



## CAK DECISION IN THE MATTER BETWEEN ASL LIMITED AND GUARANTY TRUST (GT) BANK KENYA LIMITED REGARDING MISLEADING REPRESENTATION AND UNCONSCIONABLE CONDUCT

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1. The Competition Authority of Kenya ('the Authority') has ordered Guaranty Trust Bank Kenya Limited to **pay a penalty of KES 33,180,000 for engaging in false and misleading representations and unconscionable** conduct against its customer, ASL Limited, contrary to the [Competition Act](#).
2. Additionally, the Authority has ordered GT Bank Kenya Limited (GT Bank) to **refund ASL Limited (ASL) KES 13,211,285**, being the summation of the fees and charges determined as improperly levied.
3. Unconscionable conduct refers to business practices that are unfair and oppressive, particularly where businesses take advantage of consumers' vulnerability, lack of knowledge, or unequal bargaining position. This may occur where a business coerces a consumer into entering contracts they do not fully understand, withholds crucial information, or utilizes threats, or ambiguous wording to influence their choice.
4. False or misleading representation happens where a business provides false, incomplete, or deceptive information to a customer, or creates a false impression about various aspects of a good or service. Such conduct can manifest through, among others, advertising, verbal statements, omission of key information, or promises concerning the nature, quality, price, approval, or benefits of a product or service.
5. ASL Limited (ASL) is a diversified Kenyan company involved in manufacturing, distribution, trading, and industrial products; primarily serving the construction, electrical, industrial, and manufacturing sectors.
6. GT Bank is a commercial bank, licensed and regulated by the Central Bank of Kenya. The bank provides various financial services to its retail and corporate customers and is part of a financial services group headquartered in Nigeria.
7. The investigation into GT Bank's conduct was occasioned by a complaint lodged with the Authority by ASL on 5<sup>th</sup> October 2024, alleging unfair treatment in the management of and renewal of its credit facilities held with the bank.
8. ASL had maintained a banking relationship with GT Bank since 2001. In July 2021, ASL secured credit facilities including overdrafts, letters of credit, guarantees, asset financing,

and working capital support. The facilities were secured against the company's assets and personal guarantees by the directors of ASL.

9. The facilities were scheduled to expire in May 2022, subject to review and renewal. In January 2022, ASL submitted a formal request for renewal, within the period prescribed in the agreement.
10. In its complaint, ASL alleged that despite numerous engagements over several months, GT bank did not issue a definitive position on the renewal application.
11. In June 2023, GT Bank offered a three-month extension on the facility for the process to be finalized. ASL was required to provide additional security among others demands which it accepted. ASL also accepted other revised requirements including reducing one trading line from USD 5.5 million to USD 3.5 million and retaining a cleared collateral.
12. However, a month later, the bank issued a new offer letter, further reducing the limits by USD 3 Million. ASL requested for time to deliberate internally. Upon concluding that the facility amounts and terms on offer were not agreeable, ASL notified GT of intention to transfer its facilities to I&M Bank.
13. On 31 October 2023, ASL received a formal default notice and was charged KES 13.2 million in default interest, allegedly backdated to August 2023, when the renewal process had commenced. To facilitate the takeover by I&M Bank and avert business disruptions, ASL cleared the two overdraft amounts; OD1 (KES) KES 417,848,415 and OD2 (USD) USD 197,802.
14. Following the reporting of the matter to the Authority, but prior to the start of the investigation, GT Bank offered to refund KES 2.8 million, against the disputed amount of KES 13.2 Million. ASL rejected the amount and sought full refund, arguing that the default interest was unfairly and improperly applied.
15. Subsequently, the Authority initiated an investigation into ASL's complaint and invited GT Bank to respond to the allegations.
16. The investigation was premised on possible violations of section 55 of the Competition Act on false or misleading representations, and sections 57(1) as assessed under sections 57(2)(a), (b), (d) and (e) concerning unconscionable conduct during business transactions.
17. Oral and written submissions from the complainant and the accused party were recorded in line with the provisions of the Fair Administrative Actions Act of 2015.
18. GT Bank's response indicated that the credit facilities were governed by two Letters of Offer issued in July 2021 and October 2021. These agreements permitted variation of interest rates and the charging of default interest.

