empirical Evidence from Findex Data* (World Bank Policy Research, Working Paper No. 6652, 2013), *available at* http://ssrn.com/abstract=2338858.
[47] Simone di Castri, *Mobile Money: Enabling Regulatory Solutions*, GSMA (Feb. 2013), http://www.gsma.com/mobilefordevelopment/wp-content/uploads/2013/02/MMU Enabling-Regulatory-Solutions-di-Castri-2013.pdf; Gutierrez & Singh, supra note 17, at 4.

banking regulator or central bankð extending its mandate to include mobile money and then working with government ministries, the mobile money sector, and regulators from other sectors, particularly telecommunications, to build understanding of the sector and to foster consumer demand for mobile money.[48]

b) Proportionate Regulation

The second issue relates to the substantive content of the regulation. Generally, a proportionate approach is encouraged, in which ñthe costs to the regulator, the institutions, and the consumers are proportionate to the risks being addressed, taking into consideration as well the anticipated benefits.ò[49] Proportionate regulation is seen as crucial for markets in the early stages of development where innovation and growth in financial services and products promise greater financial inclusion. A proportionate approach to regulation is important in enabling banks, MNOs, and cash merchants to work together to serve poor households on a profitable basis in these markets and to expand services.

1.3 Statement of the Problem

The main aim of regulating mobile payment system is to protect consumers and to augment the reliability of National Payment Systems by ensuring that consumers have a good way of discovering and managing all risks related to mobile transactions. All regulatory gaps should be minimized to ensure consumer protections. Security challenges on consumer protection in mobile transaction has

48 Pierre-Laurent Chatain et al., Protecting Mobile Money Against Financial Crimes: Global Policy Challenges and Solutions, WORLD BANK 112 (2011), https://openknowledge.worldbank.org/bitstream/handle/10986/2269/600600PUB0ID181Mobile09780821386699.pdf?sequence=1.

49 Kate Lauer & Michael Tarazi, Supervising Nonbank E-Money Issuers, CONSULTATIVE GROUP TO ASSIST THE POOR 1 (Jul. 2012), http://www.cgap.org/publications/supervising-nonbank-e-moneyissuers; Beth Jenkins, Developing Mobile Money Ecosystems, HARVARD KENNEDY SCHOOL 22ï 23 (2008), http://www.hks.harvard.edu/mrcbg/papers/jenkins_mobile_money_summer_008.pdf.

also been evident. It is not easy to determine the party responsible for adressing the problems that arise in the transactions process, the procedure for seeking redress, and the types of remedies which can be obtained.[50]

There is also inadequate regional coordination in the current legal framework governing mobile transfer across East Africa community between M-pesa Kenya and Tanzania. There is potential overlaps between the existing regulatory tools and mobile infrastructures between the two countries.[51] Laws were enacted by each country without taking into consideration the issue of cross boarder mobile remmitance. Despite the fact that Kenya and Tanzania have enacted laws governing national payment system, they still fail to keep up with the changes occurring in the mobile money industry. The fact that the laws in these countries have not been harmonised, poses a great challenge in the coordination of cross border mobile transactions.

The story of pricing transparency in Kenya appears to have a happy ending. However, Kenya remains the exception in Africa, no rule when it comes to pricing transparency. Even in countries that have integrated transparency in their e-money regulations. itøs often unclear when and how providers are required to disclose prices and enforcement which appears to be limited in some markets. Pricing transparency is hard to argue against and it is relatively easy to monitor on standardized DFS channels. If policy makers are serious about ensuring consumer protection keeps pace with product innovation, they would do well to follow Kenyaøs lead by issuing

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[50] Nyanga Joseph Mobile Banking Services in East Africa Community (EAC) Challenges to the Existing Legislative and Regulatory Frameworks in the EAC September 05, 2013.

[51] Nyanga Joseph Mobile Banking Services in East Africa Community (EAC) Challenges to the Existing Legislative and Regulatory Frameworks in the EAC September 05, 2013.

basic rules and monitoring providersô disclosure of key terms and prices on digital channels.

1.4 Objectives of the Study

1.4.1 General Objective

The broad objective of this study is to conduct an assessment as to the extent of consumer protection in mobile money transaction services across East Africa community: Kenya and Tanzania being the case study.

1.4.2 Specific Objective

i. To examine the legal and practical challenges facing consumer protection in Mobile Money transaction services.
ii. To evaluate the strenght of regional coordination in the current legal framework governing mobile money transaction services across East Africa community. Kenya and Tanzania being the case study.
iii. To find out potential overlaps between the existing regulatory tools and mobile infastructures with in Kenya and Tanzania.

1.5 Research Questions

This research is guided by the following research questions:-

i. What are the legal and practical Challenges facing consumersô protection in Mobile Money transaction services?
ii. What is the strenght of regional coordination in the current legal framework governing Mobile Money transaction services?
iii. What are the potential overlaps between the existing regulatory tools and

mobile infastructures with in Kenya and Tanzania?

1.6 Significance of the Study

The ultimate purpose of this study was to throw light on the challenges facing consumer protection in mobile transactions across East Africa community linking on the aim of regulating mobile payment system for the purpose of protecting consumers and to augment the reliability of National Payment Systems by ensuring that consumers have a good way of discovering and managing all perils related to mobile transactions.

1.7 Scope of the Study

This research was confined to literary survey in the area covering mobile transactions. This include cross boarder instruments and diffferent domestic legislation relating to money transaction and mobile governance.

1.8 Limitation of the Study

The researcher was not able to get information for the research from Vodacom because of bureaucratic barriers and non-responsive officials. The information used in the research has been highly limited to published materials and information obtained from other researchers conducted under the same scope.

1.9 Literature Review

Parkes[52] observes that the present and future mobile regulatory framework has helped majority of citizens who were not able to access retail banking services. He further urgues that mobile money operators emerged without a regulatory framework

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[52] Mobile Financial Services in Tanzania:the Currentand future status of the Legal and regulatory framework Clyde & Co LLP.July 2014.

and without laws governing National Payment Systems. There were guidelines and memorandum of understanding between the Bank of Tanzania and Tanzania Communication Regulatory Authority but were not sufficient to cater for mobile money operators. The author further showed the need of a comprehensive regulatory regime to regulate mobile payment in the country. This article was written before the enactment of the National Payment System Act of 2015 therefore not relevant in relation to this study.

Ojijo[53] urgues that most countries in East Africa allows for transactions through mobile money operators across East Africa and foreign currency remmitance but there is no adequate regulation. He further observes that consumer protection in cross border remmitance is also a challenge and most consumers suffers from frauders and faulty transamission. He also points out on the issue of data privacy and data protection whereby data security form the mesages are not encrypted and this can lead to money laundering and theft. Despite clearly potraying the problems facing cross border mobile transaction the author fails to provide a solution or way forward to curb the problem.

Simpson[54] argues that consumers in cross border transactions suffer from lack of transparency and that most of the decisions concerning the rates to be charged are reached without consulting the consumers. He also touched on issues of consumer protection in mobile payments and some of the main issues highlighted were lack of tangible proof of payments, lack of independent ombudsman and this makes the

[53]26 Legal Issues in Mobile Money Transactions 2014.
[54] Mobile Payment and Consumer Protection Policy Briefing January 2014.

mobile network operators to be a judge and a party if a complaint brought by the consumers meaning there is no impartiality in the proceedings and high rates of transfers. Nevertheless the author fails to show how the current law has tried in protection of consumers.

Masamila[55] states that privacy and data protection are important aspects in mobile money and mobile money operators. Customers use SMS in their transaction and thus can be prone to abuse by fraudsters if the data is not protected. Data used by the consumers if not properly protected can be used for ill intentions by fraudsters. Although the author discusses about issues of privacy and data protection he fails to show the extent to which consumers are protected against these threats in cross-border mobile transactions.

1.10 Research Methodology

The research method is based on Doctrinal Methodology. The research is focused on case-law, statutes and other legal sources. On the other hand, comperative research method will be employed by comparing domestic laws with the way the same area has been regulated in one or more countries.

1.11 Organization of the Study

This study is organised into five chapters. Chapter one presents a general introduction and bacground of the study. Chapter two deals with review of East African Community cyber and regulation harmonisation. Chapter three covers

[55] Masamila B ñState of Mobile Banking in Tanzania and Security Issuesò Internal Journal of Network &its Application Vol.6, No.4, July 2014.

presentation of legal and regulatory framework governing consumer protection in mobile transaction in Tanzania. Chapter four provides for legal and regulatory framework governing consumer protection in mobile transaction in Kenya; and chapter five gives the conclusion and recomendations for further study.

