



Strathmore University

Law School

Interrogating the English Requirement in Hire Purchase Agreements; An Analysis of Section 5(2).

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Declaration

I, ABIGAIL JELIMO BURGEI, do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.



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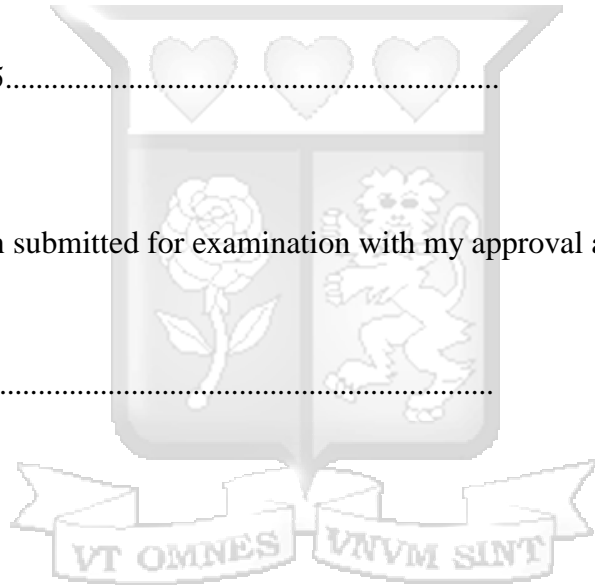
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This dissertation has been submitted for examination with my approval as University Supervisor.



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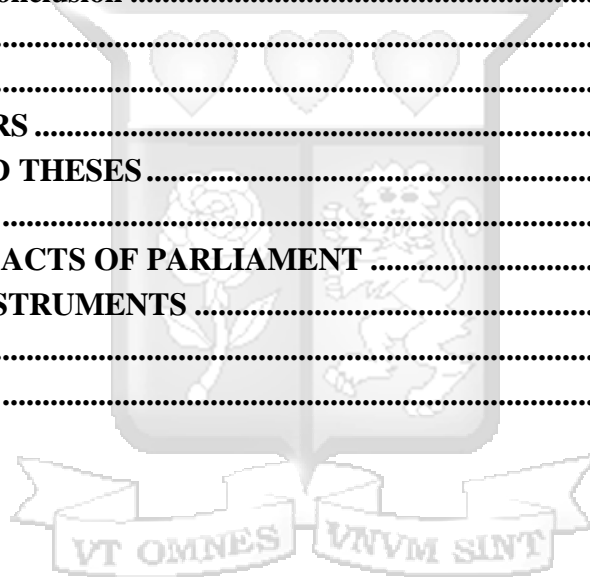
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List of abbreviations

HPA-Hire Purchase Act

CPA-Consumer Protection Act

CoK-Constitution of Kenya

LCA-Law of Contracts Act

FTA-Fair Trade Act

TANU-Tanganyika African National Union

List of Legal Instruments

The Constitution of Kenya (2010)

The Consumer Protection Act, 2013, Act No. 3 of 2013

The Hire Purchase Act ,1970, Act No. 11 of 1970

The Law of Contract Act, 1960, Act No. 43 of 1960

The Hire Purchase Act (Tanzania), 1966, Act No. 2 of 1966.

The Fair Competition Act (Tanzania), 2003, Act No. 8 of 2003

List of Cases

Credit Finance Corporation v Harcharan Singh Rambutta

Stanley Industries v W.M Barr &Co

Hubbard-Hall Chemical Co. v. Silverman

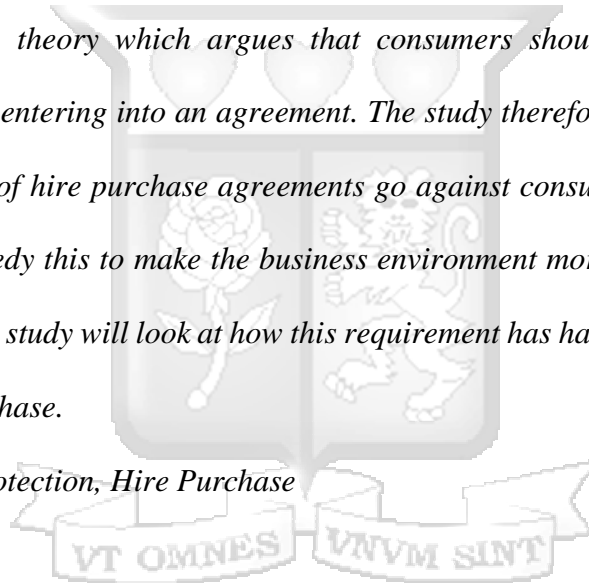
Ziglar v. E.I. DuPont de Nemours & Co

Land Appeal No. 22(High Court at Tanzania)

Abstract

Hire Purchase has been used by a majority of Kenyans when it comes to accessing certain products and services that are usually not accessible as they are very expensive. In order for a hire purchase agreement to be valid, it must fulfill certain requirements one of them being it must be in English. Even though English is one of Kenya's official languages, it may be difficult for many to understand due to the fact that they are not fluent in the language. This becomes a problem as they do not understand the terms of the agreement that they are entering into. This study therefore uses the consumer protection theory which argues that consumers should be shielded from any problems or issues when entering into an agreement. The study therefore aims at looking at how the English requirement of hire purchase agreements go against consumer protection principles and how Kenya can remedy this to make the business environment more inclusive and fairer for all parties. Therefore, the study will look at how this requirement has had an impact on consumers who engage in Hire Purchase.

Keywords- Consumer Protection, Hire Purchase



CHAPTER 1: INTRODUCTION

1.1 Background of the Problem

The English language has become one of the most dominant languages in the world. It is used as a language of instruction in schools and is used in legal contexts including contracts and court documents which must be in English. Activists such as Enock Aura wrote a demand letter to the Chief Justice in 2023 arguing that Magistrates and Judges should be open to receiving court documents that are not filed in English.¹ Additionally, even in cases where a witness chooses to testify in Kiswahili, the Magistrate or Judges will record the testimony in English.² This is because according to the Supreme Court Rules, the language of the court is in English.³ Mr. Aura argued that this practice is unconstitutional as the litigant or witness may have little to no understanding of the English language.⁴ This research will focus on Hire Purchase contracts, which also include provisions requiring the use of the English language.

A Hire Purchase Agreement is an agreement where a bailee rents or hires goods from the bailor for a certain period of time, with the option to purchase the goods at a later date.⁵ Therefore, ownership remains with the bailor until the bailee decides to purchase the goods meaning ownership will transfer to them.⁶

The use of Hire Purchase Agreements began in Britain in the 19th century where it was difficult for individuals to attain certain goods as they were expensive.⁷ Luxury goods were only purchased

¹ Wangui J,' Activist to CJ Koome English is a colonial language allow Kiswahili too', Nation, 27 February 2023 <https://nation.africa/kenya/news/activist-to-cj-koome-english-is-a-colonial-language-allow-kiswahili-too-4139680> on 15 November,2024

² Wangui J,' Activist to CJ Koome English is a colonial language allow Kiswahili too', Nation, 27 February 2023 [Wangui J,' Activist to CJ Koome English is a colonial language allow Kiswahili too', Nation, 27 February 2023](https://nation.africa/kenya/news/activist-to-cj-koome-english-is-a-colonial-language-allow-kiswahili-too-4139680) on 15 November,2024

³ Rule 8 (1), Supreme Court Rules (2020)

⁴ Wangui J,' Activist to CJ Koome English is a colonial language allow Kiswahili too', Nation, 27 February 2023 [Wangui J,' Activist to CJ Koome English is a colonial language allow Kiswahili too', Nation, 27 February 2023](https://nation.africa/kenya/news/activist-to-cj-koome-english-is-a-colonial-language-allow-kiswahili-too-4139680) on 15 November,2024

⁵ Section 2 Hire Purchase Act (1970)

⁶ Section 2 Hire Purchase Act (1970)

⁷ Scott P, 'The Twilight World of Interwar British Hire Purchase', Past and Present, No 177, 2002, 1 <https://www.jstor.org/stable/3600882?casa_token=sb5hgS_EGYAAAAA%3At4HkvcibKy5Ao_632BMwqCQJT_NgBfKoBqooD8tUVjos19taHOIG8c9sCSsO3IyspRiRP9mPinaUucqd7e19L07u7a3wxjrEM>28 February 2024

and used by members of the minority upper-class leaving middle-class and the lower-class with low priced and often low quality goods.⁸ Those who belonged to the upper-class such as aristocrats and wealthy industrialists were able to utilize Hire Purchase Agreements.⁹ In the 1860s, the use of Hire Purchase agreements trickled down to the middle and working classes.¹⁰ It was important for them to buy these high-priced goods as it became an indication of one's wealth and social status. The introduction of Hire Purchase Agreements allowed members of the middle and working classes to attain these high-priced goods as they were able to pay for them in installments.¹¹

In Kenya, Hire Purchase was first brought about by the common laws which originated from England.¹² The case of *Credit Finance Corporation v Harcharan Singh Rambutta* led the court to decide that common law from England should apply leading to the creation of and legislation of the Hire Purchase Act in the 1970.¹³ Currently, Hire purchase agreements are currently being governed by the Hire Purchase Act (HPA) of 1970 which provides for the rules and regulations regarding hire purchase agreements. According to section 5(2) of the HPA, a Hire Purchase Agreement should be registered unless it is not subject to stamp duty or is not written in English. However, according to the rules of contracts, a contract will be deemed valid if it has certain characteristics such as being written in form; however, the language it should be written has not been specified.

