# THE FAIR TRADING COMMISSION

## BEFORE THE BOARD OF COMMISSIONERS

**IN THE MATTER of the Consumer Protection Act, 2010;**

**THE FAIR TRADING COMMISSION**
**VS.**
**KENSON CONTRUCTION**
(Rep herein by Mr. Kenson Sophola)

**Case No:** CPA.14.264

**Complainants** – Ms. Peggy Meme
Mr. Thomas Vinda
**Respondent** – Kenson Construction

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**QUORUM:**
Mr. Colin Jean-Louis – Chairperson
Mr. Philippe Chong-Seng – Commissioner
Mrs. Jenna Thelermont – Commissioner
Mr. Michael Nalletamby – Commissioner
Mr. Victor Pool – Commissioner

**For the Complainant**
Mr. Ziggy Adam – Legal Officer (FTC)

**For the Respondent**
Mr. Kenson Sophola – Respondent

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## RULING

[1]The Fair Trading Commission registered a complaint from Ms. Peggy Meme (Annex 1) of Anse Louis on the 21st of October, 2014 against Kenson Construction of Grand Anse, Praslin represented herein by Mr. Kenson Sophola who is a licensed, Class III contractor (See Annexes 2, 3 & 4). The complaint was to the effect that as per their contractual agreement dated 13th September, 2014 the complainant and her partner paid to the respondent the sum of SR.419,333.05 as part payment for the construction of her

dwelling house at Anse Louis. To date the project is incomplete and works done on the roof structure were substandard. The complainant is seeking for a refund in the sum of SR.171,045.55 for incomplete and substandard works. Being unable to reach an amicable settlement the Commission therefore filed a case before the Board of Commissioners for the contravention of Section 40(1)(b) and (c) of the Consumer Protection Act, 2010 which provides that;

> *"**40(1)** Subject to this Part, where a supplier undertakes to perform any service for or on behalf of a consumer, the supplier shall –*
>
> *(b) perform the service in a manner and of a quality that persons are generally entitled to expect;*
>
> *(c) where the goods are required for performance of service, use, deliver or install such goods that are free of defects and are of a quality that persons are generally entitled to expect."*

[2]The parties appeared before the Board of Commissioners on Wednesday 30th March, 2016 for the hearing of the case. Mr. Ziggy Adam, Legal Officer from the Fair Trading Commission appeared on behalf the complainants and presented the Commission's findings to the Board. Mr. Adam called the complainants as witnesses for the Commission's case. The complainants reiterated that they would not wish the respondent to come back to the site but they would rather obtain a refund and they find another contractor to complete the project. Mr. Adam also relied on documentary evidence to support his case. The gist of the matter was poor workmanship on the part of the respondent. There were works not completed valued at SR.86,205.54 as per a Quantity Surveyor's report dated 16th December, 2014 (See Annex 12). The roof structure was defective in that it was lower than specified in the drawing plans, the fascia boards were not straight and there were nail holes on the roof sheets. For this the complainants were asking for a refund of SR.84,840 as per the Quantity Surveyor's report dated 23rd November, 2015 (See Annex 32). Hence, Mr. Adam concluded his case by praying to the Board of Commissioners to find in favour of the complainants and order the respondent pursuant to Section 40(2) of the Consumer Protection Act, 2010, to refund a total sum of SR.171,045.54.

[3]The respondent also gave evidence before the Board. From the outset he was willing to provide a refund but he did not agree with the quantum being sought. The respondent disagreed with the amount of SR.86,205.54 being sought for incomplete works stating that he was always willing to complete the house but it was the complainants themselves who forbade him to come onto the site therefore he should

not be held responsible. With regards to the roofing structure he accepted that there were defects which he was willing to rectify. In conclusion Mr. Sophola intimated that if he be presented with a reasonable amount he would be ready to settle the matter.

[4]The Board further explored the possibility of a settlement. After lengthy negotiations it was finally agreed by the parties that the respondent would refund to the complainants the sum of SR.75,000 not later than thirty days from the date of the hearing. Further, the respondent is to make arrangements to have timber purchased for the project belonging to the complainant brought to her premises within two days from the hearing. Finally, the respondent is to return all copies of plans to the complainant.

[5]Being satisfied with the outcome of the negotiations the Board of Commissioners shall endorse this agreement as final settlement of this matter. The respondent is hereby ordered to comply to the above agreement accordingly.

[6]All payments are to be paid to the office of the Fair Trading Commission.

Pronounced by us on this 22nd day of April, 2016.

**Mr. Colin Jean-Louis**
**Chairperson**

**Mr. Philippe Chong-Seng**
**Commissioner**

**Mrs. Jenna Thelermont**
**Commissioner**

**Mr. Michael Nalletamby**
**Commissioner**

**Mr. Victor Pool**
**Commissioner**