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E-COMMERCE AND THE LEGAL CHALLENGES OF ONLINE TRADING PLATFORMS:

The case of Jumia

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1. Introduction

Electronic- commerce also known as E-commerce has been defined as any service normally provided for remuneration at a distance by electronic means and at the individual request of a recipient of service.¹ The World Trade Organization has defined E-commerce as the production, distribution, marketing, sale or delivery of goods and services by electronic means.

² Broadly, e-commerce is the use of electronic networks to exchange information, products and payments for commercial and communication purposes. The exchange is between individuals (consumers) and businesses, between businesses themselves, between individuals themselves within government or between the public and government and last between businesses and government.

E-commerce has led to the rise of electronic platforms for example amazon, flipkart, shopfy, ebay, quikr and so many others and at a domestic level, there is jumia, killimall, katale, bazebo, kaymu and so many others.

¹ As defined in the EU DIRECTIVE 98/48/EC on Transparency dated 20th July 1998

² WTO Declaration of Electronic Commerce dated 25th September 1998

2. The legal framework governing E-commerce in Uganda

2.1. Background:

As far back as 1985, the United Nations Commission on International Trade Law (UNCITRAL) adopted a recommendation to all governments and international organizations elaborating legal texts relating to trade suggesting that they should review rules relating to automatic data processing to eliminate unnecessary obstacles to the use of automatic data processing in international trade.

UNCITRAL then approved its Model law on Electronic Commerce with an objective to serve as a model for enactment by member states. It put down rules for adoption by the UN General Assembly and in December 1996, the model law on Electronic Commerce was adopted. Upon the adoption of the model law on Electronic Commerce, UNCITRAL adopted the model law on Electronic Signatures in 2001. This later led to the adoption of United Nations Convention on the use of Electronic Communications in International Contracts (New York, 2005).

2.2. Uganda's legal framework:

Uganda developed a National Information and Communication Technology Policy in October 2003. The policy focused on among others; information as a resource for development, mechanisms for accessing information and ICT as an industry, including e-business, software development and manufacturing

The policy gave birth to a body of laws including, the Computer Misuse Act, 2011; the Electronic Signatures Act and the Electronic Transactions Act, 2011, all together to form the basis of the legal framework governing cyberspace and electronic transactions in Uganda. Another important legal enactment was the Data Protection & Privacy Act 2019.

In Particular, the Electronic Transactions Act, 2011 essentially provides for the use, security, facilitation and regulation of electronic communications and online transactions. The Act (together with the Electronic Signatures Act, 2011) also significantly provides for the legal recognition of electronic records & signatures; which guarantees effective enforcement of the online transactions (contracts) and rights of consumers, if infringed.

The Data Protection and privacy Act, 2019 provides for principles of privacy and data protection, the need for consent to collect or process personal data, prohibits collection and processing of certain personal data, protects the right to privacy, the right of a person to collect their personal data, security measures that must be undertaken to secure the collection, processing and retention of information collected and sets some sanctions for non-compliance.

This article goes on to discuss how this legal framework interacts with online trading platforms taking the case study of Jumia.

3. Analysis of the established legal framework; a case study of Jumia

Commonly referred to as Africa's tech giant, Jumia limited is a Jumia is an online market platform for electronics, general merchandise and fashion among others targeting several African countries. The company is also a logistics service, which enables the shipment and delivery of packages from sellers to consumers, and a payment service, which facilitates transactions among participants active on its platform.

This section analyses the terms and conditions of Jumia in view of the existing legal framework: Jade E-Services Uganda Limited ("Jumia") operates an e-commerce platform consisting of a website and mobile application ("marketplace"), together with supporting logistics and payment infrastructure, for the sale and purchase of consumer products in Uganda..

An electronic transaction means the exchange of information or data, the sale or purchase of goods or services, between businesses, households, individuals, governments, and other public or private organizations, conducted over computer-mediated networks.

