



East African Journal of Law and Ethics

eajle.eanso.org

Volume 7, Issue 1, 2024

Print ISSN: 2707-532X | Online ISSN: 2707-5338

Title DOI: <https://doi.org/10.37284/2707-5338>



EAST AFRICAN
NATURE &
SCIENCE
ORGANIZATION

Original Article

The Examination of Consumer Protection and Digital Lending Law and Practice in Tanzania

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Article DOI: <https://doi.org/10.37284/eajle.7.1.2496>

Date Published: ABSTRACT

08 December 2024

Keywords:

Digital Lending,
App-Based Lending,
Digital Lenders,
Consumer Protection.

Widespread access to digital lending has epitomized a ground-breaking change in financial access. Digital lending offers extraordinary decreases in transaction costs and time wastage; in many countries, digital lending is far outstripping traditional lending. But the same characteristics of digital lending also have the ability to harm customers in the form of unfair competition in the digital credit market, unfair application of consumer protection rules (cybersecurity, consumer data protection and privacy), unfair payment and collection practice, risk of over-indebtedness, as well as different levels of oversight, especially if, consumer protection laws are limited or not strictly enforced. This study critically examines the challenges faced by consumers in digital lending platforms specifically app-based lending. The research explores the legal framework governing financial consumer protection in digital lending in Tanzania specifically app-based microfinance. The study will analyse the findings from the field and analyse the practical aspects of the law governing consumer protection in digital lending in Tanzania.

APA CITATION

Mpogole, M. (2024). The Examination of Consumer Protection and Digital Lending Law and Practice in Tanzania. *East African Journal of Law and Ethics*, 7(1), 172-183. <https://doi.org/10.37284/eajle.7.1.2496>

CHICAGO CITATION

Mpogole, Matunda. 2024. "The Examination of Consumer Protection and Digital Lending Law and Practice in Tanzania." *East African Journal of Law and Ethics* 7 (1), 172-183. <https://doi.org/10.37284/eajle.7.1.2496>.

HARVARD CITATION

Mpogole, M. (2024) "The Examination of Consumer Protection and Digital Lending Law and Practice in Tanzania.", *East African Journal of Law and Ethics*, 7(1), pp. 172-183. doi: 10.37284/eajle.7.1.2496.

IEEE CITATION

M., Mpogole. "The Examination of Consumer Protection and Digital Lending Law and Practice in Tanzania.", *EAJLE*, vol. 7, no. 1, pp. 172-183, Dec. 2024.

MLA CITATION

Mpogole, Matunda. "The Examination of Consumer Protection and Digital Lending Law and Practice in Tanzania." *East African Journal of Law and Ethics*, Vol. 7, no. 1, Dec. 2024, pp. 172-183, doi:10.37284/eajle.7.1.2496.

INTRODUCTION

In recent years, the financial landscape in Tanzania has experienced significant transformations with the advent of digital credit services. These innovative financial technologies have provided consumers with an accessible and convenient means of accessing credit, particularly through mobile applications.¹ However, the rapid growth of app-based lending services has also raised concerns about consumer protection and the potential for exploitation. The objective of this study is to critically analyse the law and practice of consumer protection in Digital lending services in Tanzania. Whereby the author specifically focused on the assessment of the adequacy of existing consumer protection law and its practice in regulating Digital lending services in Tanzania and investigated the inadequacy of penalties provided to digital lenders who fail to comply with the consumer protection requirements.

Meaning of Digital Lending

Digital lending refers to the process of facilitating loan transactions through digital platforms and electronic channels, hence eliminating the need for traditional face-to-face interactions between borrowers and lenders.² Digital Lending is a remote and automated lending process, largely by use of seamless digital technologies for customer acquisition, credit assessment, loan approval, disbursement, recovery, and associated customer service. Digital lending is also defined as the process of providing loans or credit to individuals and organizations through online platforms, leveraging technical breakthroughs and digital networks. The increase in the method's popularity can be ascribed to its inherent benefits in terms of

simplicity, efficiency, and accessibility in comparison to traditional lending practices.³

Digital lender

A digital microfinance lender is a microfinance service provider carrying out lending activities, from loan application, approval, disbursement and repayment through digital channels.⁴ A digital lender is a digital credit provider.⁵ It is a monetary institution that offers loans and financial services mainly through online platforms. These lenders use technology to rationalize the application and approval processes, often permitting sooner access to loans compared to traditional loan systems such as bank loans. Digital lenders typically use systems and data analytics to assess creditworthiness, making it easier for borrowers to apply for and receive loans without the need for in-person meetings.⁶