CHAPTER TWO

EAST AFRICAN COMMUNITY CYBER LAWS AND REGULATION HARMONISATION

2.1 M-PESA and the Rise of the Global Mobile Money Market

2.1.1 M-PESA Kenya

M-PESA means óMobile *Pesa*ô. The M is for *mobile* phone and óPESAô is the Swahili word for *money*, it is a platform for making small-value electronic payments. Although M-PESA customers earn no interest on the balances in their accounts, many also use it to build small amounts of savings. The brainchild of a London-based team within Vodafone led by Nick Hughes and Susie Lonie, the M-PESA concept for the first time was pursued by Safaricom, Kenyaôs dominant mobile phone operator in March 2007.[56]

Since its inception, M-PESA has attracted 9.5 million customers which represent over 40% of Kenyaôs adult population. The service is clearly meeting a keen need for secure, low-cost money transfer. M-Pesa has undergone explosive growth: in 2013, a staggering 43 percent of Kenyaôs GDP flowed through M-Pesa, with over 237 million person-to-person transactions. M-Pesa is nearly ubiquitous in the daily lives of Kenyans due to a range of services that include money deposit and withdrawal, remittance delivery, bill payment, and microcredit provision.[57]

M-PESA was originally conceived as a means of doing microcredit disbursements and repayment, but focus groups revealed much broader demand for moving money

[56] http://econ.worldbank.org/WBSITE/EXTRNAL/EXTDEC/EXTRESEARCH
[57] https://www.forbes.com/site/danielrunde/2015/08/12

around the country. In large part this is because members of many Kenyan families live and work in Nairobi, or other cities, while the rest remain in the village. Tapping into this need, Safaricomôs first advertising campaign to promote M-PESA centered around the simple slogan, ñ*Send money home*.ò

2.1.2 Mode of Application

M-PESA is built on the premise that charges are only incurred when a customer ñdoes somethingò with her money and thus there is no charge for depositing funds. Rather, charges are incurred for sending and receiving funds. Robert Cull,[58] for example, he explains after creating our own M-PESA accounts at one of the 16,000+ retail stores throughout Kenya and inserting our new Safaricom SIM cards in our mobile phones, we were ready to deposit funds. We started with a deposit of 300 shillings (about $4). The owner of the store took our cash, entered the transaction on her mobile phone and then registered the transaction in her log book, which fellow traveler David Roodman signed. Almost immediately David received a text message on his cell phone confirming the deposit. We then sent the money in Davidôs account to those of the others in our party incurring a 30 shilling charge for each transaction.

The money in those accounts could then be withdrawn at any M-PESA outlet or at an ATM. Here we dealt in small sums, so the withdrawal fee was 25 shillings per transaction. Fees increase to 170 shillings (or 175 at an ATM) for withdrawals of 20,001 to the maximum 35,000 shilling limit. Though the tariff increases with transaction size, the gradient is not steep, which makes small-scale transactions less economical than larger ones.

[58] Robert Cull, (2010). M-PESA: Mobile Payments, Improves Lives for Kenyans, DECFP.

Another interesting feature is that customers can send money to non-M-PESA clients that have access to a mobile phone. Money is debited from the senderõs account and the recipient receives a code via text message which can then be used to claim the debited amount at any M-PESA store. M-PESA clients pay a commission that is about three times the standard fee when sending to non-customers, though the non-customer pays nothing to withdraw. The pricing is set up in this way for two important reasons. First, the arrangement acts as sales device to ensure that the non-customer has an enjoyable first experience with M-PESA. Second and perhaps more subtly, the sender has a strong incentive to persuade the recipient to register with M-PESA to reduce future commission fees. Since the sender is the one with the money, and therefore likely to have the economic power in the relationship, this pricing arrangement induces recipients to sign up. The influx of new registered users in turn, increases the utility of the M-PESA network for all users.

Another important aspect of M-PESAõs success is the meticulous attention paid to branding. All M-PESA stores are painted ñSafaricom greenò, which ensures a uniform appearance, reinforces the link with the well-respected mobile provider and makes it easier for customers to locate the outlets. To ensure that customers have almost identical experiences throughout the network, Safaricom hired a third-party vendor named Top Image, which visits each store at least monthly rating them on visibility of branding and the M-PESA tariff poster, in addition to the availability of cash and electronic value to accommodate the flow of customer transactions, and the quality of record-keeping. A lot of M-PESA outlets, example, in Nairobi and in around Kisumu, they all looked and functioned a lot like the one pictured.

Figure 2.1: The Lake District M-PESA store in Kisumu near Lake Victoria. Its location, directly across the street from the offices of power company, helps make it one of the busiest M-PESA locations in the country

2.1.3 Payment Applications

M-PESA is now used for all sorts of person-to-person payments including settling golf bets on the course. But a new wave of applications is making it possible for customers to make a range of payments to businesses using their M-PESA accounts. The most widely used is for payment of electricity bills, but other businesses are also coming to see M-PESAõs advantages. For instance, Bridge International Academy, which is rolling out private schools in some of the poorest areas of Kenya and is one of the first M-PESA ósuper-users.ô Bridge provides a remarkably low-cost ($4 in monthly tuition per student) alternative to public schools.

To do so, all aspects of providing education are, in a sense, commoditized. The curriculum is standardized and details exactly what teachers are to present, down to what they should write on the chalkboard for a given lesson. Construction of the schools methods, materials, the number of seats in a classroom is also standardized.

Class sizes are large at 55-65 students, but to judge from the burgeoning enrollments, parents are pleased with the quality of education and Bridgeôs accountability to them.

With a business model so focused on scale and cost efficiencies, M-PESA proved a natural fit for managing tuition payments to Bridge. Indeed, Bridge only accepts payments through M-PESA or directly into its account at Equity Bank. These arrangements mean that Bridgeôs employees do not collect cash payments, which would pose a security threat in the neighborhoods where these schools are located. In addition, using M-PESA means parents need not be physically present to make tuition payments and that other members of the extended family, like grandparents and other relatives can pay. Electronic payment records also make it easy for Bridge to track families that are delinquent on tuition payments. The research sourced from the discussions with representatives of Safaricom indicate that the range of person-to-business payment options will continue to grow as new super-users are identified.

Figure 2.2: Students at Kingston School in Nairobi. Tuition at the Bridge International Schools can be paid only through M-PESA

2.1.4 The Future

By lowering the costs of money transfer, M-PESA has helped to increase market activity, especially outside cities and that trend will continue. At Jubilee market in Kisumu, shop owners no longer spend two days traveling to Nairobi and back to provide funds for their suppliers. Funds arrive via M-PESA and suppliers draw on them to produce or obtain goods that are then sent to Kisumu. In addition to the time savings, M-PESA provides a secure alternative to traveling with relatively large amounts of cash.

In remote villages outside of Kisumu, owners of small shops use M-PESA to pay for goods from Jubilee Market. Whereas there used to be little economic activity in these village markets, there wasnǿt much cash around and thus shopkeepers had little incentive to keep inventories of goods, M-PESA has made cash less scarce and businesses have responded. Although the benefits of M-PESA to its customers exceeded my expectations by a long shot, until very recently it remained only a payments service and customers received no interest on their deposits. That changed with the introduction of M-KESHO on May 18, a joint venture of Safaricom and Equity Bank. M-KESHO is a co-branded suite of financial products that will ride on the M-PESA transactional platform.

There is no fee to open an M-KESHO account, nor minimum balances or monthly charges, all features shared by the M-PESA account. M-KESHO accounts differ from M-PESA in that they pay interest, do not have an upper limit on account balances, and are linked to credit and insurance facilities provided by Equity Bank. Customers can deposit and withdraw money from their M-KESHO account by transferring value to and from their M-PESA account. The M-KESHO arrangement between Safaricom and Equity is exclusive for one year and thus the product could be offered by other banks after that. By offering a menu of products and services, M-KESHO promises to bring fuller immersion into the financial system for many ordinary Kenyans.

2.1.5 Conclusion

In Kenya, M-Pesa has been so successful that traditional banks have come to see it as a serious competitor. At first, these banks sought to limit M-Pesa by seeking regulations from the Kenyan government, but increasingly they have begun to offer mobile banking services that attempt to disrupt M-Pesa's monopoly of the mobile money market. To compete, many of these services are offered with transaction fees that are even lower than M-Pesa's. As more players enter the system, the mobile money market may become even more widely accessible.

M-Pesa's success is derivative of the explosive growth in access to cell phones in the developing world. In the first quarter of 2015, there were over 900 million mobile subscribers in Africa, and 3.7 billion in Asia. The number of mobile lines in service is projected to surpass the global population at some point this year, and developing markets will continue to drive growth in mobile subscriptions for the foreseeable future. M-Pesa's impact in Kenya put mobile money services on the map. Today there are a number of successful mobile money services around the world that are similar to or resultant from M-Pesa. M-Pesa's impact in Kenya put mobile money services on the map, and the subsequent proliferation of similar services can be credited to this success. According to the Global Mobile Systems Association

(GMSA), approximately 255 mobile money services were operating across 89 countries in 2014. They are now accessible in more than 60 percent of developing markets. Sub Saharan Africa is the region where mobile money is most widely spread, followed by Southeast Asia and Latin America. A few of the most successful examples include:

The proliferation of mobile money services does raise the need for banking and telecom regulators to work together to allow these mobile platforms to work. As mobile money services continue to expand more proactive policies are required to ensure that the market can continue to grow and serve local consumers. Getting banking and telecom regulators to coordinate can be easier said than done, and this hurdle has slowed the adoption of mobile money platforms around the world.

While M-Pesa and other services like it do expand opportunity and financial inclusion, mobile transfers are not a complete answer to fully participating in formal financial systems. M-Pesa only allows for relatively small amounts of money to be stored and transferred via mobile phones and canôt substitute for opening a bank account or getting a loan for a small business. By enabling users to transfer money to each other and make payments directly to businesses and service providers, mobile money platforms cut down on corruption by reducing the need to operate in a cash-only economy. As a result, M-Pesaôs empowers individuals and supports entrepreneurial creativity in a less constrained financial marketplace.

