

Consumerism and the Administration of Consumer Protection Law: Nigeria in Perspective

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Abstract

This paper examined Consumer Protection under the Sale of Goods Act 1893 in Nigeria and how to protect, preserve and safeguard the rights and interest of consumers in the course of purchasing goods and services. Consumer protection in Nigeria, unlike most developed countries had remained at the lowest ebb largely due to the prevalence of unwholesome business practices. The paper adopted the doctrinal method of research where primary and secondary sources were used. It was found that although there was a Consumer Protection Council up till recently which recognized the rights of consumers, the enabling Act did not specifically provide how these rights should be enforced. The study also found that most consumers do not take time to study the labels on products before purchase and as a result they do not have full information about the products before purchase which will help them to know as well as enforce their rights. The study equally found out that Consumers awareness of their right was low, which resulted in low level of litigations against manufacturers and sellers. This situation led to the passing of the Federal Competition and Consumer Protection Act on the strength of which the Federal Competition and Consumer Protection Commission was established in 2019 as a more potent alternative to replace the Consumer Protection Council and its enabling law being the Consumer Protection Council Act, 2004. It was recommended that: Nigerian courts should adopt a more proactive and objective approach to the issue of proof in food poisoning and other products failure cases as exemplified by the decision in Osemobor v Niger Biscuits Co. Ltd and Nassars and Sons by imposing strict liability on manufacturers; and that the Nigeria courts should apply the principle of res ipsa loquitur in clear cases of manufacturing defects since in such cases the plaintiff may not always be able to discharge the burden of establishing negligence and linking same to his loss or injury.

Keywords: Consumer, Consumerism, Consumer Protection, Legislation.

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Introduction

Consumer Protection according to Ndubuisi, *et al*¹ is all about “The provision of appropriate and effective mechanisms to protect the pecuniary, health, environmental, safety and security interest of all legal persons against misleading, fraudulent and harmful business practices including

¹Ndubisi, E., Anyawu, A., Nwankwo, C. A., ‘Protecting the Nigerian Consumer: An Expository Examination of the Role of Consumer Protection Council’, *Arabian Journal of Business and Management Review*, 2016.

manufacturing, trading, packaging, advertising, distribution, and selling of goods and services to the ultimate consumer". The issue of Consumer Protection became relevant in view of the reliance on the rule of "caveat emptor". Let the buyer beware is no longer an adequate prospective measure because the principle is based on the premise or assumption that the buyer knows what he wants, has knowledge necessary to choose wisely and has adequate contact with the sellers. These complaints by consumers over a period of time gave rise to mass movement of people (consumers) referred to as "consumerism" a situation that forced marketing practitioners in most advanced countries of the world such as Europe and America to adopt better ways to deliver goods and services without abusing the funds, mental and human rights of consumers. These mass movements comprised of those formed directly by consumers groups or representative groups as well as the government.²

However, there was practically no real organized consumer movements as such to fight for the protection of the rights of the consumers apart from a handful of groups around the country which now placed the consumers protection on the shoulders of the government. As a result the government took over especially where their consumerism is still low. Since then it has been a matter of government policy through legislation and efficient enforcement than a matter of organized public movement or support as it is in the United Kingdom where government efforts and public movement are both significant factors.

Statement of the Problem

The existence of the imbalance of knowledge and power relationship between the producers of goods and service and customers across the globe led to the ugly marketing environment and situations that the consumers were exposed to. Over the years they were subject to serious exploitations as most were supplied fake and sometimes expired products. In advertising, consumers were deliberately deceived by some desperate producers and dealers.

Besides, in the last two decades, the Sale of Goods Act 1893 has increasingly proven problematic in application and has generated enormous confusion and controversies resulting in discordant court decisions. This is principally because of the very nature of the law which has been in operation for over a hundred years, notwithstanding contrasting socio-economic transformations that have taken place in the last century. Indisputably, the law of sale of goods in Nigeria is principally governed by the Sale of Goods Act, 1893, an English law adopted in Nigeria long before political independence as a Statue of General Application SOGA in the country.³

As is with a number of other statutes of general application, this statute has become outdated and out of time with current realities of business and contractual transaction involving both movable and immovable properties. As such, some of its provisions have become either moribund or inapplicable in given sets of circumstances; hence the need for an autochthonous law that will not only regulate business transactions, but also fill the gaps in the existing laws such as the Sale of Goods Act, 1893, and the Consumer Protection Act inter alia regarding consumer protection especially since the United Kingdom from where this law was borrowed has amended the original version several times to keep in tune with current realities. This situation led to the passing into law recently of the Federal

²*Ibid.*

³Obilade, A.O., *Nigeria Legal System*, London: Sweet & Maxwell, 1979.

Competition and Consumer Protection Act, 2019 by the National Assembly of the federal republic of Nigeria.

On the part of consumers themselves, they have always accepted paying for goods without adequate assurance of quality and quantity. The government agencies and officials responsible for consumer protection seem not to monitor adequately the activities of producers and dealers. All these resulted to the massive exploitation suffered by consumers. It is against this backdrop that this study seeks to examine the role of these agencies in protecting the consumers against these activities of producers of goods and services.

In spite of all the existing consumer protection organizations and laws in Nigeria, a greater percentage of the consumers are still suffering dissatisfaction⁴. Since most sellers and producers in Nigeria have their focus on profit maximization at all costs, they indulge in selling of adulterated or fake and dangerous products not minding the effects it has on the part of the consumers.

Objectives of the Study

The general objectives of the study is to examine the state of the law, level of Consumer Protection in Nigeria, and in so doing:

1. To evaluate the activities of the Consumer protection Agencies under the Sale of Goods Act in Nigeria.
2. Evaluate the performance of Federal Competition and Consumer Protection Commission in educating and protecting Nigeria consumers, as against the defunct Consumer Protection Council.

Significance of Study

This study is significant especially in view of the fact that unlike previous studies which relied solely on old laws such as the Sale of Goods of Act,1893 and the Consumer Protection Act, 2004,this research was based on the Federal Competition and Protection Act, 2019. In effect, the research is based on the most current legislation in this area of our law. Prior to the enactment of the Act, there was no single piece of legislation regulating competition in Nigeria.

Thus, provisions of laws regulating competition and consumer protection were found in various legislation such as the Investment Promotion Act; the Nigeria Communication Act, 2003; the Electric Power Sector Reform Act, 2005; the Consumer Protection Act, 2004, and of course the Sale of Goods Act,1893 among others. However, the passing of the new law on competition and consumer protection, and this paradigm shif is indeed significant.

The Doctrinal research methodology adopted in this study utilized both secondary and primary data sources in order to gain insight on consumer protection laws in Nigeria and its implications.