The HPA was passed in 1970, a few years after Kenya gained independence. The independence constitution of 1963, at the time, stated that the official language of the National Assembly would be in English.¹⁴ Furthermore, the independence constitution also stated that for one to be a member of parliament, they must be that they must be proficient in English.¹⁵ This provision seems to assert the dominance of English at that time and that the colonial administration was continuing as

⁸ Scott P, 'The Twilight World of Interwar British Hire Purchase', 1

⁹ Scott P, 'The Twilight World of Interwar British Hire Purchase', 1

¹⁰ Scott P, 'The Twilight World of Interwar British Hire Purchase', 2

¹¹ Scott P, 'The Twilight World of Interwar British Hire Purchase', 1

¹² Rogers M, 'A Note on Hire Purchase and Chattels Mortgage in Kenya', International Conference on Banking Law and Development in Africa, 1975, 2, <<https://www.jstor.org/stable/744928?seq=2>> 28th February 2024.

¹³ Rogers M, 'A Note on Hire Purchase and Chattels Mortgage in Kenya', 2.

¹⁴ Section 55, Constitution of Kenya (1963)

¹⁵ Section 40(1), Constitution of Kenya (1963)

English was the language of administration. This was the same under the 1969 constitution which had similar provisions.

When the Europeans came to Africa, one of their aims was to spread civilization which implied that African's were uncivilized which was an imperialist narrative used to justify colonization.¹⁶ A way of ensuring that Africans were assimilated into European culture was through teaching European languages such as English.¹⁷ In Kenya, the colonizers aimed at using language to spread their influence by teaching English to the Africans and forcing them to adopt their culture. Africans were manipulated into believing that the culture of the Europeans was more desirable therefore learning their language was a way of becoming like them.¹⁸ This is how English began to become a priority even among the natives and was still the same case after independence. During the colonial era, English was used as the language of instruction in missionary schools as well as Swahili however, English was still seen as the more elite language.¹⁹

During the post-colonial era, Kenya declared English as its official language. This means that it would be used in government as well as education which shows that the effects of colonization were still alive at that time which could have been because the African leaders who took over were spawns of colonialism.²⁰ Despite this, many Kenyans were against English being the primary language which was seen after the Kenya Education Commission conducted a survey to understand Kenyan's attitudes towards English the primary language in schools.²¹ Many Kenyans stated that a trilingual language system should have been adopted instead which would involve English, Swahili and one a native language depending on the area.²² English was therefore going to still be

¹⁶ Iraki F, 'Language and Political Economy: A historical perspective from Kenya', *Journal of Language, Technology & Entrepreneurship in Africa*, 2009, 3-file:///C:/Users/Pc/Downloads/ajol-file-journals_353_articles_41787_submission_proof_41787-4213-70384-1-10-20090326.pdf-12 February, 2025

¹⁷ Iraki F, 'Language and Political Economy: A historical perspective from Kenya', 3

¹⁸ Iraki F, 'Language and Political Economy: A historical perspective from Kenya', 3

¹⁹ Iraki F, 'Language and Political Economy: A historical perspective from Kenya', 3

²⁰ Nabea W, 'Language Policy in Kenya: Negotiation with Hegemony', *The Journal of Pan African Studies*, 2009, 5<https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=c07f5483d5f5fa9c84cb09b16c3dbd1781301627> - 12 February, 2025.

²¹ Nabea W, 'Language Policy in Kenya: Negotiation with Hegemony', 5

²² Nabea W, 'Language Policy in Kenya: Negotiation with Hegemony', 5

the medium of instruction and Swahili was also going to be taught in schools as it was a language that reflected national unity due to the fact that Kenya has several tribes.²³

In Kenya, it has been estimated that there should be around 41-61 languages spoken with the main ones being English as Swahili.²⁴ English is however the dominant language in Kenyan institutions with schools using it as the language of instruction even though there are instances where Swahili is used. In addition to that, there are instances where students are discouraged from speaking their native languages in school and are mostly encouraged to speak in English or Swahili.²⁵ In the legal system, English is the more dominant language with courts as Kenyan courts prefer submissions to be drafted in English. However, there are certain instances where Swahili can be used such as during examination of a witness but this is usually translated from Swahili to English in the court documents. Despite this, there are many Kenyans who are still not fluent in English and have a preference for Swahili or their native language.

According to Article 7 of the current Constitution, Kiswahili is Kenya's national language and the official languages are English and Kiswahili. This constitutional provision further asserts that the state shall promote and protect diversity as well as the use of indigenous languages.²⁶ In addition to that, Article 11 states that the state shall advance all forms of national and cultural heritage.²⁷ Consumer rights are also protected under Article 46 which states that consumers have certain rights such as the right to goods and services that are of reasonable quality, information that is necessary for them to gain full benefit from goods and services, protection of their health safety and economic interests and compensation if one suffers loss as a result of a defect of goods and services.²⁸ A consumer is defined under the Consumer Protection Act, as person to whom particular goods and services are marketed in the normal course of business, a person who has

²³ Nabea W, 'Language Policy in Kenya: Negotiation with Hegemony', 5

²⁴ Muaka L, 'Language Perceptions and Identity among Kenyan Speakers', Published, Winston Salem State University, North Carolina, 2011, 2

²⁵ Muaka L, 'Language Perceptions and Identity among Kenyan Speakers', Published, Winston Salem State University, North Carolina, 2011, 2

²⁶ Article 7, Constitution of Kenya (2010)

²⁷ Article 11, Constitution of Kenya (2010)

²⁸ Article 46, Constitution of Kenya (2010)

entered into a transaction with a supplier and a person who sues a particular good or product even though they are not directly involved in the transaction.²⁹

This research argues that section 5(2) of the HPA contravenes some constitutional provisions as stated above. Article 7 states that Kenya will have two official languages which are English and Kiswahili and that the state has the duty to protect indigenous languages. Section 5(2) of the HPA goes against this provision as only one language is being promoted despite the fact that Kiswahili is also a language understood by everyone, and is a national language as well as an official language. Moreover, the provision under Section 5(2) of the HPA also can also be argued to be inconsistent with Article 11 of the Constitution which argues that the state shall advance all forms of national and cultural heritage which also includes languages with Indigenous languages such as Kiswahili being one of them.

Article 46 of the Constitution aims at protecting the rights of consumers. This research argues that Section 5(2) of the HPA is in contravention with this constitutional provision. Consumers have the right to have their health, safety and economic interests protected. The English requirement may bring about disadvantages such as forcing an individual to get into an agreement in a language that they are not fully fluent in may lead to misunderstandings as well as errors.

English is one of the official languages spoken in Kenya with the other official language being Kiswahili. However, even though English is taught as one of the official languages it is not a language that is completely understood by the majority of the population.³⁰ This study aims at interrogating the English requirement that has been provided in the HPA by considering why it may pose a problem to the Consumers especially by considering Article 46 of the Constitution.

1.2 Problem Statement

Hire Purchase has been proven to be beneficial to a majority of individuals as its introduction allowed individuals from middle- and working-class backgrounds to have access to certain goods

²⁹ Section 2(1), The Consumer Protection Act (Act No.46 of 2012)

³⁰ <https://www.statista.com/statistics/1279540/primary-languages-spoken-at-home-in-kenya/> 13 November 2024

and services. In Kenya, they are essential for individuals who are not able to afford high priced goods and services as it gives them the opportunity to pay in installments. Therefore, the English requirement under section 5(2) of the Act is unfair as it is crucial for parties meaning the hirers and the owners to understand the terms and conditions of the contract before they get into it. This study therefore aims at interrogating the English requirement by looking at how it may be an issue for consumers by advocating for more linguistic inclusivity such as the inclusion of Kiswahili which is the other official language in Kenya.

