

**WOMEN ENTREPRENEURS' LEGAL POSITION IN RELATION TO EFFECTING
COMMUNICATIONS AND PAYMENTS USING MOBILE PHONES
– A NEED FOR REFORM?**

BY

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ABSTRACT

The use of mobile phones for their communication and simple financial payments needs has been widely touted as capable of facilitating women's development, by aiding women reduce the flexibility, mobility and time constraints they face in running their small businesses in addition to their responsibility of managing households. This dissertation explores how women in informal business in a small, urban fruits and vegetable market in Nairobi Kenya, use mobile phones to meet their communication and payment needs in both personal and business lives. While Mobile phones have been recommended for their catalytic role of in facilitating development for the poor and marginalised women, their adoption and use, as a means of empowering women poses challenges that the government through its sector regulators need to seriously consider. To start with, the people who stand to benefit most by use of mobile phone technology are women, the poor and the marginalised. These are the people who often face imbalances in economic terms, educational levels and bargaining power. They are especially vulnerable because the capacity of technology to facilitate their access to services lauded as capable of facilitating their development, presents opportunities and challenges in equal measure. A combination of mobile telephony and mobile payments now opens up business people large and small to unlimited possibilities. The dissertation sought to identify the benefits and the challenges that the women face in their use of mobile phones for communication. It raises issues of consumer protection as challenge for banking and communications regulators. It also delves into the benefits and challenges that use of basic mobiles payment services presents. It provides an overview of the applicable legal and regulatory framework and suggests pertinent issues that need reform.

EXECUTIVE SUMMARY

The study attempted to bring to light the opportunities that use of mobile phones presents to women. Mobile phones have afforded women numerous personal and business benefits. Through use of mobile phones women have been able to surmount shortcomings associated with their mobility, flexibility and time constraints. They are making it possible for women who have been long excluded from full economic participation in societies to participate in market activities. Mobile phones are enabling women build businesses and create their employment as a means of enabling them eventually escape poverty.

While Mobile phones have been recommended for their catalytic role of in facilitating development for the poor and marginalised women, their adoption and use, as a means of empowering women poses challenges that the government through its sector regulators need to seriously consider. To start with, the people who stand to benefit most by use of mobile phone technology are women, the poor and the marginalised. These are the people who often face imbalances in economic terms, educational levels and bargaining power. They are especially vulnerable because the capacity of technology to facilitate their access to services lauded as capable of facilitating their development, presents opportunities and challenges in equal measure. A combination of mobile telephony and mobile payments now opens up business people large and small to unlimited possibilities, which be beneficial or detrimental to women, the poor and marginalised.

These new innovations have almost all the time outpaced the government regulatory response. Laws and regulations applicable to mobile payments are fragmented. They scattered in more than three different pieces of legislation, and because they are still trailing industry innovations there is no clear regulatory responsibility in consumer protection. The National Payment System Act provides for regulation and supervision of the payment systems and payment service providers in Kenya. It also gives the Central Bank enhanced legal and regulatory powers over mobile payment systems, which includes the power to publish rules to regulate the system. The Act has been found to be generic because it applies to all payment systems without making specific provision on the various payment systems in use in Kenya. It does not address the challenges unique to the mobile payment system especially the level of consumer awareness, financial and technological literacy of retail consumers of the system. The Central Bank is yet to publish rules under the National Payment System Act to provide guidance on how payment systems should operate. The only

regulation in place is the requirement by the Communications Commission on licensees to file quarterly reports as part of the terms of their licenses, which does not specifically require licensees to provide fraud incident reports but quarterly reports detailing only the communication aspects of their operations.

The divide in responsibility presents a dilemma for regulators, which results in lack of coherence in consumer protection and market oversight. Existence of two regulatory regimes can result in different rights and a divergence in protection for personal and small business consumers depending on which regulator a consumer is dealing with, since decisions are driven by different legal obligations and powers vested in individual regulators Communication Commission of Kenya and the Central Bank of Kenya. Consumers are therefore unclear over what redress rights they have which entity to turn to if there is a payment related problem.

This calls for consolidation of the fragmented applicable legislation so that there is a clear regulatory responsibility in consumer protection. Integration of mobile telecommunication and financial industry provides an opportunity to harmonise and extend consumer protection measures to cover mobile payments. There is also need for reforms to the existing legislation to extend the application of the consumer protection Act to apply to mobile payment services and products. Regulators also need to emphasize consumer protection especially when the customers are the poor and marginalised who have to rely on innovative mobile technology in order to access services touted as capable of facilitating their development.

This study found that while the telecommunication sector regulator has a comprehensive consumer education and information mechanism. The mechanism is targeted at the telecommunications sector players only. The comprehensive consumer protection measures that it puts in place do not target the mobile financial services for two reasons. First, the mobile financial services are not strictly telecommunication services despite the fact that Communications Commission is the licensing authority; the Commission does not therefore have full power to regulate it. Secondly the Communications Commission does not seem to have expertise to properly play an oversight role over the mobile financial services because other than utilising the telecommunication network and being operated by a licensed mobile network operator, the other aspects of mobile money operations lean more to the banking industry than the telecommunication industry. The Central Bank on the hand on the hand as banking sector regulator has not robustly taken charge of regulation of the mobile financial

services like it does with the traditional banking sector regulatory role derived from the Banking Act and the Central Bank of Kenya Act. In banking practice the central bank has published regulations which guide commercial banks in matters of consumer protection but the banks are expected to try to amicably resolve any issues that arise between them and their clients. This is the standard that the Central bank has been applying with mobile financial services.

The study attempted to identify various priority policy and regulatory measures that would guide consumer protection in use of mobile phones for communication and payments. It has identified that consumer protection needs to expressly specify the consumer education and information mechanisms, the need to avail consumer redress mechanism as well complaints handling procedures. The United Nations Guidelines on Consumer Protection propose that in the mass market in particular, dispute resolution mechanisms need to be built into daily operations so that providers can address consumers' questions and complaints quickly and efficiently. They also need education on the available redress mechanism. These measures are intended to promote and protect the economic interests of consumers because they need to access to adequate information to enable them to make informed choices.

Mobile payment customer care needs to provide simple and consistently executed recourse mechanisms so that consumers are able to protect themselves. Clear information about products and their rights and responsibilities, will transform consumers into the best watchdogs for mobile financial consumer protection. This research found out that very little is being done by the mobile service provider Safaricom to inform consumers, or to empower them to inform themselves. There is no literature on the available consumer recourse mechanisms for mobile payments consumer.

There is need to put in place legal and administrative measures to enable consumers or organisations where appropriate, to obtain redress through formal or informal procedures that are expeditious fair inexpensive and accessible. The procedures should take particular account of the needs of women and low income consumers. Mobile financial services consumers feel the service provider is not doing enough to inform them, and offer redress when they need it. Awareness campaigns and readily available, reliable redress mechanisms can reduce risks especially the common cases of erroneous transfers.

The study recommends adjustments to banking and financial laws and regulations so as to create specific regulation for mobile payments. It is also recommended that sector regulators start paying more attention to consumer related issues and to define standards for mobile network operators and their partners to protect consumer interests. This study recommends the consolidation of the applicable legislation and creation of unified regulatory agency with power to publish and implement regulations. The service provider should sensitise the public on the risks and possible mistakes that they can make. They should compile reports on consumer trends and devise consumer education and awareness on the basis of the most common errors so the statistics can inform consumer education and information measures, and the design of mobile money applications. The mobile financial service provider should devolve more consumer protection measures to the agents so as to make use of its network of mobile money agents.

Well targeted initiatives to improve financial literacy and increased awareness can play an important role in reducing risks for consumers and increasing effectiveness of regulatory action. In order to develop effective consumer protection regimes it is important that all stakeholders participate in the process, from policy makers to financial institutions telecommunications operators law enforcement agencies and other civil society organisations.

DECLARATION

I **Omari Joel Amenya** certify that this dissertation is my original work; it is an honest and true effort of my personal research. I certify that the work has not been presented elsewhere before for any other thesis.

Signed.....

Date.....

This dissertation was submitted for examination with my approval as the University supervisor

Signed.....

Date.....

PROF. JULIE STEWART

Director Southern and Eastern African Regional Centre for Women's Law, University of Zimbabwe

DEDICATION

This dissertation is dedicated to my dear parents Anna and Belfred, who have devotedly supported my education since my first day at school to this day, and the strongest believers of my ability.

To my dear sister and learned friend Winnie, for the support and inspiration throughout the course, you never tired of my day on day grumbles about school.

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To all of you I say, thank you so much indeed.

LIST OF ABBREVIATIONS

CBK	Central Bank of Kenya
CCK	Communication Commission of Kenya
COFEK	Consumer Federation of Kenya
FSD	Financial Sector Deepening Trust
GDP	Gross Domestic Product
GSMA	Global System for Mobile Association
ICRW	International Centre for Research on Women
ICT	Information Communication Technologies
ILO	International Labour Organisation
KBA	Kenya Bankers Association
NACOSTI	National Council for Science Technology and Innovation
NPSD	National Payment System Department
OECD	Organisation for Economic Co-operation and Development
PIN	Personal Identification Number
SMS	Small Message Service
SSA	Sub-Sahara Africa

LIST OF STATUTES

Banking Act

Central Bank of Kenya Act

Consumer Protection Act

Kenya Information and Communication Act

National Payment System Act

LIST OF INTERNATIONAL INSTRUMENTS

United Nations Guidelines on Consumer Protection (1985)

United Nations Guiding Principles on Business and Human Rights

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1 INTRODUCTION

1.1. Introduction

This dissertation is based on qualitative research that was carried out within Ngara fruit and vegetable market in Nairobi, Kenya. The research topic is women entrepreneurs' legal position in relation to effecting communication and payments using mobile phones - a need for reform? It is divided into six chapters. This chapter lays the ground for the research. It covers the background to the research, why the topic was chosen, the objectives of the research, the research assumptions, the research questions and a conclusion.

1.2. Background to the Study

Mobile phones have brought new possibilities to Kenya and the rest of the world. Mobile phones are connecting individuals to individuals, information, markets and services. The adoption of mobile phones has widened with the continued reduction in the cost of communication which has allowed individuals and businesses to send and receive information affordably and swiftly. This study is an attempt to understand how women in informal business in a small urban fruits and vegetable market use mobile phones to meet communication and payment needs in their personal and business lives.

Women who operate at the Ngara fruit and vegetable market face lots of difficulties running their businesses at their market which is located within walking distance from Nairobi central business district. They have to commute from their homes outside the city every morning to wholesale markets located around the city, to source supplies which they ferry to their stalls at the market where they operate. Operating their businesses is in addition to their responsibility of managing a household which leaves them with hardly any time to properly attend to their small business.

Emerging research shows that the reduction in communication costs associated with development and adoption of mobile solutions to address a range of social and economic challenges has tangible economic benefits. Mobile phones in Africa are evolving from simple communication tools into service delivery platforms. Kenya stands out among the small number of pioneering countries where financial services are offered by mobile network operators. This has shifted the development paradigm from mobile phones as merely a tool

for reduction of communication and coordination costs to one that could transform lives (Aker and Mbiti 2010).

The evolution and adoption of mobile phones has been fast. At the Connect Africa Summit in 2007, Paul Kagame, President of Rwanda, said: “In 10 short years, what was once an object of luxury and privilege, the mobile phone, has become a basic necessity in Africa.” Policy makers, newspapers and mobile phone companies have all touted the poverty eradicating potential of mobile phones (Corbett, 2008, in Aker and Mbiti 2010). The dependence on technology for the provision of services touted as capable of facilitating development for the poor and marginalised present new challenges for the banking and communications sector regulators. It also raises issues of consumer protection.

This study seeks to identify the benefits and the challenges that the women face in their use of mobile phones for communication. It also delves into the benefits and challenges that use of basic mobiles payment services presents. It provides an overview of the applicable legal and regulatory framework and suggests issues for reform.

1.3. Definition of Key Terms

“Information and communication technologies” these are technologies employed in collecting, storing, using or sending out information and include those involving the use of computers or any telecommunication system (Information Technology Association of America, 2000).

