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# THE BOARD OF COMMISSIONERS

04th April 2022

**CPA.16.201**

Mr Jefferson N'Ganga
Anse Aux Pins
Mahe

***ATTN: Mr N'Ganga***

Dear Mr N'Ganga,

**RE: Maureen Leon Vs Jefferson N'Ganga (trading as Joshua Enterprise)- CPA.16.201**

In accordance with Section 42(1) of the Fair-Trading Commission Act 2009, please find attached a signed copy of the ruling of the Board of Commissioners of the hearing conducted in the above-mentioned case. Please do discard the previous two rulings that have been served. We trust in your expedient compliance as per the orders contained herein.

Also note that failure or refusal to comply with this ruling constitutes an offence under Section 53(1) of the Fair-Trading Act 2009. The same is reproduced below:

**53 (1)** A person which refuses or fails to comply with a direction or order of the commission commits and offence and is liable-

a) Where the person is an individual, to a fine not exceeding SCR 100,000 rupees or to imprisonment for a term not exceeding 2 years or to both
b) Where the person is a person other than the individual to a fine not exceeding SCR 400,000 rupees

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## THE BOARD OF COMMISSIONERS

Moreover, you have the right to appeal against this decision. To that effect you may, **within Fourteen (14) days of this receipt of this document,** submit a Notice of Appeal setting out your grounds of appeal to:

***Chairperson for the Appeal Tribunal***
***P O Box 216,***
***Allied Building***
***Francis Rachel Street,***
***Mahe, Seychelles***
***Telephone: (248)4224881 /***
***Facsimile: (248)4225044***
**Email: john.renaud@renaudchambers.sc**

Yours Sincerely,

Ms. Chrystal Lolzeau
Assistant Registration Officer

**For: Chairperson**
**Board of Commissioners**
**Fair Trading Commission**

**Mrs Maureen Leon**
**Baie Lazare**

VISION2033

# THE FAIR TRADING COMMISSION

## BEFORE THE BOARD OF COMMISSIONERS
**(Consumer Protection Act, 2010)**

**IN THE MATTER:**

**MAUREEN LEON**
**V**
**JEFFERSON N'GANGA**
(trading as Joshua Enterprise)

**Case No**: CPA.16.201

**Complainant** – Maureen Leon
**Respondent** – Jefferson N'Ganga

**QUORUM:**
Mr. Victor Pool – Presiding Commissioner
Mrs. Jenna Thelermont – Commissioner
Mr. Michael Nalletamby – Commissioner

**For the Complainant**
Ms. Priyanka Ramruchaya–Legal Officer (FTC)

**For the Respondent**
Mr. Jefferson N'Ganga

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## RULING

[1] The Fair-Trading Commission (the Commission) registered a complaint (CE4, A5) from Mrs. Maureen Leon (the complainant) of Baie Lazare, Mahe on the 02nd August 2016 (CE1, A5), against one Mr. Jefferson N'Ganga (A2), trading as Joshua Enterprise (the respondent) of, Anse Aux Pins (A3, A4, CE7, CE8).

[2] The gist of the complaint is that in November 2015, Mrs. Leon hired Mr. N'Ganga for the construction of a house and a retaining wall on parcel C4625 located at Anse Aux Pins. The quoted sum for this project was SCR 921, 960 (CE2, A7) of which SCR 584,360 has been paid (CE3, A7). There was also other agreed works such as demolition of a previous job done by a previous contractor.

Therefore, this meant that it would need to be reconstructed. A further sum of SCR 62,000 approximately was quoted and agreed for.

[3] Other additional works to be done by the contractor was for the ground floor. This work had been quoted for a sum of SCR 54,625. Mr. N'Ganga had been paid 50% of this amount but the works had not yet been done.

[4] The sum quoted for demolition work SCR62,000. The work has been done and he has been paid the full amount.

