



**DECISION IN THE MATTER REGARDING COMPETITION AUTHORITY OF KENYA
(THE AUTHORITY) AND KENYA AIRWAYS PLC (KQ) ON A COMPLAINT BY MR.
CHRISTOPHER.**

1. The Competition Authority of Kenya has ordered national carrier Kenya Airways to refund a passenger Ksh. 415,263 being the cost he incurred after being denied to board their aircraft despite him arriving at the airport and checking in on time.
2. The Authority's action is the culmination of an investigation into a complaint by Mr. Christopher on 23rd July 2018 alleging that:
 - a. Kenya Airways (KQ) on 23rd February, 2018 oversold tickets from Kigali to Nairobi and as a result he was not allowed to board the airline's 7:40pm flight from Kigali to Nairobi, despite him arriving at the airport on time and checking in online;
 - b. KQ booked a Rwandair from Kigali to Nairobi but its timings resulted in him missing the British Airways (BA) flight that was connecting him from Nairobi to London;
 - c. A KQ staff in Kigali indicated that the airline would provide an alternative flight to enable him complete the trip to London;
 - d. Upon arriving in Nairobi, he was advised to pay for the KQ flight to London and subsequently apply for a refund. He paid £3,211.20 (Ksh. 415,262.88) and completed his journey; and
 - e. His attempts to seek a refund from KQ have been unsuccessful.
3. The Authority initiated investigations on the matter to determine if KQ had violated sections 55 (b) (v) and 56(1) (2) (a) (b) (e) and (d) of the Competition Act No 12 of 2010 ("the Act") which prohibits false or misleading representations and unconscionable conduct by a supplier of a product or service.
4. Remedies available under the Act, for contravention of the above sections, include:
 - (i) Administrative remedies including a financial penalty of up to 10% of the immediately preceding year's gross annual turnover of Kenya airways ticket sales pursuant to Section 36 of the Act; or



- (ii) Criminal remedial measures under Section 70 of the Act where the matter may be forwarded to the ODPP. If found culpable, a party may be fined up to Ksh.10 million or 5 years' jail term for its personnel or both;
5. The airline, vide written representations and oral submissions to the Authority, denied any responsibility in the matter. They indicated that the complainant was denied boarding due to late arrival at the airport.
 6. The national carrier also confirmed that overbooking/bumping is a common practice in the aviation industry given that some passengers confirm reservations but fail to show up for the flight. Airlines, therefore, run the risk of operating overcapacity.
 7. However, regulations dictate that a consumer should be informed prior to being bumped that the flight has been oversold and the potential consequences of the same, including being offered a tickets for a later flight or compensation.
 8. The Authority, as part of its investigations, contacted passengers who had accompanied the complainant, requesting them to give their witness account of what transpired. They corroborated the complainant's version of events.
 9. The Authority also considered other evidentiary information, including the complainant's itinerary receipts and boarding passes.
 10. Further, the Authority consulted the Kenya Civil Aviation Authority (KCAA). The Authority and KCAA have an operational Memorandum of Understanding which, among other objectives, seeks to facilitate information sharing during investigations.
 11. The aviation regulator indicated that in instances where passengers are bumped from a flight, they should be informed of their rights and options, including being offered a tickets for a later flight or compensation.
 12. Based on the findings, the Authority determined that KQ's conduct was in violation of Sections 55 (b) (v), 56 (1) (2) (a) (b) (d) (e) and 90 (d) of Act in the following:



- i. KQ used its higher bargaining position to deny the complainant boarding yet he had checked online and arrived on time, which is unconscionable;
 - ii. KQ forced the complainant to comply with conditions that were not reasonably necessary;
 - iii. KQ used unfair tactics and undue pressure on the complainant, occasioning them to purchase another ticket on the promise that he will be refunded;
 - iv. KQ made false and misleading representations concerning the existence of a right or remedy; and
 - v. KQ knowingly provided false information to the Authority regarding the reasons as to why the complainant was denied boarding.
13. In view of the above, the Authority ordered KQ to:
- i. Refund the complainant Ksh. 415,263 being the amount equivalent to the value of the unutilized ticket;*
 - ii. Commit to be informing consumers of the reason for being involuntary denied boarding and be duty bound to remit appropriate compensation to affected consumers if bumping is inevitable;
 - iii. Commit to be refunding consumers who have been denied boarding an amount equal to the cost the consumer incurred in procuring the ticket, within sixty ("60") days from date a claim is lodged.

***At the time of publication of this determination, KQ had complied with the Authority's order.**