2.2 M-Pesa Tanzania

Tanzania has witnessed unprecedented uptake of Mobile Financial Services (MFS) in the span of five years. After a humble beginning, when less than 1% of the adult population had access to mobile financial services in 2008, 90% had access by September 2013 ï an exponential increase. Likewise active usage has shown similar improvement, with 43% of the adult population actively using this service in September 2013. These encouraging results have emerged from a conducive regulatory environment, which was envisioned in the early days of mobile money services.

The approach of the country was to test the deployment of the service and monitor its developments, known as the ñtest and learnò approach. To facilitate this, the Bank of Tanzania Act was amended in 2006 to give the Central Bank powers to oversee and regulate non-bank entities in offering payment services. In 2007 Tanzania operationalized this by issuing Guidelines for Electronic Payment Schemes, which was used to allow Mobile Network Operators (MNOs) to offer payment services. Mobile Financial Services (MFS) in Tanzania has subsequently become a household name and supported the Bank of Tanzaniaôs objective of financial inclusion.

The service has enabled the unbanked population to have convenient access to payment services. In this regard, the National Financial Inclusion Framework (NFIF) was launched to recognise MFS as one of the key technologies for facilitating financial inclusion. The Bankôs regulatory journey has not been a solo trip; the BOT received a great deal of cooperation from the Tanzania Communications Regulatory Authority (TCRA) as the regulatory counterpart of the MNOs that are providing MFS. The positive relationship with the TCRA has enabled MFS to thrive in the country. The Central Bank and the TCRA cooperate on the oversight of the MFS regulatory framework. It is also worth noting that the private sector has had a significant role in facilitating the growth of MFS. From the beginning, MNOs were required to partner with banks to receive a ñletter of no objectionò, which enabled the Central Bank to ensure that consumer funds are protected in the banking system backed with a 100% liquidity requirement. Commercial banks have since enhanced their partnerships with the MNOs and we are seeing inroads being made with second generation MFS in Tanzania.

In this approach, Prof. Benno Ndulu[59] states;

> ñ*We have learned that new technologies that augur well with the Central Bank's objective need to be nurtured and monitored closely to ensure they do not cause any financial instability or reputational risk that may affect the country's payment systems. This approach has made MFS in Tanzania a success story. With the increased uptake of the services and based on the dynamics that we see in the market, we are currently shifting the regulatory approach to a "mandate and monitor" approach, whereby mobile payments regulations will be issued to guide the market without stifling innovation or disrupting the success we have witnessed. Rather, the regulations will ensure that we balance financial stability and financial inclusion objectives. In doing so, we will also continue to ensure that proportionate regulation is applied to the services deployed in the market.*ò

2.1.1 Theoretica Background of M-Pesa Tanzania

The National Payment System Directorate (NPSD) at the Bank of Tanzania (BOT) began its mobile money regulatory journey in 2008, when a visit from one of the countryôs mobile network operators (MNOs) introduced the idea that a simple mobile handset could do much more than make calls. From this first meeting, the BOT was keen to engage with the mobile industry to learn more about the potential of digital financial inclusion ï a new and unfamiliar topic to the Bank. Seeking to

[59] Simone Di Castri & Lara Gidvani, (2014). MOBILE MONEY FOR THE UNBANKED: Enabling Mobile Money Policies in Tanzania. Bill & Melinda Foundation

enable digital financial inclusion, but lacking national payment systems legislation to issue regulations, the BOT elected to take an interim step. It issued óletters of no objectionô[60] to the partner banks of Vodacomôs M-PESA and Zantelôs Z-Pesa (relaunched in 2012 as ñEzy Pesaò), allowing them to launch in 2008. Two more deployments followed: Zainôs Zap in 2009 and Tigo Pesa in 2010.

As the market has continued to develop, the BOT has made concerted efforts to find a legal and regulatory framework that would provide sufficient legal certainty and consistency to support a stable mobile money market, promote financial inclusion, and protect customers. A draft regulation that allows both banks and non-banks to provide mobile payment services has gone through two iterations and will soon be adopted. Meanwhile, the BOT has taken the lead in developing a National Financial Inclusion Framework (NFIF) that articulates the role of mobile money as a key enabler of financial inclusion.[61]

Today, Tanzania is a mobile money and digital financial inclusion success story. In December 2013 there were more than 11 million active mobile money accounts and approximately 153,369 agents in Tanzania across four deployments.[62] In the same month, mobile money deployments performed transactions worth more than TZS 3 trillion (US$1.8 billion). The number and value of transactions is growing very fast, and today the Tanzania market is performing close to Kenya. Furthermore, 35% of households in Tanzania have at least one mobile money user; 33% of households

[60] This is similar to the approach taken by the Central Bank of Kenya.
[61] *Ibid*
[62] Bank of Tanzania (BOT), National Payment System Directorate Statistics, http://www.bot-tz.org/PaymentSystem/statistics.asp.

have at least one registered mobile money user.[63] The market for mobile money in Tanzania is dynamic and the four providers are highly competitive. The BOT remains actively involved in shaping the market through prospective regulation and guidance on emerging issues, such as interoperability and cross-border payments. This journey has produced a number of lessons for policymaking and regulatory authorities, as well as the industry.

2.1.2 The Growth of Mobile money in Tanzania: Policy-Enabled and Market-led

In 2009, the market for mobile voice services was already very competitive in Tanzania, with six service providers and no dominant player.[64] At that time, 28% (7,232,143) of Tanzaniaœs 22.35 million adults owned a mobile phone and 32% used someone elseœs mobile phone. Although mobile penetration was still relatively low (32%), mobile network subscriptions were growing quickly and reached 13 million by the end of 2008.

While mobile network access and mobile phone usage were increasing, the reach of the financial sector was still very limited; only 9% of adults (1,951,310) were banked.[65] When Vodacom Tanzaniaœs M-Pesa went live in April 2008, one year after an extremely successful launch of the service in Kenya, analysts were expecting the service to take off in the same way and at the same speed. However, in its first 14

[63] InterMedia (2013), ñMobile Money in Tanzania: Use, Barriers, and Opportunities,ò Washington, D.C., p. 10. Available at http://www.intermedia.org/wpcontent/uploads/FITS_Tanzania_FullReport_final.pdf

[64] Tanzanian Communication Regulatory Authority data, http://www.tcra.go.tz/images/documents/reports/statusTelecomMarketMarch09.pdf

[65] Financial Sector Deepening Trust (2010), ñFinScope 2009: The Demand for and Barriers to Accessing Financial Services in Tanzaniaò.

months, the growth of Vodacomôs M-Pesa service remained well below that seen by Safaricomôs M-Pesa in Kenya. Vodacom registered 280,000 users who were transferring US$5.5 million per month at about 930 agent locations, compared to the 2.7 million users and 3,000 agents registered in Kenya 14 months after launch. To improve customer uptake, Vodacom introduced some significant operational changes: a flat fee for M-Pesa transfers, a simpler marketing approach, utility bill pay, and the use of agent aggregators to grow its agent network.[66] Since then, Vodacomôs M-Pesa has taken off, three other MNOs have launched mobile money deployments,[67] and access to digital financial services has increased significantly in the country.

At the end of September 2013, the BOT reported 30,342,540 registered mobile money users and 9,856,440 active users on a 90-day basis. At that time, 714,930,074 transactions valued TZS 19,953,359 million (US$12.3 billion) had been conducted since mobile money was launched. Vodacom has the highest number of clients, followed by Tigo, Airtel, and Zantel. Just over half (53%) of households report that they use MPesa exclusively, while 18% use Tigo Pesa only, and 13% of households only use Airtel money. All Ezy Pesa subscribers also use M-Pesa.11 The agent network has also expanded significantly. Geographic information system (GIS) data from the Financial Sector Deepening Trust Tanzania (FSDT) indicates mobile money agents outnumber all other financial outlets by almost 10 to one. There are

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[66] Gunnar Camner, Caroline Pulver, and Emil Sjöblom (2009), ñWhat Makes a Successful Mobile Money Implementation? Learnings from M-Pesa in Kenya and Tanzaniaò, GSMA Mobile Money for the Unbanked (MMU) paper. Available at: http://www.gsma.com/mobilefordevelopment/wp-content/uploads/2012/03/What-makes-a-successful-mobile-money-implementation.pdf

[67] GSMA, ñMobile Money for the Unbanked (MMU) Deployment Trackerò, http://www.gsma.com/mobilefordevelopment/programmes/mobile-money-for-the-unbanked/tracker

roughly 17,000 M-Pesa agents, which represent 87% of the access points Tanzanians use for financial services. M-Pesa agents also have the greatest potential for outreach: agents are in 29% of the wards where 40% of the population resides. This is in stark comparison to automated teller machines (ATMs), brick-and-mortar bank branches, and microfinance institutions (MFI), which together reach only 17% of wards and 25% of the population. The strong performance of mobile money in Tanzania has been driven by the market and enabled by a regulatory environment that promotes digital financial inclusion.