Consumer Protection

This means rules and regulations designed to safeguard customers when they are dealing with financial service providers and to inspire confidence, transparency, fair treatment and effective recourse to the general public.⁷

Background of the study

The antiquity of digital lending dates to the early days of the Internet and the emergence of online financial services. The key milestones in the fruition of digital lending were during the late 1990s when internet use expanded its fame, and financial institutions started reconnoitring online banking services. However, the lending process was still largely paper-based and required borrowers to visit physical branches. In the early

¹ Bank of Tanzania "Digital Credit Regulation in Tanzania" AFI, 2020. Available at https://www.afi-global.org/sites/default/files/publications/2020-11/AFI_DFS_Tanzania_CS_AW2-digital.pdf accessed at 26th May 2024.

² C. Sommer, *Addressing the Challenges of Digital Lending for Credit Markets and the Financial System in Low- and Middle- income Countries*. Germany: Deutsche s Institut für Entwicklungspolitik (2021)

³ <https://sbi.co.in/web/personal-banking/digital/digitallending#:~:text=What%20is%20Digital%20Lending> Accessed at 18/09/2024

⁴ Guidance Note on Digital Lenders under Tier 2 Microfinance Service Providers, 2024

⁵ Digital credit provider means a person licensed by the Bank to carry on digital credit business, available at https://www.centralbank.go.ke/uploads/banking_circulars/673866074_Draft%20digital%20credit%20providers%20regulations%202021%20-%20December%202021 Accessed at 18/09/2024

⁶ FSD Kenya, *Digital Credit in Kenya: facts and figures from FinAccess 2019*. Focus Note. Nairobi: FSD Kenya, (2019). Available at https://fsdkenya.org/wp-content/uploads/2020/07/Focus-Note-Digital-Credit-in-Kenya_Updated.pdf assessed on 18/09/2024

⁷ National Microfinance policy of 2017

2000s, person-to-person lending emerged as a shift in the lending market. The first prominent person-to-person lending platform, “Zopa”, was founded in the UK in 2005, whereby the platform allowed individuals to lend and borrow money directly from each other through an online marketplace.⁸

The major actors in the digital credit landscape in Tanzania are Vodacom Tanzania, Commercial Bank of Africa, Airtel and Tigo. The digital credit services offered by the providers are disbursed to borrowers as e-money via the customer’s mobile money wallet.⁹ Digital lending in Tanzania was first launched in 2015 by Vodacom where they established MPAWA and later on, other mobile companies came out with their own lending products like Tigo Nivushe, and Timiza Wakala. Currently, digital lending service providers have increased more and more and established new ways of lending money which are App-based loans whereby the person has to download the lender app so as to lend money, Examples of app-based loan service providers are Twiga, Tara, Pesa X, kwanza loan, PesaM, Mkopo wako wa haraka, Sunny loan, Funloan, CashX, and YoyoCash.¹⁰ The study aims to analyse the legal framework of Digital lending in Tanzania mainland specifically on consumer protection in app-based loans.

LEGAL FRAMEWORK GOVERNING DIGITAL CREDITS IN TANZANIA

The primary law that governs Digital credits in Tanzania are Microfinance (Non-Deposit Taking Microfinance Service Providers) Regulations 2019 (GN No. 679 of 2019) Regulation together with the Guidance Note on Digital Lenders under Tier 2 Microfinance Service Providers, 2024. The

two are the main laws that govern the aspects of digital credits and they apply assistance to other laws that is the Microfinance Act of 2018 and The Bank of Tanzania Act, of 2006.

Microfinance (Non-Deposit Taking Microfinance Service Providers) Regulations¹¹

This regulation is in response to the Microfinance Act.¹² The regulation provides details as to how microfinance that falls under Tier 2 works, it regulates all issues concerned with Tier 2 microfinance.¹³ The Act provides that any person who intends to commence a microfinance business under Tier 2, shall lawfully be recognized under the Companies Act or any other relevant laws; or in case of individual money lender, register a business name as a sole proprietor under the Business Licensing Act.¹⁴ The Act recognize digital lending as per Regulation 3. It defines a digital microfinance lender as a microfinance service provider carrying out lending activities, from loan application, approval, disbursement and repayment through digital channels.¹⁵

The regulation states directly what has to be done by the microfinance falls under Tier 2 which includes Issuing microfinance loans, issuing housing microfinance products, maintenance and operation of various types of accounts with banks and financial institutions in Tanzania, operation of micro leasing facilities, microfinance related hire-purchase, provision of professional advice to customers regarding investments in small Businesses, micro insurance as an agent of insurers, equity investment, agency banking.¹⁶ Furthermore, the Regulation provides for activities which should not be done by

⁸ Kevin Davis and Jacob Murphy "Peer to Peer Lending: Structures, Risks and Regulation" JASSA: The Finsia Journal of Applied Finance, 2016:3, at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2862252 accessed at 25th May 2024

⁹ Bank of Tanzania “Digital Credit Regulation in Tanzania” AFI, 2020. Available at https://www.afi-global.org/sites/default/files/publications/2020-11/AFI_DFS_Tanzania_CS_AW2-digital.pdf accessed at 26th May 2024.