“Mobile payments” is the provision of payment services using mobile phones, electronic funds transfer between a customer’s own accounts, transfer to a third party. A mobile payment may also refer to the process of two parties exchanging financial value using a mobile device in return for goods and services (Ramezani, 2008, in Lawack - Davids, 2012).

“Mobile money” is another form of electronic money it includes services that connect consumers financially through mobile phones. Mobile money allows for any mobile phone subscriber, whether banked or un banked- to deposit value into their mobile phone account, send value via a simple handset to another subscriber, and allow the recipient to turn that value back into cash easily and cheaply. In this way mobile money can be used for both money transfers and mobile payments (GSMA, 2010).

“Payment system” UNCTAD has defined it as a system or arrangement that enables payments to be effected between a payer and a beneficiary, or facilitates the circulation of money, and includes any instruments and procedures that relate to the system.

“Mobile payments”, also known as m-payments, may be defined as any payment where a mobile device is used to initiate, authorize and confirm an exchange of currency in return for goods and services. Mobile devices include mobile phones, PDAs, wireless tablets and other devices that can connect to mobile telecommunication networks. Mobile payments can be an alternative to cash, checks, credit cards and debit cards, and can make possible new opportunities for commerce convenience (Mobile Payments Today, 2013).

1.4. Mobile Telephony in Kenya

Sector statistics for the first quarter (July-September 2013) of the financial year 2013/2014 by the Communications Commission of Kenya (CCK) indicate that the number of mobile phone subscribers stood at 31.3 million, while mobile penetration stood at 76.9 percent. Mobile money transfer continued to record growth, with the number of subscribers rising to 25.1 million against a population of 44,037,656 as estimated by Kenya Bureau of Statistics as at July 2013.

Safaricom Limited the pioneers of the mobile payment service M-pesa, continue to dominate the market with the highest market share of 66.5 per cent, with rival Airtel Networks Limited recording a distant 17.6 per cent. In mobile money transfer there are no sector statistics from the industry regulator, but from the statistics published by the operators the subscriber trend is most likely replicated. While Airtel has not published its statistics on mobile money Safaricom has provided comprehensive statistics on its popular mobile money business M-pesa, which just about 7 years after its launch in Kenya, M-pesa has entirely redefined how money transactions are conducted.

Its latest statistics indicate that, over Ksh 2 billion is transacted on M-Pesa daily, which translates to over 40 percent of Kenya’s Gross Domestic Product (GDP). Now mobile money is revolutionizing how money flows among individuals and even businesses. One does not have to go far to get an M-Pesa agent; there seems to be one around every corner. You no longer need to visit the bank or ATM to withdraw money – you can easily and instantly access it via M-Pesa. You don’t have to carry cash when going to the supermarket – M-Pesa will do. Queues to pay electricity, water and other bills are getting shorter and shorter thanks

to M-Pesa. For those who go to church, you may not need to carry cash for tithe – your church most likely has an M-Pesa account. And soon, you'll no longer be required to carry money for bus fare or to fuel your car – *Lipa na M-Pesa* (meaning pay using M-pesa) will do the trick (Safaricom 2014).

1.5. Why the Topic

In *Women, Commerce and the Law* we identified the transformative effect of mobile phones. There has been recent development and adoption of mobile phone based solutions aimed at addressing a range of social economic challenges. Given multiple demands on women's time, these mobile solutions have the potential to enhance women's participation in social and economic activity by freeing up their time (World Bank, 2012).

Despite this great promise, I have come across challenges with use of mobile phones which I thought needed to be highlighted. I had concerns in my dual capacity as prosecution counsel and an M-pesa agent. As prosecution counsel I receive on a regular basis, investigation files from police stations within my area of jurisdiction on incidents of loss of money by M-pesa consumers. The investigation files usually land on my table with requests from investigation officers to close the files because the complainants are no longer interested to pursue the complaints any further.

Similarly at the M-pesa agency, it is not unusual for M- pesa consumers to come to us in desperate need for assistance when they have erroneously transferred money. Unfortunately we are never in a position to help. They have to go to the nearest office of the service provider or call the service providers customer helpline.

With these in mind, there seemed to be a contradiction. Mobile phones have the huge potential to improve women's lives by revolutionizing how they send and receive information thereby increasing the flexibility of conducting business activities and strengthening their ability to compete in market economies. Yet, the same women appeared vulnerable to loss of money going by the frequency of cases of errors and mistakes.

1.6. Objectives of the Study

The following were the six main objectives of this research:

1. To bring to light the opportunities that use of mobile phones presents to women in small scale business.
2. To find out how mobile phones are aiding women reduce the flexibility, mobility and time constraints they face in running their small businesses.
3. To find out the challenges that use of mobile phones presents to women in small scale business.
4. To assess the adequacy of applicable legal and regulatory framework and suggests issues for reform.
5. To assess the adequacy of consumer education and awareness measures in laws and regulations applicable to mobile payments.
6. To assess the adequacy of the available mobile phone consumer complaint and recourse mechanism in addressing the needs of women in small scale business.

1.7. Research Assumptions

Out of the research objectives, the following research assumptions were formulated:

1. Mobile phones increase women's flexibility of conducting business activities by making it easier to gather and transmit business related information.
2. Mobile phones are helping business women reduce the time constraints they face in running their small businesses.
3. Mobile phones are helping business women reduce the mobility constraints they face in running their small businesses.
4. Women in small scale business face difficulties getting redress when they encounter problems of fraud and erroneous money transfers in their use mobile phones.
5. The small amounts in which women in small scale business make M-pesa transactions is the reason they do not pursue redress in cases of fraud and erroneous money transfers.
6. Absence of awareness about the risk of fraud and erroneous transfer in M-pesa contributes to high incidents of fraud and erroneous transfer among consumers.

1.8. Research Questions

Out of the above research assumptions the following research questions were formulated:

1. Do mobile phones increase women's flexibility of conducting business activities by making it easier to gather and transmit business related information?
2. Are mobile phones helping business women reduce the time constraints they face in running their small businesses?
3. Are mobile phones helping business women reduce the mobility constraints they face in running their small businesses?
4. Do women in small scale business face difficulties getting redress when they encounter problems of fraud and erroneous money transfers in their use mobile phones?
5. Are the small amounts in which women in small scale business make M-pesa transactions the reason they do not pursue redress in cases of fraud and erroneous money transfers?
6. Does absence of awareness about the risk of fraud and erroneous transfer in M-pesa contribute to high incidents of fraud and erroneous transfer among consumers?

1.9. About the Area of Study

Ngara Market is believed to have started in the early 1990's. Initially it was an illegal market where women who hawked fruits and vegetables in the nearby areas of Parklands would converge after selling their goods house to house. It remains an illegal market, but the city council seems to countenance it. Stall operators pay charges daily to city council tax collectors, and the market has survived despite operations in various parts of the city to get rid of illegal structures and undesignated markets.



Ngara Fruit and Vegetable Market Nairobi

A typical Nairobi walk-through street market, it has rows of temporary fruit and vegetable stalls lining both sides of the street. The market is a beehive of activity with busy buyers and sellers, encroaching on the sidewalks leaving barely enough space for shoppers to drive or walk through. The market is situated in the old predominantly Asian inhabited part of Ngara. It is awkwardly set right in front of residential premises, with vendors crowding the road with their fresh produce. A large section of Tiwi Road has been occupied leaving no room to drive through. The market lines both sides of Kienjoku and Tiwi roads and parts Ngara and Shillingi roads. There is a wide variety of vegetables and fruits on sale at pretty affordable prices. The traders are more often than not very friendly and welcoming, even offering buyers tasters of their fresh fruit.

The busy informal market provides business accommodation for over five hundred fruit and vegetable vendors. The mix of men and women running business in the market is almost even. One cannot tell the owners from the employees by mere observation but men and women are busy at work arranging their fruits and vegetables in neat rows while selling to the

buyers. The buyers comprise women and men of Asian and African descent. Pickup trucks and hand carts can also be seen delivering supplies to the stalls.

A mobile phone is a common feature at the market. Men and women once in a while interrupted their business to answer phone a call, send text messages or use the calculators on their phones. It was interesting observing people men and women had at work and how the mobile phones had become a part of their business and personal lives. It was difficult trying to imagine what life used to be for them without mobile phones. After a brief walk around I further observed that like other crowded and busy market places in Kenya the area around Ngara Market is served by a number of Mpesa outlets/agents. They seemed located strategically just a walking distance within the market targeting the market as well the nearby fig tree stalls complex.

1.10. Conclusion

No doubt mobile phones have the potential to better women's lives by ensuring their continued ability to participate in market activities. Yet, the same women seem vulnerable to loss of money going by the frequency of errors and mistakes reported. This chapter has laid the ground to investigate women's legal position in effecting payments using M-pesa.

2 THEORETICAL FRAMEWORK

2.1. Introduction

In this chapter I present a review of literature on development, use of mobile phones and its potential to enhance women's participation in economic activity. I have also attempted to show the connection between enhanced women's participation in economic activity and economic development. With increased use of mobile phones and the central part that they continue to occupy in women's empowerment and the development process in general, there are legal and administrative challenges which need to be addressed.

2.2. Why Women's Economic Advancement

One of the ways of promoting economic growth and reducing poverty is through strong investment in people particularly Africa's women who have been long excluded from full economic participation in societies (Gelb, 2003). Strong investment in people here means empowering women especially those at the bottom of the economic pyramid. This can be done by providing the right tools to find employment and build businesses as a means of enabling them eventually escape poverty. Mobile phones rank high among these tools (GSMA, 2010).

Empowering women economically is acknowledged as a means for reducing poverty and promoting economic growth. Women have a significant role to play in African economies; they are however relegated to mainly the informal sector where they operate micro and small enterprises. The bulk of them are engaged in small income generating self employment in agriculture and non – agricultural activities with low prospect for growth (Dejene Y. (2007). Interventions to increase women's time for work and economic activity are an effective way to advance development since women's economic well being is linked to the development of the sectors and subsectors in which they operate and evidence has been mounting over the recent years that empowering women has a positive economic and social change (Dejene Y. 2007).

Increasing women's ability to earn an income in turn allows them to improve the quality of their own lives as well as that of their families. Organisation for Economic Co-operation and Development (OECD) in report published in 2008 reported that women channel up to 90% of their income to their families and communities. Research has also confirmed that children of

mothers in gainful employment have a 5% greater educational attainment in comparison to other children (OECD 2008).

There exists a strong link between women's economic empowerment and improved welfare of families and society in general. There is evidence to confirm that empowering women and improving the efficiency of their work is critical for reducing poverty. A woman's improved economic status produces many positive economic and welfare outcomes for their children, families, and societies (Dejene Y. 2007).

Protecting women's economic and social rights, calls for women's equal access to employment and equal pay for jobs of equal value, promotion and support of women's occupations and economic activities in particular within the informal sector produces many positive outcomes in economic development. It has been argued that gender bias in employment is associated with low growth in Sub-Saharan Africa (Klasen 1999).

Countries that have managed to reduce inequality between men and women in employment benefit from lower child mortality, as well as more transparent businesses and faster growth economically (World Bank 2001). In addition, access to income, technology and paid work by a woman improves their children's welfare more than a man's access to similar resources would (United Nations, 2009). Increases in household income, particularly income controlled by women, correlate with a boost in children's nutrition and survival (World Bank 2001).

The inference from this is that empowering women can change the course for families and society, and by extension countries development. Mobile phones are positioned high among the right tools to enable women create employment and build businesses as a means of enabling them eventually escape poverty.

2.3. Mobile Phones a Tool for Women's Economic Advancement

Everyone seems to have a mobile phone these days. Mobile phones have revolutionized how business transactions are conducted, in the current connected, instant-information age, mobile phones can help collect important information previously difficult or time-consuming to obtain and make possible payments in a manner previously never imagined. This has enabled women go into and remain in business which has in the process improved their lives and those of their families (Gill, K. et al, 2010).