2.1.3 "Test and Learn": Developing Regulations that meet Market and Customer Needs

In Tanzania, the regulator made a progressive decision: to let regulation follow innovation and support financial inclusion while managing risks. This approach has enabled the countryǿs mobile money market to flourish. By engaging closely with MNOs (and their respective partner banks), the BOT has been able to offer the private sector a degree of freedom in rolling out new products, responding with sufficient safeguards where necessary. The BOT has applied the lessons from the oversight of service providers to develop more comprehensive regulations.

When Vodacom and Zantel approached the NPSD at the BOT in 2008, the regulators had to determine how to regulate these newly proposed payments services. A 2003 amendment to the Bank of Tanzania Act, specifically Section 6[68] granted the BOT the power to regulate, monitor, and supervise the National Payments System,

[68] See Section 6 of the Bank of Tanzania Act, 2006, available at: http://www.bot-tz.org/AboutBOT /BOTA ct2006.pdf

including payments products and clearing and settlement systems products.[69] However, the existing regulations provided limited guidance for the private sector. Tanzania lacked broader legislation for payment systems, and the Electronic Payment Scheme Guidelines of 2007 only covered risk management for banks and other financial institutions.

Even in the absence of regulation, the BOT was inclined to progress. According to the BOT, ñthe mobile money deployments offered great opportunity to leverage on enhancing financial inclusion given the high mobile penetration rates compared to bank penetration, it was thus seen imperative within the BOTös objective of financial inclusion that it be allowed and monitored effectively.ò[70] The BOT was familiar with the regulatory approach taken by the Central Bank of Kenya,[71] and intended to take a similar path: allowing mobile money services to launch while applying sufficient safeguards and carefully monitoring developments. Meanwhile, the BOT became acquainted with the market to determine the appropriate regulatory framework for mobile money.

In this context, the BOT advised MNOs to partner with one commercial bank to offer mobile money services. Having a commercial bank partner allowed the BOT to issue õletters of no objectionö to the partner bank (already under the purview of the BOT) that granted the MNOs the legitimacy to implement mobile money services.[72]

[69] Bank of Tanzania (2003), ñPayment Systems in the Southern African Development Community - Tanzania Chapterò. Available at: http://www.bot-tz.org/paymentsystem/Green%20book%20draft%2003dec-final.pdf

[70] Interview of the National Payments System Directorate, Bank of Tanzania, January 2013.

[71] Alliance for Financial Inclusion (2010), Enabling mobile money transfer: The Central Bank of Kenyaös Treatment of M-Pesaò, Case study. Available at http://www.afi-global.org

[72] Note that in Kenya the central bank had issued the õletter of no objectionö to the MNO. See Alliance for Financial Inclusion (2010), cit.

The no objection letters specified that mobile money deployments were subject to BOT oversight and the (prudential and non-prudential) regulatory requirements for the provision of the services, including: Presentation to the BOT before approval, Obtaining a Tanzanian Communication Regulatory Authority (TCRA) licence for the provision of value added services, Providing a risk management plan to the BOT, Establishing safeguards for customer funds, Submitting monthly data on the volume and value of transactions, as well as trust account balances, Consumer protection mechanisms, Distribution requirements, Know Your Customer (KYC) standards, Maximum transaction limits and Restrictions on the use of interest. These requirements are complemented by the providersô operational policies aimed at making the service sound and safe for customers.

In this context, moral suasion was also instrumental in establishing trusted dialogue between the BOT and the mobile money providers. Issued independently by the BOT to each operator and partner bank, the letters of no objection were intended to be an interim solution. Although they are not public, it is understood that the prudential and market conduct requirements detailed in the letters are similar in nature for all deployments, thus, Safeguarding customer money: MNOs are required to use a trust account at a bank and abide by BOT account management standards. The partner commercial bank would house a trust account, through which the MNO could issue electronic value and safely deposit the equivalent of the float. MNOs were only permitted to have one bank partner, and the entire float would be maintained in the trust account, therefore, the value was backed by 100% liquidity.[73]

[73] In the draft Mobile Payments Regulations 2012, this value is defined as ñelectronic moneyò.

To use the trust structure, each MNO registers a local holding company with independent directors to act as a trustee.

2.1.4 Towards Greater Regulatory Certainty

Tanzaniaøs ótest and learnô approach allowed MNOs to launch and scale mobile money services based on the guidance provided by the BOTøs letters of no objection. The BOT maintained close oversight of the services to ensure the industry was sound and safe for customers, and to develop a better understanding of the business and the operational risk factors and mitigants. By 2010, the market had reached a certain level of maturity, with four providers and more than 10 million registered mobile money customers.

The exponential increase in the payment system in all spheres ï subscribers, usage, volume, and values ï made it necessary for the BOT to consider shifting its regulatory approach to provide certainty and consistency to all market participants. The BOT had progressively increased its operational knowledge of mobile money and was now in a position to draft regulations that would provide more legal certainty to providers. The BOT also had to ensure that the regulatory arrangements were in compliance with supporting laws and regulations, such as the AML/CFT regime.[74]

At the same time BOT had become sufficiently comfortable with the performance of mobile money and armed with the lessons of the marketøs early years, began

[74] A detailed list of AML/CFT law and regulation in Tanzania can be found at: http://www.fiu.go.tz/Legislation.asp

transforming the original set of requirements into a more formal regulatory framework. While the draft National Payment Systems Act was in the promulgation process in 2012, the NPSD set out to draft mobile payments regulations for the sector. The BOT has been open to learning from market implementation and other jurisdictions; in 2010 they visited the Philippines to learn firsthand how the Bangko Sentral ng Pilipinas established enabling regulation for banks and non-banks to implement mobile money deployments.[75] The visit was clearly valuable; the BOT released its first draft regulations for comment in March 2012. The draft regulations allowed for ñnon-bank based modelsò, which ensured that non-banks, such as MNOs could continue to receive no objection letters to act as mobile payments service providers.

The early draft received detailed discussion from national stakeholders and beyond the countryôs borders when a panel of regulators from the Alliance for Financial Inclusionôs (AFI) Mobile Financial Services Working Group conducted a peer review of the regulations in April 2012. Tanzaniaôs mobile money industry and the GSMA participated in the consultative process by submitting detailed feedback on the regulations, which put forth a number of additional factors for consideration. In May 2012, the BOT released a new version of the draft Mobile Payments Regulations, introducing a licensing regime[76] for non-banks intending to provide mobile payments services. Prospective non-bank mobile payments providers will be required to seek a licence as ñwholly owned subsidiary companiesò. The Regulations

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[75] Alliance for Financial Inclusion, ñKnowledge Exchange Insights: The Bank of Tanzania Learns from the Bangko Sentral ng Pilipinas on Mobile Financial Servicesò, December 2, 2011. Available at:http://www.afi-global.org/library/publications/knowledge-exchange-insights-bank-tanzania-learns-bangko-sentral-ng-pilipinas

[76] In addition to the existing TCRA licence required for value added services.

maintain the requirement that a trust account be used at a commercial bank to hold float funds (100% liquidity) and introduce a cap of 25% on the portion of funds that can be kept in a trust account at a single bank. Licensed providers were to be allowed to provide a range of services, including: Account to Account funds transfers; Person to Person funds transfer; Person to Business funds transfer; Business to Person funds transfer; Business to Business funds transfer; Cash in and Cash out services.

BOT reserves to itself the authority to approve new services, a prerogative that will be critical to keep abreast with market innovations. Three customer ñtiersò will be introduced for CDD, with ñleastò requirements for individual, ñpartialò for small and medium enterprises (SMEs), and full requirements for corporate accounts. For each ñtierò the Regulations set maximum transactional limits while additional limits must be agreed between the provider and the BOT. The Regulations call for ñrelevant and reasonableò KYC requirements at each of the three levels. To comply with verification requirements for the entry level account, individuals can provide their registered phone number, voterôs registration card, or a letter from a ward executive.

These simplified CDD requirements may boost account registrations since they are aligned with the CDD conducted at the time of SIM registration/purchase. Mobile money service providers must report any suspected or confirmed cases of fraud to the central bank. Two features of the Regulations may require significant changes for the existing deployments:

i. Interest accrued in the trust account can be used ñfor the benefit of the mobile payment services customers as determined by the BOT.ò However, it has not yet agreed that interest can be earned on the mobile wallet.

ii. System interoperability is a stated requirement within the regulations: ñA mobile payment service provider shall implement a mobile payment service that is able to provide interoperable services with other mobile payment service providers at various level of interoperability suitable to the market demands. The level of interoperability may be at agent, customer or platform level.ò The words ñable to provideò imply compliance to international standards that allow interoperability. The section does not mandate it but offers a framework for interoperability driven by market value propositions. Agent exclusivity is not permitted, in line with the current market reality.

Providers and stakeholders have had the opportunity to comment on the second draft of the regulations, and the final draft was submitted to the Ministry of Finance. However, it was only to be adopted once the National Payment Systems Act had passed, which was expected in early 2014 (now in application). This legal certainty brought more transparency in the licensing process and ensures that new entrants and current service providers are operating on a level playing field.