¹⁰ Bank of Tanzania “Digital Credit Regulation in Tanzania” AFI, 2020. Available at https://www.afiglobal.org/sites/default/files/publications/202011/AFI_DFS_Tanzania_CS_AW-digital.pdf accessed at 26th May 2024.

¹¹ Microfinance (Non-Deposit Taking Microfinance Service Providers) Regulations 2019 (GN No. 679 of 2019)

¹² Microfinance Act 2018

¹³ Ibid Regulation 3, Tier 2 means a category of non-deposit taking microfinance service providers including credit companies, financial organizations, housing microfinance companies, individual money lenders and digital microfinance lenders.

¹⁴ Id Regulation 4

¹⁵ Id Regulation 3

¹⁶ Microfinance (Non-Deposit Taking Microfinance Service Providers) Regulations 2019 (GN No. 679 of 2019) Regulation

microfinance which falls under Tier 2, accepting any type of deposits from the public, foreign exchange business, foreign trade operations, trust operations, credit and debit card payment orders and transfer of funds.¹⁷

The Regulation provides for consumer protection whereby the microfinance service providers are required to have full disclosure and transparency of their services, whereas, the loan agreements must be comprehensible and written in a meek and comprehensible language but also contain terms and conditions that are transparent, fair and protect the rights of the borrower. Also, the microfinance service provider must clearly state the amount of interest, charges and penalties to the consumer of the service.¹⁸ Moreover, the Regulations require Microfinance service providers to provide a disclosure statement in writing to the Loan guarantors indicating their liability for the loan guaranteed. Such a notice must include full details of the loan and must be signed by the Guarantor.¹⁹ As far as consumer protection is concerned it extends to debt collection and recovery, the regulation requires the Microfinance service providers to ensure sufficient notice is issued before recovery.²⁰ The provision is too general and this provision is practicable to physical microfinances but it does not work in digital lending, as a result, consumers end up being violated and their privacy is no longer protected during the collection and recovery of digital debts.

The Regulation provides punishment to microfinance service providers who failed to comply with the regulation, it is provided in the regulation that without prejudice to penalties and actions prescribed under the Act, the Bank may impose on any microfinance service provider any

of the following administrative measures for non-compliance²¹ which includes the prohibition from declaring or paying dividends²² prohibition from opening or establishing new branches²³ suspension of lending and investment activities,²⁴ revocation of license,²⁵ a formal warning to a defaulting director, employee or proprietor,²⁶ suspension from office of the defaulting director, employee or proprietor,²⁷ disqualification from holding any position or office in any institution under the supervision of the Bank,²⁸ and a penalty of the amount to be determined by the Bank of not less than five hundred thousand shillings and not more than five million shillings²⁹ any other administrative measures as the Bank may prescribe.³⁰ The punishment imposed is not sufficient for the loss that consumers suffer due to microfinance service providers' non-compliance with the provisions of the law.

The regulations also place responsibilities on microfinance to conduct financial education through training, seminars, workshops, media, or fliers to its bunches to cover at minimum key features of products and services offered, terms and conditions of loans, cash flow management, record keeping, financial decision making, management of loans usage and repayment, business planning, the importance of saving or any other aspects considered relevant.³¹ It is not disputed that this law governs all affairs of microfinances that fall under Tier 2, the law does recognise digital microfinances but the provisions of this law are not practicable in digital microfinances but rather other kinds of microfinances that fall under Tier 2.