[5] In regards to the retaining wall, the work was quoted for SCR 162, 625 which was for materials, labor and transportation. Mr. N'Ganga had been paid 50% of this sum. The retaining wall had been completed but Mrs. Leon stated in her complaint that she was not satisfied with the finishing touches and Mr. N'Ganga had extended beyond her right of way, hence as to why the demolition was required. Mr. N'Ganga had also been acquired for the construction of a road structure on Mrs. Leon's site at Au Cap, this was quoted for SCR 142, 250. Mr. N'Ganga was not paid for this work and therefore did not perform this work, another contractor was] The contracted for this works.

[6] Mrs. Leon stated that thereafter having experienced all these issues with the contractor he told Mr. N'Ganga to hold on to cease all works because she no longer wanted his services.

[7] The Commission sought a site visit from the Planning Authority dated 13th December 2016, they conducted the visit on the 17th November 2016 at the complainant's site and reported as follows:

- that the staircase waist is smaller than the approved width;
- ground floor load bearing walls were not well interlocked;
- see through holes in beams; there are a number of concrete segregations in structural members namely the columns, first floor slab, ring beam and suspended beams, heavy segregation in the road side retaining wall columns; -exposed reinforcement in beams; columns and first floor slabs;
- fire exposed (Exposed to high temperature) load bearing walls.

[8] It was concluded that the form works beneath the slab was to be removed for inspection; comprehensive strength test was to be carried out on all structural members; road side retaining wall columns to be removed and replaced, and project engineer to provide structural assessment.

[9] Furthermore, That the Planning Authority also confirmed that no commencement notice was ever submitted for this project.

[10] That on the 04th March 2017, a structural engineer assessed the structural integrity of the house and other works and reported that –

- -firstly, in the foundation, the footings under the walls were casted without having been certified.

- -secondly, the columns casted had not been certified. They also did not have proper formwork which meant they varied in section and as a result, they are not straight. That most of the columns exhibit evidence of honeycomb resulting from lack of proper vibration;

- -thirdly, the walls were erected in blockwork contrary to the drawings.

[11] In terms of blockwork, the engineer reported that the running bond was not properly laid. In some areas of the block work, the vertical joints are above one another – this being unacceptable and not as per standards.

[12] The engineer further noted that the concrete on the lintel beams appeared to be very poor; spalling off had already resulted in exposing the reinforcement bars; and the concrete exhibits evidenced of a lot of impurities with red earth being a common occurrence.

[13] With regards to the stairway, the engineer reported that Mr. N'Ganga did not adhere to the drawings and specifications as per approved plans and did it in his own way. He stated that the staircase waist was merely 70mm thick when the standard is 150mm. there was no adequate cover, hence exposure of the reinforcement bars.

[14] Another observation was with regards to the poorly cast concrete on the first-floor slab; there is evidence of honeycomb and exposure of rebars due to lack of proper vibration for proper settling and removal of air bubbles to assist in good concrete settling, also, the specified cover respectively; slab exhibits evidence of impurities in the concrete; no concrete samples were taken as required by regulation.

[15] The engineer concluded that majority of the works done were defective.

[16] Given the above findings of the engineer, the Commission contacted the contractor to try and put the matters to him and to try and resolve the matter.

[17] After the Commission failed in negotiating a solution to the defective works with the respondent and the parties could not resolve the dispute, the case was forwarded before the Board of Commissioners for a hearing for the contravention of Section 40 (1) (b) and Section 40 (2) (b) of the Consumer Protection Act 2010, which states 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;*
>
> *"**40**(2) Subject to this Part, where a supplier fails to perform service to the standards specified in subsection (1), the supplier shall at the direction of the consumer—*
>
> *(b) refund to the consumer a reasonable portion of the price paid for the service performed, having regards to the extent of failure."*

[18] On the 15th October 2020, the matter was heard before the Board of Commissioners, whereby both parties had been summoned. Ms. Priyanka Ramruchaya, Legal Officer of the Fair-Trading Commission representing the complainant and Ms. Alexandra Benoiton representing Mr. Jefferson N'Ganga before the Board of Commissioners. Witnesses were called on behalf of the complainant and they were cross examined by the attorney.