19. GT Bank maintained that a renewal beyond May 2022 was conditional on ASL providing additional security, and that the January 2023 extension was to facilitate its client meet these conditions. Additionally, it stated that the final offer reflected its internal assessment of collateral adequacy and risk exposure.
20. The bank denied allegations of coercion, asserting that ASL's failure to execute the July 2023 offer triggered contractual default provisions, and that the default interest was not backdated, but applied according to these terms. Further, the bank described its proposal to refund a portion of the interest as a goodwill gesture arising from a candid error, rather than an admission of liability. It characterized ASL's demand for a full compensation as an unreasonable attempt at unjust enrichment.
21. Upon analyzing the evidentiary information, the Authority determined that GT Bank violated Section 55(a)(ii) of the Competition Act on false or misleading representation regarding the standard, quality, or value of banking services, by:
- i) Continuing to charge fees for unapproved facilities;
  - ii) Misleading ASL about the availability and approval status of the services;
  - iii) Applying default interest retroactively without prior notice, thereby misrepresenting ASL's account status;
  - iv) Referring to materially altered offers as renewals, thus misrepresenting the continuity and nature of the service; and
  - v) Making partial refunds without proper admission or transparency, which may confuse or mislead the consumer on the accuracy of service charges.
22. Further, GT Bank's conduct violated section 57 (1) of the Competition Act on unconscionable conduct in business transactions, as follows:
- i) GT Bank, a commercial lender with substantial financial resources, possessed significantly higher negotiating power relative to ASL. The bank took advantage of its position to treat ASL unfairly by unilaterally recalling the facilities and backdating charges and fees:
  - ii) GT Bank imposed conditions to ASL that were not reasonably necessary for the protection of its legitimate interest. GT Bank reduced the facility limits significantly and demanded additional security as a precondition for renewal;
  - iii) GT Bank used unfair tactics and exerted pressure against ASL to accept unfavorable offer despite ASL's indication of an impending facility takeover by I&M Bank. GT

- Bank backdated default interest and applied it without prior notice or demand, which placed ASL under financial strain and pressure to settle prematurely; and
- iv) GT Bank's continued change of terms, delays, and conditional offers impaired ASL's ability to fully understand or effectively negotiate the terms. GT Bank's insistence on the acceptance of the offer issued on 20<sup>th</sup> July 2023, without justification for variation on key contract terms and the threat of default interest and account arrears, curtailed ASL's opportunity to make informed decisions.
23. The Authority's penalization process is guided by the Consolidated Administrative Remedies and Settlement Guidelines. The Competition Act provides that the Authority may impose a penalty of up to 10% of a business' preceding year's gross annual turnover. This is the highest allowable penalty under the Act, and is in line with international best practice.
24. The determination of a penalty is conducted in accordance with the applicable guidelines. In doing so, the Authority evaluates the specific mitigating and aggravating factors relevant to the case to ensure that the penalty is fair, proportionate, and appropriate in the circumstances.
25. Mitigating factors support a party's bid to have their fine reduced as much as possible from the permissible 10%. They include; cooperation, first time offender, inadvertent breach, conduct terminated in course of investigation, self-reporting, and willingness to acknowledge liability.
26. Aggravating factors, which increase the penalty, include; impact, coverage and duration of contravention, repeat offender, non-cooperation, conduct ongoing during investigation, impact on SMEs or retaliation against complainants.
27. Premised on the above findings, the Authority ordered Guaranty Trust Bank Kenya Limited to:
- i) Pay a pecuniary penalty of KES 33,180,000.00, being 2% of its Gross Annual Turnover for the year 2023;
  - ii) Refund ASL Limited KES 13,211,285 within 30 days, the fees and charges that were levied in the account;
  - iii) To comply with the provisions of the Act and the Competition (General) Rules, 2019; and
  - iv) To sensitize its staff on the provisions of the Act, specifically Part VI, and the Competition (General) Rules 2019.