¹⁷ Id Regulation 22

¹⁸ Id Regulation 53

¹⁹ Id Regulation 55

²⁰ Microfinance (Non-Deposit Taking Microfinance Service Providers) Regulations 2019 (GN No. 679 of 2019) Regulation 56

²¹ Id Regulation 60(1)

²² Id Regulation 60 (1)(a)

²³ Id Regulation 60(10(b)

²⁴ Regulation 60(10(c)

²⁵ Id Regulation 60(10(d)

²⁶ Id Regulation 60(10(e)

²⁷ Regulation 60(10(f)

²⁸ Id Regulation 60(10(g)

²⁹ Id Regulation 60(10(h)

³⁰ Id Regulation 60(10(i)

³¹ Microfinance (Non-Deposit Taking Microfinance Service Providers) Regulations 2019 (GN No. 679 of 2019) Regulation 57

Guidance Note on Digital Lenders under Tier 2 Microfinance Service Providers.³²

The guidance note must mandate that all digital lenders obtain licenses from the Bank of Tanzania (BoT) to operate legally, ensuring adherence to established standards. Digital lenders are required to provide clear and accurate information about loan terms, interest rates, fees, and repayment schedules also emphasizes the need to avoid predatory lending practices, ensuring that loan products are designed with consumer welfare in mind so as to ensure that consumers of digital lending are fully protected. Issues of credit assessment the guideline provides a mandatory requirement for digital lenders to conduct thorough credit assessments to ensure that loans are granted based on the borrower's ability to repay, thus minimizing over-indebtedness. Digital lenders should implement affordability checks to protect consumers from taking on excessive debt.³³

Digital lenders are mandated to comply with data protection regulations, ensuring the security and confidentiality of consumer information. Consumers must be informed about how their data will be used and provide explicit consent and the aim is to ensure and maintain consumer data protection and privacy. Digital lenders are encouraged to promote financial literacy among consumers, helping them understand financial products and their implications.³⁴

Digital lenders must establish accessible mechanisms for consumers to lodge complaints and seek resolution for disputes. The BoT will oversee complaint resolution processes to ensure fairness and transparency. Digital lenders are required to submit regular reports to the BoT regarding their operations, including loan portfolios and consumer complaints. Compliance Monitoring, that the BoT will conduct audits and

inspections to ensure compliance with the guidance provisions.³⁵

Issues related to guarantor consent to guarantee the loan³⁶ have been addressed though the guideline does not specify the qualification of the loan guarantor in relation to digital loans and also how the said consent can be obtained by the digital lender. Moreover, the guideline does provide the issues related to debt collection whereby the guideline prohibits digital lenders from using abusive language, threats, insults, and harassment to collect debts from borrowers, access the borrower phonebook list, and creation of groups that threaten the borrowers.³⁷

The Guidance Note aims to create a balanced regulatory environment that fosters innovation in digital lending while ensuring consumer protection and financial stability. By setting clear standards for operation, the guidance seeks to enhance trust in digital financial services and promote responsible lending practices.

Statement of the problem

Rule 56³⁸ provides that the microfinance service provider shall collect or recover a loan from the borrower in accordance with recovery procedures prescribed in its lending policy. The provision goes further under sub-rule 2 by stating that the microfinance service providers have to ensure that the procedures for debt collection or recovery comply with the consumer protection principles as provided in rule 56(2) (a-e).³⁹ Also in accordance with Paragraph 5.1 (f)(i-vii) of the guidance note⁴⁰ prohibits the digital lenders under tier 2 from using threats, violence, abusive language, and access to customers' phonebook during the debt collection process. However, the law as well as the guidance note does not address the manner in which digital microfinance service providers can employ during recovery and collection of debts.

³² Guidance Note on Digital Lenders under Tier 2 Microfinance Service Providers, 2024.

³³ Paragraph 4.0

³⁴ Guidance Note on Digital Lenders under Tier 2 Microfinance Service Providers, 2024.

³⁵ Id, Paragraph 6.0

³⁶ Id, paragraph 5.1 (o)

³⁷ Paragraph 5.1

³⁸ The Microfinance (Non-Deposit Taking Microfinance Service Providers) Regulations 2019

³⁹ ibid

⁴⁰ Guidance Note on Digital Lenders under Tier 2 Microfinance Service Providers, 2024

The provision of the Regulation is too general it's not practicable in digital microfinance regimes as a result in practice modes involved in debt collection violate consumer protection principles.

Following Rule 55 of the Regulation⁴¹ and Paragraph 5.1 (o),⁴² it provides requirements for the service providers to ensure that they seek and obtain guarantor consent and also issue a written statement to inform the guarantor about the loan, amount of the loan, name of the borrower and also the borrowers signature. The regulation and the guidance note are silent as to whom can be a loan guarantor, what are the qualifications of a loan guarantor, how the consent of the loan guarantor may be obtained, how the loan guarantor signature may be obtained as far as digital platforms are concerned also, it is not stipulated as to how the loan guarantor will be identified. Therefore, since the law is silent as far as loan guarantor's affairs in digital lending are concerned, it remains upon the lending policy of the platform to decide how that consent will be directed. As a result, in practice people end up being guarantors of loans they have no idea.