CHAPTER THREE

LEGAL AND REGULATORY FRAMEWORK GOVERNING CONSUMER PROTECTION IN MOBILE TRANSACTION IN TANZANIA

3.1 Introduction

This chapter discusses the legal and regulatory framework governing consumer protection in mobile transaction in Tanzania taking into consideration all the players and stakeholders involved in the transfer. It further expresses the role of the Bank of Tanzania in regulating National payment systems as well as the role played by Tanzania Communication Regulatory Authority in regulating mobile Number Operators.

3.1.1 Tanzania Mobile Money

Tanzania is one of the world leaders in mobile money transfers (mobile phone-based money transfer), with 44% of adults having access to it and a total of 16m subscribers. Mobile money, also referred to as M-Pesa, was first introduced in Tanzania in 2008. Since then, over 40m mobile money accounts have been registered making 95m mobile money transactions per month in total, transacting an average of USD1.6b per month. 43% of adults are using these services to pay bills, make transfers to family and friends and conduct business transactions.

Mobile money penetration rates in Tanzania have reached 65% in urban areas and about 25% in rural areas. 32% of the 52m population use exclusively mobile money as financial services while only 2% have an active traditional bank account. The GSM Association (GSMA) indicates ñGiven that only a small minority of the Tanzanian population has access to formal banking services, the consumerôs unimpaired ability to use mobile money services rather than being required to travel long distances to bank branches to make transactions in person reduces transaction costs and increases the efficiency of the economy.ö

3.1.2 Tanzania Mobile Money Providers

As of March 2018, there are 6 mobile money providers in Tanzania: Vodacom with M-Pesa (43% market share), Tigo with Tigo Pesa (36%), Airtel with Airtel Money (17%), Halotel with Halotel Money (3%), Zantel with Ezy Pesa(1%), and TTCL (0.04%).

3.1.3 Tanzania Mobile Money Operators Market Share by Provider

In 2016, Halotel became the fifth mobile money provider in Tanzania with Halo Pesa. In addition to mobile money, mobile operators in Tanzania offer other mobile financial services such as financing and micro financing services and mobile insurance. In 2012, Tigo launched Tanzaniaøs first mobile insurance service, Tigo Bima, offering life and hospitalization cover. Tigo customers, both in Tanzania and Rwanda, were also the first ever to use an international mobile money transfer service with instant currency conversion.

3.1.4 Tanzania Mobile Money Interoperability

Mobile providers in Tanzania began to interconnect their services first with a bilateral arrangement between Tigo and Airtel in September 2014 (with the official commercial launch in February 2015). In December 2014, Tigo connected with Zantel and in February 2016, Vodacom announced connecting with Airtel and Tigo. By the beginning of 2016 Tanzania was the first country in the world to achieve full interoperability, i.e. the ability of users of different mobile money services to transact directly with each other. International interoperability is also a reality in Tanzania thanks to the partnerships of mobile money operators with international money transfer services like MoneyGram and Western Union. Vodacom Tanzania also allows for operator-to-operator international money transfer interoperability through its partnerships with Safaricom in Kenya.

In 2013, B-Pesa was introduced to Tanzania. B-Pesa is Tanzaniaӧs first prepaid card. This card allows a customer to transact at any B-Pesa member bank or any B-PESA merchant. B-Pesa allows the customer to have the flexibility of card to card transfers, dispense cash, deposit cash, and pay bills. BitPesa, an online platform to convert digital currency such as bitcoin into local African currencies, expanded to Tanzania in November 2015. Since then, BitPesa offers instant payments to and from 7 different mobile money networks and over 60 banks in Nigeria, Kenya, Uganda, and Tanzania.

3.1.5 Tanzania Mobile Money Outlook

The GSMA indicates that mobile money providers will continue to strengthen the customer experience and improve the quality of agent networks, in turn attracting more customers and encouraging greater usage of mobile money. In addition, the graduation to domestic interoperability between mobile money services will accelerate transaction growth in emerging markets, including Tanzania. However, one of the main challenges to Tanzaniaӧs mobile money growth is taxation. A mobile money tax was first introduced in Tanzania in 2013 when an excise duty of 0.15% was charged on transfers exceeding TZS 30,000. The tax was then replaced in 2014 with the current m-money fee excise tax of 10%. Since the mobile money excise is charged on transfer fees, the tax is a larger share of the cost for smaller transfers. Therefore this tax is regressive and imposes a larger burden on poorer consumers, which could potentially reverse financial inclusion gains made in Tanzania, according to the GSMA. ñRemoving the tax on mobile money charges could improve the affordability of these services, enhancing financial inclusion,ò the GSMA notes.

3.2 Cross Border Mobile Transfer and Stakeholders Involved

Cross border mobile enviroment has a number of stakeholder who ensutres the functionability from cross border mobile transactions.They include mobile network operators (MNO), banking and financial institutions.[77] Parties involved in the mobile money transfer has widened because the new laws requires a licenced payment provider to open and maintain a trust account[78] and to open and maintain a special account.[79] This means that the banks have now been included in the mobile payment envinroment because the funds of the customers are now stored in the banks.

3.3 Liability of Vodacom Tanzania as Subsidiary Companies

Vodacom and Safaricom are subsidiary companies of the holding company of Vodafone in South Africa. According to law a customer can sue Vodacom or Safaricom without including the mother company because they are authorised agents. They have been incorporated as subsidiary companies and act as agents of

[77]Ojiji 26 Legal Issues in Mobile Money Transactions.
[78] Section 32 of the National Payment Act of Tanzania No.4 of 2015 of Tanzania and Section 25(3) (a) of the Kenyan National Payment System Act No.39 of 2011.
[79] Section 32 of the National patment System Act No.4 of 2015.

the mother company and thus it can be said that they have the authority whether express or implied to work under the principal.

Order 111 rule 2(b) of the Civil Procedure Code[80] provides for recognized agents whereby a person can sue a person carrying on trade or business for and in the names of parties not resident within the local limits of the appearance meaning that a customer can sue Vodacom Tanzania because it is the authorised agent doing business in the country.

It provides that:

> *"Persons carrying on trade or business for and in the names of the parties not resident within the local limits of jurisdiction of the court within which the limits the appearance, application or acts is made or done, in matters connected with such trade or business only, where no other agent is expressly authorised to make and do such appearance and applications and acts"*[81]

Thus clearly shows that an aggrieved customer can sue Vodacom Tanzania or Safaricom Kenya because they ate authorized agents during business in Tanzania and Kenya. On the other hand a customer can choose to sue the mother company and join either Vodacom Tanzania or Safaricom because they are all proper parties to the suit.

3.4 Access Channels

M- Pesa offers users a menu item on their SIM through this menu; users can accomplish a range of transactions by using commands to the platform. M - Pesa has initiated a session between the mobile phone and the server during which is guided through a series of steps to accomplish the transaction.[82] It also uses the SIM ToolKit

[80] Cap. 33 R.E 2002.
[81] Order 111 rule 2(b) of the Civil Procedure Code Cap 33 R.E 2002.
[82] Ojiji 26 Legal Issues in Mobile Money Transactions.

(STK) approach whereby the SIM ToolKit break down the transaction into a series of logical steps into a series of logical steps that can be followed to accomplish the transaction. The STK re-assembles the different steps into a complex statement that is sent to the server via SMS.[83]

3.5 How M-Pesa Operates in Cross Border Mobile Transactions

Short Messaging Service[84] is always used while sending money across East Africa Community is always used whereby the customer sending the money is required to follow the instructions always set by the mobile payment company .The SMS always facilitates the consumer to send the money to the other customers across East Africa. SMS is commonly used because it is simple and can be used by both the elite and the illiterate. Most mobiles phones used support this services and thus become more efficient and reliable.

3.6 Legal and Regulatory Framework in Tanzania

3.6.1 National Payment System Act No.4 of 2015

This law was enacted to make provision for the regulation and supervision of payment system, regulation of electronic payment instruments, electronic money, and payment instruments and payment system service Provider. Prior to the enactment of this law, mobile payment were regulated by a memorandum of understanding between Bank of Tanzania and Tanzania Regulatory Authority. Section 4 of the act empowers the Bank of Tanzania to issue license, regulate, supervise, investigate and oversee the operations of payment system. Section 5

[83] Ibid.
[84] Hereinafter referred to SMS.

prohibits a person from operating a payment system without a payment system license. This is aimed to ensure that the general are protected from fraudsters.

Safeguard of customers fund is also provided by the requirement that every mobile network operator should open a Trust bank[85] and special account[86] when the funds of the customers will be held in trust. MNOs are supposed to diverse the customerǿs money in a number of banks to lessen the peril of collapse of a sole guardian bank failure. The funds are not supposed to be used by the mobile network operators. Section 51 of the Act provides for consumer protection in payment system whereby a payment system provider shall provide complaint handling and dispute resolution mechanism and to put in place terms and condition that are transparent, fair, and legible in comprehensive language.