Literature review

According to Wikipedia⁵, in jurisdictions that provide for it, Consumer Protection is a group of laws and organizations designed to ensure the rights of consumer as well as fair trade, competition and accurate information in the marketplace. Consumer Protection therefore refers to a state or federal

⁴Grossarchive, 'Consumer Protection Laws in Nigeria and its Implications on Nigerian Consumers', [2016], <http://www.grossarchive.com> , accessed, 12th June 2019.

⁵ Wikipedia, <https://www.wikipedia.com> , accessed, 14th June, 2019.

law designed to protect consumers against improperly described, damaged, faulty, and dangerous goods and services in addition to unfair trade and credit practices.

In order to maximize profits therefore, many businessmen exploit consumers by supplying poor quality goods at higher prices. They adopt unfair trade practices such as adulteration, hoarding, black market, etc. As a result, consumers do not get value for their money. Big business houses use their power for private gain and to the detriment of consumers. Consumers are thus exposed to physical, environmental, and other hazards. According to Singh⁶ they need to be protected from spurious, duplicate and adulterated products, pollution of air, water, and noise, and misleading advertising.

Consumer Protection is therefore prompted by the allegations of abuses of consumer rights in the marketplace, Consumer right in this sense are, the rights of a consumer to some basic entitlement in the goods and services they consume. This basic entitlement includes standard weight and measures, adequate and appropriate quality of goods and services, as well as right to consumer information, competitive choice, redress, etc.

To Nnadi⁷ Consumer Protection Law or Consumer Law is considered an area of law that regulates private law relationship between individual consumers and the businesses that sell those goods and services. Consumer Protection thus covers a wide range of topics including, but not necessary limited to product liability, privacy rights, unfair business practice, fraud, misrepresentation, and other consumer/ business interactions. Ordinarily, consumer rights and Consumer Protection Law provide a way for individuals to fight back against abusive business practices. These laws are designed to hold sellers of goods and services accountable when they seek to profit by taking advantage of an innocent consumer lacking of information or bargaining power. She concludes that, indeed, Consumer Protection Laws are a form of governmental regulation which aims at protecting the rights of consumers⁸

The exercise is a tripartite affair involving the consumer himself, the manufacturers/suppliers and the Consumer Protection Agencies that play regulatory role.

2.3.1 Consumer

A consumer is defined as someone who acquires goods or services for direct use or ownership rather than for resale or use in production and manufacturing⁹. Consumer interests can also be protected by promoting competition in the markets which directly and indirectly serve consumers, consistent with economic efficiency. Consumer protection can also be asserted via non-governmental organizations and individuals by way of consumerism¹⁰ He or she is the individual that consumes the good or service being offered for sale by the seller.

⁶ Singh, S., ‘Why do we need Consumer Protection?’ [2018], <https://www.preserveartiues.com>, accessed, 15th June, 2019.

⁷Nnadi, I., Consumer Rights And Protection Under the Law: How Adequate?, Journal of Commercial And Contemporary Law, Vol.4, 2014, 1-13.

⁸*Ibid* at 2.

⁹ The Free Dictionary, <http://www.thefreedictionary.com/comsumer>, accessed , 10th May, 2019.

¹⁰ Wikipedia, <http://www.wikipedia.org> , accessed , 10th May, 2019.

The Consumer Protection Council Act had defined the term as an individual who purchases, uses, maintains or disposes of products or services¹¹. In simple terms, a consumer can be defined as a person who purchases or uses any product or service or is adversely affected by a product or services.

The Black's Law Dictionary defines a consumer as one who consumes, individuals who purchases, use, maintain and dispose of products and services; users of the final product: a member of the broad class of people, who is affected by pricing policies, financing practices, quality of goods and services, credit reporting, debt collection, and other trade practice for which the state and general consumer protection laws are enacted. The term is further defined as a buyer of any consumer product; any person to whom such product is transferred during the duration of an implied or written warranty applicable to the product, and any other person who is entitled by the terms of such warranty or under applicable state law to enforce against the warrantor the obligations of the warranty.¹²

The Chambers English Dictionary simply defines a consumer as one who consumes, as opposed to a producer, one who uses an article produced.¹³ Some statutory definitions may be considered.

The Fair Trading Act, U.K¹⁴ provides that a consumer means any person who is either:

a. A person to whom goods are or are sought to be supplied (whether by way of sale or otherwise) in the course of business carried on by the person supplying or seeking to supply them, and who does not receive or seek to receive the goods or services in the course of a business carried on by him.

In Nigeria, there was no local statutory definition of the term consumer until the Industrial Promotion Act 1979 was enacted.¹⁵ This Act defines the term as including any person whether or not another manufacturer who buys goods from a wholesale or retail trader in the goods concerned. The term was further defined by the repealed Consumer Protection Council Act, 2004 as an individual who purchases, uses, maintains or disposes of products or services.¹⁶

Legal scholars have not been left out in this regard. Aaker and Day¹⁷ equate the term "Consumer" with citizens. They write that "consumer interest" is involved when citizens enter exchange relationships with institutions such as hospitals, libraries, police force and various government agencies, as well as with businesses".

Schiffman and Kanut¹⁸ in their book on consumer behavior classify consumer into two different kinds of consuming entities:

1. The personal consumer and
2. The organizational consumer

¹¹ John, D. and Catherine, T., 'Mac-Author Foundation', [2016]<http://www.macfound.org>, accessed, 15th June, 2019.

¹² Henry, C.B., Code of Federal Regulations, New York, West Publishing co., 2015 Amendment.

¹³ Schwarz, C., et al. *Chambers English Dictionary*, (7thedn.), Edinburg, Chambers, 1990.

¹⁴ Section 137(2) of the Fair Trading Act, UK.

¹⁵ Industrial Promotion Act, 1979, Laws of the federation of Nigeria Cap. 181.

¹⁶ Section 25..

¹⁷ Aaker, P.A, and Day, G.S, *consumerism*, (2nd.ed.), New York: Free Press, 1974.

¹⁸ Schiffman, L.G and Kanut, L.L., *Consumer Behavior*, Eaglewood Cliffs, Prentice Hall, Inc. 1978, 16.

According to them, the personal consumer is the individual who buys goods and services for her own use, for the use of her household or for just one member of the household, or even as a gift for a friend.

In all these contexts, the goods are brought for final or “end” use by individuals who are referred to as “end users” or “ultimate users”. The second category encompasses private business, government agencies, and institutions, all of which must buy products, equipment, and services in order to run their organizations. Whether for profit or non-profit.