The provisions of this law impose punishment which is not sufficient enough compared to the benefits incurred by the service providers it contributes a lot to the increase of problems relating to consumer protection in digital lending specifically app-based credits. Example Rule 60(1)(h)⁴³ provides a penalty of the amount to be determined by the Bank of not less than five hundred thousand shillings and not more than five million shillings to anyone who fails to comply with the regulation; That the lesser of penalties/punishment given to service providers who did not comply with the provision of the law as far as digital lending is concerned it results to increase of violation of consumer rights in financial services in Tanzania mainland.

Both the Regulation and Guidance notes provide the framework to digital lenders but their

provisions are still inadequate in ensuring consumer protection, most of their provisions are not practicable as far as the digital lending environment is concerned.

METHODOLOGY

Research Design

The author in the work used doctrinal research methodology complemented by the empirical research methodology to explore the examination of consumer protection and digital lending in Tanzania's mainland law and practice. The author involved a total of 53 respondents including financial service providers, consumers of App-Based lending, BOT officers, university lecturers and Advocates who are well-equipped with the knowledge of Digital lending. The author used stratified random sampling to have a small group of the population represent the whole population to reduce time and costs.

Reasons as to why people use digital lending platforms?

The marvel of digital lending has become a tenacious and continuing tendency. Presently, both customers and lenders observe the financing process as far more rationalized. Financial institutions are promptly embracing the new technology, which enables them to modernize their banking activities. The lending sector is sighted rapid modernization due to the development of online lenders, who are disrupting traditional practices. In recent years there was a shift in prominence from traditional ways of lending towards inserting a greater prominence on the role that technology plays in the foundation of digital lending services. The development of the digital lending environment has been sprinted up as a result it made possible roadmap for fintech companies and financial institutions to issue credit online. This is because of the ability and possibility to speed up adopting changes. The extensive adoption of smartphones and the

⁴¹ The Microfinance (Non-Deposit Taking Microfinance Service Providers) Regulations 2019

⁴² Guidance Note on Digital Lenders under Tier 2 Microfinance Service Providers, 2024

⁴³ Guidance Note on Digital Lenders under Tier 2 Microfinance Service Providers, 2024

affordability of internet connectivity have facilitated the inclusion of socioeconomically disadvantaged populaces in accessing the advantages of convenient credit.

The compulsion for digital lending ascended due to the difficult nature of the traditional lending procedure, which failed to augment operational effectiveness. The previous loan application procedures proved to be costly and required a momentous investment of time (time cost). Traditional loans generally required roughly a week or even more than a week, whereas digital lending like app-based lending platforms significantly decreased this timeframe to a matter of minutes. Digital lending services are characterized by their user-friendly edge and straightforward operational procedures whereby procedures assurances the accomplishment of the application without any human errors. It helps to reduce corruption, eradicates bias, and expedites the processing time. A good example is M-shwari and Pesax lending platforms they provide digital loans that can be processed and disbursed within a span of 10 minutes.⁴⁴

The app-based lending platform is a unified system augmented by an app-based programming system in processing loan applications. The process facilitates the seamless acquisition of loans with ultimate expediency and provides consumers with a very adequate user experience.⁴⁵ The consumer is required to provide the necessary digital credit product information and submit the required identity document. The loan application form is automatically filled and the verification of identification documents is conducted inconspicuously (Know Your Customer (KYC)). The loan is digitally assessed and the interest rate and span of the loan will be automatically provided. The absence of paperwork and human interface renders the service more suitable for customers.

The interface of the system is highly user-friendly, pigeonholed by its affluence of use and spontaneous navigation. Mobile applications that are user-friendly and seamlessly accessible contribute to a high level of comfort for customers. The convenience of digital lending has led users to favour personal loans over credit cards for significant expenditures due to their cost-effectiveness.⁴⁶

The traditional loan application procedures were very troublesome for consumers as they required the consumer to frequently visit the bank and provide for submission of multiple documents for loan application. Digital lending platforms have meritoriously exterminated the need for physical documentation in the context of unsecured loans. This development is extremely beneficial for consumers, particularly those who avoid taking loans due to the extensive documentation procedures.⁴⁷

Why the Existing Digital Lending Laws and Regulations are not adequate

It is from the field research that a large number of respondents stated that laws, rules, policies as well as regulations that govern consumer protection on digital credits are not adequate. This behoves the author to take time to inquire from the respondents as to why they stated that the laws governing consumer protection in digital credits are not adequate while others stated that they are partly adequate to means that it fails to ensure consumers are fully protected in every side while using digital credits in Tanzania. Reasons as to why they suggested that the law is not adequate have been grouped into different issues and detailed as follows;

Debt Recovery

A large number of the respondents stated that the law that governs the protection of consumers in the digital lending sector is not adequate because consumer suffers from unfair practices of lenders

⁴⁴ Mlale, K.L., Interview by author (16th September 2024, Cuom Mbeya).