A study by global telecommunications operator Vodafone established that 62% of businesses in South Africa attributed their raise in profits to the use of mobile phones (Vodafone, 2005). In just a few years, mobile phones have overtaken the conventional media like radio to emerge as the most accessible technology in low and middle-income countries. Mobile phones connect people and provide them with information that is useful in their daily lives. Research shows that greater mobile phone penetration rates are associated with faster economic growth, job creation and profitable businesses (Comfort, K. and Dada, J. 2009)

Studies have shown that women have higher labour burden (time poor) as opposed to men. Family and community responsibilities take a lot of women's time that could be applied for improving their income generating efforts (World Bank 2012). In many Sub-Sahara Africa countries, women work up to 16 hours a day, juggling both productive work and their responsibilities at home. Their responsibility for child care limits their mobility and obliges them to generate income in less conducive environments for business than men. Mobile phones can help reduce both the time and mobility constraints that women face in accessing markets and participating in market work (Dejene, Y. 2007). With innovative mobile phone based developments, such as mobile financial services product M-pesa, women are now in a position to remotely process small financial and payment transactions more effectively without the need to physically travel to the markets to make purchases, which is especially beneficial to women entrepreneurs operating at a small scale (World Bank 2012).

Mobile phones can advance women's access to markets and increase their participation in economic activity by reducing transaction costs that they incur as a result of time and mobility constraints. They make it possible to gather and transmit prices and other information and increase the flexibility as to where and when economic activities can occur. Because women are the ones often faced with more restrictions than men in their mobility and available time, they stand to benefit more from these developments (World Bank 2012).

There also exists a strong link between use of technology and women's economic empowerment. Research indicates that an increase of 10 mobile phones per 100 people boosts GDP by 0.6 percent (Navas-Sabater 2006 in Gill, K. *et al* 2010). There is a strong connection between use of mobile phones and women's economic empowerment because owning a mobile phone improves incomes earned by women as well as their access to economic opportunities (World Bank 2012).

Gender differences in access to economic opportunities are driven in part by differences in time use that result from how responsibility for care and housework is distributed. To address this requires measures to release women's time and reduction of transaction costs associated with accessing market (World Bank 2012). Mobile phone access and use can alleviate these time and mobility constraints for women by increasing their ability to coordinate their family and work lives, reducing the cost of money transfers, and cutting down the physical labour or travel required to discover information (World bank 2012). In addition services delivered over the mobile channel have been found to be more convenient, private and affordable than services offered in person (GSMA 2013).

2.4. The Challenge

There is evidence that mobile phones are catalytic in the promotion of economic development for women, the poor and the marginalised. They have been recommended for their ability to minimise the constraints that women face in participating in economic activity. Bearing in mind that consumers often face imbalances in economic terms, educational levels and bargaining power this segment of consumers is especially vulnerable. The ability of technology to facilitate the provision of services touted as capable of facilitating development for the poor and marginalised presents opportunities and challenges in equal measure. As much as mobile phones make it possible for women to obtain and exchange information, coordinate business and personal activities and conduct simple mobile financial and payment transactions it is to be expected that some of the subscribers will experience confusion or problems in the usual course of using the technology. In a survey conducted by the Financial Sector Deepening Trust Kenya in 2011, it was observed that given the volume of M-pesa transactions conducted by consumers per day, on their handsets or interacting with an agent the possibility of disputes exists. The study concluded that there was need especially in the mass market, for dispute resolution mechanisms to be built into daily operations so that providers can address consumers' questions and complaints quickly and efficiently (FSD 2011).

The United Nations Guidelines on Consumer Protection (UNGCP) aim to among others, assist countries to achieve and maintain adequate protection for their population of consumers. They propose that in the mass market in particular, dispute resolution mechanisms need to be built into daily operations so that providers can address consumers' questions and complaints quickly and efficiently. The intention is to promote and protect the

economic interests of consumers because they need to access adequate information to enable them to make informed choices when choosing and using mobile phones and mobile phone based developments like M-pesa. They also need education on the social and economic impacts of their choices, and the available redress mechanism should they need them.

The considerable in interest and the catalytic potential of mobile phones is out of its ability to provide communication and basic payment services to person who few years ago could not because of either cost or distance from the service providers. For instance the Financial Sector Deepening Trust (FSD) in its 2009 report on mobile payments observed that mobile payments are by far more convenient and efficient for poor consumers than going to a bank branch. In that way they have the potential to extend financial services to the unbanked and marginalised communities. The other attractive feature is that it is made possible by retail agents using mobile phones that customers, retail agents and mobile network operators use to record and communicate transaction details quickly, reliably and cheaply over great distances.

In Kenya consumer protection has been enshrined in the constitution which recognises consumer rights as human rights. Article 46 of the Constitution of Kenya 2010 gives consumers the right to goods and services of reasonable quality, it also provides for the right to information necessary for the gain of full benefit from those goods and services. Parliament enacted the Consumer Protection Act to give effect to article 46. However gaps still exist in the legal and regulatory frameworks which results in inadequate consumer protection for mobile phone consumers especially those using the mobile financial services. Mobile financial services present a challenge for regulators applying the traditional bank regulation and oversight. M-pesa is run by a mobile operator rather than a bank as defined by the Banking Act. In contrast to traditional branch based banking, M-pesa passes direct customer interaction to a wide range of retail agents. According to Communication Commission of Kenya sector statistics for period between July and September 2013, the number of mobile money agents stood at 88,466 who range from standalone M-pesa agencies, supermarkets, kiosks the list endless. These non bank entities are not subject to regulation and supervision like banks. They are also not in a position to offer the services that customers are entitled to at conventional bank branches. They are capable of devolving simple payment services over great distances but unable to devolve the consumer protection measures according to UNGCP. The implication is that while you are able to access

communication and payment services remotely, should any problem arise you have to rely on the customer helpline or go to the service providers nearest outlet.

Use of mobile phones indeed has a major role to play in expanding communication and financial services to the poor and marginalised, which are the tools that they need in order to advance economically. The government of Kenya has in its ICT master plan 2017 recognised that information and communication technology offers a powerful tool that, if deployed equitably can ensure citizens are empowered and government can deliver services more effectively. The desired regulatory approach for mobile payments therefore needs to be as innovative and dynamic as the mobile technology sector, it has to be one that encourages innovation and development while managing the key risks that come with use of technology and while bearing in mind the people it targets to empower and protect.

The regulatory approach should also incorporate consumer protection aimed at achieving and maintaining adequate protection for the population of consumers, because consumers often face inequality in economic terms, educational levels and bargaining power. The gender differences in access to economic opportunities driven by differences in time use that result from how responsibility for care and housework is distributed are extended to access to redress mechanisms. Time and mobility constraints affect women's ability to interact with the service provider in cases where they need assistance. Women are responsible for both the home and childcare, in addition to income generating activities. The convoluted process of making a report, whether at the service provider or at the police station poses a particular burden on women's time.

2.5 Law, human rights and policy

Various laws, regulations, rights and policies colour the regulatory approach mosaic that is applicable for mobile payments systems in Kenya. The Kenya ICT master plan, Millennium Development Goals (MDG), the 1999 OECD guidelines for consumer protection in the context of electronic commerce, United Nations Guiding Principles on Business and Human Rights (Ruggie Principles), United Nations Guidelines on Consumer Protection (1985) the constitution of Kenya 2010 and a various pieces of legislation and regulations.

In 2013 the government launched the ICT master plan 2017. The master plan identifies access to information as crucial to economic growth. Information and communication technology offer a powerful tool that, if deployed equitably, can ensure citizens are

empowered and government can deliver services more effectively. Information is vital to the efficient delivery of public and private sector products and services that are responsive to the needs of citizens and business as well as capacity creation. Through implementation of the master plan the government of Kenya aims to provide an enabling ICT environment and regulatory frame work so as to stimulate the setup of ICT related business to enhance employment creation.

The government of Kenya recognises that ICT offers key benefits that make life simpler and more convenient for citizens and businesses, and provides channels to collaborate and share information, which in turn enables opening up of new opportunities for local entrepreneurs. The eighth millennium development goal covers a global partnership for development in various areas including ICT. Goal number eight builds on the language of the Millennium Declaration where United Nations member countries resolved to create an environment at the national and global levels alike – which is conducive to development and to the elimination of poverty. With regard to ICT goal number 8 target 8F requires the member countries to, in conjunction with the private sector; make available benefits of new technologies, especially information and communication technologies.

OECD has provided extensive guidelines for consumer protection on e-commerce. The guidelines relate to transparent and effective protection, online disclosures which also include information about the transaction as well as confirmation process and payments. There is also a guide on dispute resolution and redress mechanism and consumer education and awareness. This provides a guide from which countries that are seeking to strengthen consumer protection in mobile payments and e-commerce can borrow from.

2.5.1 Ruggie Principles

United Nations Guiding Principles on Business and Human Rights are popularly known as the Ruggie Principles. The guidelines outline how business should implement the UN human rights framework and how states should play a part in this. The guiding principles do not create new international legal obligations on business activity. They are aimed at setting a common global standard for preventing and addressing the adverse human rights impact of business activity.

The guiding principles follow the three pillars of the UN “protect, respect and remedy” framework. The state has a duty to protect its citizens against human rights abuses by third

parties, including business enterprises, through appropriate policies regulation and adjudication. The corporate responsibility to respect human rights, meaning corporations should act with due diligence to avoid violating the rights of others and to address adverse effects with which they are involved. Then there is need for greater access to remedy for victims of business-related abuse, both judicial and non judicial.

2.5.2 United Nations Guidelines on Consumer Protection (1985)

The United Nations Guidelines on Consumer Protection (UNGCP) were adopted by the General Assembly in 1985. UNGCP remain relevant for consumer protection policy and has inspired a significant number of national consumer protection laws. The guidelines for consumer protection are aimed at assisting countries to achieve and maintain adequate protection for their population of consumers, because consumers often face inequality in economic terms, educational levels and bargaining power. The Constitution of Kenya 2010 recognises consumer rights as human rights. Parliament has also enacted a Consumer Protection Act to give effect to the right.

Under UNGCP Governments are supposed to develop and maintain a strong consumer protection policy. The intention is to promote and protect the economic interests of consumers by ensuring they have access to adequate information to enable them to make informed choices. Consumers should also be educated on the available effective redress mechanisms.

Governments are required under the guidelines to provide or maintain adequate infrastructure to develop, implement and monitor consumer protection policies. Special attention should be taken to ensure that measures for consumer protection are implemented for the benefit of all sectors of the population, particularly people living in poverty.

All enterprises should obey the relevant laws and regulations of the countries in which they do business. They should also conform to the appropriate provisions of international standards for consumer protection to which the competent authorities of the country in question have agreed. While governments should within their own national context, encourage the formulation and implementation by business, in cooperation with consumer organisations, of codes business practices to ensure adequate consumer protection. Voluntary agreements may also be established jointly by business, consumer organisations and other interested parties. These codes should adequately be publicised.

Governments should put in place legal as well as administrative measures to enable consumers or organisations where appropriate obtain redress through formal or informal procedures that are expeditious fair inexpensive and accessible. The procedures should take particular account of the needs of low income consumers. Governments should encourage all enterprises to resolve consumer disputes in a fair, expeditious and informal manner. Establishment of voluntary mechanisms including advisory services and informal complaints procedure which can provide assistance to consumers are also recommended. Information on available redress and other dispute resolving mechanism should be made available to consumers.

Governments should develop or encourage the development of general consumer education and information programmes. The aim of the programmes is to enable people act as discriminating consumers, capable of making an informed choice of goods and services, and conscious of their rights and responsibilities. Education and information programmes create awareness on important aspects of consumer protection especially how to obtain redress and the available agencies for and organisations for consumer protection. Business should where appropriate undertake or participate in factual and relevant consumer education and information programmes.