1.3 Research Objectives

- 1) To examine the rationale behind the language requirement in the law, particularly in the Hire Purchase Act.
- 2) To understand the extent to which Section 5(2) of the HPA aligns with the requirements of consumer protection as set out under Article 46 of the Constitution.
- 3) To examine how Kenya can revise the language requirement in Section 5(2) of the Hire Purchase Act to enhance inclusivity, ensuring accessibility for all consumers, and what lessons Kenya can learn from Tanzania's approach to language use in legal frameworks.

1.4 Research Questions

- 1) Why does the law, including the Hire Purchase Act, impose a language requirement?
- 2) Does Section 5(2) of the HPA align with consumer protection principles?
- 3) How can Kenya revise the language requirement in Section 5(2) of the HPA to ensure greater inclusivity and accessibility?

1.5 Hypothesis

The mandatory requirement that Hire Purchase Agreements are in English is unfair as it may hinder comprehension of the parties. This is because the parties may not understand the terms of the agreement which is very important. They may therefore agree to terms that they so not wish to. This is because they do not have enough knowledge on the terms to make proper decisions.

1.6 Theoretical framework

Consumer Protection theory

The consumer protection theory is the theory that will be employed in this study. Consumer protection refers to the act of safeguarding parties when it comes to the selling and buying of goods and services. Consumer protection allows for markets to work for both sides meaning the businesses and the consumers.³¹It protects consumers from possibly obtaining information that is not accurate or that they are not able to fully comprehend. This gives them the advantage of being able to make informed choices and may reduce instances of possibly being misled by the seller.³²

Businesses can therefore be held accountable in the event that a buyer is a victim of an unfair business practice. In addition to that, the economy of a country can also benefit from consumer protection. Businesses are pressured into ensuring that their goods and services are fair and of high quality therefore, businesses are encouraged to come up with innovative solutions that ensure that the consumers interests are recognized and protected.

This research asserts that language does in fact play a key role in how consumers understand and interact with contracts. Contracts such as Hire Purchase agreements ought to be understood so that consumers are able to make informed decisions and avoiding unfair practices and exploitations. In addition to that, the fact that these Hire Purchase Agreements are not in English can bring about problems as consumers may not be able to seek compensation.

This theory has certain rights that are linked to it and are also mentioned under Article 46 of the Kenyan Constitution. These rights are the right to goods and services of reasonable quality, rights to attain the necessary information regarding the goods or services, the right to have their health, safety and economic interests protected and the right to receive compensation in the event that the goods and services that they attain.

³¹ <https://www.cak.go.ke/what-we-do/consumer-protection/overview> >15 November 2024

³² <https://www.cak.go.ke/what-we-do/consumer-protection/overview> 15 November 2024

1.7 Literature review

Different authors have studied the effect of hire purchase on consumers as well as sellers. However, authors have not been able to get into the English requirement laid out under section 5(2) of the HPA. Additionally, some have looked at language used in a contract and consumer protection.

Newman looks at the South African Consumer Protection Act and argues that the use of plain and understandable language is essential in a contract.³³ The author defines plain and simple language as language that is simple and straightforward therefore it does not talk of a specific language.³⁴ The aim is to ensure that a consumer is able to read a contract and understand without undue effort. According to Newman, this can be done by simplifying structure of contracts by avoiding the use of too much jargon that would be hard to comprehend. This would be in line with the concept of Consumer Protection as the interests of consumers are protected.³⁵ However, the author does not look at the fact that requiring a contract to be in a particular language does not align with the idea of Consumer Protection.

Stoop and Churr also discuss the importance of using plain and simple language in contracts. In this paper, the authors also focus on the Consumer Protection Act of South Africa.³⁶ They point out that it is important that the language of a contract is plain and understandable as it empowers consumers allowing them to make informed decisions.³⁷ Furthermore, they also assist businesses as there is increased transparency because consumers may trust these businesses more.³⁸ The

³³ Newman S, 'The Understanding of The Plain and Understandable Language Requirement in Terms of the Consumer protection Act -Can we Learn from Past Precedent?', *Obiter- Nelson Mandela Law Journal*, 2012 1, - <https://obiter.mandela.ac.za/article/view/12138>-15 November 2024

³⁴ Newman S, 'The Understanding of The Plain and Understandable Language Requirement in Terms of the Consumer protection Act -Can we Learn from Past Precedent?', 4

³⁵ Newman S, 'The Understanding of The Plain and Understandable Language Requirement in Terms of the Consumer protection Act -Can we Learn from Past Precedent?', 4

³⁶ Churr P and Stoop PN, 'Unpacking the Right to Plain and Understandable Language in the Consumer Protection Act 68 of 2008', *Potchefstroom Electronic Law Journal*, 2017,3 - https://www.researchgate.net/publication/317110845_Unpacking_the_Right_to_Plain_and_Understandable_Language_in_the_Consumer_Protection_Act_68_of_2008- 15 November 2024

³⁷ Churr P and Stoop PN, 'Unpacking the Right to Plain and Understandable Language in the Consumer Protection Act 68 of 2008',30

³⁸ Churr P and Stoop PN, 'Unpacking the Right to Plain and Understandable Language in the Consumer Protection Act 68 of 2008',30

authors however noted that there are no guidelines surrounding what exactly amounts to clear and simple language.³⁹ The authors in this paper also do not look at any specific language requirements in contracts. Moreover, the authors do not focus on Hire Purchase Agreements.

According to Moses Wanjala, hire purchase has been able to aid Small and Medium -sized Enterprises (SMEs) when it comes to debt management practices.⁴⁰ Debt management practices is how a business may plan out how their debts will be paid.⁴¹ It is therefore a method of financial planning. The paper also considered how hire purchase has been able to assist SMEs when it comes to attainment of certain assets.⁴² The author in this paper did not focus on the requirements of the HPA under section 5(2) especially the English requirement.

Mararia Wanjiku discussed hire purchase in relation to consumer protection and how certain parties are at risk.⁴³ According to the author, certain parties are at risk especially the owner being at risk because the hirer may choose not to complete completion of the payment but still keep the property.⁴⁴ The author therefore argues that the HPA should protect owners from potential losses.⁴⁵ The author however does not focus on the English requirement and how it could potentially go against consumer protection as the parties are not able to understand the terms.

³⁹ Churr P and Stoop PN, 'Unpacking the Right to Plain and Understandable Language in the Consumer Protection Act 68 of 2008',30

⁴⁰ Wanjala M,' Effect of Debtors Management Practices on Growth of Small and Medium sized enterprises in Kenya; A Case Study of the Hire Purchase Sector in Kenya', Published, Jomo Kenyatta University of Agriculture and Technology, Nairobi, 2018,5

⁴¹ Wanjala M,' Effect of Debtors Management Practices on Growth of Small and Medium sized enterprises in Kenya; A Case Study of the Hire Purchase Sector in Kenya', Published, Jomo Kenyatta University of Agriculture and Technology, Nairobi, 2018,5

⁴² Wanjala M,' Effect of Debtors Management Practices on Growth of Small and Medium sized enterprises in Kenya; A Case Study of the Hire Purchase Sector in Kenya', Published, Jomo Kenyatta University of Agriculture and Technology, Nairobi, 2018,5

⁴³ Mariara W, 'Hire Purchase Law in Kenya; a case for consumer protection', Published, 2004, University of Nairobi, University of Nairobi, Nairobi, 2004,2

⁴⁴ Mariara W, 'Hire Purchase Law in Kenya; a case for consumer protection', Published, 2004, University of Nairobi, University of Nairobi, Nairobi, 2004,2

⁴⁵ Mariara W, 'Hire Purchase Law in Kenya; a case for consumer protection', Published, 2004, University of Nairobi, University of Nairobi, Nairobi, 2004,2

Augustus Mbila also had commentary on the weaknesses of the HPA. According to him, the doctrine of freedom to contract is not present in the HPA in Kenya. ⁴⁶The doctrine of freedom to contract states that parties to a contract have the freedom to contract but to determine the terms of their contract. ⁴⁷However, Mbila argues that the HPA goes against the doctrine of freedom to contract because it already gives the specific requirements that should exist in a contract. ⁴⁸ This means that parties are not able to determine the terms of the agreement that are already set for them under the HPA. ⁴⁹ However, Mbila does not consider the fact that the English requirement also goes against the doctrine of freedom to contract as parties are not allowed to choose which language they wish to contract in.