Consumer interest can be protected by government through promoting healthy competition in the markets which directly and indirectly serve consumers consistent with economic efficiency. Consumer protection can also be asserted via non-governmental organizations and individuals by way of consumer activism.

It is therefore a common practice for nations to make laws that are designed specifically to protect the interest of its citizens in the course of buying and using of goods and services. The aim is to guard against exploitation of consumers, reduce the risk of exposure to harmful or substandard products and services, as well as provide a platform for the consumer to seek redress in the event of violation by businesses.

Consumer protection is therefore mostly about allegations of abuses of consumer rights in the market place. Consumer rights in this regard are the rights of a consumer to some basic entitlement in the goods and services they consume. This basic entitlement includes standard weight and measures, adequate and appropriate quantity of goods and services, as well as right to consumer information, competitive choice, redress, and environmental protection.

Consumers are particularly price sensitive, especially when buying good. A little less than half of consumers claim to be very careful with how they spend their money. They are also willing to spend more time and energy searching for discount products to ensure that they purchase the items they needed at the lowest rate possible.

A consumer can also be defined as someone who acquires goods or services for direct use or ownership rather than for resale or use in production and manufacturing.¹⁹ On its part the Encarta Dictionaries define a consumer as a buyer of goods and services and as someone who consumes something by eating it, drinking it or using it up.²⁰ Consumer as defined by Adediran²¹ means a natural person who is a purchaser, lessee, recipient or prospective purchaser, lessor or recipient of consumer product, service or credit.

In his 15th march 1962 declaration to the US Congress, President John Kennedy gave the meaning as; “they are the largest economic group, affected by almost every public and private economic decision, yet they are the only important group whose views are often not heard.”²²

¹⁹ Nnadi ,I, ‘Consumer Rights And Protection Under The Law: How Adequate?’ *Journal of Commercial and Contemporary Law*, Vol. 4, 2014, 1-13.

¹⁹ Adediran, A., *Psychology of Advertising and Consumer Behaviours*, Ibadan, Fola and Associates, 1992.

²⁰ Encarta, Microsoft Corporation, <http://www.Microsoft> , accessed , 10th May, 2019.

²¹ Adediran, A., *Psychology, Advertising and Consumer Behaviours*, Op. Cit.

²² Wikipedia, ‘Consumer Protection’, <http://en.wikipedia.org/wiki/consumer>, accessed on 2th June, 2019.

Some statutory definitions may also be considered. The Fair Trading Act 1973, UK provides that a consumer means any person who is either:

- a. A person to whom goods are supplied, or are sought to be supplied in the course of business carried on by the person supplying or seeking to supply them;
- b. A person for whom service are sought to be supplied in the cause of a business carried on by the person supplying or seeking to supply them, and who does not receive or seek to receive the goods or services in the course of a business carried on by him²³.

The attempts by some writers to confine the term consumer to purchasers of goods or services is however restrictive. Thus implies that only a contractual plaintiff is qualified as consumer. This approach will adversely affect possible claims of many end users and so cannot be supported. It seems that the concept of consumer has assumed a very wide connotation. As rightly observed by Charles worth and Percy²⁴ the category of persons who may be deemed to be ultimate consumers has been extended to include the user of the product as well as the person who comes into contract with it whether accidentally or deliberately.

Consumer protection

Consumer Protection refers to the laws and other forms of government regulation designed to protect the consumer. One form of consumer protection that is common is product regulation. The laws are designed to prevent the businesses that engage in fraud or specified unfair practices from gaining an advantage over competitors. They may also provide additional protection for those most vulnerable in the society. Consumer Protection laws are a form of government regulation that aim to protect the rights of consumers by requiring businesses or manufacturers for instance to disclose detailed information about products particularly in areas where safety or public health is an issue, such as food.

Consumer protection is linked to the idea of consumer right and to the formation of consumer organizations, which helps consumers makes better choice in the market place and get help with consumer complaints. Other organizations that promote consumer protection include government organization and self-regulating business organization.²⁵

Seller

A seller is an individual or entity who exchanges any good or service in return for payment.²⁶ Under the sale of Goods Act, a seller agrees to transfer the property in goods to the buyer for a money consideration, called the price.²⁷

Business Dictionary defines seller as a party that makes offers or contracts to make a sale to an actual or potential buyer.

Law Dictionary defined seller as one who sells anything; the party who transfers property in the contract of sale. The correlative is “buyer” or “purchaser” though these terms is not inapplicable to

²³ Felicia, M., *Law of Consumer Protection*, Ibadan, Spectrum Books, 2005.

²⁴ Charles, w., & Percy, R. A., *Negligence* (8thedn), London, Sweet & Maxwell, 1990, 1089.

²⁵ Wikipedia, <https://www.wikipedia.org>, accessed, 15th May, 2019.

²⁶ James, C., ‘Trading Instruments’, <http://www.investopedia.com>, accessed, 14th May, 2019.

²⁷ Sale of Goods Act, Part 1(i) 1893.

the persons concerned in a transfer of real estate, it is more customary to use “vendor” and “vendee” in that case.²⁸

Although many seller positions have no formal education requirements, some employers prefer employees to have a formal education, particularly those who sell complex or high end items. Employers also prefer one to two years of customer service or sales experience which will help them learn how to do the work properly.²⁹

Goods

Includes all personal chattels other than things in action and money, and includes emblements industrial growing crops and things attached to or forming part of the land which are agreed to be severed before the sale or under the contract of sale.³⁰ In fact, according to the Business Dictionary, it is a commodity, or a physical tangible item that satisfies some human want or need or something that people find useful or desirable and make an effort to acquire it.³¹

History of Sale of Goods in Nigeria

There has been global recognition of the fact that there is an existing imbalance of knowledge and power relationship between the producers of goods and services and consumers in the opinion of Kamarudeen, Suleiman, and Danjuma.³² This imbalance as pointed out by many scholars in the field of marketing and business circles in general appear to tilt towards the advantage of producers, who are strengthened by the traditional maxim “Caveat Emptor” which loosely translated means ‘let the buyer beware’, and the ever changing and growing free market philosophy which tend to put the producers and suppliers at liberty to do whatever they want to do.

Over the years, the Nigerian consumer as a result of this knowledge imbalance has suffered so much in the hands of producers and suppliers of goods and services with whom they were engaged in trade relationships in terms of supplying substandard goods and services, fake and expired products, etc. These fake products according to Nkamnebe, Idoko, and Kalu³³ are those goods and services that fail to meet up to the promised specification, conformance, and performance quality. They posited that consumer protection became an important area of interest because of the knowledge imbalance coupled with the sophistication of consumer products which made it difficult for consumers to ascertain and distinguish the genuine products from fake and substandard ones.

