FOOD AND THE LAW,

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FOREWORD

The aim of this paper is, first, to outline the practical application of the Food and Drugs Act, which is well established within our legal framework. Secondly, it seeks to provide some guidance on what courts are likely to consider in cases involving the production and consumption of goods, specifically addressing what the prosecution or plaintiff's counsel must prove, the potential defenses available, and the broader legal challenges consumers face in seeking justice.

Much of the focus is drawn from common law jurisprudence, which serves to guide and influence Uganda's legal practices in the production and consumption sectors. Notably, every case related to production and consumption, when brought before the public or the courts, is evaluated on its own individual merits. Special attention is necessary to address potential injustices that may arise from exposing the public to contaminated goods without recourse to "food justice," a key issue that industry professionals must prioritize.

The author takes no responsibility for the sufficiency or accuracy of the information contained within this paper. It is recommended to seek further legal advice beyond the opinions presented by the author.

ACKNOWLEDGEMENTS

This paper is grounded in existing legislation and the accompanying legal framework, alongside relevant common law principles. It also considers the role of various statutory bodies tasked with preventing the consumption of contaminated or adulterated food. The court, in such matters, should serve as a last resort for dispute resolution and as a source of advisory opinions to guide the public on the necessary precautions throughout the stages of manufacturing, retail, farming, wholesale, and consumption ultimately promoting best practices for consumer protection.

FOODS AND DRUGS ACT CAP. 307

1.0 Introduction

1.1 In a country like Uganda which is state a party to a number of international conventions including the United National Consumer Protection Guidelines, there is urgent need to recognize UNSDG 12 on responsible consumption and production and as such, the Food and Drugs Act Cap 307 is one of Uganda's foundational legal frameworks aimed at safeguarding public health by regulating the production, distribution, and sale of food and drugs within the country. Enacted to ensure that consumable products meet certain safety and quality standards, the Act plays a critical role in protecting consumers from harmful or

substandard foodstuffs and pharmaceuticals. Its provisions are central to addressing issues like adulteration, contamination, and the misuse of chemicals or additives in the production process.

1.2 The Act draws its basis from the necessity to protect public health, especially in a growing economy where the demand for both local and imported goods continues to rise. With the increasing complexity of food and drug production, there is a pressing need to ensure that products on the market are safe for human consumption and use. By laying down strict rules and regulations, the Act offers a framework that businesses must follow, thereby reducing the risks posed by unscrupulous practices in the manufacturing, storage, and sale of consumables.

1.3 Therefore, it is key to note that in developing countries, First Moving Consumer Goods (FMCG's) are on high demand than any other kind of goods making the food and drugs industry susceptible to harm by the public for purpose of economic gain. Forexample a milk man/vendor will add water in milk before the same is brought to the dairy for purchase and final consumption and thereby would have changed the substance in the milk, which is hazardous to human as considered in ***(Hall vs. Owen Jones and Jones (1967) vol. 3 ALLER 209)***

1.4 As such, the Act establishes a regulatory framework that involves various government agencies, including health authorities and inspectors, to enforce its provisions. These bodies are empowered to ensure compliance by monitoring businesses, inspecting premises, and, where necessary, removing unsafe products from the market. The enforcement mechanisms outlined in the Act are designed to prevent the sale of harmful or substandard goods, thereby enhancing public confidence in the quality of food and drugs available in Uganda. The regulation is in place and the only limiting factor is enforcement at all levels of the value chain.

1.5 In essence, the law serves as a vital legal tool in Uganda's public health system. By setting standards for food and drug safety, it not only protects consumers but also supports the broader goals of maintaining public health, ensuring fair trade practices, and fostering a safe environment for both domestic and international markets.

1.0. **The key areas of consideration and highlights of the Act,**

1.1. The Act in section 2 outlines the scope and general application of the law. It provides the legal definition of "food" and "drug," which is critical in determining the Act's applicability. "Food" includes any substance consumed by humans for nourishment, while "drug" covers substances used for treatment or prevention of diseases in humans or animals. This ensures that the Act applies to a wide range of consumable goods, allowing regulators to oversee and control the quality and safety of both food and medicinal products.

