
**EXEMPTION CLAUSES AND THE *CONSUMER PROTECTION ACT* 68 OF 2008:
AN ASSESSMENT OF *NAIDOO V BIRCHWOOD HOTEL* 2012 6 SA 170 (GSJ)****Y Mupangavanhu*****SUMMARY**

Exemption clauses are a rule rather than an exception particularly in standard-form contracts. Consumers are usually forced to accept such terms on a "take-it-or-leave-it" basis. This state of affairs shows that freedom of contract is theoretical and could lead to injustices. In *Naidoo v Birchwood Hotel* 2012 6 SA 170 (GSJ) the Court refused to uphold the exemption clauses based on the fact that it would have been unfair and unjust to the plaintiff who had sustained serious bodily injuries during his stay at the hotel. The article discusses this court decision in the light of the provisions of the *Consumer Protection Act* 68 of 2008 (CPA) against the background of the previous jurisprudence regarding exemption clauses, including the position of exemption clauses in a new constitutional dispensation.

KEYWORDS: Exemption clauses, consumer protection, fairness and reasonableness, public policy, constitutional values.

* Yeukai Mupangavanhu. LLB (UFH) LLM LLD (UWC) Lecturer, University of the Western Cape.
Email: ychandaengerwa@uwc.ac.za.