Consumer protection in the opinion of Lardan is therefore all about the provision of appropriate and effective mechanisms to protect the pecuniary, health, environmental, safety, and security interests of all legal persons against misleading, fraudulent, and harmful business practices including manufacturing, trading, packaging, advertising, distribution, and selling of goods and services to the ultimate consumers. The idea of consumer protection became relevant since the reliance on the rule of “Caveat Emptor” is no longer an adequate protective measure because the principle is based on the

²⁸ Garner, B. A., Black’s Law Dictionary, (2ndedn.) Minnesota, West Publishing Company, 2001.

²⁹ *Ibid.*

³⁰ Section 62, Sale of Goods Act, 1893.

³¹ Business Dictionary, <https://www.businessdictionary.com>, accessed, 14th May, 2020.

³² Bello, K.B., Suleiman J.B.A., Danjuma, I., ‘Perspective on Consumerism and Consumer Protection Act in Nigeria’, *European Journal of Business and Management*, Vol.4, No.10, 2012

³³ Nkamnebe, A.D, Idoko, E., Kalu, S.E, ‘Consumer Protection in Market Transactions in Nigeria’, *Journal of Innovative Marketing*, Vol.5, No.4, 2009.

premise or assumptions that the buyer knows what he wants, has knowledge necessary to choose wisely, and has adequate contact with the sellers.

Incessant complaints by consumers over a period of time gave rise to mass movement of people, mostly consumers which was later termed consumerism and this forced marketing practitioners in most advanced countries of the world such as Europe and America to respond favourably and adopt better ways of delivering goods and services without abusing the fundamental rights of the consumers. These mass movements comprised of those formed directly by consumer groups or representative groups as well as government agencies. ore the sale or under the contract of sale³⁴.

According to the Business Dictionary, it is a commodity, or a physical tangible item that satisfies some human want or need or something that people find useful or desirable and make an effort to acquire it.³⁵

Consumer protection: An Overview

The law governing Sale of Goods in Nigeria is the Sale of Goods Act³⁶ 1893, a Statute of General Application in force in Nigeria. The rules of Common Law which are not inconsistent with the express provisions of the Sale of Goods Act 1893 are also applicable. The study of sale of goods is only a specialized one in the sense that it is a contract involving sale of goods; otherwise it is essentially a part of the general law of contract. The Act has not therefore; done away with the general rules relating to contract. Hence, offer and acceptance, consideration and other elements of a valid contract must be present in a contract of Sale of Goods. Aside this, certain presumed ‘safeguards’ have been put in place by law to protect the interest of the consumer by implying terms concerning the standard and quality of product in commercial transaction of sale of goods in the Sale of Goods Act. Breach by the seller of any of these terms entitles the buyer to institute an action and gets remedies for such breach. These terms impose strict liability on the seller and they are actionable per se. It is irrelevant whether the seller was unaware of the alleged defect in the goods or not.³⁷

Sale of Goods is defined in *Section 1(1)* of the Sale of Goods Act, 1893 as: ‘A contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration called the price.’ This means that in addition to the ordinary elements of a contract, two other elements, goods and money consideration, must also be present in a contract of sale of goods. The above definition also envisages two situations namely:

- a. A contract of sale, in which the property in the goods is transferred from the seller to the buyer
- b. An agreement to sell, in which the transfer of the property takes place ‘in future’ (at a future time), or upon fulfillment of certain conditions.³⁸

³⁴ *Section 62*, Sale of Goods Act, 1893.

³⁵ Business Dictionary <https://www.businessdictionary.com>, accessed, 14th May, 2019.

³⁶ English Sale of Goods Act 1893.

³⁷ Kanyip B.B., ‘Service Liability under Nigerian Consumer Law’ *Consumer Journal* Vol.79, No 1, 2005, 90-95.

³⁸ Mmadu, R. A. O., ‘Application of Implied Terms in the Sale of Goods Act to Consumer Transactions in Nigeria: Between Consumer Protection and Safeguarding the Sanctity of Contracts’, *Journal of Business Law and Ethics*, Vol. 2, No.2, 2014, 1-10.

A contract for the sale of goods yet to be manufactured is an agreement to sell because the property in the goods cannot pass until they are manufactured and ascertained. That the definition of a contract of sale is recognized in terms of two transactions is indicated by Section 1(3) of the Act which states that where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a “sale”; but where the transfer of the property in the goods is to take place at a future time or subject to some conditions thereafter to be fulfilled, the contract is called an “agreement to sell”.

It is trite that consumer protection entails the existence of both laws and institutions designed to ensure the rights of consumers as well as fair trade, competition and accurate information in the market place. The goal of consumer protection laws and institutions is to place consumers, who are average citizens engaging in business deals such as buying of goods or borrowing of money on an even path with companies or citizens who regularly engage in business.

Historically, consumer transactions such as purchase of goods, or services for personal, family, or household use were presumed fair because it was assumed that buyers and sellers bargained from equal positions. However, starting in the 1960’s, legislatures all over the globe began to respond to complaints by consumer advocate that consumers were inherently disadvantaged, particularly when bargaining with large corporations and industries. Consequently, several types of agencies and statues both state and federal now work to profit consumers in addition to voluntary organizations.

Legal Framework for Consumer Protection in Nigeria

In Nigeria, although the first legislation on Consumer Protector was the Sale of Goods Act, 1893, a Statute of General Application made by the British Colonial Government, the principal legislation regarding Consumer Protection until recently was the Consumer Protection Council Act.³⁹ This Act provided for the establishment of the Consumer Protection Council as a regulatory body, and for matters connected therewith.

Against this background, the consumer is clearly seized of certain rights which are under the right to satisfaction of basic needs, the right to receive safe products and services, information choice, redress, representation, and the right to a healthy environment. Where a consumer is dissatisfied or feels shortchanged, he or she is entitled to seek redress through the regulatory body.

There is no doubt that these and earlier attempts at consumer protection have mapped out albeit vaguely, the terrain of Consumer Protection Law in Nigeria.⁴⁰ A cursory look at Section 12 shows that the CPC Act had made significant provisions for sanctions against advertisers as well as others who contravened the enactment protecting consumers.

However, this Act faced major criticisms which include the fact that consumer rights were being subsumed with the functions of the Consumer Protection Council, leaving no clear definition of what are consumer’s rights; the absence of a defined and adequate provision and mechanism for redress; general weakness of the enabling law; lack of strong enforcement machinery and provisions for enforcement; lack of effective institutional framework for the defence of consumer rights; inadequate

³⁹ Cap. C25 Laws of the Federation of Nigeria, 2004.