According to section 45(1) of the Electronic Money Regulations[87] it provides that the, money issuer is supposed to solve the complaint of a customer within 21 days and if the customer is not satisfied he or she can refer the matter to Bank of Tanzania, Fair, and legible in comprehensive language. According to section 45(1) of the Electronic Money Regulations[88] it provides that the, money issuer is supposed to solve the complaint of a customer within 21 days and if the customer is not satisfied he or she can refer the matter to Bank of Tanzania, Fair Competition Commission or Tanzania Communication and Regulatory Authority.[89]The law is very clear but there is no enforcement and a customer can stay more than a month

[85] Section 32 National Payment System Act 2015.
[86] Ibid Section 34.
[87] 2015.
[88] 2015.
[89] Section 25(2) (d) of the Electronic Money Regulation 2015.

waiting for his or her complaint to be addressed. There is no clear mechanism put in place for speeding up resolution of disputes that related to national payment system products and services. On the other had there is also no clear enforcement mechanism to ensure that all the MNO stakeholders adhere to the requirement of the law. Most of the companies have not yet complied with the requirements of the law which they were supposed to comply by 1st July 2016.[90]

3.6.2 The Electronic Transaction Act No.13 of 2005

As the Long title clearly provides, this law provides for legal recognition of electronic transactions,e-goveremnt Services,the use of information and communication Technologies in collection of evidence,admisibility of electronic evidence,and to provide for the facilitation of sue of secure electronic signatures. Mobile Transaction falls under electronic transaction and therefore governed by this law in case of any dispute a customer can use the electronic evidence in form of SMS to prove that transaction has taken place.

Section 4 of the Electronic Transactions Act[91] provides that data message shall not be denied legal effect,validity or enforceability on the ground that it is in elecronic format. This law is therefore relevant in mobile transaction because in case of any dispute a customer can use the electronic data as evidence in court.[92] The law does not provide for extradition orders and this can pose a challenge when the dispute cuts

[90] Compliance with the new law to commece on 1st July 2016 according to the Public Notice issued on 17th March 2016 by the governor of Bank of Tanzania Prof Benno Ndulu available at the Bank of Tanzania website visted on 17th April 2016.
[91] No.13 of 2015.
[92] Section 18 Electronic Transactions Act No 13 of 2015 also provide for the admissibility of electronics evidence.

across more than one jurisdiction.there is no law on cyber and electronic transaction that has been harmonised for East Africa countries.

3.7 Conclusion

In view of the above it suffices to say that, the domestic and cross boarder instruments still face challanges to cover conceptual issues. However, despite all the parliamentary enactment and the regulations to govern mobile transaction, still there exist legal and regulatory challanges due to inadquate framework governing mobile transaction across East Africa community.

CHAPTER FOUR

LEGAL AND REGULATORY FRAMEWORK GOVERNING CONSUMER PROTECTION IN MOBILE TRANSACTION IN KENYA

4.1 Introduction

In Kenya, a request ñ*Please don't forget to include the cash out fee . . .*ò is commonly known by anyone who has transferred mobile money to someone else. Itôs a noteworthy request for two reasons. First, it shows that many Kenyans are price-sensitive to small values. Second, it reveals that many of them are also aware of cash-out fees. But do Kenyans know what theyôre being charged when they send money, not just when they cash out? Fortunately, since Kenya began forcing providers to disclose fees, the answer is increasingly yes.

For years, Kenyaôs Digital Financial Services (DFS) providers did a poor job disclosing the costs of person-to-person transfers, bill payments and loans. To address this lack of transparency, the Competition Authority of Kenya (CAK) in 2016 required mobile financial services providers to disclose their costs via customersô mobile handsets. Since then, disclosure has improved substantially in person-to-person payments, bill payments and digital credit.

To understand what impact (if any) this was having on consumers, CGAP surveyed 825 Kenyan DFS users in November 2016, just before providers began complying with the new policy and by November 2017 most providers had complied. The findings offer evidence that in-channel pricing transparency in DFS matters. Two of the more interesting findings relate to person-to-person transfers and digital credit. For M-Pesa and Airtel Money, consumersô pricing awareness improved from baseline to endline across several transfer amounts. The M-Pesa findings are particularly interesting. Many respondents who guessed incorrectly thought that the companyós by pre-August 2014 rate of Ksh 27 was still in effect, which is significantly more than the actual Ksh 11. In effect, it appears that a lack of price transparency has been leading consumers to believe that M-Pesa transfers are more expensive than they are.

Customers nowadays are also more aware of the cost of digital credit. Digital credit has taken off in Kenya in recent years, raising opportunities for innovation and consumer protection issues including concerns about the high prices of loans. While many app-based lenders used innovative formats to disclose prices clearly to consumers, lenders using USSD or SIM Toolkit did not always present costs in a transparent manner. This is significant because most digital credit users borrow on non-app channels. For example, 79 percent of endline survey respondents had used digital credit products, and 64 percent of the respondents had used M-Shwari, the dominant, SIM Toolkit-driven product of M-Pesa and the Commercial Bank of Africa. The survey findings for M-Shwari show that people who had taken an M-Shwari loan of Ksh 200, Ksh 500 and Ksh 1,000 were more aware of the costs after the CAK policy.

Given the high cost of digital credit and recent concerns raised about borrowing patterns in Kenya including indications of possible debt distress, improved transparency and price awareness is particularly important in digital credit.[93]

[93] Rafe Mazer, *Kenya's Rules on Mobile Money Price Transparency Are Paying Off*. Available at: https://www.cgap.org/blog/kenyas-rules-mobile-money-price-transparency-are-paying

However, transactions not affected by CAK policy tell a different story. Withdrawal fees from mobile money and banking agents were not impacted by the CAK policy. Not surprisingly, there was not much change ð and sometimes change in the wrong direction ð regarding price awareness for these transactions. This lack of impact suggests that the positive change in other transactions is at least partially due to the improvements in pricing disclosure mandated by CAK. Other factors could be at play, and for ethical reasons a randomized control trial was not an option in this study. As such, the findings cannot prove full causality, but the fact that price awareness shifted only for the transactions affected by the ruling indicates that some of the impact is likely due to the policy reform.

When is the Customers' long wait for Transparency Ends: The story of pricing transparency in Kenya appears to have a happy ending. However, Kenya remains the exception in Africa, not the rule when it comes to pricing transparency. Even in countries that have integrated transparency into their e-money regulations, itøs often unclear when and how providers are required to disclose prices and enforcement appears to be limited in some markets. Pricing transparency is hard to argue against, and it is relatively easy to monitor on standardized DFS channels. This makes the lack of proper enforcement in several DFS markets particularly noteworthy. If policy makers are serious about ensuring consumer protection keeps pace with product innovation, they would do well to follow Kenyaøs lead by issuing basic rules and monitoring providersô disclosure of key terms and prices on digital channels.

4.2 Kenya Regulatory Framework

The discusion here is cemented on the legal and regulatory framework governing consumer protection in mobile transaction in Kenya taking into consideration all the players and stakeholders involved in the transfer. It further expresses the role of the Central Bank of Kenya in regulating National payment systems as well as the role played by the Kenya Communication Regulatory Authority and the Kenya Nation Payment System Act in regulating mobile Number Operators.

4.2.1 Central Bank of Kenya

The Central Bank of Kenya has adopted a practical relatively than institutionalized method of regulation, which allows banks and mobile operators to offer cross border mobile money services. Under the NPS Regulations, mobile money providers may be nominated as either payment service providers[94]or e-money issuers.[95] Customer money must be held in trust in banks and the MNOs are not allowed to invest or lend the money because it does not belong to them but belongs to the customers. There is no creditor-debtor relationship between the MNOs and the customers therefore they cannot lend or invest the funds creditors. The Central Bank of Kenyas regulates and inspects the mobile payment operators in its functionality.

4.2.2 The Kenya National Payment System Act No.39 of 2011

The National Payment System Regulations compels a payment service provider to establish sufficient governance arrangements, which must be effectual and patent to

[94] A payment service provider is defined under the NPS Act as (i) a person, company or organisation acting as provider in relation to the sending, receiving, storing or processing of payments or the provision of other services.

in relation to payment services through an electronic system; (ii) a person, company or organisation which owns, processes, operates, manages or controls a public switched network for the provision of payment services; or (iii) any other person, company or organisation that processes or stores data on behalf of such payment service providers or users of such payment services.

[95] An e-money issuer is defined under the NPS Regulations as a payment service provider that is authorised to issue e-money.

reliability of its service.[96] The National Payment System Regulations prohibit a mobile payment operator from using the funds to itself or investing the funds. Consequently, substantial importance has been palced on the administration and authority of the trusts set up hold customer funds. National Payment System Regulations embrace consumer protection services of disclosure mechanisms, redress to consumers complaints, transparent terms and conditions for services and must ensure privacy and confidentiality of customer data.

Disclosure[97] in totaling up to providing an unambigous depiction with services and providing customers support. MNOs are also mandated to unveil to the consumers and Central Bank of Kenya. Mobile payments are also mandated to provide,[98] payment-related information: a payment reference; name of the payer, name of the payee; amount of the transfer; date of the transaction; and statements on request.[99] MNOs are forbidden from:charging consumers in order to fulfill disclosure and information obligations under the NPS regulations; or issuing misleading advertising on its products or services.

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[96] The requirements include: a) establishment of a Board of Trustees of persons of calibre, credibility, and integrity who fulfil the fit and proper criteria prescribed in the draft regulations; b) clearly documented ownership and management structure; c) segregation of duties and internal audit functions to minimise risk of fraud; and d) conducting payment services in a separate and distinct business unit from other business units, including maintaining a separate management structure and keeping separate books of account for the payment services division.