This research will also look at previous literature concerning the difference between an official language and a national language which is important to understand for this research. ⁵⁰A national language is a language that is used by majority of the population and regardless of ethnicity while a national language is the language that is used for official purposes such as in the judiciary, the legislation as well as for administrative purposes. ⁵¹According to the CoK, the official languages are English and Kiswahili while the national language is English despite the fact that many Kenyans have had a preference for Kiswahili.

1.8 Significance of study

The English requirement under the HPA has not been interrogated in both case law as well as academic work. In addition to that, this study shows how potentially changing this requirement

⁴⁶ Mbila A, 'Discrimination in the Market: Examining the (In)Effectiveness of the Hire Purchase Act in Enforcing Hire Purchase Contracts in Kenya', *Human Rights and Rule of Law Journal*, 2021,13<https://www.researchgate.net/publication/373660927_Discrimination_in_the_Market_Examining_the_In_Effectiveness_of_the_Hire_Purchase_Act_in_Enforcing_Hire_Purchase_Contracts_in_Kenya>1 March 2024

⁴⁷ Mbila A, 'Discrimination in the Market: Examining the (In)Effectiveness of the Hire Purchase Act in Enforcing Hire Purchase Contracts in Kenya', 13

⁴⁸ Mbila A, 'Discrimination in the Market: Examining the (In)Effectiveness of the Hire Purchase Act in Enforcing Hire Purchase Contracts in Kenya',13

⁴⁹ Mbila A, 'Discrimination in the Market: Examining the (In)Effectiveness of the Hire Purchase Act in Enforcing Hire Purchase Contracts in Kenya',13

⁵⁰ Moreno K, Nathaniel F, 'Official and National languages in the Contemporary World', Published, University of South Eastern Philippines, Davao City, 2022, 9

⁵¹ Moreno K, Nathaniel F, 'Official and National languages in the Contemporary World', Published, University of South Eastern Philippines, Davao City, 2022, 9

may have an impact on consumer protection when it comes to contracts as it is important for the parties to understand the terms of the agreement making the realm of hire purchase a more even playing field. Therefore, this study aims at ensuring that the business environment can be more inclusive and considerate the needs of people. It also ensures that businesses do not take

1.9 Research Methodology

This study has used primary sources by using the Hire Purchase Act which is the governing act for hire purchase in Kenya, the Consumer Protection Act and the Constitution of Kenya. In addition to that, the general principles of contract law have also been considered under the Law of Contracts Act. The study also has secondary sources such as academic work of authors who have looked at Hire Purchase and its history as well as the idea of consumer protection and what exactly it entails.

1.10 Limitations

This study has certain limitations. While it may be possible to find case law based on the HPA, it may not be possible to find Kenyan Jurisprudence that is focused on section 5(2) that provides for English as a requirement for a hire purchase agreement to be valid. Furthermore, it may also be difficult to find instances where a judge may make an exception as this will require meeting with judges. This may not be possible due to the time constraints as the time is quite short to conduct a thorough analysis. The literature that I have relied on, mainly the academic works which are the secondary sources relating to Hire Purchase are difficult to access. This is because it is hard to find literature that is up to date that discusses the hire purchase in Kenya and the problems associated with the HPA.

1.11 Chapter Breakdown

1.11.1 Chapter 1

This chapter is the introduction section of the study that aims at introducing the area of law that should be changed. Therefore, this study will firstly provide a background of Hire Purchase Agreements in Kenya and section 5(2) of the HPA which lays out the English requirement. It will

have the hypothesis, statement of the problem, research questions and objectives, the significance of looking at this requirement and the limitations that could be encountered.

1.11.2 Chapter 2

Chapter 2 will focus on understanding the importance of having a language requirement in any law. The aim will be to expand its role in ensuring clarity, accessibility and fairness in the legal process. Moreover, it will examine how language plays a key role in communication in contracts and how language can hinder one from fully engaging with contract such as Hire Purchase Agreements.

1.11.3 Chapter 3

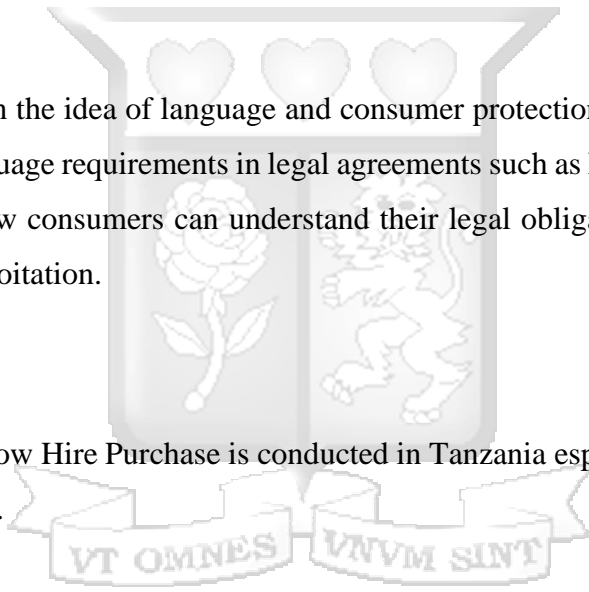
This chapter will focus on the idea of language and consumer protection. The aim of this chapter is to understand how language requirements in legal agreements such as Hire Purchase agreements can have an effect on how consumers can understand their legal obligations leading to cases of misunderstanding or exploitation.

1.11.4 Chapter 4

Chapter 4 will focus on how Hire Purchase is conducted in Tanzania especially when it comes to the language requirement.

1.11.5 Chapter 5

This chapter will provide recommendations by proposing practical steps that Kenya can take to ensure that consumers interests are protected by looking at Tanzania's law regarding language in Hire Purchase Agreements.



CHAPTER 2

2.1 Introduction

Language refers to words, their pronunciation and the methods of combining them used and understood by a group of people.⁵² It also reflects cultural world views showing how individuals perceive the world around them.⁵³ Language is also very essential for cultural bonds when it comes to interpreting the world around us and forming social bonds. Individuals are therefore able to express their intentions allowing them to create meaning.⁵⁴ When it comes to the law, language plays an important role as it is a method of ensuring that individuals are able to understand the things that govern them.

The aim of this chapter will be to understand the intention behind language requirements in law and the extent to which language plays a key role in the communication of contracts such as Hire Purchase Agreements.

2.2 Language Requirements in Law

This Chapter aims at considering why language requirements exist in law and how these requirements do not protect the interests of the consumers. The research will discuss the following reasons which are:

1. Clarity
2. Standardization
3. Accessibility
4. Historical Considerations

⁵² Merriam Webster, 11 ed

⁵³ Boylan P, 'Language as Representation, as Agency, as Being', *International Association for Languages and Intercultural Communication*, 2002, 5-
<file:///C:/Users/Pc/Downloads/Language As Representation As Agency As.pdf> on 28 November 2024

⁵⁴ Boylan P, 'Language as Representation, as Agency, as Being', 5

2.2.1 Clarity

Clarity is an essential requirement when it comes to any contract including Hire Purchase Agreements. It has been argued that using one language or having a standard language requirement is important as it eliminates ambiguities which can take place when terms have several meanings in different languages.⁵⁵ The formal language theory argues that terms used in contracts should be specific and unambiguous.⁵⁶ This argument has been used to justify why a language requirement would be present under various laws such as the HPA. A formal language requirement therefore promotes clarity and prevents issues of unambiguity.⁵⁷

However, this research argues that language requirements such as the one under section 5(2) of the HPA may actually discourage clarity rather than promote it. Firstly, there may be a large degree of legal language that is used in the contract making it hard for a layman to truly understand.⁵⁸ This is because using legal jargon requires one to understand it and interpret it which may be difficult for someone to do.⁵⁹ This may lead to consumers entering into contracts even when they do not fully understand the terms and conditions of the contract. This can also lead to lower levels of confidence in the legal system among individuals as they may not have an understanding of what they are entitled to.

2.2.2 Standardization

Standardization is also an argument as to why having a language requirement is necessary. Language requirements in contracts that have been prescribed by law have been argued to ensure

⁵⁵ Hvitved T, 'A Survey of Formal Languages for Contracts', *Formal Languages and Analysis of Contract-Oriented Software*, 2010,4-<https://researchprofiles.ku.dk/en/publications/a-survey-of-formal-languages-for-contracts-28> November 2024.

⁵⁶ Hvitved T, 'A Survey of Formal Languages for Contracts',4

⁵⁷ Hvitved T, 'A Survey of Formal Languages for Contracts',4

⁵⁸ Filipowski O, 'The Impact of Language on the building of the Internal Market: The Consumer Transactions Perspective', *Wroclaw Review of Law, Administration & Economics*,2014, 6-<https://intapi.sciendo.com/pdf/10.1515/wrlae-2015-0002>-on 28 November 2024.