⁴⁵ Mwanyanje, Y.J., Interview by author (16th February 2024, mwanjelwa Mbeya).

⁴⁶ Chobo.B.B., Interview by author (30th September 2024, BOT Mbeya).

⁴⁷ Msafiri.F.F., Interview by author (11th September 2024, Marisho Mbeya).

during debt collections. It is not disputed that debt collection is the process, and that lenders have a right to collect their money back from the borrower. The issue arises as to the mode involved by service providers in debt collection, whereby there is the use of threats, abusive and insult language as reminders for loans. The access to the consumer phone log book and sending messages violate the right to privacy of the borrowers. The use of obscene language and harassment to the consumer of digital credits, and formulation of group out of the consumer phonebook list to harass the consumers.⁴⁸ The digital lending consumer faces a huge problem as far as debt collection is concerned, in that the mode used by lenders to collect debt violates the consumers especially those who defaulted in making payments. Apart from the linkage of the personal data from those close to them, they receive threatening messages from both them and their guarantors which amounted to psychological torture. But also the increase of interest on the loan as the default payment of the loan causes most of the lenders to end up in very high debt compared to what they were supposed to pay.⁴⁹

One of the respondents stated; “Once I defaulted to pay for my loan, I did not do it intentionally. I was at my mother’s funeral at the time, and two days later I received a message from the digital lender saying “...*Lipa pesa yetu kwani endapo utashindwa kufanya hivyo tutakuagizia majini*” I was so scared but surprisingly they also send message to some of my friend as well as to my late mama phone saying “... *Ni tapeli mkubwa sana hatakiwi kuaminika na kuwepo katika jamii amewatapeli watu wengi sana kuweni makini nae*”⁵⁰

From the above message and comments from another respondent, the author proves that the law that governs consumer protection in digital credits in Tanzania is not adequate.

Some of the respondents stated that the provision of the regulation⁵¹ that governs digital credits in Tanzania is impracticable and it’s very inadequate. According to them, the law is too general. The law covers two different kinds of lending; one involves the physical application of a loan while the other is in digital form. Frequently the provisions of this regulation are not practicable in digital credits which is why lenders use their own ways to collect debts from the consumer which mostly violates their rights. This increases because the law does not indicate acts that amount to violations of consumer protection principles and how digital lenders should act while collecting their own debt via digital platforms. That is why digital lenders end up violating consumer protection requirements.⁵²

The Bank of Tanzania upon realising the issue of consumer protection enacted the guideline note whereby all digital lenders have to comply with it. The guidance note prohibits the following conduct against a customer. This includes the use of threats, violence, or other means to harm the person, or his reputation or property if they do not settle their loans. Also, the use of obscene or profane language to the customer or the customer’s references or contacts for purposes of shaming them, to access the customer’s phone book or contacts list and other phone records for purposes of sending them messages in the event of untimely payment or non-payment. As well, as posting the customer’s personal or sensitive information online or on any other forum or medium for purposes of shaming them, making unauthorised or unsolicited calls or messages to a customer’s phone contacts and other contacts, to improper or excessive debt collection tactic, method, or conduct. Similarly, it prohibits any other conduct whose consequence is to harass, oppress, or abuse any person in connection with the collection of a debt. Some of the respondents were of the view that this guideline is adequate

⁴⁸ Jeko.L.L., Interview by author (22th September 2024, Bot Dar es Salaaam).

⁴⁹ Mwinga.G.D., Interview by author (14th September 2024, Nikopeshe Mbeya).

⁵⁰ Msillu.I.X., Interview by author (16th September 2024, Kabwe Mbeya).