⁴⁰ Apori, K.A., ‘Cutting a Swath around the Nigerian Consumer: The Nigerian Consumer Protection Decree’, *EDSU Law Journal*, Vol.3, 1993.

funding; overlapping in the role and functions of some agencies; and, failure of the agencies to align with emerging trends in technologies and global policies particularly international law.

Another legislation that has proved very useful and thus important is the National Agency for Food and Drug Administration and Control Act.⁴¹ This Act of the National Assembly was originally promulgated as the National Agency for Food and Drug Administration and Control Decree No 15 of 1993 which was subsequently amended by the Decree No 19 of 1999. *Sections 5 and 30* of the Act empowered NAFDAC to make Regulations and guidelines regulating the Registration of Food and Drugs.

Equally significant were the National Insurance Commission Act⁴², which established the National Insurance Commission; the Pharmacist Council of Nigeria Act⁴³, which established the Pharmacist Council; the Weight and Measure's Act⁴⁴, breach of *Section 49* of which attracts a fine of ₦500.00 for individual or one year imprisonment; while corporate bodies are liable to a fine of ₦5,000.00; the Utilities and Charges Commission Act⁴⁵ which established the Utilities and Charges Commission; the Counterfeit and Fake Drugs and Unwholesome Processed Foods (Miscellaneous Provisions) Act⁴⁶; The Price Control Act⁴⁷; the Criminal Code Act⁴⁸; and the Penal Code Act⁴⁹ which applies in the Northern States, as well as the Sale of Goods Laws of the various states.

More recently however, presumably in view of some of the perceived lapses in the existing laws, the Federal Government of Nigeria through its legislative arm made another significant leap by the passing into law of the Federal Competition and Consumer Protection Act, 2019. The Act aims at promoting a competitive market and protecting consumer rights in Nigeria. Prior to the enactment of the Act, there was no single piece of legislation regulating competition in Nigeria. Thus, provisions of laws regulating competition were found in various legislation such as The Investment and Securities Act⁵⁰; the Nigerian Communications Act⁵¹, 2003; the Electric Power Sector Reform Act⁵², 2005 among others. However, this new Act applies to all businesses in Nigeria and thus, supersedes all laws on competition.

To be specific, the introduction of this codified set of competition rules into Nigeria's regulatory oversight framework came as a long anticipated change, to ensure that market distortions across all sectors are minimized and rules of fair play are respected in the market place. The Act thus repealed the Consumer Protection Act, dissolving with it, the Consumer Protection Council and in its place, establishes the Federal Competition and Consumer Protection Commission. It equally repealed *Sections 118 -128* of the Investment and Securities Act, Cap. I24 Laws of the Federation of Nigeria,

⁴¹Cap. N1 Laws of the Federation of Nigeria, 2004.

⁴² National Insurance Commission Act, 2007.

⁴³ Pharmacist Council of Nigeria Act, 1992.

⁴⁴Weight and Measure's Act, 1962.

⁴⁵ Utilities and Charges Commission Act,2016.

⁴⁶ Counterfeit and Fake Drugs and Unwholesome Processed Foods (Miscellaneous Provisions) Act,2015.

⁴⁷Price Control Act, 1977.

⁴⁸ Cap. C.39 Laws of the Federation of Nigeria, 2004.

⁴⁹Cap. 345, Revised Laws of the Federation of Nigeria, 1990.

⁵⁰ Investment and Securities Act, 2007.

⁵¹ Nigeria Communication Act,2003.

⁵²Electric Power Sector Reform Act,2005.

2004.⁵³ The Act promises to introduce ground breaking changes into the Nigerian Regulatory regime going by its obvious features.

The Act prohibits and voids restrictive agreements between business entities. The description of restrictive arrangements which are likely to prevent, restrict, or distort trade is very wide-ranging and includes prohibition of minimum resale prices, even for patented goods; direct or indirect price fixing; collusive tendering; withholding supply of goods and services from a dealer; exclusionary contractual provisions etc. However, some of the prohibited arrangements may be approved by the commission, if the commission is satisfied that they are fair and do not eliminate competition.

KanyiP⁵⁴ notes that protection has been accorded the Nigerian Consumer under these laws. According to him, in a general sense, these laws establish the respective standards and criteria for protecting the consumer, the breach of which gives rise to criminal or administrative penalties.

Salient features of the Federal Competition and Consumer Protection Act, 2019

Regarding its functions and powers, a comparison of FCCPA and the repealed CPC Act reveals several significant changes to the legal framework for competition and consumer protection in Nigeria. The new law makes ample provision against the creation of monopolies and anti-competition practices. It sets out in detail, the rights of consumers and the available modes of redress where these rights are infringed upon.⁵⁵ The CPC Act included provisions to protect the consumer against exploitation by business owners and harmful business practices of manufacturers. Under the CPC Act the focus was more on the elimination of hazardous products from the market. The FCCPA on the other hand aims at promoting efficiency in the emerging Nigerian economy by eliminating barriers and operational obstacles in the form of abuse of dominant power as well as unconscionable marketing, trading and harmful business practices of manufacturers, wholesalers, retailers etc.

The establishment of the Commission and the Tribunal has provided the much needed regulatory and legal framework for competition and consumer protection within the Nigerian economy. The functions and powers of the Commission under the FCCPA are more robust than the powers of the Council under the repealed CPC Act.

The Commission on its own has the power to prevent the circulation of goods and services which constitute a public hazard or an imminent hazard,⁵⁶ unlike the CPC Act which only gave the Consumer Protection Council the power to apply to court to prevent the circulation of such goods and services. Under the FCCPA, the Commission can act independently of the Court system and is not subject to the discretion and procedures of the court.

It has the power to make rules and regulations regarding competition in the market and protection of consumers. The Commission can on its own prohibit the making or performing of an agreement or arrangement to which the Act relates, declare any business practice as an abuse of dominant position of market power and prohibit the same, after carrying out the necessary investigation.⁵⁷ The Act also makes detailed provisions for where there is an abuse of a dominant position in the market

⁵³Section 165 FCCPA, 2019.

⁵⁴KanyiP, B.B; 'Historical Analysis of Consumer Protection in Nigeria', Abuja, *Nigerian Institute of Advanced Legal Studies: Occasional Paper Series*, 1977.

⁵⁵Section 114 FCCPA 2019.

⁵⁶Section 18(1)(b)FCCPA 2019.

⁵⁷Section 18(3)FCCPA 2019.

by an undertaking or an association of undertakings, where an agreement is restrictive, and where a monopoly situation exists, so as to guide the Commission in the exercise of its powers.