⁵⁹ Filipowski O, 'The Impact of Language on the building of the Internal Market: The Consumer Transactions Perspective',8

and promote uniformity. The argument was that it would make contracts more enforceable and would promote consistency.

It has been argued that language requirements are a way of ensuring that there is uniformity. This helps in instances where certain terms can be interpreted differently.⁶⁰ It has been contended that having contracts in multiple languages can lead to various divergences taking place such as interpreting important terms differently. Using a particular language will reduce conflicts and issues where there are loopholes.⁶¹ Additionally, if there are instances where there is more than one language spoken, the preference for using one language could be a way of combating the multiple translations and conceptions of particular terms or words.

Consistency is also a reason as to why language requirements exist in laws. It refers to the quality of staying the same in every instance. Language requirements tend to promote consistency as they are a way of ensuring that the contracts do remain the same regardless of the parties involved or where they are enforced.⁶² There can be different meanings of different words or phrases when it comes to contracts therefore having a language requirement allows courts to have consistent standards which gives room for predictability for both consumers as well as businesses.⁶³ Therefore, the consistency that arises as a result of the language requirement gives room for terms to have the same meaning throughout.

This research however argues that the language requirement does not promote standardization. This is because there may still be issues of misinterpretation as standardization tends to assume that everyone will interpret certain terms in a particular way. For instance, the term *force majeure* which refers to unforeseeable circumstances that prevent a contract from being fulfilled may have various meanings.⁶⁴ The meaning may vary depending on the legal system. For instance, *force*

⁶⁰ Filipowski O, 'The Impact of Language on the building of the Internal Market: The Consumer Transactions Perspective',6

⁶¹ Filipowski O, 'The Impact of Language on the building of the Internal Market: The Consumer Transactions Perspective',6

⁶² Hvitved T, 'A Survey of Formal Languages for Contracts',4

⁶³ Durant A and Heung J, 'Legal Order and Linguistic Diversity in *Language and Law*', Routledge Taylor and Francis Group, London and New York,2016,48

⁶⁴ <https://gallp.co.ke/insights-pt/legal-opinion-on-the-doctrine-of-force-majeure/> 28 November 2024

majeure under the French legal system means that an event is external, unforeseeable and insurmountable meaning that it is hard to overcome.⁶⁵ However, the German legal system the term force majeure is not used and is referred to as impossibility.⁶⁶

2.2.3 Accessibility

Language requirements may exist in law as a way of ensuring that there is accessibility. Parties involved are able to interact with contracts and ensuring that everyone is able to understand the terms of the contract regardless of their linguistic background.⁶⁷ This allows for consumers and businesses to carry out business activities without having to be concerned about the language of the contract. Additionally, the legal process is also more efficient as courts do not have to take time to translate the contracts allowing the court process to move at a faster rate and generally reducing the administrative burden.⁶⁸

However, this argument can be said to be faulty. The proponents of having a language requirement would argue that having it promotes accessibility.⁶⁹ Requiring that a contract should be in English prevents accessibility as it bars non-English speakers from understanding the terms which has social and economic consequences.⁷⁰ The individuals who do not fully understand English may also not have the resources to translate the contracts. A power imbalance may therefore arise where consumers are left at a vulnerable state with the risk of being exploited.

⁶⁵ Guo Y, Alam H and Dahlan, 'Comparative Research on Force Majeure in Contract Law', *International Journal of Crime and Justice Science*, 2024, 107-[file:///C:/Users/Pc/Downloads/6-IJCJS+19\(1\)2024+final+14%25,+IJCJS-784-Zihan+update-clean.pdf](file:///C:/Users/Pc/Downloads/6-IJCJS+19(1)2024+final+14%25,+IJCJS-784-Zihan+update-clean.pdf)-on 20 November 2024

⁶⁶ Guo Y et al, 'Comparative Research on Force Majeure in Contract Law', 107

⁶⁷ Filipowski O, 'The Impact of Language on the building of the Internal Market: The Consumer Transactions Perspective', 3

⁶⁸ Filipowski O, 'The Impact of Language on the building of the Internal Market: The Consumer Transactions Perspective', 3

⁶⁹ Filipowski O, 'The Impact of Language on the building of the Internal Market: The Consumer Transactions Perspective', 6

⁷⁰ Filipowski O, 'The Impact of Language on the building of the Internal Market: The Consumer Transactions Perspective', 6

2.2.4 Historical considerations

It is also very important to consider history when discussing why the provision under section 5(2) exists. The fact that Kenya is a former British colony could be argued to greatly contribute as to why such a provision may exist. Kenya decided to adopt English as the official language which can be seen in the independence constitution.⁷¹ It is also used in schools as a language of instructions and is also the language of commerce as well as in legal proceedings.⁷² This is also the case when it comes to several former British colonies in Africa and Asia. This may have been a way of ensuring that there is clarity and consistency in laws and legal practices and also a way of promoting uniformity.

Nevertheless, according to this research, the requirement can also be a way of promoting Anglo-centrism which refers to the practice of viewing the world primarily through the lens of British or English culture and disregarding other perspectives. This research argues that the English language requirement could have been a way of promoting British culture and disregarding other languages that are more comfortable to Africans such as Kiswahili. Additionally, section 5(2) of the HPA could be present as the HPA passed in 1970 which was a few years after Kenya's independence and it is possible that the legislators still had some sort of colonial mentality.

2.3 Conclusion

Language requirements exist in law as a way of promoting Clarity, Standardization as well as Accessibility. However, this research argues that language requirements are more problematic than advantageous meaning that they may do more harm than good. This is because agreements may not be clear to consumers as they do not understand the terms. In addition to that, standardization may not necessarily be achieved as there is still the risk of misrepresentation. Accessibility may also not be achieved as non-English speaking parties may not be able to understand the terms of the contract meaning that these requirements are exclusionary.

⁷¹ Section 55, Constitution of Kenya (1963)

⁷² Michieka M, 'English in Kenya: a sociolinguistic profile', *World Englishes*, 2005, 182-
<https://onlinelibrary.wiley.com/doi/epdf/10.1111/j.1467-971X.2005.00402.x>-on 29 November 2024

CHAPTER 3

3.1 Introduction

In the previous chapter, this research has delved into the importance of language requirements in laws and how the English provision under the HPA goes against some of the concepts that it wishes to promote which are clarity, standardization accessibility and historical considerations. This chapter will discuss the link between language and contracts such as Hire Purchase Agreements and how parties not understanding a language has negative effects. Kenya's consumer protection framework will also be assessed in this chapter by looking at the CA and its provisions regarding comprehending information. The chapter will therefore look at what consumer protection is, why it is important and the relationship between language and consumer protection.

The concept of Consumer Protection has its roots in Roman Law where there were implied warranties against any defects that were found in goods.⁷³ As time passed, regulations extended to weights, dangerous drugs and fraudulent practices that can be undertaken by sellers.⁷⁴

Consumer Protection refers to the practice of safeguarding consumers against unfair practices that will possibly harm them.⁷⁵ This is done through the use of statutes such as the Consumer Protection Act which are meant to prevent businesses and corporations from using unfair, fraudulent or deceptive practices which will place them at an advantage at the expense of consumers.⁷⁶ In Kenya, consumer protection is provided for under the country's Grundnorm, the Constitution, which states that customers have the right to goods and services that are of reasonable quality, to information necessary for them to access and gain full benefit from goods and services and to protection of their health and economic interests.⁷⁷ Article 46 of the CoK also states that

⁷³ Hadfield G, 'Information-Based Principles for Rethinking Consumer Protection Policy', *Journal of Consumer Policy*, 1,1998 -file:///C:/Users/Pc/Downloads/A_1006863016924.pdf - 19 January 2025

⁷⁴ Hadfield G, 'Information-Based Principles for Rethinking Consumer Protection Policy',1

⁷⁵ <https://www.law.georgetown.edu/your-life-career/career-exploration-professional-development/for-jd-students/explore-legal-careers/practice-areas/consumer-protection/>-19 January, 2024

⁷⁶ Article 46, Constitution of Kenya (2010)

⁷⁷ Article 46, Constitution of Kenya (2010)

individuals are entitled to compensation if any loss or injury has been suffered if any problems are faced.⁷⁸

3.2 Purpose of Consumer Protection

This section of this research aims at looking at the aims of consumer protection laws generally which will also be used to argue these aims are connected to language requirements. The aims of consumer protection are⁷⁹:

- 1) Information Availability
- 2) Preventing Exploitation
- 3) Remedies
- 4) Boosting Market Efficiency

3.2.1 Information Availability

The aim of consumer protection is to ensure that buyers or consumers are able to access the necessary information to a particular product or service.⁸⁰ This allows the consumers to make informed decisions such as whether or not they want to purchase a product or service.⁸¹ This is because there are instances where consumers are not able to access the necessary information that they need such as the price of a product or service or any risks or benefits.⁸² This is very important when it comes to Hire Purchase Agreements as it essential for consumers to understand their financial obligations and avoid instances of exploitation.