1.2. Additionally, it prohibits the sale of food and drugs that are harmful, adulterated, or unfit for human consumption. ***(Concentrated Foods Ltd vs. Champ (1944) KB 342 at 350)*** This creates a legal obligation for manufacturers, distributors, and sellers to ensure that their products meet safety standards. It provides a safeguard against health risks associated with poor quality or contaminated products. Violating section 5 of the Act results in legal penalties, ensuring public protection against the dangers of consuming unsafe food or drugs.

1.3. Section 6 mandates the requirement for licensing in the manufacture, preparation, storage, and sale of food and drugs. This section creates a regulatory framework where entities involved in the production and sale of these goods must obtain licenses from the appropriate authorities. The section emphasizes government oversight, ensuring that only certified and regulated entities can engage in the food and drug business, thereby reducing the risks of malpractice and promoting the overall quality of consumable goods in the country to avert selling of food that is unfit for human consumption. ***David Greig ltd vs. Goldfinch (1961) 105 Sol. Jo 367***

1.4. It grants authorities, such as inspectors and health officers, the power to enter premises, inspect goods, and seize products that violate the Act. Additionally, this section outlines the penalties for individuals and businesses that breach the law, including fines and imprisonment. The enforcement provisions are designed to ensure compliance with the law, maintaining public confidence in the safety of food and drugs distributed in the country.

1.5. Section 31 of the Act provides for evidence of the analyst and it is to the effect that; In any proceeding under the Act, the production by one of the parties of a document purporting to be a certificate of a public analyst in the prescribed form, or of a document supplied to him or her by the other party as being a copy of such certificate, shall be sufficient evidence of the facts stated therein unless, in the first mentioned case, the other party requires that the analyst shall be called as a witness.

1.6. It follows that the analyst is not only required to exercise the expertise in production of any report or certification but also owes a duty to the public. An example is the decision by the Bombay High Court ***(The state of Maharashtra versus Prakash and Anor.)*** to the effect that *a most important matter to be considered by the Food Analyst, although directly his province, is the proper sampling of the food or food products to be analyzed.* In practice however, legal practitioners in this area should be alive to appropriate defenses to raise as and when litigating related matters arise.

2.0.**Possible defenses to the defendant;**

2.1. The law in cases involving violations of the Food and Drugs Act, presupposes certain defenses that may be available to a defendant under specific sections of the law to wit;

2.2. Under Section 2(6), before courts of law defendant counsel may argue that the sale of the food or drug in question was carried out in the ordinary course of business. This defense suggests that the defendant did not knowingly sell a defective or unsafe product but merely engaged in routine transactions typical of their commercial operations. The key element of this defense is the demonstration that the defendant was not engaged in any special or suspicious conduct related to the sale in question. Therefore, they must prove that their actions were consistent with standard practices in their business, without any intent to defraud or mislead customers. It is paramount for practitioners in this area to note that the ordinary course of business defense places emphasis on the normality of the transaction, thereby mitigating the culpability of the defendant if the harmful product was sold without their knowledge or direct involvement in its production.

2.3. Section 5(3) (a) provides a defense where the defendant can show that, even with the exercise of reasonable diligence, they could not have known that the food or drug was harmful, adulterated, or unsafe. This is based on the principle that a seller cannot be held strictly liable for defects in products they had no reasonable means of detecting. To successfully invoke this defense, defence counsel must demonstrate that the defendant/accused followed all standard procedures for inspecting and ensuring the safety of the product but that the defect was not discoverable by any means available to them at the time. The notion of "reasonable diligence" is key; the defendant/accused must prove that they took all reasonable steps to prevent the sale of unsafe products but were still unaware of the defect due to factors beyond their control. ***(Tesco Supermarkets Ltd v. Nattrass (1972) AC 153)***