2.6 National Laws

Innovation has been at the front line of development in Kenya, especially through the integration of mobile telephony and retail financial services. The integration gave rise to mobile payments which have in turn revolutionised the way people conduct business in Kenya. A combination of mobile telephony and mobile payments now opens up businesspeople large and small to unlimited possibilities. These new innovations have almost all the time outpaced the government regulatory response. The absence of specific legislation in this realm means the Kenyan regulatory environment offers no protection, which leaves the consumer exposed to various risks. Mobile payments comprise both banking and telecommunication activities, differing perspectives exist as to what the appropriate regulatory framework as well as well as which authority should regulate it (Malala, J. 2013). To increase the potential benefits from innovations there is need to make adjustments to banking and financial laws and regulations so as to create specific regulation for mobile payments.

The Kenyan government has been more reactive than proactive in reforming regulatory measures. Creation of new regulations seems to come long after industry acceptance of technology. This explains the ever widening gap between new technology and government regulation.

Article 46 of the Constitution of Kenya 2010 gives consumers the right to information necessary for the gain of full benefit from; goods and services. Article 46(2) required parliament to enact on priority legislation to provide for consumer protection. This demonstrated the need and urgency to strengthen protection for consumers of services offered by both regulated and unregulated service providers. The Consumer Protection Act was enacted in 2012, before then there was no unified policy and regulatory framework for issues of consumer protection in Kenya. The Act was hailed as the first unified enactment of consumer protection provisions. The Act however does not contain any consumer protection provision applicable to mobile financial products and services.

The Central Bank of Kenya regulates the banking activities pursuant to the Banking Act and the Central Bank of Kenya Act. The Banking Act mandates the Central Bank to regulate the banking industry in the interest of consumers. In 2006 the Central Bank published the Banking Regulations. They prescribe the procedure to be followed in increasing the rate of banking and other fees. The regulations leave recourse to the banks they do not provide guidelines obligations of the parties and on consumer complaint handling. At the time of publication of the banking regulations of 2006 mobile payments were not contemplated. There is no specific provision in both the Banking Act and the Central Bank of Kenya Act mandating the Central Bank to oversee consumer protection. Any consumer protection measures taken by the Central Bank are to be implied from the duty to regulate in the interest of consumers.

Since their launch in early 2006 mobile payments operated under an undefined regulatory space until 2011. Before then, there was no law governing mobile payments. The Central Bank through its National Payment System Department provided oversight over mobile financial services since their inception without any specific regulations. The oversight is mainly focused on the integrity of the information system and service delivery systems to protect customers against system failures. In 2011, the National Payment System Act was enacted, it provides for regulation and supervision of the payment systems and payment service providers in Kenya. The Act makes provision for among others use of electronic

means to provide payment services. It brings Kenya's payment system to compliance with the Bank for International Settlements core principles. It also gives the Central Bank enhanced legal and regulatory powers over mobile payment systems, which includes the power to publish rules to regulate the system.

Since enactment of the National Payment System Act, the Central Bank and the mobile financial service providers have continued to work with the understanding that the regulatory structure will be clarified in future. Though the Act was enacted in response to widespread adoption of mobile payment service to uses beyond the current regulatory definition the Act provides for regulation and closest the Act gets is making provision for among others use of electronic means to provide payment services but it does not address mobile payment systems. It does not address the challenges unique to the mobile payment system especially the level of consumer awareness, financial and technological literacy of retail consumers of the system.

The Consumer Federation of Kenya was established with the main aim of providing consumer advocacy and education. It is a member of consumer international the umbrella organisation of consumer associations worldwide. It has an office in Nairobi from where it conducts its main functions of providing consumer advice, campaigning and lobbying. The federation supports public interest litigation, offers consumers assistance in seeking recourse with service providers. The federation receives complaints from individual consumers or other consumer organisations. Their approach is initially trying to understand the complaint and whether the service provider is in breach of the consumers rights. They establish contact with the service provider to understand their point of view on the consumer's complaint. If the approach does not yield any settlement, the federation takes it up with the industry regulator. Their recommendation to consumers is usually that they should first attempt amicable settlement with the service provider, because the Central Bank and the Communications Commission require that consumers first seek to resolve complaints with the service provider before going to the regulator.

Majority of the complaints received by the federation are from trade, food and housing. Complaints from the telecommunications and financial services sectors are very minimal. In all cases involving M-pesa the service provider has been willing to resolve the complaints with the consumer as soon the federation raises them. The absence of consumer protection guidelines from the Central Bank and the Communication Commission of Kenya leave some

grey areas. A representative of the Consumer Federation was of the view that the service providers are sort of self regulating, coupled with the fact that there is one dominant player in the market which presents a case for the market regulator to move in fast and provide guidelines. She admitted that the Consumer Federation is keen on impact cases rather than handling consumers' complaints *en masse*.

“We have not taken any case to court so far, we are targeting a high impact public interest case. Another way of consumer protection is raising consumer awareness about the existing risk and how to protect them as well empowering them to be able to exercise their rights. But exercise of rights must begin by the regulator publishing rules so that consumers are aware on their right to prompt resolution of complaints, recourse channels and how to go about filing and pursuing complaints effectively.”

Essentially there are pieces of legislation governing the foundational sectors of mobile financial services. They do not however adequately protect the consumers because they do not fully apply to mobile financial services. The advancements in technological innovations do not fit neatly into legal categories used by the current pieces of legislation (Malala, J. 2013). A reading of the Banking Act and the banking regulations of 2006 confirm that mobile payments were not contemplated at the time the regulations were published.

The Kenya Information and Communication Act establishes the Communication Commission of Kenya as regulator of the information communication industry in Kenya. The Commission is charged with the mandate of licensing telecommunication operators. The commission is also charged with the responsibility of protecting the interests of consumers in relation to the operators it licenses and regulates. The Commission set up its consumer affairs division in 2008 to oversee consumer protection and education in the telecommunication sector in Kenya. In 2010, through its Consumer Affairs Division the Communications Commission issued a comprehensive set of consumer protection regulations. The Kenya Information and Communication Consumer Protection Regulations, they stipulate the rights and obligations of consumers. They also lay down the obligations of service providers, detailing the complaint handling procedures and disclosures to be made to consumers. The regulations require submission of a commercial code of practice stating the service providers' compliance measures. The current approved commercial codes do not provide for mobile payment services and there is no requirement for service codes with respect to mobile payment systems.

Safaricom as a telecommunications operator is licensed and regulated by the Communications Commission but the regulation is limited to telecommunication services only. The Communication Commission licensed Safaricom to operate a mobile payment service M-pesa, but its mandate is limited to mere licensing, it does not extend to regulation of the M-pesa service because it is classified as a mobile payment system which falls under the regulation of the Central Bank. Its regulation falls under the National Payment Systems Division of the Bank Supervision Department of the Central Bank of Kenya. In essence regulation of mobile payments by the Communication Commission is limited to its use of the telecommunication system, while operational regulation including consumer protection and education is the mandate of the Central Bank of Kenya.

Since mobile financial service providers are owned by mobile telephone operators, the Communications Commission has allowed them to carry out mobile financial services as long as they list the services in their service agreement. The Kenya Information and Communications Consumer Protection Regulations 2010 sought to outline the rights and responsibilities of consumers and set obligations of service providers. These rules do not apply to mobile financial services because of the dual regulatory regime, since mobile payment systems are just one of the many payment systems in use by Kenyan financial institutions. The Central Bank which is best placed to publish its own rules and provide guidance on how payment systems should operate and the applicable consumer protection and education measures is yet publish rules under the National Payment System Act. The Communications Commission only requires licensees as part of the terms of their licenses to file quarterly reports. It does not specifically require licensees to provide fraud incident reports but quarterly reports providing details on the communication aspects of their operations.

The divide in responsibility presents a dilemma for regulators, which results in lack of coherence in consumer protection and market oversight. Existence of two regulatory regimes for what is often from the consumers perspective a single service can result in different rights and a divergence in protection for personal and small business consumers depending on which regulator a consumer is dealing with, since decisions are driven by different legal obligations and powers vested in individual regulators Communication Commission of Kenya and the Central Bank of Kenya.

Consumers are therefore unclear over what redress rights they have which entity to turn to if there is a payment related problem. The consumer is left to figure out on his own what protections apply. Integration of mobile telecommunication and financial industry provides an opportunity to harmonise and extend consumer protection measures to cover mobile payments. There is need for reforms to the existing legislation to extend the application of the consumer protection Act to apply to mobile payment services and products. Regulators also need to emphasize consumer protection especially when the customers are the poor and marginalised who have to rely on innovative mobile technology in order to access services touted as capable of facilitating their development.

2.7 Conclusion

Use of mobile phones holds a potential to enhance women's participation in economic activity. With increased use of mobile phones and the central part that they continue to occupy in women's empowerment and the development process in general, there are legal and administrative challenges which need to be addressed. There is need for reforms to the existing legislation to extend the application of the consumer protection Act to apply to mobile payment services and products.

3 METHODOLOGY AND METHODS

3.1 Introduction

In this chapter I outline the framework of the research. I describe how I went about gathering the information presented in chapters 4 and 5, by explaining the various methodologies and methods that I employed in the investigation, how I used them and how useful I found them. I also outline the limitations that I encountered in the process.

3.2 Methodological Framework

The focus of the study was to assess the use of mobile phones by women to alleviate the flexibility, mobility and time constraints they face in running their small businesses at the Ngara fruit and vegetable market. I needed to closely examine and understand the lived realities of the women as well as their business processes. The women's law approach was an obvious choice. Taking women as starting point, I set out to collect empirical data from the women at the Ngara Fruit and vegetables market. I had conversations with both men and women who operate at the market who shared their experiences in the use mobile phones, and how they were managing to juggle between domestic work and market work.

I needed to bring to light the socially constructed basis of differences between men and women, and why there is need to challenge existing gender roles and relations in order for women have to have time to participate in market activities. The role that use of technology has to play in order to achieve gender equality. Where everyone will have equal rights, responsibilities and opportunities that all persons should enjoy, regardless of whether one is born male or female. There was need to pay greater attention to women in the development policy, and practice, and to integrate them into the development process.

Given that women are usually in a disadvantaged position in the workplace compared to men, promotion of gender equality implies explicit attention to women's needs and perspectives. At the same time, there are also significant negative effects of unequal power relations and expectations on men and boys due to stereotyping about what it means to be a male. Instead, both women and men, and boys and girls, should be free to develop their abilities and make choices – without limitations set by rigid gender roles and prejudices – based on personal interests and capacities. It enabled close examination of the place of women in development socially and economically. Considering women as key agents of development, I evaluated the

impact of use mobile phones on women's participation in markets and adequacy of the regulatory system.

Contrary to my earlier apprehension the women at the market were so willing to talk. They were so excited to share their experiences, how the advent of mobile phones has enabled them conduct business in ways that were previously never conceived. They were however reclusive and uncomfortable when we got to the challenges they face. Initially the respondents were quick to say they had not had any problems but asked if they knew of someone who had encountered a problem they seemed to have stories to tell, they told the stories in great detail, at times even admitting that they had encountered challenges themselves. I changed my approach in asking the question when I realised no one wanted to say they have lost money. With the approach I had a tool for analysis of the position of women in law and society. It enabled to me uncover a need for measures to improve recourse mechanism, consumer education and awareness.

Grounded Theory was another approach I employed in my research. The approach allowed to engage with the data as I collected it, filter it and manage it, which enabled me determine what to collect next. It became clear at initial stages of the research that it was not easy to interview the women at the market and be able to make notes. I resorted to having conversations with the women then recording the narratives at the nearby restaurant before proceeding to the next interview. I took advantage of the interactive process to engage with the women to get their perceptions and make observations on how they went about their business. In my conversations with women in fruit and vegetable business I spoke to women who ventured into the business long before mobile phones were accessible and those who started in the era of mobile phones.

I started the research with the apprehension that the women at the market will not be willing to talk about themselves and their business. Nervously, I randomly picked the very first respondent a gentleman who contrary to my expectation turned out to be friendly and so willing to tell his story. As the conversation went on the neighbours three ladies joined us one by one I ended up with a group discussion. One of them offered to introduce me to a woman who had been at the market since its inception. I knew this was my chance to get insight from someone who had operated at the market in the days before the advent of mobile phones. From then onwards one respondent influenced the choice of the next respondent. I collected

data with an open mind, constantly reminding myself of the possibility that findings will have an impact on the assumptions.