[19] The Fair-Trading Commission called 3 witnesses and Mrs. Maureen Leon, the complainant, testified that she acquired the services of Mr. N'Ganga for the partial construction of her house. The service also included some demolition works and the construction of a retaining wall. Mr. N'Ganga quoted a total sum of SCR 921, 960(CE2).

[20] Mrs. Leon stated that she had paid SCR 584,860 out of the above sum and she produced receipts to substantiate her statement (CE3). Mrs. Leon explained that she was not satisfied with Mr. N'Ganga's quality of works on site and that she therefore asked him to hold on to the works. She lodged a complaint at the Fair-

Trading Commission asking for a refund with the Fair-Trading Commissions assistance.

[21] Mrs. Leon further testified that the investigation conducted by the FTC and the findings of the authorities and experts who went on site was relayed to her.

[22] The second witness to be called up was Mr. Philip Adrienne, a structural engineer, who was called to testify about his assessments on the structural integrity of part of the house built by Mr. N'Ganga. It was firstly established through his qualification and experience that he was indeed an expert.

[23] Mr. Adrienne went on to explain his observations on the site (CE5, A10). He distinguished works of Mr. N'Ganga and the first contractor that had started the works for Mrs. Leon. Mr. Adrienne explained that most of Mr. N'Ganga's works were not certified since he failed to notify the engineer. This included: -

- Columns, which were constructed by Mr. N'Ganga without proper form work and it was not straight. The columns also had honeycomb from lack of proper vibration.
- Walls, the engineer stated that this was contrary to drawings and he had instructed Mr. N'Ganga to demolish it.
- Blockworks, running bond not properly laid by Mr. N'Ganga. The engineer explained that this is not as per standards and that it is unacceptable.
- Lintel Beams, the engineer explained that the concrete was very poor and that spalling off had already occurred.
- Stair Case, the engineer explained that Mr. N'Ganga did not build the staircase as per the drawings. The waist of the stairs was only 70mm thick. There was also exposure of reinforcement bars.
- First floor slab concrete was poorly placed as evidenced by honeycombs due to lack of vibration

[24] Mr. Adrienne stated that the onus is on the contractor to notify an engineer for inspections. Mr. Adrienne concluded that most works done by Mr. N'Ganga were defective and required demolition. (CE5).

[25] The third witness to be called was Mr. Dereck Marie, an engineer from the Planning Authority. He testified his findings following a visit on Mrs. Leon's site in the above capacity. In his report (A3, CE7), he confirmed the engineers' observations that:

- the waist of the staircase was too small and that the approved width is 150mm
- there were concrete segregations in columns and beams

- there were see through holes in the beams\
- there were exposed reinforcement bars in beams and columns

[26] In that same report he recommended that a strength test be conducted on all structural elements of the building.

[27] That continuation of the matter that was set for end of October 2020 was postponed since the Respondent was overseas.

[28] That in January 2021, the case was mentioned. By then Mr N'Ganga's attorney had stopped representing him and he was told by the Board of Commissioners to seek the services of a lawyer who can appear on the set dates. However, Ms. Benoiton never withdrew her appearance on record. Mr. N'ganga opted to try and contact Ms. Benoiton again. Dates for continuation of hearing was set for the 9th, 16th, 23rd of February 2021.

[29] That on the above stated dates Mr N'Ganga appeared before the Board of Commissioners stating that he has been unsuccessful in contacting Ms. Benoiton and in seeking the services of a lawyer. He was given further chances to do so by the BOC. The matter was set for continuation of hearing on 4th, 11th, 18th May 2021.

[30] That in May 2021, all cases were postponed before the BOC due to the COVID19 pandemic.

[31] That on the 07th September 2021, the case was mentioned. Mr N'Ganga appeared and stated that he still does not have a lawyer. He was to get one available on 21st September 2021 for the hearing as requested by the Board members. Again, he was unable to do so.