2.4. The Tesco decision was subsequently criticized at English law as it would shield companies a gainst liability since due diligence is not only a matter of inquiry but procedure and in the food industry it squarely depends on the circumstance of the substance subject of the diligence which was clarified by Lord Lane in ***Garret vs. Boots Chemists Ltd (1ith July 1980 unreported):*** *"what might be reasonable for a large retailer might not be reasonable for the village shop."*

2.5. Under Section 5(3) (b), defence may argue that the sale was conducted in the ordinary course of business, or in accordance with established custom or usage within the industry. The same suggests that the product was sold following practices that are widely accepted and followed by others in the trade or business. In this case, the defendant must show that their conduct conformed to standard industry norms and that there was no deviation from the usual procedures or practices. By highlighting that, the sale was in line with customs generally followed in the trade, the defendant shifts the focus to the broader industry's accepted practices rather than the specific actions taken by them.

2.6. Section 5(3)(c) provides a specific defense for commercial advertisers, who may claim that they are not liable for defects in food or drugs that were advertised, provided they were merely acting in their capacity as an advertiser and had no control over the quality or safety of the product. In this scenario, the defendant must establish that they were not involved in the manufacture, preparation, or distribution of the product but only in its promotion or advertisement. By distancing themselves from the production process, the commercial advertiser can argue that their role was limited to promoting the product and that they had no means to verify its safety.

2.7. If food contains some extraneous matter, it is a defence for the defendant to show that the presence of that matter was an un avoidable consequence of the process of collection or preparation. In ***(Smeldleys Ltd vs. Breed (1974) AC 839 (1974) 2 ALLER, 21 HL)*** a customer who had bought a tin of smedleys peas from the supermarket found that the tin also contained a caterpillar, the larva of a hawkmoth. The Appellant were charged with an offence under section 2 (1) of the Act, the information alleging that the appellants had supplied food not of the substance demanded by the purchaser. The supermarket being clearly entitled to the act or default of third party defence considered below, the authority prosecuted the appellant manufacturers direct.

2.8. The lower court convicted the appellants, and their appeal was dismissed by the Divisional court and by the House of Lords. Lord Hailsham in his speech described the cooked and dehydrated caterpillar as entirely harmless and, perhaps, beneficial. By the time the immolated insect had at length plodded its way to the highest court in the land' it was well established that the appellants had an extremely efficient screening system. The caterpillar had escaped because it was of a similar density and colour to the peas.

2.9. But even if it could, the failure of the visual inspection to detect and remove the caterpillar was not "un avoidable" The word has to be construed in a sense that "no human agency concerned with the process could by the exercise of a high standard of reasonable care have avoided the contamination" Viscount Dilhorne stated that; *where it is apparent that prosecution does not serve the general interests of consumers, the justices may think fit if they find that the Act has been contravened to grant an absolute discharge"*

2.10. There is also testing samples as a defence, where manufacturers plead that they availed a sample, which was warning enough or would have been treated as alarm. ***(Hicks v. Sullam)***

2.11. Please note that each of these defenses provides a pathway for the defendant to mitigate or avoid liability under the Food and Drugs Act by demonstrating that they either acted in good faith, had no knowledge of the defect, or were simply following standard business practices or industry customs.

3.0.**Food Law & Fair Trading**

3.1.Food and Drugs Authorities are given power and an important task of enforcing the provisions relating to the sale of injurious foods and adulterated milk, sales of food not of the nature, substances or quality demanded and labelling offences. Thus, in ***Snodgrass vs. Topping (1952)116 JP 312*** the decision of court suggested that the private prosecutor in the matter of any crime over food stuffs should be a purchaser prejudiced by the food however, notice of intention to sue must be given to the AG who will represent the body corporate in case the suit is brought against it or given to a person who was a party to the adulteration of such food; in another view, it may be a statutory corporation itself other than the AG if the corporation is vested with capacity to sue or be sued.

3.2.Therefore, for courts of law to grant a closure order of where food which is dangerous for human consumption is sold, the court must be satisfied that the food business is being carried on in insanitary premises and that this constitutes a continuing danger to health. ***(Uganda vs. Jighar High Court Criminal Case No. 0019 of 2020).*** The closure order prohibits the preparation, storage or sale of food from the premises or stall in question until specified measures have been taken to remove the danger to health.