The approach enabled me pursue emerging issues as they arose. I continued to refine my assumptions from the body of data I collected and pursuing issues as they emerged. After a few days in the field it became obvious that the source of disputes was not contracting as I initially thought, problems seemed to be on fraud and erroneous transfer of money using mobile payment systems. This realisation changed my trajectory. I went in search of the service provider Safaricom and the industry regulators for answers. I also began scrutinizing the M-pesa outlets for consumer awareness and education measures. This became more of an intuitive exercise, whenever I found myself near any M-pesa outlet I could not resist the temptation to look inside and read the posters on the walls. In my curiosity I explored countless outlets in Nairobi, Nakuru and Kisii which were beyond the delimited area of the study. Using the approach, the issues under investigation kept leading me to other interrelated issues which needed investigation with aim of understanding the situation of women so that it may inform crafting of suitable interventions. My investigation led me from the mobile service provider to the regulatory authorities.

According to target 8F of the Millennium Development Goals (MDG), the state has the obligation to, in conjunction with the private sector, make available benefits of new technologies, especially information and communication technologies to women. At the same time the United Nations Guiding Principles on Business and Human Rights outline how business should implement the UN human rights framework and how states should play a part in it. I kept the three pillars of the UN “protect, respect and remedy” in mind as I held conversations with the women. I sought to know if they knew that the government owed them a duty and what that duty was. The investigations lead me from the market to the service provider onwards to two industry regulators. I also interviewed the consumer advocacy and education body as well as the police. The approach provided a means to assess state compliance with its obligation to make available benefits of new technologies, especially ICT to women in order to enhance their participation in economic activities. I, at the same time assessed compliance with consumer protection measures in the telecommunication and banking services. I also assessed steps taken to encourage use of technology as a means to enhance women’s participation in economic activities in order to achieve advancement of women and eliminate their subordination. My interaction with the key informants provided an opportunity to finding their out their side of the story and to contradistinguish it with

women's perceptions of government and its respective agents, such as the Police, Central Bank and Communication Commission which are charged with the responsibility to protect their interests.

In my conversation with the police, I took the time to understand the process of what goes on at the police station from when a crime incident report is made up to when the file is forwarded to the office of the Director of Public Prosecutions for action. The approach was useful in assessing the perception of the police on why complainants are reluctant to come to the police station to report and why even when they report, they seem to lose interest in the cases. I also got their perspective of what they think of the reporting and investigation process of mobile payment fraud and theft cases. I also spoke to an official of the Consumer Federation of Kenya on the consumer complaints process and the frequency of consumer complaints from the telecommunications and financial services sectors. In the case M-pesa the service provider has been willing to resolve the complaints with the consumer as soon as any complaints are made against them. The absence of consumer protection guidelines from the central bank leaves some grey areas. The service providers are sort of self regulating, coupled with the fact that there is one dominant player in the market presents a case for the market regulator to move in fast and provide guidelines.

3.3 Data Collection Methods

The study was guided by the principle that there exists a strong link between women's use of technology and their economic advancement. According to the World Bank, mobile phone access and use can alleviate women's time and mobility constraints. By increasing women's ability to coordinate their family and work lives, reducing the cost of money transfers, and cutting down the physical labour or travel required mobile phones have emerged as crucial tools for women's economic advancement. With increased use of mobile phones for personal and economic activity comes the need for consumer protection measures. I sought to find out how well this standard is defined in policy and implemented on the ground. The findings draw from various methods of investigation.

3.3.1 Individual Interviews

Individual interviews were conducted at the market where the women were going about their businesses. I interviewed both women and men on their experiences in the use of mobile phones and the benefits it had on their businesses. We had conversations on what the service

providers and the regulators were doing to make them aware about use of mobile payment services and the challenges that are most common among users. I wanted to find out if the mobile phone users had been sensitised on how best they can use the service and the common challenges they likely to face and how to them. I also wanted to find out what if they were aware of their rights and obligations as well as those of the service providers.

3.3.2 Key Informant Interviews

The key informants were mainly drawn from the respective industries where they possess specialist expertise. I held face to face interviews and electronic correspondence with representatives and management staff of regulators, mobile network operators, the police and the consumer advocacy organisations. The aim was to get the responses from all the three sides of the triangle, the consumers the industry regulator and the service providers. In some cases the search for answers led me to other key informants like the police and the consumer advocacy organisations.

3.3.3 Group Discussions

Engagement with consumers in group discussions to understand, their own awareness and experiences with different products and services vis-à-vis the service they are entitled from providers. The group discussion I held were in many cases not planned, as it were a market is no place for hushed discussions. The conversation started off as a one on one conversation with a respondent. We were then joined by other respondents from the neighbouring stalls attracted by our conversation. In some cases a respondent would not resist the temptation to ask the neighbours for answers in the course of conversation. The discussions zeroed in the main research questions but it was not unusual for other issues to arise as the respondents contributed to the discussion.

3.3.4 Observations

I widely employed observation as a method data collection. It provided the third angle to the mould, from what I had gathered from interviews with the women at the market and what I had been told by the key informants. My observations started at the waiting lounge at Safaricom headquarters and the Safaricom shops within Nairobi city centre. My observations extended to the M-pesa outlets, within and around Ngara vegetable and fruit market. I was looking out for any consumer awareness and educational information on Safaricom services generally or on the M-pesa service specifically.

3.3.5 Desk Research

I conducted desk research in the library and online on the applicable laws, service codes, published regulations and sector regulators periodic reports. Identification of relevant experiences from other jurisdictions, with attention on measures to promote women's uses of mobile phones for business and implementation a consumer awareness and protection measures. The analysis also closely examined laws and regulations, with close attention to the overlaps and lacunae in promotion of consumer protection.

3.4 Limitations

Even before I started the research I knew that there would be limitations but I never expected that it will be with the process of obtaining a research permit. I was aware that a permit would be required before conducting research, especially when my research involved interviewing officials from government agencies. When I first went to the National Commission for Science, Technology and Innovation I established that applications for permits to conduct research in Kenya ought to be submitted at least one month before the intended commencement date of the research. This meant I could only obtain a permit after one month, which would delay my intended appointments with government agencies. I applied for my research permit on 9th October 2013 and requested for a quick process. I was promised it will be ready within two weeks. I continued with the aspects of the research that did not require a permit while taking my chances with the government offices. I went back after fifteen days, to follow up on the fate of my application for a research permit. To my dismay, the commission was no longer processing hard copy applications for research permits and no one had cared to inform me. I had to resubmit the application online. It was processed and issued within 10 days, but I had lost a month in the process.

Police officers insisted that in addition to the permit from the National Commission for Science Technology and Innovation, I was required to write to the Inspector General of Police (IGP) for permission to interview police officers and to obtain police records. No one seemed to know exactly what the official procedure of obtaining information and permission to interview police officers was. I wrote to the office of the IGP on three occasions but no response was forthcoming. When it became apparent that authorisation was not coming I opted to rely on my friends within the police service to get the information I was looking for.

M-pesa operators especially employees declined to be interviewed citing either confidentiality agreements with the service provider or express instructions from the owners (employers) not to talk to ‘strangers’ though they did not have a problem with me looking around and reading the posters on the walls. They also seemed overly suspicious of people requesting to interview them on the operations of their outlets. Some were not willing to divulge any information regarding their agreements with the service provider, incidents of fraud involving them or M-pesa customers. Those who agreed to be interviewed requested for anonymity.

3.5 Conclusion

In this chapter I described the process, how I went about gathering the information by explaining the different methodologies and methods that I employed in the investigation, how I used them and how useful I found them. I also captured the limitations that I encountered in the process.

4 MOBILE PHONES: AN ANSWER TO WOMEN'S CONSTRAINTS IN BUSINESS

4.1 Introduction

This chapter is a presentation and an analysis of the findings of the research. It begins with an exploration of how mobile phones are helping business women reduce the time constraints they face in running their small businesses. How it helps women to build business networks and relationships by making it possible for women and their wholesalers establish suitable business agreements. It also explores how mobile phones are helping increase women's flexibility of conducting business activities by making it easier to gather and transmit business related information. Last is a look at how mobile phones are helping business women reduce the flexibility constraints that they face in running their small businesses.

4.2 Mobile Phones and Women's Time Constraints in Business

Studies have shown that women have a higher labour burden. When compared to men, women have been found to be time poor. Family and community responsibilities take a lot of women's time that could be applied for improving their income generating efforts (World Bank 2012). In many Sub-Saharan Africa countries, women work up to 16 hours a day, juggling both productive work and their responsibilities at home. As a business tool, mobile phones offer key benefits that make life simpler and more convenient for women and able to carry on with business. Use of mobile phones has enabled women to obtain and exchange market information among themselves at the Ngara market and with their colleagues who do similar business in other fruit and vegetable markets within Nairobi. Use of mobile phones makes it easier to gather and transmit prices and other related business information. It also enables them to connect and exchange information about and with their suppliers.

In order to be and remain competitive women in business need channels to collaborate and share information, so that they can open up new opportunities for their businesses. The information has to be available when it is needed and the women need the means to share it quickly. Mobile phones provide an affordable means to bridge the information and time gap. In a typical day, before a woman leaves her house for the stall, she has to call the markets to get information on the prices and to make orders so that her supplies are delivered in time for the business day. Those who have enough time to spare for their business are able to make higher profits, while those who are deprived of time have to grapple with, not only the

profitability of the business but even the continued survival of the business. Owning and use of a mobile phone is so important to a small business owner because it provides a way to go around the time constraints which pose a threat to many women owned small businesses. Anne Njambi a stall operator at Ngara market was forced to acquire a mobile phone so that she could cope with her family and business responsibilities:

“We know these mobile wholesalers are the earliest at the market. They buy at fairer prices and sell to us at a profit later, but we do not mind it. If you do not like their terms you wake up early and go to the wholesale market. I know the few men who operate here don’t buy from mobile wholesalers. They are able to be at the wholesale market very early to buy from the farmers and brokers. If you look closely you will realise that the men here are better stocked and doing business at a much higher scale than women.”

The business approach by women is different from that of men. The men who started off as stall operators at the market quickly took advantage of women’s inability to go the wholesale market early enough because of their time constraints. There are those men who go to the wholesale market early to get the supplies directly from the wholesalers so that they are able to realise superior profit margins when they sell. There are also those who have taken advantage of the state of affairs to venture into mobile wholesaling. Women are their main clients because, for women the priority is not to compete with their male colleagues at the market but the challenge of ensuring continued existence of their business while coping with their household responsibilities.

4.3 A Tool for Building Business Networks and Relationships

Use of mobile phones is helping women to build business networks and relationships by making it possible for women in business and their wholesalers establish arrangements that assist women get round mobility constraints. Initially the practice was for business women at the market to get their supplies every day from the wholesale markets located around the city, in some cases they sourced directly from the farmers. But the process was too taxing on women, because of the need to shuttle between different markets at very odd hours of the day, when they are expected to be at home doing household tasks. Mobile phones seem to have finally provided the missing link between women and their wholesalers according to Nancy Mugweru;

“I do not go to the markets every morning. I will not be able to go to all the markets even if I wanted. When I open my stall in the morning, I determine which supplies need to be added. I pick up my phone and call the relevant suppliers to find out the prices. After making my comparisons, I make orders

to the fairest wholesalers. With time I have realised that you work better with some suppliers than others. Much of the time, I find myself buying not on the basis of the lowest prices but on how I relate with the supplier. Sometimes you may be given supplies on credit and promise to pay after some days; if you have not sold some people might not understand. But if it is a supplier who trusts you it is not an issue if you delay, you are allowed to pay as you sell.”