[97] Section 35.

[98] In addition to the standard legal terms commonly found in customer terms and conditions, the following additional provisions should be included in the service agreement: a) detailed description of the services offered; b) registration requirements for account opening; c) procedures for maintaining a customer account; d) the electronic retail service providerôs privacy policy; e) customer account use and access responsibility; f) conditions and procedures for loading, transferring, receiving, and withdrawing funds; g) suspension, termination, and freezing of accounts; and h) account access procedure in the event of death of the account holder.

[99] Section 35(7).

Customer redress[100] MNOs providers are obliged within six months of commencing operations to create a customer redress and complaints-handling mechanism and to notify customers of the procedures for lodging complaints including how to intensify the complaint if the customer is not satisfied with the initial response. Complaints must be filed within 15 days of the event, and service providers must respond to all complaints.

The service provider is required to inform the customer of the expected outcomes and timeline for the resolution of the complaint within 60 days. The provider cannot charge customers for lodging complaints. However, it may levy a reasonable charge when records more than three months old must be retrieved, or when retrieval results in incremental expense or inconvenience to the service provider. Privacy and confidentiality[101] disclosure of confidential customer[102]information is prohibited except under the following circumstances:to the customer concerned;to the Central Bank;when authorised in writing by the customer concerned; and areas required by law.

A significant fine of KES 1 million (USD 11,600) may be imposed on service providers (including agents or cash merchants) that fail to comply with these disclosure requirements. In addition to these measures, the NPS Regulations specify how advertisements are to be produced, including a requirement that advertisements are not misleading and are clear, concise, and comprehensive enough to inform

[100] Section 38.
[101] Section 42.
[102] Includes agents and cash merchants.

customers of the main features of the product being advertised.[103]

4.3 Legal and Practical Challenges Facing Consumers in Mobile Transaction across East Africa: Kenya and Tanzania as Case Study

This section discusses the practical and legal challenges facing consumers in cross border mobile transactions. Given that constructive outcome in any national payment system is visualized on efficiency and confidence it is indispensable to focus on security issues and privacy in order to uphold public loyalty in cross border mobile transactions. Insufficient regulation of cross border mobile transactions has resulted to cyber crime and fraud. Consumers face many legal challenges which are discussed hereunder.

4.3.1 Multiplicity of the Complaint Settlement Bodies

The law according to section 45(1) of the Tanzania Electronic Money Regulations[104] establishes that the aggrieved customer should report to the money issuer who is suppose to solve the complaint within twenty one days and if the customer is not satisfied he or she can refer the matter to Bank of Tanzania, Tanzania Revenue Authority or Fair Competition Commission. This creates perplexity to many of the customers who at the end of the day fail to get redress because of the multiplicity of the complaint settlement bodies. There is no combination of the complaint handling mechanism which poses as a challenge to consumers when they have lost their money during transfer. Shadrack Shubira[105] commented that most customers fail to

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[103] Section 37
[104] Regulation of 2015.
[105] An advocate of the High Court of Tanzania and Courts Subordinate to it except the Primary court.

get justice because they do not understand which body to follow to address the complaint and they end up losing a lot of money through fraud and cyber insecurity.

4.3.2 Data Protection and Privacy

Data protection is also a major challenge to consumer protection. Considerable personal data is transferred during mobile payments, and is accessible to mobile networks operators, applications developers, payment processors that can potentially gain illegal access to that data during the payment process. Customers do not know where, and how the data is stored, processed and used, which is challenging as they should have control over their data of payment[106]

The National Payment System laws of both Tanzania and Kenya provide for measures against cyber attacks and illegal entry into the data of the consumers but still many consumers are complaining. Meaning, the laws in place are not sufficient in promoting and protecting mobile transactions in cross border. This challenge of lacking adequate laws in place may be the outcome of dramatic and rapid changes of new forms of communication systems and digital technology in ways of transacting business and transfer of funds. V.S. Datey,[107] states that;

> ñ*Use of computers and other digital technologies to create, transmit and store information is increasing. Computer has many advantages in e-commerce. As international trade increases, traditional paper based commerce will shift rapidly to e-commerce…It is difficult to shift business from paper to electronic form due to two legal hurdles- (a) Requirements as to writing and (b) Signature for legal recognition. Many legal provisions assume paper based records and documents and signature on paper.*ò

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[106] Ibid.

[107] V.S. (2003),Stundentôs Guide to Economic Laws,Taxmann Allied Services Pvt. Ltd.NewDelhi at p.417

Because of the above stated challenge, on the 30th January, 1997 the General Assembly of the United Nations passed a resolution to adopt the Model Law on Electronic Commerce and recommended that all States should give favourable consideration to the Model Law when they enact or revise their laws, in view of the need for uniformity of the law applicable to alternatives to paper-based methods of communication and storage of information.[108]

4.3.3 Lack of Regulatory Framework within East Africa Community

There is no specific legal framework governing national payment system in East Africa region and this creates a difficulty to consumers on where to seek redress or compensation when money is lost during transfer or faulty transmission in cross border mobile transaction. Most of the victims aver that in case of loss during transfer one has to depend on the good will of the mobile money operators to make good the loss which might take two to three days.

4.3.4 Security in Cross Border Mobile Transactions

A major challenge for cross border mobile transaction is the insight of insecurity. In the rough interview conducted by the researcher the results show that 48% of the respondents cited their main reason for not using mobile banking was because of the lack of security in cross border mobile transaction. The respondents were also asked to rate the security of cross border for protracting their personal information and 32% rated as unsafe while, 34% were not sure of the security. These statistics represent a significant barrier to the use of cross border mobile transaction.

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[108] *Ibid*

From the security perspective, if data sent via either USSD or SMS are not encrypted, a transaction is vulnerable to interception. Given that the transaction session is based on the server helps manage the steps, once the USSD session terminates no data is left on the phone. With STK, the SIM helps to manage the steps and create an SMS sent to the server. SMS is transaction based and SMS data is stored on the phone, creating vulnerability if the SMS is not deleted and the phone ends up in the wrong hands. All systems rely on the use of Personal Identification Number for transaction authentication.[109]

Currently, there is no specific protection in the event that a userô mobile phone is stolen and used by fraudsters who are able to figure out the user PIN. The users best bet is to report the stolen mobile phone as soon as possible so that all mobile money transactions are blocked. The laws does not provide effective and convenient means by which customers can notify loss, misuse, theft or unauthorised use and breach of security code. Brigita Masawe[110] when interviewed on the issue of security in cross border mobile transactions said that most of the customers are afraid to send and receive money through their mobile phones because of the increased insecurity whereby money can be stolen from the customerô account without their knowledge through SIM swap.

Thomas T. Minja[111] commented that currently cross border mobile transactions are characterized by theft and loss in the course of the transmission. Fraudulent dealings,

[109] Ojiji 26 Legal Issues in Mobile Money Transactions.
[110] An M-Pesa Agent situated at Makonde Mbezi Beach.
[111] Advocate, Notary Public and Commission of Oaths.

identity theft or criminal activity is evident in cross border mobile transaction with many consumers suffering loss at an alarming rate. He further urged that most of the mobile payment operators in the country have not complied with the law and this poses a challenge to consumers in case when the Mobile operator collapses. He ended up asking the government to enforce the law and ensure that all the mobile payment operators comply with the law.

The law governing national payment system of Tanzania[112] only provides that the national payment system providers should ensure that consumers are protected but does not provide fines or punishment that will benefit the customer incase their rights have been violated or breached by the payment system providers. Most of the customers have suffered loss during the cross border mobile transactions and nothing has been done to help them recover the money sent to a wrong number.

4.3.5 Cyber Crimes

There is high volume cyber crime and frauds targeting cross border mobile transaction which has recently increased in a distressing rate. Majority of the consumers have suffered from the hands of fraudsters who use the loopholes in the security system of the mobile money operators to commit theft from the customers. This new landscape may require a service-based risk analysis by regulators to determine new approaches to the oversight of money laundering risk[113]. Risk based approach should be used to reduce money laundering risk. Mobile network operators should incorporate security checks to prevent cyber crimes and identity theft.

[112] Section 51(2) of the National Payment System Act.
[113] Chaitan H,Borowki &Zerzan Integrity In Mobile Phone Financial Services:Measures for mitigating Risks from Money Laindering and Terrorists Financing 2008.

Section 53 of the Tanzanian National payment System Act[114] prohibits a person to access another personœs financial data, recorded or transmission with the aid of any device to retrieve information without his or her permission. The law provides that the penalty is a fine of ten million shillings or three times the value of the property illegally obtained whichever is greater. Despite the fact that the law sets high penalties issue of cyber insecurity in cross-border mobile transaction is still prevalent and strong measures need to be put in place to eradicate this menace.

4.4 Conclusion

As cross border mobile transactions are widening and services developing more rampant dialogues or issues of security and data privacy in cross border mobile payments will be of essence. All stakeholders should be included in the dialogue because it is critical in ensuring a risk free mobile payments ecosystem as this will boost the confidence of the customers.