Furthermore, information availability is important as it levels the playing field. This is because when consumers have the necessary information, they can navigate the market more skillfully as

⁷⁸ Article 46, Constitution of Kenya (2010)

⁷⁹ Hadfield G, 'Information-Based Principles for Rethinking Consumer Protection Policy',4

⁸⁰ Hadfield G, 'Information-Based Principles for Rethinking Consumer Protection Policy',4

⁸¹ Hadfield G, 'Information-Based Principles for Rethinking Consumer Protection Policy',4

⁸² Hadfield G, 'Information-Based Principles for Rethinking Consumer Protection Policy',4

they will be able to advocate for themselves.⁸³ Additionally, information availability also promotes competition among businesses and corporations as they now aim at ensuring that they build trust with consumers as a way of gaining a good reputation.⁸⁴ They therefore do this to provide the information that is necessary which is usually advantageous to their business. The consumers therefore motivate businesses and corporations to ensure that they maintain high standards.⁸⁵

3.2.2 Preventing Exploitation

The relationship between consumers and businesses and corporations usually involves an imbalance of power.⁸⁶ This is mostly common when there are larger corporations and businesses that are popular and may take advantage of consumers who are not knowledgeable. Consumer protection therefore comes in as a way of preventing this less knowledgeable exploitation from being exploited.⁸⁷ In addition to that, when exploitation is prevented, there is a level of trust that is built between consumers and corporations. This shows that it is important for ethical business practices to be carried out as they benefit both the consumer and the corporations.⁸⁸

3.2.3 Remedies

One essential component of consumer protection is the availability of remedies and channels for redress.⁸⁹ It is essential that customers have access to efficient channels for resolving their complaints when they run into problems, such as being defrauded or obtaining faulty goods. Consumers can seek compensation or redress for unjust treatment through a variety of channels established under consumer protection regimes, including mediation services, complaint

⁸³ Hadfield G, 'Information-Based Principles for Rethinking Consumer Protection Policy',4

⁸⁴ Hadfield G, 'Information-Based Principles for Rethinking Consumer Protection Policy',1

⁸⁵ Hadfield G, 'Information-Based Principles for Rethinking Consumer Protection Policy',4

⁸⁶ <https://www.americanprogress.org/article/language-access-is-a-consumer-protection-issue/> on 20 January 2025

⁸⁷ Hadfield G, 'Information-Based Principles for Rethinking Consumer Protection Policy', 20

⁸⁸ Hadfield G, 'Information-Based Principles for Rethinking Consumer Protection Policy',20

⁸⁹ Hadfield G, 'Information-Based Principles for Rethinking Consumer Protection Policy',20

resolution procedures, and legal action.⁹⁰ Consumer protection laws enable people to intervene when they feel their rights have been infringed by providing these choices.

Additionally, the availability of affordable and efficient solutions benefits both individual customers and the overall industry.⁹¹ Customers are more inclined to participate actively in the market without worrying about being taken advantage of or let down when they are aware that they have options.⁹² Because they can protect their interests, consumers are encouraged to make purchases with assurance, which promotes a more prosperous market economy.⁹³ Therefore, promoting a market where justice is upheld and consumer welfare is given priority requires efficient remedy procedures.

3.2.4 Boosting Market Efficiency

Lastly, consumer protection improves market efficiency by promoting an atmosphere in which knowledgeable and safeguarded customers can take part in business that is fair.⁹⁴ A strong foundation for protecting customers makes them more discriminating in their purchases, which in turn increases competition between companies. Customers engage in the market more actively and demand better goods, services, and costs when they are well-informed and shielded from unfair business practices.⁹⁵ Businesses compete to draw customers with better products as a result of this greater engagement, which eventually helps the economy as a whole.

Furthermore, by resolving problems like unequal pricing, information asymmetry, and product quality, consumer protection laws support the market's general well-being.⁹⁶ They guarantee that everyone competes on an even playing field, where moral business conduct is rewarded and

⁹⁰ <https://cak.go.ke/sites/default/files/guidelines/consumer-protection/Consumer%20Protection%20Guidelines.pdf>
on 20 January 2025

⁹¹ <https://cak.go.ke/sites/default/files/guidelines/consumer-protection/Consumer%20Protection%20Guidelines.pdf>
on 20 January 2025

⁹² Hadfield G, 'Information-Based Principles for Rethinking Consumer Protection Policy', 20,

⁹³ Hadfield G, 'Information-Based Principles for Rethinking Consumer Protection Policy', 20,

⁹⁴ Hadfield G, 'Information-Based Principles for Rethinking Consumer Protection Policy', 20,

⁹⁵ Hadfield G, 'Information-Based Principles for Rethinking Consumer Protection Policy', 20,

⁹⁶ Hadfield G, 'Information-Based Principles for Rethinking Consumer Protection Policy', 20,

immoral behavior is punished.⁹⁷ As a result, businesses are forced to improve in order to satisfy the expectations of consumers, and consumer welfare is given priority. In this situation, protecting consumers is not only a matter of law, it is a fundamental component of an effective market that promotes the interests of all parties.⁹⁸

3.3 Kenya's Consumer Protection Framework

In Kenya, the foundational framework for consumer protection can be found under Article 46 of the constitution. This provision states out the principles of consumer protection which are to apply to goods and services in the private sector as well as the public sector.⁹⁹ The constitution also states that parliament should enact a legislation to ensure that there is consumer protection which is the Consumer Protection Act.¹⁰⁰ Furthermore, the HPA and the CPA work together to ensure that business agreements such as Hire Purchase are fair and transparent.

Under the CPA, there are various implications of the consequences of not understanding the language of a contract. The act states that if any cases of ambiguity, then the terms ought to be interpreted in a manner that will benefit the consumer. This means that if wording in the words of the agreement could be interpreted differently, then it should be interpreted in a way that benefits the consumer.¹⁰¹ Furthermore, the CPA also states that an action can be deemed to be unfair practice if the vendor is aware of the fact that a consumer may not understand a contract due to issues such as illiteracy.¹⁰² The CPA also discourages any form of ambiguity that may hinder a consumer from understanding the terms of a contract.¹⁰³ These provisions imply that the English requirement in the HPA go against the idea of consumer protection as consumers are left vulnerable to things like extortion.

⁹⁷ Hadfield G, 'Information-Based Principles for Rethinking Consumer Protection Policy',20

⁹⁸ Hadfield G, 'Information-Based Principles for Rethinking Consumer Protection Policy',20,

⁹⁹ Article 46(3), Constitution of Kenya (2010)

¹⁰⁰ Article 46(2), Constitution of Kenya (2010)

¹⁰¹ Section 7, Consumer Protection Act (Act No.46 of 2012)

¹⁰² Section 13 (2) (a), Consumer Protection Act (Act No.46 of 2012)

¹⁰³ Section 12 (n), Consumer Protection Act (Act No.46 of 2012)

3.4 Language and Consumer Protection

Language plays a very important role when it comes to consumer protection as they are closely linked. Language can be used as a tool to either promote consumer protection or to undermine it. This research argues that requirements such as the English Requirement under the HPA can have negative consequences as they have an effect on consumer protection.