It is not only in purchase that mobile phones are helping build relationships, in selling there are regular customers especially the Kenyans of Indian origin who have struck arrangements with business women at the market. They call and give lists of what they want. Since it is unlikely that that one business woman will be stocking everything they need, the trusted business woman will source the other items from her colleagues. The customer will then send someone to the stall to pick up the goods. In other instances the orders are delivered to their homes. The customers then make payments in the evenings after work or by M-pesa. Relationships matter, once one has established trust they get more business by referrals and business continues without the need to see each other face to face every time the parties are transacting. For those who are keen to grow their business, mobile phones provide a means to reach wider markets, although this comes with risk. Violet Waithera has been building her business relationships and growing her business using innovative ways.

“Our customers also call to order whatever goods that they need. I have an assistant who delivers the goods to the customers’ gates for those who live within a walking distance. They pay by M-pesa or by cash on receiving their goods. I have customers who have been making their purchases this way for some time now.”

4.4 Mobile Phones and Women’s Mobility Constraints in Business

Mobility constraints have a direct impact on the profitability and sustainability of a business. It turned out that there is never one wholesaler for all the supplies in the fruits and vegetable business. Supplies are sourced every morning from as many as five different wholesalers who are located in different parts of town. One has to find out who among the tens of wholesalers for each the supplies is offering the best prices and make arrangements to ferry them to the stall. Because there are different suppliers for the various goods that business women stock, from time to time it becomes necessary for them to exchange information among them at the market as well as with those who do this business in other markets. They are able to know which wholesalers are selling what at what terms and who is offering the fairest prices. It is such a precarious process according to Nancy Mugweru:

“You have to make your calculations and know where you can obtain goods so that your price is not far off from the others in this market. The terms at which the wholesalers give you the goods are equally important, those who sell at the fairest price will normally insist on cash. Those who allow some grace period will be slightly higher.”

The use of mobile phones makes women's market work manageable. They are still able to go about their businesses without the need to travel to the market in search of supplies. Respondents who started their businesses before mobile phones were affordable know best what difference the mobile phones have made to this occupation. Going to the wholesale market very early in the morning to buy supplies for their businesses used to be hectic. One had to be up at 4.00am to be at the wholesale market early enough. Anne Njambi tried and failed.

“I tried and failed. As woman, you cannot wake up at 4.00am to go to Wakulima when you have a husband and children to take care of.”

Unlike women, men do not face mobility constraints, they are able to go the wholesale markets or farms themselves, which enables them reap better profit margins. Everything they sell is carefully sourced to ensure the maximum possible return. They are able to combine their use of mobile phones with the absence of mobility constraints to their advantage. Martin Muya a fruit and vegetable stall operator shared his experience.

“You have to do your research and have the information about every wholesaler around here, so that you are able to know who sells what at which price, and the terms of payment they offer. We get supplies from High Ridge, City Park market, Wakulima, Githurai, and occasionally we go to the farmers. If I go to one of the markets say Wakulima in the morning, it means I will not be able to go the other markets, I call my contacts there to get the all the information I need.”

The use of mobile phones to coordinate household chores and business activity has the combined effect of alleviating mobility constraints. This allows one to conduct many activities at the same with the option of being where it is most profitable and overseeing the errands through phone. Sally Mugure has been taking advantage of these combined effects.

“I use this phone for my own transactions as well those for the business, because as a small business there is never a clear line between my business and personal errands. What I know is that it cuts out the need to actually be at a place to get things done. It is now easier to do business than when I started, mobile phones make it easier to run more than one business while at the same time managing my household duties as a wife and mother.”

This has made has made doing business much easier especially for women because, as a woman one ear is usually at the business while the other is at home. It is a balancing act that mobile phones help, a lot, to achieve according to Sally Mugure:

“It is difficult being a businesswoman, wife and a mother all at the same time, but I am able to juggle between all these roles. I think I am managing fairly well, because of this phone. I am able to find out what is going on at home and the welfare of my child at anytime, it is only a phone call away. That gives me the peace to run this stall and another I have at Muthurwa market.”

Pregnancy seems to heighten women’s mobility challenges. They keep increasing until the time of delivery and the subsequent months when they hit their peak. This is when owning a mobile phone becomes a deciding factor whether a woman is going out of business or remaining in business. Catherine Wambui had to invest in a mobile phone in order to remain in business. She never had a mobile phone until around 2006 when she became pregnant with her first child. Waking up early to go to the wholesale market to source supplies became difficult. A mobile phone was a necessity, because she found it easier calling the suppliers to make her orders and have everything delivered to her stall. Acquiring and using a mobile phone turned out to be so convenient, even after she delivered she never took time off to raise her child because that would have meant closing down the stall, consequently losing her only source of income. She chose to remain in business which meant leaving her newborn baby at home with a maid. All she needed was to call home regularly to find out how her baby was faring, and if there was anything that was needed.

Use of mobile phones has enabled women to remain competitive and provided new options in conducting business. Use of the mobile phones coupled with mobile payments has enabled innovative ways of conducting business which allow women to circumvent mobility constraints. Other than being able to call and order goods and make payments using mobile money to the suppliers when the goods have been delivered. Women and their suppliers have developed an understanding with the suppliers some of them are now willing to allow business women a grace period from the time of receipt of supplies, women are allowed to sell the supplies and send the money to the supplier through M-pesa, in the mean time they can get more of the items that are sold out.

4.5 Mobile Phones and Women's Flexibility to Conduct Business

Increasing women's flexibility in the conduct of business contributes to the promotion and support of women's occupations and economic activities. In particular, within the informal sector micro and small enterprises where women are over represented mobile phones are playing an important role in alleviating women's flexibility constraints. Esther Karani a sole owner and manager of her business, has been able to juggle her domestic duties as well as business. A wife and mother of two school going children her mobile phone makes it easier to run the business while making sure home chores are performed. She is able to follow what was going on at home, making sure that the children are fine and her dairy cows are properly taken care of. Esther is not certain she would have had the flexibility to do all that is she able to now without her mobile phone.

“I doubt I would be able to continue with the business and manage to perform my role as a wife and mother of young children if it were not for this mobile phone. Since I realised that I did not need to be physically present to have everything done, I have been allowing others to do errands for me, and all I need are phone calls here and there to get things moving. It also allows me to multitask, from my kiosk.”

Getting supplies to a stall every morning requires a network of suppliers and good level of coordination, otherwise on some days you will miss supplies which means lost business opportunity. The expectation is that even when you venture in this kind of work you still must have the time oversee other domestic chores. Both in business and domestic responsibilities there are always unanticipated issues, especially when one has young children, which tend to demand women's personal attention. One has to divide her attention between domestic chores and the business demands but at the same time remain flexible enough to give attention to any domestic issue that may demand her personal attention. This is often a difficult balance for women to achieve. That is where mobile phones come in handy. Asked if she is excused from domestic chores now that she has a business to operate, Anne Njambi said

“I am still a wife and mother remember! I have no exemption no one is expected to assume that role regardless of whether am in business or not, when the responsibility of a wife and mother calls the business has to wait”.

4.6 Conclusion

This chapter presented the findings of the research. It explored how mobile phones are helping business women reduce the time constraints they face in running their small businesses. How they help women to build business networks and relationships by making it possible for them and their wholesalers establish suitable business arrangements. It also explored how mobile phones are helping increase women's flexibility to conduct business activities by making it easier to gather and transmit business related information. Finally it looks at how mobile phones are helping business women reduce the flexibility constraints that they face in running their small businesses.

5 CONSUMER PROTECTION MEASURES A CASE FOR REFORM

5.1 Introduction

In this chapter is a review of the existing consumer protection measures and the different applicable pieces of legislation. An examination of how they play out on the ground with respect to use of mobile phones for communication and mobile payments. In Kenya consumer protection has been enshrined in the constitution which recognises consumer rights as human rights. The government is therefore under obligation to avail to the consumer adequate information to enable them to make informed choices. In the review I apply the United Nations Guideline on Consumer Protection standard to assess the consumer protection measures and their application. The guidelines provide the most relevant and widely used consumer protection approach which has inspired a significant number of national consumer protection laws and practices.

Consumer protection is based on the belief that the consumer requires protection against unfair trading practices. It takes a two prong approach, protection offered to the consumer by the international / national legal framework and the protection offered by provision of consumer education. In essence the adoption of international / national legal framework for the protection and care of consumers and the development of ability and knowledge of the consumer to make informed and responsible choices. It entails creating awareness among consumers about their rights responsibilities and the available recourse in case of a dispute, mistake or fraud.

5.2 Consumer Education and Information

Consumers have the right to access adequate information to enable them to make informed choices. So that consumers realise the right, government is under an obligation to develop and encourage the development of consumer education and information programmes. The onus falls on the Communication Commission of Kenya and the Central Bank of Kenya as sector regulators on behalf of government. They are obligated to initiate programmes to educate and inform consumers in their respective sectors so that they are conscious of their rights and responsibilities. Education and information programmes create awareness on important aspects of consumer protection especially how to obtain redress and the available agencies that champion consumer rights.

The Communications Commission of Kenya offers protection to the consumer by ensuring that service providers adhere to the conditions stipulated in their licences. In the interest of empowering the consumers, the Commission conducts nationwide consumer education outreach programmes with the aim of offering consumers a broad range of concise and current information on aspects of the industry. The aim is to ensure that consumers are able to correctly analyze, interpret and absorb any information offered in the industry. They should also be able to make informed and responsible choices as consumers, and aware of their rights and responsibilities as consumers.

Since enactment of the National Payment System Act, the Central Bank of Kenya and the mobile financial service providers have continued to work with the understanding that the regulatory structure will be clarified in future. The Central bank has not published rules to govern the mobile payment systems in Kenya. The sector remains some sort of novelty which the banking regulator is grappling with. Before the enactment of the National Payment Systems Act, there was no law or regulation governing M-pesa and other mobile payment systems. The Banking Act which is the basis of Central Bank of Kenya's regulation of the banking sector did not provide any basis to regulate products offered by non banks, even though it had the general authority to regulate the sector. It was within its mandate to formulate and implement such guidelines as best promote the establishment, regulation and supervision of efficient and effective payment, clearing and settlement systems. The Central Bank had not exercised its mandate to publish any regulations to govern mobile payments, it restricted itself to all payments systems but mobile. Mobile payments had been operating on the basis of self regulation with the central bank giving "oversight" until the National Payment System Act formally placed them under the supervision and regulation of the Central Bank. Even then, the Central Bank is yet to publish regulations to provide legal and administrative measures to require the mobile payment service providers to initiate programmes to educate and inform consumers so that they are conscious of their rights and responsibilities and capable of making informed choices in compliance with the United Nations Guidelines on Consumer Protection.

Under the United Nations Guidelines on Consumer Protection the obligation on private enterprises like Safaricom is to where appropriate undertake or participate in factual and relevant consumer education and information programmes. In educating consumers they are required to provide consumers with information on available redress and other dispute

resolving mechanism. According to the head of the Financial Services Department at Safaricom, the company maintains continuous education initiatives to raise their awareness, knowledge and skills among consumers so that they can optimally utilise Safaricom services. The company has also placed publicity screens in Safaricom shops, printed various leaflets which are distributed to customers and placed at strategic areas where the customers can pick and read them. These measures are replicated throughout all their shops in the country. They also use SMS, posters and mass media for continuous relevant consumer education and information programmes in order to raise awareness, knowledge and skills among consumers.

In the Safaricom shops and M-pesa agencies surveyed in and around Ngara Market, the standard features were the M-pesa sign and service rates. There was also an assortment of other advertising posters, mostly from the service provider Safaricom. The element of sensitisation in posters and flyers was conspicuously absent in the Safaricom shops and M-pesa outlets. There were various advertising posters advertising the company merchandise and services. On the public access counters there were all manner of freely accessible brochures and flyers also advertising merchandise and services available from Safaricom. There were no information flyers, brochures or posters providing any consumer awareness and education on the correct use of Safaricom services and how avoid making mistakes or falling victim to fraudsters.