For the purpose of regulating and facilitating competition, the Act also gives the President the power to publish an order in the Federal Gazette, declaring that the prices for goods or services specified in that order be controlled according to the provisions of the Act.⁵⁸ Therefore, in a situation where competition is limited in a particular market, the President, upon a submission of a report by the Commission, has the power to make a declaration that certain goods and services should be provided to consumers at an authorized price.

Equally significant is the fact that the power to prohibit or approve mergers now rests with the Commission and no longer the Securities and Exchange Commission.⁵⁹ The focus of the Commission when considering a merger or a proposed merger is on the competition and anti-trust implications of such a merger. This is further evidence that proactive steps are being taken to create a more competitive Nigerian market.

The purpose of the Federal Competition and Consumer Protection Act 2019 is to develop, promote and regulate a fair and competitive market in the Nigerian economy and protect the interest and welfare of consumers by ensuring that goods and services in the Nigerian market are of a high standard. The provisions of the Act give the Commission sufficient authority to oversee and regulate the Nigerian market in a manner that ensures the elimination of hazardous goods and services, anti-competitive agreements, misleading and unfair trading and business practices, but this can only be achieved with a proper understanding and enforcement of these provisions. The Federal Competition and Consumer Protection Act 2019 is thus a welcome and timely legislation that is robust enough to achieve its objectives and open up the Nigerian market to small and medium scale businesses by removing monopolies and market dominance by one business, alongside protecting Nigerian consumers and their rights.

The English Sale of Goods Act 1893 has in reality granted a number of rights and remedies to the buyer and by so doing fortified his position in the contractual relationship. Among the remedies is an action for damages for non-delivery of goods specified under the Contract of Sale. By *Section 51(1)* of the Sale of Goods Act, where the seller wrongfully neglects or refuses to deliver the goods to the buyer, such buyer may maintain an action against the seller for damages. The threshold for the delivery of the goods has been established by the courts in *Abba v Shell British petroleum*⁶⁰ has clarified, requires the buyer's acceptance of the goods delivered by the supplier, and unless and until the buyer accepts and signs the waybills, due delivery is not done again, as is with the case of the seller, the measure of damages which a buyer can claim is the estimated loss directly and natural resulting, in the ordinary course of events, from the seller's breach of contract.⁶¹

Furthermore, the Supreme Court has held in *Artra Industries Nigeria Ltd v Nigerian bank of commerce and Industry*⁶² that damages for breach of contract are not awarded for anticipated gross income but for net income or profit, such that in considering a claim for loss of anticipated profit, the

⁵⁸Section 88 FCCPA 2019.

⁵⁹Section 17(k); 92 FCCPA 2019.

⁶⁰ (2013) 1 SC, 708

⁶¹(1864) *Section 51(2)* Sale of Goods Act.

⁶² (1998)4 NWLR (pt. 546) 357.

projection of an anticipated profit in a feasibility report without more has no weight and is not acceptable as proof of such anticipated profit. Another important remedy for the aggrieved buyer lies in specific performance which the court requiring the fulfillment of a legal or contractual obligation when monetary damages are in appropriate or in adequate⁶³. Section 52 of the Sale of Goods Act provides that in any action for breach of contract to deliver specific or ascertained goods the court may, if it thinks fit, on the application of the plaintiff, by its judgment or decree direct that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages. The judgment or decree may be unconditional, or upon such term and conditions as to damages, payment of the price and otherwise, as the court may deem just, and the application by the plaintiff may be made at any time before judgment or decree. There are many advantages of specific performance including that it may be difficult to revert the parties to the *status quo ante* merely by the payment of damages. However, the greatest obstacle to the enjoyment of this remedy is that it is purely discretionary on the presiding Judge to grant or refuse and this is further complicated by the fact that there is no objective yard stick by which the court's discretion may be measured thereby throwing the entire enterprise to his whims and caprices. To this extent, specific performance is in effect a shaky and uncertain remedy. This uncertainty is amplified by the supreme court in *Help Nigeria Ltd, v Silver Anchor Nigeria Ltd*.⁶⁴, when it held that specific performance is a discretionary remedy. It will not be granted if the contract suffers from some defect or if damages constitute an adequate remedy. The language of Section 52 of the Act supports this view particularly when it uses non-obligatory phrases such as the court may and if the court thinks fit to describe what the court can or cannot do when considering an order for specific performance.

Therefore, specific performance, in the final analysis, is not a right but a clearly uncertain remedy. This is more so since the court can only grant specific performance for a purpose which can be achieved or enforced. It cannot command the impossible or decree specific performance in vain. Accordingly, the court must examine and weigh carefully every competing interest before making an order of specific performance. The Sale of Goods Act also grants the buyer a remedy for breach of warranty by the seller. However, by section 53(1) of the Act, the buyer is not thereby allowed the right to reject the goods or repudiate the contract but rather a remedy of set up against the seller; the breach of warranty in diminution or extinction of the price; or of maintaining an the seller for damages for the breach of warranty. This remedy derives from the fact that there is always the implied warranty by the seller that the goods shall be free from any charge or encumbrance from any third party not declared or known to the buyer. Specifically, in a contract of sale of goods, the law imposes upon the seller a warranty that he has title to the property⁶⁵. Notwithstanding the foregoing, the Supreme Court in *Metal Construction WA Ltd vs. Meridian Trade Corp. Ltd*.⁶⁶, stated that a buyer complaining about non-merchantability of goods purchased must do so and reject the goods timeously and that the appellant in that case having accepted the goods which it had ample opportunity to examine, cannot later reject them and must be taken to have examined them⁶⁷. In *Elf Petroleum Nigeria Ltd. v. Onyekwehu*,⁶⁸ the Supreme Court laid

⁶³*Best (Nigeria) Ltd. vs. Blackwood Hodge (Nigeria) Ltd.* (2011)5 NWLR (pt. 1239) 95.

⁶⁴ (2006) 5 NWLR (pt. 972) 196.

⁶⁵*Akerele vs. Atunrase* (1969) 15 CNLR 323.

⁶⁶ 28(1990) 5 NWLR 145.

⁶⁷*British Overseas Credit Ltd. vs. Animashaun* (1961) ANLR 343.

⁶⁸ (2002) 7 NWLR 461.

out the ground rules as to when a buyer would be deemed to have accepted delivery of any goods to include when he intimates the seller that he has accepted them; when the goods are delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller; or when after the lapse of a reasonable time, he retains the goods without intimating the seller that he has rejected them⁶⁹. Nonetheless, by *Section 36* of the Act, where goods are delivered to the buyer and he refuses to accept them, he is not bound to return them back to the seller, rather, it is sufficient if he intimates the seller that he has rejected them.