Firstly, this research argues that a language requirement may create blockades for consumers who are not fluent in English. This means that consumers may not be able to access certain products or services especially if majority of them are not familiar with the English language.¹⁰⁴ Consumers may have a hard time understanding Hire Purchase Agreements which could lead to misinformation.¹⁰⁵ Additionally, they could be left vulnerable to exploitation especially in instances where they are dealing with a major corporation or business.¹⁰⁶ Such corporations may engage in exploitative practices such as misrepresentation of terms and fraudulent practices since some of the parties do not fully comprehend the English language.¹⁰⁷

Secondly, there is also the assumption that consumers will read and understand their contracts.¹⁰⁸ However, consumers may have a hard time when it comes to understanding legal terminology which may lead to them signing terms they do not understand.¹⁰⁹ This leads to market imperfection where consumers may have a likelihood of being victims of misleading market practices.¹¹⁰ Furthermore, in as much as consumer protection means being able to gain access,

¹⁰⁴ Bender S, 'Consumer Protection for Latinos: Overcoming Language Fraud Consumer Protection for Latinos: Overcoming Language Fraud and English Only in the Market place and English Only in the Marketplace', *Seattle University School of Law Digital Commons*, 1996,4-<https://digitalcommons.law.seattleu.edu/faculty/395/>-28 January 2025

¹⁰⁵ Bender S, 'Consumer Protection for Latinos: Overcoming Language Fraud Consumer Protection for Latinos: Overcoming Language Fraud and English Only in the Market place and English Only in the Marketplace',4

¹⁰⁶ Bender S, 'Consumer Protection for Latinos: Overcoming Language Fraud Consumer Protection for Latinos: Overcoming Language Fraud and English Only in the Market place and English Only in the Marketplace',52

¹⁰⁷ Bender S, 'Consumer Protection for Latinos: Overcoming Language Fraud Consumer Protection for Latinos: Overcoming Language Fraud and English Only in the Market place and English Only in the Marketplace',52

¹⁰⁸ Bender S, 'Consumer Protection for Latinos: Overcoming Language Fraud Consumer Protection for Latinos: Overcoming Language Fraud and English Only in the Market place and English Only in the Marketplace',40

¹⁰⁹ Bender S, 'Consumer Protection for Latinos: Overcoming Language Fraud Consumer Protection for Latinos: Overcoming Language Fraud and English Only in the Market place and English Only in the Marketplace',40

¹¹⁰ Bender S, 'Consumer Protection for Latinos: Overcoming Language Fraud Consumer Protection for Latinos: Overcoming Language Fraud and English Only in the Market place and English Only in the Marketplace',40

comprehension is also another important and essential part of consumer protection. When the terms of a contract such as Hire Purchase Agreements are not understandable due to language barriers, there can be certain disadvantages and downsides such as being taken advantage of.¹¹¹

In the USA, the English only requirement has had an effect on Latino community who are more conversant with Spanish. In the case of *Stanley Industries v W.M Barr &Co*, the court ruled that English only warnings were inadequate for Spanish speaking individuals when it comes to products or services.¹¹² This was the court's judgement after two Nicaraguans purchased linseed oil without understanding the risks one of them being its flammability as the risks were only explained in English which they did not understand.¹¹³ The court ruled in favour of the two Nicaraguans arguing that the manufacturers should have written the warnings in Spanish as well as their target audience were Spanish speakers.¹¹⁴

Additionally, in the case of *Hubbard-Hall Chemical Co. v. Silverman*, the court ruled in favour of two Puerto-Rican who were not fluent in English.¹¹⁵ They died as a result of using Parathion which is a pesticide.¹¹⁶ The court argued that the manufacturers should have foreseen that non-English speaking individuals and should have considered using symbols such as skulls.¹¹⁷ A similar judgement was given in the case of *Ziglar v. E.I. DuPont de Nemours & Co* where a court in the state of North Carolina ruled that manufacturers of a pesticide should have foreseen that non-English speaking individuals might use the product.¹¹⁸ Moreover, the court stated that using the small sized skull warning was not sufficient enough to pass as a warning and that a manufacturer must ensure that warnings are understandable.¹¹⁹ These cases illustrate that the role that language

¹¹¹ <https://www.americanprogress.org/article/language-access-is-a-consumer-protection-issue/> on 31 January 2024

¹¹² Lee T, 'Purposeful Approach to Products Liability Warnings and Non- English Speaking Consumers Notes', *The Fordham Law Archive and Scholarship and History*, 1994, 21-
<file:///C:/Users/Pc/Desktop/4.2/Dissertation/Purposeful%20Approach%20to%20Products%20Liability%20Warnings%20and%20Non-Englis.pdf>-31 January 2025

¹¹³ Lee T, 'Purposeful Approach to Products Liability Warnings and Non- English Speaking Consumers Notes', 21

¹¹⁴ Lee T, 'Purposeful Approach to Products Liability Warnings and Non- English Speaking Consumers Notes', 22

¹¹⁵ Lee T, 'Purposeful Approach to Products Liability Warnings and Non- English Speaking Consumers Notes', 22

¹¹⁶ Lee T, 'Purposeful Approach to Products Liability Warnings and Non- English Speaking Consumers Notes', 22

¹¹⁷ Lee T, 'Purposeful Approach to Products Liability Warnings and Non- English Speaking Consumers Notes', 14

¹¹⁸ Lee T, 'Purposeful Approach to Products Liability Warnings and Non- English Speaking Consumers Notes', 14

¹¹⁹ Lee T, 'Purposeful Approach to Products Liability Warnings and Non- English Speaking Consumers Notes', 15

when it comes to consumer protection and indicate that the HPA can be amended to include Kiswahili as one of the languages.

3.5 Conclusion

This research therefore argues that there is a link between language and consumer protection. Consumer protection involves protecting consumers against unfair practices and potential exploitation. Language requirements such as those under the HPA can lead to disadvantages such as signing or agreeing to terms that they do not fully understand. This is because of the very important role language plays being a tool of communication.



CHAPTER 4

4.1 Introduction

Kenya and Tanzania share several similarities such as geographical location, history as well as legal ties. Firstly, both countries are former British colonies with Kenya gaining independence in 1963 and Tanzania gaining independence in 1961. Additionally, due to their colonial past both countries currently use the Common Law System which is a legal system that is developed through judicial decisions rather than statutes. Furthermore, both countries have both English and Swahili as the main languages and are normally understood by majority of citizens regardless of their ethnic background. However, in Tanzania, Swahili is the sole language that is used in government, education and law but English can be used. In contrast, English and Swahili are used in Kenya even though statistics show that 5% of Kenyan's use English as their primary language at home.¹²⁰ In Tanzania, Hire Purchase is conducted in a unique manner especially when it comes to the language requirement. The aim of this chapter will be to understand how Hire Purchase is conducted in Tanzania specifically their language requirements as well as understand why Tanzania may have chosen to frame their laws a certain way.

4.2 Hire Purchase in Tanzania

In Tanzania, the laws that govern Hire Purchase agreements are governed by the Hire Purchase Act which outlines the rights and obligations of parties. The Law of Contracts Act also outlines the general principles in contracts such as Hire Purchase agreements. The Consumer Protection Regulations (CPR) also prevents individuals from unfair practices that can arise as well as the Fair Competition Act which endures that certain practices are not exploitative in nature.¹²¹ For instance, Tanzania's FCA states that contracts should not create an imbalance of power.¹²² It also states that

¹²⁰ https://www.statista.com/statistics/1279540/primary-languages-spoken-at-home-in-kenya/?utm_source on February 5, 2025

¹²¹ Section 8, Fair Competition Act (2003).

¹²² Section 10, Fair Competition Act (2003)

consumers must have the necessary information before signing a contract. The country's FCA states that there should be no false or misleading terms in contracts.¹²³ This research is mostly focused on the Hire Purchase in Tanzania, specifically the language requirement.

The Tanzanian HPA and the Kenyan HPA have certain similarities which this research will highlight. Firstly, the Tanzanian HPA and the Kenyan HPA have a similar definition of what Hire Purchase is with both highlighting that it is an agreement for the bailment of goods where the bailee may buy the goods and pay in installments and property may pass to them after a certain period of time.¹²⁴ Secondly, both Acts state that the essential requirements of Hire Purchase agreement such as the price and the installment details.¹²⁵ Thirdly, both acts state that a Hire Purchase agreement must be in writing.¹²⁶ Another similarity between the two Acts is that they state that if the hirer pays at least two-thirds of the price, then the goods can only be repossessed through a court order therefore there are limitations on repossession.¹²⁷

According to Tanzania's HPA, the agreements must be in a language that all the parties will understand which are usually Swahili and English.¹²⁸ This means that if one of the parties does not understand English, there is the option of having the agreement in Swahili as it is more fathomable.¹²⁹ This is in line with the countries CPR which states that the terms of the contract should be comprehensible.¹³⁰ The idea that legal documents ought to be in an understandable language has also been discussed in other cases in Tanzania even though they are not Hire Purchase related cases. The High Court of Tanzania ruled that there must always be translation of legal proceedings from Swahili to English if it is necessary.¹³¹ This was after the Appellants had filed an appeal against the District Land Housing Tribunal in Swahili. In response, the District Land Housing

¹²³ Section 10, Fair Competition Act (2003) (Tanzania)

¹²⁴ Section 2 of Hire Purchase Act (Kenya) and Section 2 of the Hire Purchase Act (Tanzania)

¹²⁵ Section 6 of Hire Purchase Act (Kenya) and Section 6 of the Hire Purchase Act (Tanzania)

¹²⁶ Section 6 of Hire Purchase Act (Kenya) and Section 6 of the Hire Purchase Act (Tanzania)

¹²⁷ Section 15 of Hire Purchase Act (Kenya) and Section 15 of the Hire Purchase Act (Tanzania)

¹²⁸ Section 5(2), Hire Purchase Act (Tanzania)

¹²⁹ Section 5(2), Hire Purchase Act (Tanzania)

¹³⁰ Section 6, Consumer Protection Regulations (2001).