Consumers interviewed also had a different account of what the state of affairs is, on consumer education and information programmes. It emerged that consumers lack education and information on the possible risks of mobile payments which exposes them to cases of fraud. The most widespread consumer educational and awareness information that Safaricom has been publicising is about users not disclosing their M-pesa Personal Identification Number. They never publicise anything about the risk of loss of money through fraud or erroneous transfer of money. The information about Personal Identification Number confidentiality is publicised through mass media, sent with M-pesa short messages and on posters in M-pesa agencies. This frustrated M-pesa user felt the service provider could do better:

“No one had warned us, we had not received any information from the service provider about cases of this nature, but I came to learn that this was not the first case at our market. It would have been helpful if they had sensitised us how to tell the difference between an SMS from M-pesa and SMS from a fraudster. We read the posters at the M-pesa agents and in the newspapers on the need to keep the M-pesa Personal Identification Number secret, but I think

that is not enough. The service provider needs to provide the information so that we are always aware of these cons and what we need to do to get assistance when we need it.”

Consumers did not seem to know what to do in case of an emergence except to call the service provider’s customer help line. While it is impressive that almost all the respondents interviewed knew about the option of calling the customer help line, they were also aware that it takes a while before the call is answered because the line is perpetually busy. Even frustrating was the realisation that even after patiently waiting for the call to be answered, when it is finally answered the service provider does not have much help to offer at that point in time. They were instead asked to pay for a statement of account at the nearest Safaricom outlet, and then proceed to the police station for assistance. Andrew Kimani thought the suggested course of action would not yield any fruit.

“The customer agent advised me to go the nearest Safaricom customer care to obtain a statement of my M-pesa account and forward it to the police for investigation and help. When they referred me to the police I knew I had lost the money, the service provider was not going to assist me in recovering it. I counted my losses and decided not to report to the police.”

It was common for the respondents to opt not to pursue complaints when advised to go to the police while almost all of them lost interest to pursue the claims further after the initial report at the police station.

A further issue that emerged was that even with awareness and education, consumers are bound to make mistakes, the design of the M-pesa application ought to incorporate features to minimise the possibility of mistakes by consumers.

“Even if you are a regular user you are bound to make a mistake, no matter how careful you are. If you have not made a mistake and lost money then your day is coming, it will happen when you are so much in a financial fix you will hate M-pesa. It is such a swift system of transferring money, maybe that is sometimes not a good thing, because that is the swiftness with which your money is transferred when you make a mistake, there is never enough time to reverse a transfer in case of a mistake.”

Consumers face difficulties getting redress in cases of mobile payment fraud and erroneous money transfers. The customer helpline, which is the most widely accessible contact to the service provider is always busy, it takes more than half an hour to be answered, by which time the recipient will have transferred the money. There should be a way of instantly

freezing the money so that it cannot be withdrawn or transferred to another person pending the long process of verifying that a user made a mistake.

“The service provider should acknowledge that the risk of fraud exists that is why these cases happen all the time, which calls for sensitisation of consumers or create a system that is not easily exploited by cons. They should at least make it easy to get help to recover money, not refer people to the police who will not assist.”

The service provider seems to have a homogeneous way of conducting consumer education and information which does not address itself to the most prevalent consumer challenges and the calibre of consumers targeted. As a result, consumers of mobile payment services do not receive sufficient information to protect themselves from errors and mistakes, making them vulnerable to losses. The service provider seems to place lots of emphasis about non disclosure of the Personal Identification Numbers, which according to consumers is not a big source of concern when compared to mistakes which result in erroneous transfers of money. Consumers seem to become accustomed to not expecting much assistance from the service provider or the police, if a consumer happens to be conned or erroneously transfers money to unintended user, they resort to devising their own ways to recover the money or at least part of it. They call the recipient and employ whatever tricks which they think can make them return the money.

The available education and information programmes do not create awareness on the areas where customers are most vulnerable, and what they should do to minimise the risk if not avoid it all together. Grace Mwangi an M-pesa user feels Safaricom is concerned with minor concerns while ignoring the elephant in the room.

“I have not seen or heard any mention of the risk of loss money through fraud or mistakes. I think the service providers are not keen to do anything about it because it is not their problem. They do not conduct awareness campaigns about risks as much as they advertise. Awareness campaigns can reduce risks especially these common cases of erroneous transfers.”

Education and information programmes create awareness on important aspects of consumer protection especially how to obtain redress and the available agencies and organisations for consumer protection. The obligation on the businesses is to, where appropriate undertake or participate in factual and relevant consumer education and information programmes. This is intended to ensure that businesses are held responsible by industry regulators and the consumers who use their products and services. Businesses are compelled to be open about

the possible risks of the product or service that they're offering and pay close attention to the needs and wants of their customers. The benefit of having informed consumers is that businesses have to always keep the consumer in mind when developing the product. This determines how they educate their consumers by taking into account their industry, the product or service that they offer and the target population. They need to devise means to respond to consumer questions, and to solicit feedback on services.

5.3 Availability of Effective Consumer Redress

Governments are under obligation to put in place legal and administrative measures to enable consumers or organisations where appropriate to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. The procedures should take particular account of the needs of low income consumers.

The Communication Commission of Kenya offers protection to the consumer by ensuring that service providers adhere to the conditions stipulated in their licences such as the requirement for service providers to make available redress mechanism in the event that the service offered falls short of that stipulated by the commission. The consumer affairs division only deals with consumer complaints where a consumer has made all reasonable attempts to resolve any such complaints with the service provider.

In payment systems there are still no regulations to govern mobile payments. It was not until 2011 that parliament enacted the National Payment Systems Act which sought to regulate the national payment system. The Act applies to all the payment systems used in Kenya. It is a generic piece of legislation but it gave the Central Bank as the regulator power to make rules to govern the various payment systems including the mobile payments system. The National Payment System Act consolidates and extends the Central Bank's authority over all payment systems. The Central Bank has however not taken the step to publish regulations to provide legal and administrative measures to enable consumers or organisations where appropriate to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible as required by the United Nations Guidelines on Consumer Protection.

On the part of service provider, Safaricom have established a call centre through which customers can call a helpline and get information about products and services or get any assistance round the clock. These measures are reinforced by service counters throughout their shops in the country, where consumers can be served if their problems cannot be

redressed through the helpline. In comparison to other payment systems, the mobile payment system has been at the centre of attention because it is the most common and widely used. It also raises more consumer protection and general regulatory issues than the other systems especially since a significant fraction of the users often face imbalances in economic terms, educational levels and bargaining power.

Consumers feel the service provider can do more to offer them expeditious, fair, inexpensive and accessible redress when they need it. Awareness campaigns and readily available, reliable redress mechanisms can reduce risks especially the common cases of erroneous transfers. Gladys Mwangi knows too well that you cannot expect expeditious redress from Safaricom.

“At Safaricom the best you can get is advice to pay for a statement of your M-pesa account which you forward to the police for investigation whose end result you will wait for a very long time.”

At the moment Safaricom agents can only offer the limited services of registering new customers, cashing in and cashing out, but they are well spread out and easy to find at the turn of every corner. They offer a potential to offer more in customer service should the service provider be committed to use them. Using its network of 88,466 mobile money agents who range from standalone M-pesa agencies to supermarkets, spread across the country Safaricom can make the most essential redress mechanisms available to the consumers. Since M-pesa passes direct customer interaction to this wide range of retail agents devolving more customer redress services to the agents holds the potential to improve its consumer redress measures.

Another player in ensuring consumers obtain redress are the police. They too are under obligation to provide expeditious fair inexpensive and accessible redress to consumers. The recurrent complaint from the respondents was that mobile service provider service Safaricom kept referring them to the police while it was well aware that the police had no assistance to offer. It emerged that at the police station level, police have a standard way of treating crime incident reports. The incident is recorded in the occurrence book then an investigating officer is assigned to investigate the case. She will take a statement from the complainant and receive the M-pesa statement if the complainant has obtained it. If the complainant does not have a statement the incident is still noted in the occurrence book, she is asked to obtain a statement and return to the station to record a statement. This is the stage where complainants go away

and never come back. The reports made to the police stations are numerous, but complainants never return to pursue their complaints further. The case file remains open for a while then it is forwarded to the office of the Director of Public Prosecutions with a request for permission to close it with no further police action. None of the of the officers I spoke to at the Parklands and Capitol Hill police stations has ever seen a case of theft of erroneously transferred money proceed to full prosecution.

Consumers never want to lose more money and time going to the police station because they have a perception that the police procedure is long and involving without any assurance of recovery of their money. They give up on their money when they are referred to the police because they know going to the police station only means an investigation and possible prosecution. It does not offer any prospect of recovering their money, while their main interest is recovering their money rather than having the recipient prosecuted. Margaret Wamucii subscribes to this popular sentiment among M-pesa users.

“My brother was so discouraged he even never reported to the police. I think he was right, I do not expect any better from the police after what happened with the service provider. Once you report I imagine Safaricom are able to identify the recipient of the money, it is not that there is nothing they can do to help; they opt for the easy option of referring all cases to the police because people never pursue the money thereafter. It is meaningless spending time and more money pursuing the money lost to a dishonest recipient.”

Asked about Safaricom’s response to the rampant cases of fraud and erroneous transfer of money reported by customers, the Safaricom representative said it is the customer that has an obligation to accurately identify the recipients of their money transfers prior to confirming the transaction. It would be unfair and impractical to expect the service provider to make any assumptions of the customers’ intentions. She added that the policy at Safaricom is that “it is not financial best practice to reverse financial transactions as it undermines public confidence in payment systems which are used both for private transfers and to support commerce.” When they get a request to reverse a transaction they have to first go through the motions of ascertaining the veracity of the request. This is a process that takes time. Consumers like Alice Ndiritu do not seem to agree with this position.

“The customer care agent informed me the amount had been withdrawn, she could only advise me to report the matter to the police for investigation and any other assistance. She was not in a position to give any more information. She was only obliged to give information to the investigating officer once the complaint had been made to the police. She advised that the starting point was

obtaining a statement of the M-pesa account and report to the police then the service provider will be obliged to cooperate with the police.”

According to Safaricom customers’ money is safe in the M-pesa account, they advise customers to keep their Personal Identification Number secret. In compliance with their obligation under the United Nations Guidelines on Consumer Protection they have established voluntary mechanisms, including advisory services and informal complaints procedure which can provide assistance to consumers. Safaricom has shops around the country which serve as the points of contact with the customers. They serve as access points where consumers can get access to Safaricom products and services. The shops also serve as customer care points for all the Safaricom services including the M-pesa service. Information on available redress and other dispute resolving mechanism is made available to consumers through SMS, the print and electronic media and the official Safaricom website. They also advise customers that in case of fraud the customer should first make an official complaint to the police, the service provider is obliged to cooperate and assist the police with investigations.

Within the delimited area of study there were more than ten active M-pesa agents. There are M-pesa agents who double up as mobile phone and mobile phone accessories stalls; others are operated within existing businesses while others operate as standalone M-pesa agencies. The agencies are not equipped to resolve consumer complaints in a fair, expeditious and informal manner. They were not intended to offer redress or advisory services or any complaints procedure which can provide assistance to consumers. Information on available redress and other dispute resolving mechanism should be made available to consumers through the agents because consumers interact much of the time with the agents.

All the three shops I visited had long queues of customers waiting to be served. There were specific counters allocated to serve particular customer needs. In all the three shops, the M-pesa customer service queue was the longest. There were customers with various complaints waiting to be attended. I also observed that on average it took longer to serve a customer on the M-pesa customers’ queue, compared to the other queues.

5.4 Learning from Others

In attempts to help consumers avoid M-pesa mistakes and fraud when they perform a transaction, Safaricom has put in place a number of measures but there can be more to be learnt from other operators. When a user sends money a text message is sent to the users

account. The message is confirmation that the M-pesa money sent has moved from the senders account into the other person's account. To avoid errors, Safaricom advises users to always check their M-pesa balance before and after transacting. Safaricom has imposed a small charge for each balance enquiry. While the charge of one Kenya shilling per balance enquiry on face value appears nominal, it turned out that M-pesa users want keep and send money in round figures. A typical M-pesa user will normally deposit and send an exact amount and avoid checking the balance before the transaction, because that will mean reducing their balance. They rely on the confirmatory message sent by the service provider when the transaction has been effected.