Another agency in Nigeria charged with the responsibility of protecting consumers is the National Agency for Food and Drugs Administration and Control. NAFDAC was established with the mandate to regulate and control the importation, exportation, manufacturing, advertisement, distribution, sale, and use of food, drugs, cosmetics, medical devices, bottled water, and a wide variety of chemicals. It is important to note that NAFDAC has been relatively effective in the past two and half decades in the area of consumer protection and quality control and if its potentials and present tempo is sustained through manpower development and infrastructural empowerment, it would certainly achieve greater heights in protecting Nigerian consumers.

Unfortunately, while consumer protection organizations have given impetus to efforts at defining and promoting the interest of consumers in the United States, Canada, United Kingdom etc., such consumer oriented bodies are yet to take deep root in Nigeria. Consequently, despite the above structures set up by the Nigeria Government to ensure the protection of consumers, the Nigerian consumers clearly appear to be the most exploited in the world. This is the case even in the face of clear provisions of the law providing the needed impetus to the institutions.

Thus, *Section 1(9)* of the Nigerian Communications Commission Act, 2003 for instance mandates the Commission to protect the rights and interests of service providers and consumers within Nigeria while *Section 4(1)(b)* of the Act further empowers the Commission to protect and promote the interest of consumers against unfair practices relating to matters which include tariffs and charges for the availability and quality of communications services, equipment, and facilities.

Thus, the commission as a regulator has the responsibility of ensuring that customers receive value for their money. This is in addition to supporting advocacy on behalf of telecommunications consumers to ensure that their interests are generally protected.

In 2013, the Consumer Protection Council through its Director-General Mrs. Atoki made a call for speedy passage of a reviewed consumer protection law to enable the government provide adequate cover for consumers as well as improved budgetary provisions in a bid to enhance the performance of the Council.⁷⁰ According to the Director-General, the extant Consumer Protection Act had some gaps and so could not effectively protect Nigerian consumers and it was because of the gaps in the Act that multinationals were able to dump goods in the country with no law to hold them responsible.

Beyond the federal legislation, the Lagos State Government in March, 2014 passed the State Consumer Protection Agency Bill into law. Critics have however expressed doubts as to the efficacy of this legislation especially in view of the fact that the existing Federal Consumer Protection Agency

⁶⁹ *Section 35* of the Sale of Goods Act.

⁷⁰ Oladunjoye, P, 'Consumer Protection Laws', [2013], <https://www.independentnig.com>, accessed, 14th May, 2019.

appears to have made no significant impact on the lives of Nigerians since its inception over two decades ago, a situation that has given rise to pressure groups such as the Consumer Advocacy Foundation of Nigeria, and the Consumer Rights Project.

More recently however, the Federal Government of Nigeria through the new Federal Competition and Consumer Protection Act which repealed the former Consumer Protection Council Act, dissolved the Consumer Protection Council, and established the Federal Competition and Consumer Protection Commission (FCCPC) in its stead. Unlike the defunct CPC, the FCCPC's oversight extends beyond just consumer protection issues, and covers all entities in Nigeria-whether they are engaged in commercial activities as bodies corporate, or as government agencies and bodies.

The Act provides for the establishment of a Federal Competition and Consumer Protection Tribunal. The Tribunal is expected to adjudicate over matters which arise from the operation of the Act. The tribunal is also empowered to hear appeals from, or review any decision from the exercise of the powers of any sector specific regulatory authority in a regulated industry in respect of competition and consumer protection matters.

The tribunal can impose administrative penalties for breaches of the Act, and oversee forced divestments, partial or total, of investors from companies. Appeals against the Tribunal's decisions lie directly to the Court of Appeal, although its divisions are to be enforced after registration at the Registry of the Federal High Court. It is not clear why the law provides for a process for registration of its decisions in the first instance since that suggests that there might have to be recourse to an extant or new protocol of the Federal High Court up to serve as a review panel for decisions of the FCCPC tribunal.

The courts

The active role of the courts in consumer rights protection traces the emergence of both the common law and specific legislation governing the role of domestic or national courts in proceedings involving consumers. Though only more recently given serious attention, this role has already become an important benchmark for effective consumer protection given its historical antecedents dating back to the old English court rulings based on the common law.

Accordingly, national courts are required to uphold the spirit of statutes on mandatory rules of consumer contract law and protection in the enforcement of the terms of commercial transactions. This results in the strengthening of procedural consumer protection standards in ordinary proceedings, consumer insolvency proceedings, or repossession proceedings⁷¹. The considerations of contractual imbalance will therefore now have to be taken into account in court proceedings leading, where necessary, to the reform of national procedural safeguards to protect the weaker contractual party. This has led to what is now known as consumer advocacy.

Consumer advocacy is the process of standing beside a consumer and speaking out on his behalf to protect and promote their rights and interests in the area of goods and services. An advocate may be an individual or an institution/organization such as a governmental or non-governmental organization. It could also be a court which is an arm of the judiciary. Given the pride of place the legal profession enjoys in the society, the court has an inherent duty to be proactive in the area of consumer protection and advocacy. This is in view of the fact that the Nigerian consumer is unarguably in a precarious situation and more often than not, shortchanged by both the procedures

⁷¹Beka, A., *The Active Role of Courts in Consumer Litigation*, EU, e-Book, (1stedn.), 2018.

of goods and the sellers thereof, and the providers of services who on a regular basis inundate him with substandard products and shoddy services.⁷²

In Nigeria, just like in all other jurisdictions, rights have been defined as just claims with legal guarantees. They are in the nature of powers, privileges, or immunity secured to a person by law, which are legally enforceable. They are claims and guarantees that another will do or will not do a given act, a recognized and protected interest, the violation of which is a wrong⁷³. These rights with particular reference to the consumer are enforceable at law by the High Courts.

4.2 The state of consumer rights in Nigeria

It is trite that despite the existence of both a legal and institutional framework for the protection of consumers, the Nigeria consumer is far from being free from the abuse of manufacturers and retailers. Instances will include the epileptic power supply situation in the country despite the exorbitant bills charged by the power holding company in Nigeria from the citizens which in most cases are designated 'estimated bills'; the consistent charging of customers for dropped, failed, or unsatisfactory calls by the various telecommunications companies in Nigeria under the clear watch of the National Communications Commission an agency of the Federal Government established by the NCC Act, 2003, and which has so far done little or nothing to root out the rot in the telecoms industry.

Specifically, *Section 1(9)* Of the Nigerian Communications Commission Act, 2003 mandates the Commission to protect the rights and interests of service providers and consumers within Nigeria while *Section 4(1(b))* of the Act further empowers the Commission to protect and promote the interest of consumers against unfair practices relating to matters which includes tariffs and charges for the availability and quality of communication services, equipment, and facilities. Thus, the commission as a regulator has the responsibility of ensuring that customers receive value for their money. This is an addition to supporting advocacy on behalf of telecoms consumers to ensure that their interests are generally protected.