¹³¹ <https://fbattorneys.co.tz/bilingualism-in-court-proceedings-remains-confusing/> February 5 2025

objected to this stating that the appellants should have filed in English but the court ruled in Favour of the appellants.¹³²

4.3 History of language in Tanzania

This chapter aims at understanding how Hire Purchase is conducted in Tanzania especially when it comes to the language requirement. It has been established that Hire Purchase agreement can be in Swahili or English but this section aims at establishing why Tanzania may have chosen to have this by looking at the country's past with language.

The Swahili language can be traced back to the 10th century and can be traced back to East Africa where it is said to have come up as a way of ensuring communication between different groups living in the East African Coast.¹³³ There is also the belief Swahili arose after Arabic merchants married the local Bantu women from the coast. Nevertheless, many agree that Swahili is a Bantu language that has several Arabic words. Additionally, it is said the name Swahili originates from the Arabic word Sawahil which means coast.¹³⁴ When Tanzania became a Germany colony, Swahili was already being used by a large number of people which the colonialists encouraged as they relied on it for their administration.¹³⁵ After the first world war, heavy sanctions were imposed on Germany with one of them being loss of colonies in Africa such as Tanganyika. As a result, Britain took over the territory and began encouraging English making it the official language of Tanganyika and Swahili was used at the provisional and district level.¹³⁶

Swahili was still seen as a very important language as the people were more comfortable with it. In schools, it would be used the language of instruction especially during the early years and Christian missionaries also understood the importance of Swahili as people understood their

¹³² <https://fbattorneys.co.tz/bilingualism-in-court-proceedings-remains-confusing/> February 5 2025

¹³³ Petzell M, 'The Linguistic Situation in Tanzania', Unpublished, University of Gothenburg, Sweden, 2012, 1

¹³⁴ Petzell M, 'The Linguistic Situation in Tanzania', Unpublished, University of Gothenburg, Sweden, 2012, 2

¹³⁵ Petzell M, 'The Linguistic Situation in Tanzania', Unpublished, University of Gothenburg, Sweden, 2012, 2

¹³⁶ Petzell M, 'The Linguistic Situation in Tanzania', Unpublished, University of Gothenburg, Sweden, 2012, 2

message more.¹³⁷ When it came to the struggle for independence Tanganyika African National Union (TANU) used Swahili as a way of mobilizing the people and encouraging Pan-Africanism among the people meaning that the TANU freedom fighters did not need any translators when talking to the people regardless of their tribe as everyone understood it.¹³⁸ Furthermore, when the country finally became independent, the first president Julius Nyerere also encouraged the use of Swahili in the country with the National Swahili Council known as Baraza la Kiswahili la Taifa which promoted the use of Swahili.¹³⁹

By looking at Tanzania's history, this paper suggests that Tanzania's history with language could explain the Swahili language requirement in hire purchase. Firstly, the government has played a key role in promoting the use of Swahili in the country therefore the requirement that an agreement can be translated to Swahili if need be is in line with the government's rationale. Secondly, the language requirement also illustrates Swahili's cultural significance due to the fact the Swahili is almost like a national symbol and is an essential part of Tanzanian identity. Therefore, encouraging Swahili in Hire Purchase is almost an expression of this identity. Furthermore, the use of Swahili in Hire Purchase encourages accessibility as it allows the majority Swahili speaking population to enter into these agreements.

4.4 Conclusion

Swahili is an ancient language in East Africa and it has become very prominent in East Africa specifically Kenya and Tanzania. However, when it comes to Swahili Tanzania has taken a stronger stance when it comes to protecting and safeguarding the language through their various policies from independence. This may be a result of the philosophy TANU during the struggle for independence as well as of Tanzania's first president, Julius Nyerere who was trying to promote Tanzanian identity and mitigate the colonial mentality. Evidence of this can be seen in Hire Purchase Agreements where the Tanzanian HPA gives an allowance for agreement to be translated

¹³⁷ Petzell M, 'The Linguistic Situation in Tanzania', Unpublished, University of Gothenburg, Sweden, 2012, 3

¹³⁸ Petzell M, 'The Linguistic Situation in Tanzania', Unpublished, University of Gothenburg, Sweden, 2012, 3

¹³⁹ Petzell M, 'The Linguistic Situation in Tanzania', Unpublished, University of Gothenburg, Sweden, 2012, 3

from English to Swahili which is a reflection of the country's commitment to promoting its national identity through Swahili as well as encouraging accessibility.



CHAPTER 5

5.1 Recommendations

This dissertation has looked at section 5 (2) of Kenya's HPA by arguing that the English requirement contradicts Consumer Protection which is under Article 46 of the Constitution. This is because Kenya's HPA states that in order for a Hire Purchase Agreement to be valid then it must be written and it should be in English. Tanzania on the other hand allows for Hire Purchase Agreements to be translated from English to Swahili in the event that a party is not able to understand English. This research therefore argues that Kenya could borrow this practice from Tanzania as both countries have both Swahili and English as the main languages. Furthermore, research has shown that in Kenya, even though English is the official language, a large sector of the population is not fluent in English and prefer speaking Swahili.

Additionally, Tanzania's language requirement under their HPA is more in line with the concept of Consumer Protection. This is because Consumer Protection protects consumers from unfair practices such as exploitation which could be a result of not understanding the language of an agreement such as a Hire Purchase Agreement. This research therefore argues that Kenya can promote Consumer Protection when it comes to Hire Purchase by reconsidering its language requirement and borrowing Tanzania's language requirement which is more inclusionary.

5.2 Summary and Conclusion

The aim of this dissertation was to look at Section 5(2) of Kenya's HPA which makes it compulsory for a Hire Purchase Agreement to be in English and arguing that it goes against Consumer Protection. Chapter 1 provided the background of the problem, theoretical framework, research questions and objectives, literature review and the chapter breakdown.

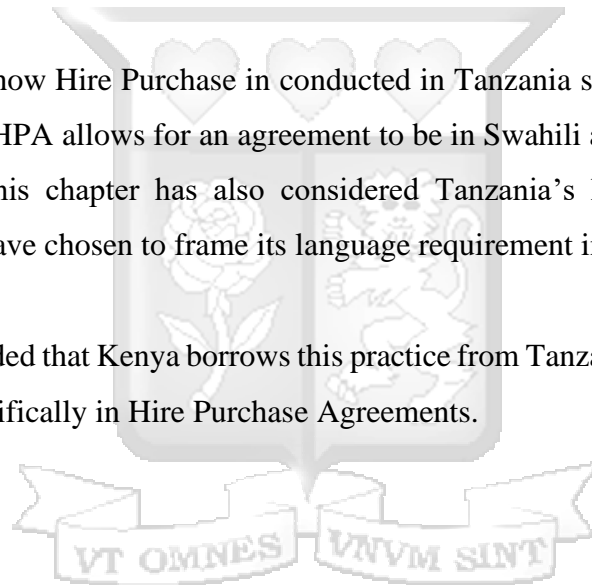
Chapter 2 looks at why language requirements are present in laws such as the HPA and argues that these language requirements prevent one from understanding the terms of the contract as language plays a very important role in communication. This chapter states that language requirements exist

in law to ensure that there is clarity, standardization as well as accessibility. However, the second chapter of this research argues that the clarity is not achieved when these language requirements exist as the terms of the contract are not understood by consumers and standardization is not achieved as the terms of a contract can still be understood differently by various individuals which may lead to misrepresentation.

Chapter 3 looks at the link between consumer protection and language requirements. Consumer protection involves protecting consumers against unfair practices and potential exploitation. This chapter therefore argues that the English requirement under the HPA can lead to disadvantages such as signing or agreeing to terms that they do not fully understand.

Chapter 4 has looked at how Hire Purchase is conducted in Tanzania specifically when it comes to language. Tanzania's HPA allows for an agreement to be in Swahili as well as English making it more inclusionary. This chapter has also considered Tanzania's history with language to understand why it may have chosen to frame its language requirement in this manner.

Chapter 5 has recommended that Kenya borrows this practice from Tanzania to promote Consumer Protection in Kenya specifically in Hire Purchase Agreements.



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