



CAK DECISION REGARDING MISREPRESENTATION AND UNCONSCIONABLE CONDUCT BY FAMILY BANK LIMITED.

1. The Competition Authority of Kenya has directed Family Bank Limited to **refund a customer Ksh. 1,415,604**, being the sum of an **unapplied waiver** on her mortgage facility and an **amount debited from her account without consent** to settle legal fees incurred by the lender.
2. Further, Family Bank has been directed to, in future, refrain from **misrepresenting facts** about its products and engaging in **unconscionable conduct** when dealing with its clients. Such practices are illegal under the [Competition Act \(the Act\)](#).
3. The Orders are subsequent to an investigation initiated following a complaint lodged with the Authority by a former Family Bank employee.
4. The complainant exited the bank after 11 years through early retirement, but after one year, was unable to service the loan due to financial difficulties. Subsequently, the property was put up for auction in October 2017. However, she secured a Court injunction to stop the sale, allowing her to explore the option of securing a buyer.
5. She further alleged that in November 2017, Family Bank **debited and overdraw her account with Ksh.399,800**. Upon inquiring, she was informed that the amount would be used to settle legal fees Family Bank would incur in the court proceedings.
6. The complainant further alleged that, despite her **exit letter indicating she was entitled to a 20% waiver if the facility is settled in full**, she was later informed about her ineligibility on the argument that the relief was **only** applicable if triggered within **30 days** from the exit date. She contested this position, arguing that her **exit letter did not provide for the one-month ultimatum**.

7. In a response to the complainant's inquiries, Family Bank indicated that it strictly adheres to staff termination terms, and that they only grant 20% waiver on outstanding balances if they are settled within the 30-day window.
8. Upon settling the outstanding loan amount in full, the complainant revisited the waiver issue with Family Bank and was informed that it could not be granted. **The reason provided was that the facility was in distress.**
9. Subsequently, she [lodged a complaint](#) with the Authority, arguing that her [consumer rights had been infringed](#), **contrary to the provisions of the Competition Act.**
10. Upon reviewing the matter, the Authority informed Family Bank of the allegations and invited them to respond, noting that the investigation was premised on possible violation of the following Sections of the Competition Act:
 - i. 55 (a) (ii) & (v) on false representation
 - ii. 56 (1) of the Act on unconscionable conduct, when assessed under the criteria in 56 (2) (a) (b) & (d)
11. Family Bank responded through **written and oral submissions**, including furnishing the Authority with **relevant evidentiary information** such as the exit letter on voluntary early retirement, mortgage contract, and notice of intention to sell the property, among others.
12. Upon analyzing the evidentiary information, the Authority concluded that Family Bank had violated the Competition Act through:
 - i. Failure to favor the complainant with the 20% discount on her loan upon full clearance. This amounted to **misrepresentation** and was in violation of Sections 55 (a) (ii) and (v) of the Act;
 - ii. The Bank's conduct of promising to discount the complainant's loan by 20% and later renegeing on this promise demonstrated **use of unfair tactics** in violation of Section 56 (2) (d) of the Act;

- iii. By unilaterally debiting the complainants' account with Ksh. 399,800, the bank had **abused its higher bargaining position**. This **unconscionable conduct** is in violation of Section 56 (1) and Section 56(2) (a) of the Act;
- iv. Family Bank claimed in their submissions that bullet 4 of the staff exit letter read "*you will continue to service your staff loans at prevailing staff rate plus 2% p.a (this will be effected 30 days after exit)*" and bullet 5 "*staff loans discounted at 20% (subject to clearing secured loans in full)*" should be read together. However, the exit letter was not clear on this and therefore the Family Bank's terms were in contravention of Rule 32 (1) (2) (a) the Competition (General) Rules, 2019 which requires **terms and conditions to be summarized in clear, concise and intelligible manner for consumers to understand**; and

13. In view of the foregoing, the Authority directed Family Bank to:

- (i) Apply and refund the 20% waiver on the complainant's facility totaling to Ksh. 1,015,804.20, being the discount that would otherwise have been applicable on the loan if settled in full;
- (ii) Refund the complainant KES 399,800, being the excess amount debited from her account to the bank's legal fees as a result of the court proceedings initiated by the complainant; and
- (iii) Refrain from engaging in such conduct in future.

14. **Family Bank has complied with the Authority's directive.**