⁵¹ The Microfinance (Non-Deposit Taking Microfinance Service Providers) Regulations 2019

⁵² Kasanga.L., Interview by author (09th September 2024, Globen Attorney Mbeya).

and cannot protect consumers from unfair practices during debt collections. The majority of the respondents were of the view that this guidance note is inadequate because the guidance note is silent on how and what can be employed by the digital lender during debt collection without violating the consumers' rights. It just prohibits lenders from employing some act during debt collection and yet leaves the digital lender with room to use any means to collect debt as provided in their lending policy. This is why despite the enactment of this guidance, still unfair methods of debt collection have been continuing, some of the respondents went further by stating that most of the borrowers did not pay for their loans as agreed and they did it intentionally and with malice of not paying the money back. This also leads lenders to use threatening language as a reminder and most of them pay upon being threatened, so as far as there is no road map as to how they can collect debt they will still do it to get their money back.

Loan Guarantor

A majority of the respondents said that the laws that govern consumer protection are inadequate because they do not express clearly as to whom can be a guarantor in digital credit, what are the qualifications of a digital guarantor, also as to how the consent of the guarantor can be obtained. Most of the respondents stated that they were loan guarantors in loans that they had no idea about yet the law stated that the loan guarantor must consent and his signature must be appended which is not the case in digital credit. It is not disputed that the law does say that there must be a guarantor who consented to secure the loan but in practice, most of the guarantors of digital loans have no idea that they are guarantors to a certain loan.⁵³ One of the respondents stated that:

“the law must specify the qualification of the guarantor because once I applied for a loan to a certain digital platform, they requested

for guarantor information, since I had two phone numbers I decided to use the other number and write the different name from that registered in my loan application as well as the sim card and received a loan.”

The laws and guidance notes are not sufficient enough to ensure consumer protection in digital credits, the law does not provide as to how the consent can be obtained as the results mode used to obtain consent still are not user-friendly.⁵⁴ The digital lender is the one who has the power and mandate to decide how consent can be obtained from the guarantor. Despite the fact that the Guidance note provides the requirement of obtaining the consent of the loan guarantor prior to issuance of a loan, still, loan guarantors are still not involved in the process, which is why most of them have no idea about the loan and they did not provide for their consent. One of the respondents stated that he is not sure as to whether the guidance note works because still he receives messages stating that he is a loan guarantor and that he has to remind the borrower about payment of the loan but he has no idea about the loan. He stated that the guidance note is not practicable in real life.

Collateral security for the loan

It is the trite principle of the law that a loan must have security so that if the borrower defaults then the lender can recover the money via the sale of the security. Neither the regulation, policy, law nor guideline note has been provided as to the issue of security to digital loans.⁵⁵ Digital loans are not secured like any other loans because of their nature as they are provided via digital platforms. Unlike other kinds of loans, digital lenders depend much on means of debt collection because their loans are not secured. Digital lenders use the access of the phonebook list of the consumer and call some people requesting for them to remind the borrower to return the money. It is not fair but they did it because their loans have

⁵³ Kasanga.L, Interview by author (09th September 2024, Globen Attorney Mbeya).

⁵⁴ Mdoe. B.J, Interview by author (09th September 2024, Baistar Advocates Mbeya).

⁵⁵ Mdoe. B.J, Interview by author (09th September 2024, Baistar Advocates Mbeya)

no other security, hence they ended up violating consumers' protection requirements.⁵⁶ This is one of the reasons why service providers use threatening language and harassment to collect debt because loans are not secured at all.

Punishments

Despite the fact that the law imposes punishments for non-compliance to consumer protection requirements, those kinds of punishment are not adequate enough to stop offenders from reoffending and encourage others to commit the same offence. The kind of punishment imposed cannot be effective to deter the problem of non-compliance to consumer protection requirements. Digital lenders are not scared of the punishment imposed because are too small compared to the benefit that they receive out of the business. The use of unfair business practices, issues of breach of consumer data privacy, unfair competition practices and also cybercrimes affect consumers more than lenders. For example, pursuant to the Regulation it provides a penalty of not more than 20 million for non-compliance while in accordance with the Rule. The penalty for non-compliance of the amount to be determined by the Bank of not less than five hundred thousand shillings and not more than five million shillings, the penalties imposed are not adequate enough to deter the digital lenders from non-compliance to the law.