When sending money using M-pesa, Safaricom advises users to make sure they double check the phone number they are sending money to. As part of the transaction, they are asked to confirm the transaction details and ensure the mobile number digits they have entered are correct. It may also help to write the number down before users perform a transaction. To help users avoid M-pesa fraud, Safaricom introduced a new SIM card which allows users to save the phone numbers that they frequently use for their M-pesa transactions. The SIM card allows users to save the numbers on their SIM card as SIM contacts. This is intended to enable the user pick the mobile numbers directly on the M-pesa menu while carrying out M-pesa transactions in order to minimise cases of sending money to the wrong number. The new Safaricom SIM card is available in Safaricom Retail Shops, Dealer outlets and M-pesa agent outlets countrywide. It costs Ksh50 for a SIM replacement and Ksh100 for a new Safaricom line. This advice looks dependable but that is not the case on the ground. Users were still likely to make mistakes especially when they are busy. Sally Mugure was one such user:

“I was in the process serving a customer, she had stopped her car on the road, to quickly buy from me and drive away. It took longer than she expected and she ended blocking other motorists who were getting impatient with her, because it had started raining. I was trying to quickly send my brother the money while she kept pestering me to give her change so that she can leave. Although I had my brother's number in my phone book he had recently lost his phone, he wanted me to use another number which I did not have in my phone book. In the confusion of trying to send my brother money while serving customers I ended up sending money to a wrong number.”

The SIM card that allows users to save the numbers on their SIM card as SIM contacts is aimed at reducing incidents of mistake by enabling users pick the mobile numbers directly on the M-pesa menu while carrying out M-pesa transactions in order to minimise cases of sending money to the wrong number. This only works with frequently used numbers when saved on the SIM card. The risk still exists because of the circumstances under which

transactions occur, regardless of how informed a user is the risk of making a mistake is still high when one is sending money to a number that is not saved on the SIM card if they are required to transact while busy attending other business demands. A system designed to verify the details of users from the databases provides a more reliable way of avoiding mistakes especially when mobile payment system derives majority of its users from one network operator. Safaricom will have much to learn from Eco Cash a Zimbabwean mobile payment service operated by Econet Wireless which makes available details of registered users from their data base whenever a user wants to send money to another user. As part of the transaction, Eco Cash users are asked to confirm the transaction details, the details for confirmation are verified from the database of Eco Cash registered users. This makes it easier for the user to ensure the mobile number digits and the recipient they have entered are correct before confirming the transaction.

5.5 Conclusion

In this chapter I reviewed the existing consumer protection measures and the different applicable pieces of legislation. I also examined how they play out on the ground with respect to use of mobile phones for communication and mobile payments. In Kenya consumer rights are recognised as human rights. Government is therefore under obligation to avail to the consumer adequate information to enable them to make informed choices.

6 CONCLUSIONS AND RECOMMENDATIONS

This chapter presents the conclusions and recommendations drawn from the research findings.

6.1 Conclusions

6.1.1 Mobile Phones as a Tool for Women's Empowerment

The study attempted to bring to light the opportunities that use of mobile phones presents to women. It emerged that mobile phones have afforded women numerous personal and business benefits. Through use of mobile phones women have been able to surmount shortcomings associated with their mobility, flexibility and time constraints. Mobile phones are indeed a tool for women's empowerment. They are making it possible for women who have been long excluded from full economic participation in societies to participate in market activities. Mobile phones are a tool to help women build businesses and create their employment as a means of enabling them eventually escape poverty. This explains the widespread adoption and use of mobile phones, which has necessitated a balance between adoption of innovative technologies and consumer protection measures.

6.1.2 Use of mobile phones presents challenges to women

While Mobile phones have been recommended for their catalytic role of in facilitating development for the poor and marginalised women, their adoption and use, as a means of empowering women poses challenges that the government through its sector regulators need to seriously consider. To start with, the people who stand to benefit most by use of mobile phone technology are women, the poor and the marginalised. These are the people who often face imbalances in economic terms, educational levels and bargaining power. They are especially vulnerable because the capacity of technology to facilitate their access to services lauded as capable of facilitating their development, presents opportunities and challenges in equal measure. A combination of mobile telephony and mobile payments now opens up business people large and small to unlimited possibilities. These new innovations have almost all the time outpaced the government regulatory response.

6.1.3 Adequacy of legal and regulatory framework

Laws and regulations applicable to mobile payments are fragmented. They are found in more than three different pieces of legislation, so there is no clear regulatory responsibility in consumer protection.

The National Payment System Act 2011 was enacted to provide for regulation and supervision of the payment systems and payment service providers in Kenya. It also gives the Central Bank enhanced legal and regulatory powers over mobile payment systems, which includes the power to publish rules to regulate the system. The Act has been found generic. It does not address the challenges unique to the mobile payment system especially the level of consumer awareness, financial and technological literacy of retail consumers of the system. The Central Bank is yet to publish rules under the National Payment System Act to provide guidance on how payment systems should operate and the applicable consumer protection and education measures. The only regulation in place is the requirement by the Communications Commission on licensees to file quarterly reports as part of the terms of their licenses, which does not specifically require licensees to provide fraud incident reports but quarterly reports detailing only the communication aspects of their operations.

The divide in responsibility presents a dilemma for regulators, which results in lack of coherence in consumer protection and market oversight. Existence of two regulatory regimes can result in different rights and a divergence in protection for personal and small business consumers depending on which regulator a consumer is dealing with, since decisions are driven by different legal obligations and powers vested in individual regulators Communication Commission of Kenya and the Central Bank of Kenya. Consumers are therefore unclear over what redress rights they have which entity to turn to if there is a payment related problem.

There is also need for consolidation of the fragmented applicable legislation so that there is a clear regulatory responsibility in consumer protection. Integration of mobile telecommunication and financial industry provides an opportunity to harmonise and extend consumer protection measures to cover mobile payments. There is need for reforms to the existing legislation to extend the application of the consumer protection Act to apply to mobile payment services and products. Regulators also need to emphasize consumer protection especially when the customers are the poor and marginalised who have to rely on

innovative mobile technology in order to access services touted as capable of facilitating their development.

6.1.4 Adequacy of consumer education and awareness measures

Regulation and supervision are not sufficient to deal with all consumer protection problems. Sometimes problems are rooted in consumers' lack of understanding, knowledge and awareness with regard to financial services and redress mechanisms. Consumers can be the best watchdogs for mobile financial services if they are armed with clear information about products, and their rights and responsibilities.

This study found that while the telecommunication sector regulator has a comprehensive consumer education and information mechanism. The mechanism is targeted at the telecommunications sector players only. The comprehensive consumer protection measures that it puts in place do not target the mobile financial services for two reasons. First, the mobile financial services are not strictly telecommunication services despite the fact that Communications Commission is the licensing authority; the Commission does not therefore have full power to regulate it. Secondly the Communications Commission does not seem to have expertise to properly play an oversight role over the mobile financial services because other than utilising the telecommunication network and being operated by a licensed mobile network operator, the other aspects of mobile money operations lean more to the banking industry than the telecommunication industry. The Central Bank on the hand on the hand as banking sector regulator has not robustly taken charge of regulation of the mobile financial services like it does with the traditional banking sector regulatory role derived from the Banking Act and the Central Bank of Kenya Act. The National Payment System Act gives the Central Bank enhanced legal and regulatory powers over mobile payment systems, which includes the power to publish rules to regulate payment systems. Though the Act has been found to be generic, the Central Bank is yet to publish rules or any regulatory guidelines. In banking practice the central has published regulations which guide commercial banks in matters of consumer protection but the banks are expected to try to amicably resolve any issues that arise between them and their clients. This is the standard that the Central bank has been applying with mobile financial services.

6.1.5 Adequacy of consumer complaint and recourse mechanisms

The study attempted to identify various priority policy and regulatory measures that would guide consumer protection in use of mobile phones for communication and payments. It has identified that consumer protection needs to expressly specify the consumer education and information mechanisms, the need to avail consumer redress mechanism as well complaints handling procedures.

The United Nations Guidelines on Consumer Protection propose that in the mass market in particular, dispute resolution mechanisms need to be built into daily operations so that providers can address consumers' questions and complaints quickly and efficiently. They also need education on the available redress mechanism. These measures are intended to promote and protect the economic interests of consumers because they need to access to adequate information to enable them to make informed choices.

Mobile payment customer care needs to provide simple and consistently executed recourse mechanisms so that consumers are able to protect themselves. Clear information about products and their rights and responsibilities, will transform consumers into the best watchdogs for mobile financial consumer protection. This research found out that very little is being done by the mobile service provider Safaricom to inform consumers, or to empower them to inform themselves. There is no literature on the available consumer recourse mechanisms for mobile payments consumer.

There is need to put in place legal and administrative measures to enable consumers or organisations where appropriate, to obtain redress through formal or informal procedures that are expeditious fair inexpensive and accessible. The procedures should take particular account of the needs of women and low income consumers. Mobile financial services consumers feel the service provider is not doing enough to inform them, and offer redress when they need it. Awareness campaigns and readily available, reliable redress mechanisms can reduce risks especially the common cases of erroneous transfers.

The Communication Commission offers protection to the consumer by ensuring that service providers adhere to the conditions stipulated in their licences such as the minimum quality of service that may be offered to the consumer, pricing of services and technical standards which have to be maintained. The licences also require service providers to make available redress mechanism in the event that the service offered falls short of that stipulated by the

commission. The consumer affairs division only deals with consumer complaints where a consumer has made all reasonable attempts to resolve any such complaints with the service provider. In the banking regulation front there are still no regulations to govern mobile payments front. It was not until 2011 that parliament enacted the National payment systems Act which sort to regulate the National payments system. The act applies to all the payment systems used in Kenya. It is generic sector piece of legislation but it gave the Central Bank as the regulator power to make rules to govern the various payment systems including the mobile payments system.

As a way of making redress available to consumers Safaricom have established a call centre through which customers can call and get information about products and services or get any assistance round the clock. These measures are reinforced by service counters throughout all their shops in the country, where consumers can be served if their problems cannot be redressed through the helpline. The mobile payment system has been the major focus because it is the most commonly and widely used. It also raises more consumer protection and general regulatory issues than the other systems.

The most common consumer educational and awareness information that mobile service provider Safaricom has been publicising does not mention anything about the risk of loss of money through fraud or erroneous transfer of money. Consumers do not know what to do except to call the service providers customer care line which is always busy.

6.2 Recommendations

The key recommendations to improve protection for consumers of mobile communication and payments in Kenya relate to the following areas:

Currently no comprehensive multi-sectoral consumer protection legislation is in place. The fragmentation of the existing sector consumer protection laws and regulations and the gaps that arise as a consequence call for adjustments to banking and financial laws and regulations so as to create specific regulation for mobile payments, that.

It is recommended that sector regulators start paying more attention to consumer related issues and to define standards for mobile network operators and their partners to protect consumer interests.

There is no mandated authority in Kenya to protect mobile money consumers, this study recommends the consolidation of the applicable legislation and creation of unified regulatory agency with power to publish and implement regulations.

The service provider should sensitise the public on the risks and possible mistakes that they can make. They should compile reports on consumer trends and devise consumer education and awareness on the basis of the most common errors so the statistics can inform consumer education and information measures, and the design of mobile money applications.

The mobile financial service provider should devolve more consumer protection measures to the agents so as to make use of its network of 88,466 mobile money agents. Since M-pesa passes direct customer interaction to this wide range of retail agents devolving more customer services to the agents holds the potential to improve its consumer protection measures.

Well targeted initiatives to improve financial literacy and increased awareness can play an important role in reducing risks for consumers and increasing effectiveness of regulatory action.

In order to develop effective consumer protection regimes it is important that all stake holders participate in the process, from policy makers to financial institutions telecommunications operators law enforcement agencies and other civil society organisations.

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