[32] The case was heard on the 28th September 2021, again Mr. N'ganga was without legal representation and the complainant objected that the case be further postponed and indeed the Board of Commissioners were also concerned as to the amount of postponement and as to the inordinate and excessive delays that had taken over this mater. The Board granted the plea of the complainant to proceed with the case as was set and the three witnesses were called and the Respondent represented himself. He was given the chance to question the witnesses.

[33] The fourth witness to be called up was Mrs. Nelly Felix, who worked at Gondwana Granite. Following a recommendation from the Planning Authority, the Fair-Trading Commission sought the service of Gondwana to extract samples of concrete on site to be sent to the Seychelles Bureau of Standards for testing.

[34] Mrs. Felix testified that they attempted to take some samples of the concrete used on site but this task proved impossible as the concrete would disintegrate easily

and they were unable to properly flatten the sample to be sent for testing (A38, CE 6).

[35] The fifth witness to be called up was Mr. Shane Chang-Seng, an analyst from the Fair-Trading Commission, who was called to testify about his investigation. Mr. Chang-Seng went through the investigation of the case and analysis of his findings. He testified that as part of his investigation, he liaised with authorities and experts. He then compiled his findings in an investigation report where he established that Mr. N'Ganga was in breach of the CPA 2010 (A14, CE16).

[36] Mr. Chang-Seng testified that no commencement notice was submitted by Mr. N'Ganga for the construction, this meant that the agreed service was not to a quality expected.

[37] Mr. Chang-Seng testified that he sought the services of a Quantity Surveyor through the Fair-Trading Commission, who evaluated the sum to be refunded to Mrs. Leon. Mr. N'Ganga did not agree to the findings of the Quantity Surveyor and stated that he would get the services of another Quantity Surveyor but failed to do so (A41, A13, CE12, CE14).

[38] The case was then set for continuation on the 23rd November 2021, however, the Board of Commissioners and Fair Trading Commission was informed on hearing date that Mr. N'Ganga had sought the services of a lawyer, Mr. Guy Ferley who was unavailable on that mentioned date.

[39] Ms. Priyanka Ramruchaya called up the last witness, who was Mr. Alain Jean, an independent Quantity Surveyor with years of experience.

[40] Mr. Jean stated that he valued the works satisfactorily completed by Mr. N'Ganga at SCR 171,040. This means that the SCR 413,820.50 was to be refunded to Mrs. Leon.

[41] Mr. Jean testified that he estimated the cost for demolition of some of Mr. N'Ganga's works at SCR 68,400 (A12, CE17, CE18).

[42] During the last hearing, Ms. Priyanka Ramruchaya stated to the Board of Commissioners that since this was her last witness, she would like to move to close the case for the prosecution.

[43] Mr. Jefferson N'Ganga, stated that he would like to challenge the Quantity Surveyors report and would like to submit written submissions.

[44] The Board, after hearing the evidence from the Commission and all the documents adduced as evidence in this matter, and having heard the arguments of Mr. Jefferson N'Ganga finds that Mr. Jefferson N'Ganga had failed to perform and

complete the service in a timely manner and of a quality that is to be generally expected of contrary to Section 40 (1) (b) read with Section 40 (2) (b) of the CPA 2010.

[45] Based on all the evidence presented, the Board rules as follows:

**That Mr. Jefferson N'Ganga, refunds the complainant, Mrs. Maureen Leon, the sum of SCR 482,220.50**

**Given the conduct of Mr. N'Ganga, in this matter the Board considers a penalty under section 67 (1)(a) read with subsection (3) (c)and (f) of the Consumer Protection Act to an amount of SCR 10,000.**

**All payments are to be made by the respondent at the office of the Fair Trading Commission not later than Sixty (60) calendar days from the date of the receipt of this ruling.**

**The parties are free to appeal against the ruling to the Appeal Tribunal (See Section 44 of the Fair Trading Commission Act, 2009 and Section 77 (1) of the Consumer Protection Act, 2010)**

[46] We rule accordingly.

Pronounced by us on this 20th day of April, 2022.

**Mr. Victor Pool**
**Commissioner**
**(Presiding)**

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

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