Even from the existing legal framework, there is inconsistency of punishment to be imposed on digital lenders for non-compliance as a result it becomes difficult to ensure that digital lenders who fail to comply with the law receive their punishment effectively. Inconsistency of punishment contributes a lot to non-compliance with the consumer protection requirements because having laws which have small

punishments is as much as having no law because the law is there and still people commit offences.⁵⁷

Challenges in Implementing Financial Consumer Protection in Digital Lending Platforms Specifically App-Based Lending

The consumer protection laws governing digital lending in Tanzania indeed face several challenges, making them appear inadequate. Here are some key points to consider;

Lack of Comprehensive Legislation; While there are laws governing financial services and consumer rights, there is no specific legislation addressing digital lending. This gap can lead to ambiguities in enforcement and consumer rights protection. In fragmented Regulation, different regulatory bodies oversee various aspects of financial services, leading to a lack of cohesive guidelines for digital lenders.⁵⁸ The pace of technological innovation in digital lending outstrips the development of regulatory frameworks, leading to a mismatch between consumer needs and regulatory protections.⁵⁹

Transparency and Disclosure: Inadequate transparency digital lenders often do not provide clear information about loan terms, fees, and interest rates, making it difficult for consumers to make informed decisions. Many digital lending platforms may impose hidden fees, which are not clearly disclosed to consumers.⁶⁰

Consumer Awareness: Lack of Financial Literacy. Many consumers lack the necessary financial literacy to understand loan terms and their rights. This can lead to exploitation by predatory lending practices. Limited Outreach there is insufficient outreach and education on consumer rights related to digital lending.⁶¹

⁵⁶ Kasanga.L., Interview by author (09th September 2024, Globen Attorney Mbeya).

⁵⁷ Kasanga.L., Interview by author (09th September 2024, Globen Attorney Mbeya).

⁵⁸ Ibid

⁵⁹ Agur, I., Martinez Peria, S., & Rochon, C. Digital financial services and the pandemic: Opportunities and risks for emerging and developing countries (Special Series on

COVID-19). Washington, DC: International Monetary Fund (IMF) (2020).

⁶⁰ I.Agur, S. Martinez Peria, , & C. Rochon, Digital financial services and the pandemic: Opportunities and risks for emerging and developing countries (Special Series on COVID-19). Washington, DC: International Monetary Fund (IMF) (2020).

⁶¹ Mazer, R., & McKee, K. Consumer protection in digital credit (Focus Note 108). CGAP (2017).

Data Privacy and Security, Inadequate Data Protection: Digital lenders collect significant amounts of personal data, yet there are few regulations governing how this data is used or protected, putting consumers at risk of data breaches and misuse. Consumer Consent: often, consumers are not fully informed about what they are consenting to when providing personal information.⁶²

CONCLUSION AND RECOMMENDATION

The author observed that many customers take out loans without knowing the details of the terms, and many end up being violated by service providers. The digital lender takes advantage of this ignorance to violate consumers by employing unfair practices. From the legal and practical point of view, albeit with no conclusive intimation in practice, it is a legal requirement to ensure effective consumer protection in digital lending platforms in Tanzania. Generally, to enhance consumer protection in digital lending, Tanzania may need to develop comprehensive and specific regulations, improve transparency, and increase consumer education. Strengthening enforcement mechanisms and ensuring data protection are also critical steps to safeguard consumer rights in this rapidly evolving sector.

The research recommends the enactment of specific laws governing consumer protection on digital lending platforms specifically app-based lending and the imposition of severe punishment to service providers who fail to comply with consumer protection requirements, that the law must tackle all challenges faced by consumers while using the digital platform, the law has to differentiate traditional loans methods and digital loan methods to ensure that the provision of the law are practicable in the aspect it is intended to cover. The law must address issues relating to guarantors, collateral as well as debt collection mechanism as far as digital platforms are concerned. The law must be practicable in digital lending platforms to avoid unenforceability of the

law and punishment must be deterrent in nature since the severe of the punishment will create fear in the offenders according to Daniel S. Nagin's "Deterrence in the Twenty-first Century" in 2013 state that "*the fear of being caught is far more dreadful than the draconian punishment when the legal system has been successful in punishing a criminal it has shown its power in getting hold of the criminal, this alone shall act as a fear psychosis in the mind of the other criminals.*" Therefore, the researcher recommends severe punishments for noncompliance with financial consumer protection requirements.

Addressing the insufficiencies in consumer protection for digital lending in Tanzania requires a complex approach, including the enactment of specific regulations, improved enforcement mechanisms, consumer education initiatives, and a focus on data protection. As the digital lending setting evolves, regulatory frameworks must adapt to changes so as to safeguard consumers effectively. Therefore, the researcher recommends for enactment of specific laws governing digital lending specifically app-based lending and imposing severe punishments for non-compliance.

The guidance note has to be amended since it just prohibits service providers on different aspects without stating how service providers should act to secure and balance their interest and the interest of the consumers, that the guidance note should cover the issue of collaterals to digital lending platforms as well as should states methods and things which has to be employed by financial service providers during debt collection and obtaining of guarantor consent.

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