- 3 This above legal provision shows the legal acknowledgement of electronic transactions in Uganda and their enforceability in courts of law. There are aspects that must be clearly examined including modes of payment, privacy of data, contract formation and performance, notice, fraud, acceptance, validity of the contract, enforceability, expression of interest, consumer protection, perfection of e-transactions:

These general terms and conditions apply to buyers and sellers on the marketplace by using the marketplace, the consumer accepts these general terms and conditions in full. If the consumer disagrees with these general terms and conditions or any part of these general terms and conditions, they are expected not to use the marketplace.

4. Return of products:

It is a term and condition that, “return of products by buyers and acceptance of returned products by sellers shall be managed by Jumia in accordance with the returns page on the marketplace, as may be amended from time to time. Acceptance of returns shall be in Jumia’s discretion, subject to compliance with applicable laws of the territory.”

A consumer not satisfied with a product has a right to return the product within a specified period of time. Section 24(4)(a) of the Electronic transactions Act gives the buyer/consumer a right to return products to the seller after the cancellation of the contract.

The law further gives a consumer the right to cease using the service where applicable. However, by Jumia adding that acceptance shall be at their discretion yet they are a third party and not a party to a contract is derogation to the consumer’s right which needs to be addressed.

3.5. Refunds:

Jumia in its terms and conditions provides that

“refunds in respect of returned products shall be managed in accordance with the refunds page on the marketplace, as may be amended from time to time. Jumia’s rules on refunds shall be exercised in its discretion, subject to applicable laws of the territory. Returned products shall be accepted and refunds issued by Jumia, for and on behalf of the seller.”

The above term makes it possible for a consumer who has returned goods to a seller for one reason or another to get a refund of their money. Section **24(4) (b) of the Electronic transactions Act** provides that a person selling shall refund all payments made by the consumer after deducting the direct cost of returning the goods.

However the fact that Jumia makes refunds at its discretion limits the consumer’s right to a refund. Jumia being with the discretion to choose when to refund and when not to refund puts the consumer at a disadvantage. The law should have expounded more on the conditions specifically that would entitle a consumer to a refund and a sanction against the seller if the refund isn’t done.

3.6. Payments

In Jumia online transactions, one must make payments in accordance with the Payments Information and Guidelines on the marketplace.

After one has selected the goods to buy using Jumia and confirmed them, Jumia presents payment information and guidelines for making payments. This can be either cash on delivery of the goods or payment via mobile money. This seems to comply with **section 24(5) of the Electronic transactions Act** which provides that a person offering goods and services shall use a payment system which is secure.

The practice is to use mobile money payments, credit and debit cards. There is no entity or person to ensure that the system is secure and the law should have dealt more with this in order to further protect the consumers

3.1. Capacity to contract:

It is a term of the Jumia contract that one should only register on the market place if they are above eighteen (18) years of age and by using the market place, one warrants and represents that they are at least eighteen years of age.

This is Jumia`s attempt to ensure that the persons contracting on the market place have capacity to contract. However, because of the anonymous nature of online accounts, it is difficult to distinguish between a person competent to contract or otherwise when transacting online. This often results in minors, lunatics and other incompetent people entering into contracts that would otherwise have been illegal.

The ***Electronic Transactions Act*** does not provide for capacity to contract however ***section 11 of the Contracts Act*** places contractual capacity of any person at or above 18 years. Electronic platforms don`t seem to have put in place adequate measures to verify the requisite conditions to safe guard vulnerable people (the young or under any infirmity) from entering electronic contracts

3.2. Formation and conclusion of an automated transaction:

For Jumia, a buyer must acknowledge and agree that the marketplace provides an online location for individuals to sell and purchase products but Jumia is not a party to the transaction between the seller and the buyer.

Further, a contract for sale and purchase of a product or products will come into force between the buyer and seller, and accordingly a user commits to buying or selling upon the buyer's confirmation of purchase via the marketplace.

Jumia by this term and condition shows how electronic transactions on the market place are formed and concluded. Section 13 of the Electronic Transactions Act requires formation of a contract in an automated transaction where a party or agent to a contract performs an action required in law to form a contract.