3.3.The practice tip is that, to establish an offence of adulterated food, as laid out in ***(Cullen vs. Mc'Nair (1908),*** four key elements must obtain: (i) that a substance, such as a liquid, was added to the food; (ii) that the food was subjected to treatment and other substances were found within it; (iii) that upon consumption, the food was injurious to human health; and (iv) that the seller or supplier intended for the food to be sold to humans.Thereby, Plaintiff's lawyer/prosecution will have established elements to collectively demonstrate both the adulteration and the harmful intent or negligence behind the sale of unsafe food.

3.4.Although, in ***(Pain vs. Bought wood (1890) vol. 24 Qb.d at pg. 353)*** the court noted that it is not necessary to prove that the seller of adulterated food knew that it had been subjected to one of the specified operations I.e. there is no requirement of mensrea. Again in ***(Dyke vs. Gower, (1892) vol. 1 Qb.d at Pg. 220)*** Court of Appeal noted that *"but not an intention to sell for human consumption must be proved"*

3.5.However, in most cases, the question that has always risen is whether the employee can be held individually liable for selling an adulterated product which manifests a tricky position but settled by ***Lord Parker CJ in Good fellow vs. Johnson (1966) vol. 2 Kbd*** where he explained that; *"It constitutes an absolute offence …The forbidden act is the selling to the prejudice of the purchaser, and it has long been held that a person who has done the forbidden thing through somebody else like a servant or agent is himself liable…. The forbidden act in the law anywhere it is not the parting with the title by the owner but is the physical handling and handing over the goods by way of sale; in other words the shop assistant, or in case the barmaid, is liable, and accordingly in view of*

the general principle to which I have referred any person on whose behalf that act of handling and handling over is also liable"

Conclusions

In practically all the cases highlighted, the Act plays a vital role in protecting public health by regulating the quality and safety of food and drugs sold within the country. Through its provisions, such as those outlined in Sections 2, 5, and 6, the Act sets clear standards for the definition, production, and sale of consumable goods. By doing so, it ensures that only safe, uncontaminated, and properly prepared products reach consumers, fostering a healthier and more secure environment for public consumption. The Public can only demand enforcement of this law.

Having demonstrated common law jurisprudence, The Act also provides robust enforcement mechanisms, empowering authorities to inspect, seize, and penalize those who violate its provisions. Sections such as 5(3) lay the groundwork for identifying offenses like the sale of adulterated food or unsafe drugs while also offering possible defenses for defendants, such as reasonable diligence or adherence to established business practices. This balanced approach allows for both strict regulation and fair adjudication in cases of alleged violations, ensuring that due process is maintained. We hope much will be done through the Standards Utilities and Wildlife Court the judiciary established in 2017

The defense mechanisms available under the Act, particularly those outlined in Sections 2(6) and 5(3) (a)-(c), offer businesses a degree of protection, particularly when they act in good faith or follow industry customs. These defenses recognize the challenges businesses face in monitoring product quality, especially when they are not directly involved in the manufacturing process. However, these defenses do not absolve businesses of their duty to ensure product safety, reinforcing the need for continuous diligence and adherence to regulatory standards.

Footnotes:

(i) The cases referenced are not an exhaustive list of court decisions, but they represent common law rulings that are likely to influence Uganda's jurisprudence in the production and consumer industries over time. While European courts have addressed such issues with more simplicity and clarity, this area of practice remains underdeveloped in Uganda's legal system.

(ii) Although many of the cases pertain to common law, it is important to recognize that consumption extends beyond food products. Other consumer goods are also relevant, and legal rulings on these may help shape the direction of future litigation within the industry.

(iii) It is also worth noting the lack of sufficient jurisprudence in Uganda concerning consumer protection law. The writer urges Ugandan courts and legal practitioners to engage with the cited cases to help shape and advance the practice of consumer protection in the country.

"Linking consumer challenges with legal solutions"



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