[114] No.4 of 2015.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

Cross border mobile transactions is progressively an imperative factor of East Africa Community regional development. According to data collected it can be seen that there are no adquate and or binding laws enacted to govern national payment across East Africa Community and this poses a big challenge when it comes to dispute resolution. Most consumers suffer in silence because of failure to get the correct avenue for solving their complaints. Consumer protection in terms of security and data protection has also been seen as a challenge with many consumers suffering from cyber attacks, fraud and identity theft.

The research has shown that most of the consumers do not have confidence in cross border mobile transactions and this is caused by money-laundering, identity theft, phishing and vulnerability to malware attacks which has increased payment risk in cross border mobile transactions. National payment system has to be strengthened and data encryptions to be uphold to increase confidence and trust among the consumers. To ensure safe and sound national payment system across East Africa Community there must be more proficient regulatory framework to curb the challenges witnessed in cross border mobile transactions.

5.2 Recommendations

5.2.1 Consumer Education and Awareness

All stakeholders involved should engage in enhancing customer understanding and to provide information on security issues related to the use of mobile payment services with a view to enable customers to use such services on a safe and secure manner. General guidance must be put in place for establishing regulatory environments for cross border mobile transactions that emphasize the requirement of protections in mobile payments. All parties involved in cross border mobile transaction should put practical measures in order to provide protected and secured cross border mobile payments to uphold consumerõs confidence.

5.2.2 Data Security and Protection

Mobile Number Operators and Mobile Money Transfers should implement a robust data protection mechanism to protect sensitive data wherever it is transmitted, processed or stored.[115] The software installed in the mobile device and used to manage sensitive data should be distributed via a secure channel and regularly checked against tampering and illegal entry.[116]

5.2.3 Reporting of Consumer Complaints

Mobile Money Operators should ensure efficient and consistent handling and follow up of security incidents, including security related customer complaints. The complaint handling procedures should be integrated so that the consumers can easily access to those bodies and get justice.

5.2.4 Strong and Stable Customer Verification

It is a procedure on the use of two or more of the following elements categorized as

[115] Levente Kovacs, Sandor David ñFraud Risk in Electronic Payment Transactionsò, Journal of Money Laundering Control, Vol.19 Issue 2, Pg.148-157, 2016.
[116] Ibid.

knowledge, ownership and inherence.[117] It can be something only the user possesses[118], or something only the user knows[119]. Verification technologies such as voice fingerprinting and identification cards should be used at places of transaction before cash withdrawal.[120] This will help curb the problem of money laundering and will help to easily spot dubious behaviors on time to put on hold transactions. As cross border mobile transactions expand it will be essential for mobile payment service operators to launch incorporated system of security checks to reach swiftly to apprehensive action.

5.2.5 Consumer Access to Information related to Transactions

Mobile money transfers and all stakeholders should notify customers of the payments initiation and provide customers with timely information necessary to check that a payment transaction has been correctly initiated and or executed**.** Stakeholder should provide customers with a near real-time facility to check the status of the execution of transaction account balances at any time in a safe and trusted environment**.**

5.2.6 Regional and Cross border Regulation within East Africa Community

For there to be a safe and secure cross border payments ecosystem, in East Africa Community they should enacted laws that will govern national payments in East Africa Community. This will help boost public confidence and reliance in cross

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[117] Stephanie Czak Secure Pay Recommendations for the Security of Mobile Payments European Central Bank 2014.
[118] For example token, smart card or mobile device.
[119] For example static password, code or PIN number.
[120] Stephanie Czak Secure Pay Recommendations for the Security of Mobile Payments European Central Bank 2014.

border mobile transactions because the national payment system across East Africa will be proficient, secure and effectual. The issue of conflict of laws across East Africa Community will be resolved through enacting laws that will govern all national payment across East Africa Community.

5.3 Recommendation for Further Study

By 2011, 36 percent of U.S. mobile users accessed their devices to shop online, either via mobile retail apps or online browsers. By 2013, the global mobile payment volume had reached US$ 235.4 billion; and is expected to hit $721.4 billion U.S. dollars by 2017. On a regional user basis, Africa recorded 45.5 million users in 2011, with that number expected to escalate to 101.3 million users in 2016.[121] Take Kenya as an example.

It is virtually a cashless society, with 86 percent of households using mobile payments, allowing a cheaper alternative to traditional banking options, especially with regard to cross-border transactions. With Kenya in the lead and Tanzania and Uganda close behind, payment service providers are developing platforms and systems to make mobile transactons cheaper, easier, more convenient, and faster, allowing the region the freedom to develop commercially in additional directions.[122] Of course, each advanced payment method and indeed the entire concept of ñmoneylessò transfer of funds in commerce has legitimate challenges and concerns, both for vendor and customer which are yet to be resolved.

[121] http://www.statista.com/statistics/226530/mobile-payment-transaction-volume.for ecast/
[122] http://www.directpay.online/blog/global-payment-trends-in-2015/

5.3.1 The Challenge of Security for One-Touch Mobile Payment Apps

Security ranks highest among concerns for customers and vendors. Because one-touch mobile payment apps store credit card and other financial details to make payments easy and seamless for buyers, many consumers are still afraid of someone intercepting their payment information or other data. Merchants and service providers can only store financial information once they implement the extremely stringent security procedures, and meet the robust, comprehensive standards set by the PCI DSS. This open global forum is responsible for the development, management, education, and awareness of the PCI Security Standards, ensuring absolute financial security. Without the PCI certificate, the merchant cannot store and process payments.[123] Currently, some of the biggest players in the payments tech industry are working on some of their own solutions such as tokenization, fingerprint readers, and a mix of other technologies to provide seamless and secure options for users; customers and merchants alike.

5.3.2 The Challenge of Cross-Platform Payment Solutions

There are vast amounts of different mobile devices and operating systems (Android, iOS, and more), and thousands of networks, and the challenge that one payment system to function across all of them is significant. There are a few technological solutions to this, including;

i. **Direct Mobile Billing Options**. Features high security, convenience, speed, and a proven track record.

ii. **Near Field Communication (NFC–No-Touch Mobile Payments)**. Enables

[123] https://www.pcisecuritystandards.org/merchants/index.php/

users to wave an NFC-enabled phone in front of an NFC reader.

iii. **SMS Based Mobile Payments**. Despite its many drawbacks (poor reliability, high cost, low security, slow speed, etc.) this is still widely used.

5.3.3 The Challenge of User Adoption is Slow

Many people are simply accustomed to the payment methods they have been using their entire lives. Cash and credit cards are still within their comfort zones, and learning a new payment method or changing their way of paying for things might seem silly or pointless to them Other people still consider their mobile phones as insecure and not as reliable for payments as other methods, such as credit cards or even direct bank transfers.Payment services providers and merchants need to educate consumers, earn their trust, help them become familiar with the mobile payment experience, and make them feel rest assured that security is a prime concern. PayPal, for example, achieved this with great success, over the years.

5.3.4 The Challenge of Technology

In many developing countries, internet connection speeds are slow, network reach is minimal, and the infrastructure is weak. All of these are driving the ever-increasing demand for the development of digital and mobile payment technology. Additional restrictions are set by the slow deployment of new generation smart phones. The majority of the population still uses older phones, which do not support apps. This requires mobile payment providers to develop a bridge between old and new technologies.[124]

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[124] http://blog.directpay.online/four-main-challenges-in-mobile-payments/

In Africa, for example, this need for a solution to overcome this technological challenge is being met with a variety of digital solutions, such as Airtime money, mPesa, PesaPal, and mSwipe, to name a few.[125] Mobile Cross-border payments and ecommerce still have many challenges ahead. The natural concerns of security, a multiplicity of devices and operating systems, slow adoption, and the technological limitations all contribute to the obstacles facing mobile payments, today. But they are being successfully overcome through careful planning, education, marketing, and by choosing the right payment service provider as a partner.

5.3.5 Challenges to Growth

Both MNOs are encountering challenges in expanding their mobile money services, particularly in rural areas. Low levels of financial literacy have been identified as a key issue for MNOs when selecting and training agents. This, along with other well documented issues[126] which are commonly experienced in building agent networks in emerging countries, has led to MNOs committing considerable resources to the building of agent networks. This situation may have restricted the MNOsô expansion of agent networks in many African countriues, so to Kenya and Tanzania.

Challenges faced by MNOs in expanding the customer base for mobile money services include low levels of financial literacy and limited trust. For example, in Malawi many Malawians in rural areas have never used banks and consequently do not sufficiently trust financial services to take up mobile money. This is the case to

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125 http://www.directpayonline/mswipe/

126 *Mobile Money War: RBZ Movies In*, THE STANDARD (Mar. 2, 2014), http://www.thestandard.co.zw/2014/03/02/mobile-money-war-rbz-moves for an explanation of the issues in this article focusing on the Reserve Bank of Zimbabweǿs (RBZ) directive for mobile money operators to seek RBZǿs permission prior to entering into exclusive agreements with agents.

many African rural areas. The absence of a national identification system can also make it difficult for MNOs and agents to comply with know your customer (KYC) requirements for the unbanked. Additionally, MNOs find it difficult to establish profitable business models with customers who often have very small incomes, and there is a relatively low penetration rate of mobile phones. Finally, limited infrastructure in remote rural areas means that some rural dwellers may need to travel long distances simply to charge their phones, which reduces the convenience that mobile money may be otherwise able to offer.

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