This term is in line with section 14(2) of the Electronic Transactions Act which provides for when a contract by means of a data message can be concluded that is at the time when and the place where acceptance of the offer is received by the person making the offer. However, the fact that Jumia is not privy to the transaction but only a third party providing a platform for buyers and sellers was not anticipated by the law which leaves a lacuna regarding liability arising from mistakes committed by the host of the market platform.

3.3. Terms and conditions of sale:

The seller's terms of business govern the contract for sale and purchase between the buyer and the seller. Notwithstanding this, the following provisions are incorporated into the contract of sale and purchase between the buyer and the seller:

- i. the price for a product will be as stated in the relevant product listing
- ii. the price for the product must include all taxes and comply with applicable laws in force from time to time
- iii. delivery charges, packaging charges, handling charges, administrative charges, insurance costs, other ancillary costs and charges, will only be payable by the buyer if this is expressly and clearly stated in the product listing
- iv. products must be of satisfactory quality, fit and safe for any purpose specified in, and conform in all material respects to, the product listing and any other description of the products supplied or made available by the seller to the buyer; and
- v. The seller warrants that the seller has good title to, and is the sole legal and beneficial owner of, the products, and that the products are not subject to any third party rights or restrictions including in respect of third party intellectual property rights and/or any criminal, insolvency or tax investigation or proceedings.

The above term and condition is concerned with consumer protection in relation with the suppliers/sellers obligation during an automated transaction. This is in tandem with section 24(1)(I-q) of the Electronic transactions Act which provides for the particular information that must be provided to the consumer by the supplier.

However the legal regime does not do anything to mitigate the challenge that the supplier may advertise a different quality of product to the buyer/consumer but later-on ship out or deliver lower quality products since the consumer cannot sample or check the goods.

The other issue is how to ascertain whether the seller is passing on good title in the goods to the consumer. This is because nowhere in the terms and conditions of Jumia does it state that the company must undertake due diligence to confirm that the sellers on the market place have good title to the goods sold.

3.7. Data privacy and protection:

It is a term and condition that buyers agree to processing of their personal data in accordance with the terms of Jumia`s Privacy and cookies Notice. Jumia shall process all personal data obtained through the marketplace and related services in accordance with the terms of our Privacy and Cookie Notice and Privacy Policy. Sellers shall be directly responsible to buyers for any misuse of their personal data and Jumia shall bear no liability to buyers in respect of any misuse by sellers of their personal data.

This term and condition is in compliance with section 7 and 10 of the Data Protection and Privacy Act which requires for one to have consent from the owner of the data to collect or process personal data. By a consumer accepting this term they give their consent to their data being collected and processed. However according to the above stated term and condition the seller is to be held responsible for the misuse of buyers` data and Jumia bears no liability yet Jumia is a collector and processor of the personal data. This exposes the owners of personal data to a risk of abuse by data collectors who may set up unconscionable terms and take advantage of consumers` data and use for their own profiting without limitations. Apart from sanctions set-up in the act for noncompliance, consumers whose data is abused or used for profiting don`t have any remedies available in the Act.

3.8. Limitations and exclusions of liability:

It is provided that nothing in the general terms and conditions will, limit any liabilities in any way that is not permitted under applicable law and exclude any liabilities or statutory rights that may not be excluded under applicable law.

This particular term and condition is line with section 28 of the Electronic Transaction Act which provides for invalidity of provisions of an agreement excluding consumer rights

4. Conclusion

The legal regime governing e-commerce in Uganda using Jumia as a case study clearly shows the loopholes that need to be better addressed by the legal regime. The legal challenges need to be addressed by coming up with multi-prong approach.

These spans from awareness creation among service providers to website design that make it possible for the consumers to understand the terms and conditions before entering into e-transactions.

The regulatory authority needs to take up its role of policing online service providers to ensure that the online platforms are carrying out their business without hurting innocent clients.

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