Furthermore, the incessant rent increase by landlords in most Nigerian cities in clear violation and disregard of the restrictions in the Rent Control Laws of the various states, the consistent habit of airline companies keeping many of their passengers stranded at most Nigerian airports via prolonged flight delays and outright cancellation of flight already paid for without any or adequate notice and compensation, finding of dangerous items and substance in beverages, dispensing of fake and expired drugs in pharmacies, fraudulent adjustment of petrol pumps by fuel stations and their attendants, and poor customer service especially in the public sector notwithstanding the introduction of SERVICOM as a public service watchdog by the head of service, etc. are instance of consumer exploitation and abuse.

As a result of many years of such abuse and neglect, Nigeria consumers no longer agitate about poor services in public institutions or fallen standard of goods and services. A.S Aniagolu J.S.C succinctly put it:

⁷²Okiche, E.I., 'The Bar and the Bench as Agents of Consumer Advocacy in Nigeria' *Nigerian Juridical Review*, Vol. 9, 2002 – 10, 88-105.

⁷³Garner, B.A., *Black's Law Dictionary*, (8th edn.) St. Paul Minnesota, West Publishing Co. Ltd, 2004, 7347.

Nothing appears to be elementary in this country where it is often the unhappy lot of customers to be inflicted with shoddy and unmerchanted goods by some pretentious manufacturers, entrepreneurs, shady middleman, and unprincipled retailers whose avowed interest seems only and always to be to maximize their profit leaving honesty and discounted and shattered commodity.⁷⁴

Current Trends in Consumer Protection in Nigeria

To ameliorate the plight of consumers in Nigeria, the defunct Consumer Protection Council at a point started running periodic radio programs tagged ‘Consumer Speaks Radio Network’. While this was perceived as commendable, the present Federal FCCPC is enjoined to organize ‘town hall meetings’ and ‘road shows’ to major markets in all the cities in the country to educate both the buyers and the sellers on their duties and responsibilities towards each other. It will also be helpful if the FCCPC will establish more offices nationwide to make their services more accessible to the average Nigeria consumer.

In cities like Abuja, phone lines have been made available so consumers can call in to lay complaints against producers and providers of goods and services, The standards Organization of Nigeria (SON), established via the SON Decree of 1971, now the SON Act, 2015 which is another agency of the Federal Government saddled with the responsibility of ensuring the compliance of producers and manufacturers of goods and services to minimum acceptable standard has implanted clear and stringent guidelines to inform importers and assure Nigerians that imported products must comply with applicable regulations.

In Lagos state for instance, the Standards Organization of Nigeria has a market desk that is fully functional at the Alaba International market which provides buyers the opportunity to authenticate the quality and genuineness of products purchased from any shop within the market especially the electronics section. Thus the slogan that ‘the consumer is king, and is always right’ is gradually gaining worldwide acceptance as consumer protection laws are increasingly being enacted while consumers and customers are becoming more aware of their rights when purchasing goods and services.

Regarding its operational modus, and in line with the law establishing it, it is necessary to note that in Nigeria the public will not patronize products and service that are not listed with the FCCPC. The Commission is empowered by law to shut down the premise of product manufacturers and service providers that fail to list their products and services. Besides, where companies are not listed, or default in terms of product quality, compliance, even a listed company can be de-listed by the Commission. In demonstration of its seriousness to tackle the abuse of the disadvantaged position of the Nigeria consumers, some of the consumer protection agencies in Nigeria have in some instances risen to the occasion by taking bold steps to confront some businesses that made conscious efforts to take advantage of consumer over the years particularly under the defunct CPC. The following instances are Noteworthy:

On the 30th of May, 2006 the Consumer Protection Council shut down the Abuja regional office of MTN Nigeria, and threatened to press for the withdrawal of its operational license if the company continues to flout the operational guidelines in its dealings with Nigerian subscribers to its network. This action was taken by CPC over MTN’s Y’ello time promotion which the agency said was

⁷⁴Ayojimi, M., ‘Is the consumer King in Nigeria?’, *Businessdayonline.com*, [2014], <https://www.craai.org/is-the-consumer-king-in-nigeria/2014/03>, accessed, 29th May, 2019.

unlawful and in contravention of rules and regulations, having not been duly registered and subjected to the scrutiny of the consumer rights agency.⁷⁵

Reacting to the development, MTN's corporate services Executive, Amina Oyagbola said that:

'We confirm that the Consumer Protection Council came to MTN's Regional Office in Abuja with 25 armed policemen to seal the said premises. No notice, court Order, or other official documentation giving the CPC the authority or right to seal the premises was presented to anyone before, during, or after their actions. Further, no one was informed of the reasons for their action at the time they proceeded to seal the premises. MTN learnt of the reasons for the actions of the CPC through press publications after the sealing was effected.'

This is clearly unlawful and beyond the power of the CPC under its enabling law. While the CPC has the power to seal up premises of defaulting businesses, the fact still remains that they must do so in line with the requirements of the law. Due process ought to be followed in all such instance and a court Order obtained and duly served on the defaulters at the time of such sealing of their premises to avoid a breakdown of law and order. The CPC's arbitrary sealing of the Abuja office of MTN and the premises of its business partner operating the Owerri Connect Store undoubtedly adversely affected the customer experience on MTN's network and the provision of mobile services throughout Northern and Eastern Nigeria.

MTN does have the civil right to a fair hearing and to be informed of the legal premise upon which any official sanction is being executed. This was clearly not done by the CPC and amounted to a breach of due process. The action also resulted in reputation damage to MTN and financial loss to the proprietor of the Connect Store in Owerri who is a private citizen.

Similarly, the National Agency for Food and Drug Administration and Control on the 20th day of May, 2015 shut down a Lagos based Mall known as Chocolate Royale for selling counterfeit wines and spirits to the general public. The Regulatory officers of the agency had gone to visit three branches of the Mall located in Ajah, Gbagada, and Magodo-Isheri. According to the team leader of the Magodo-Isheri operation, Mr. Andy Tamanuwa, a Chief Regulatory Officer, the closing down of the Mall was a routine exercise aimed to make sure that the mall conformed to the approved regulatory standards. He said:

'There were complaints received about the sale of cloned wines and spirits against the company and which were discovered to be true when we got here to inspect the place. We found the products and accordingly seized them. They will be evacuated from the outlet for further investigation.'⁷⁶

NAFDAC began intensifying effort to clean up the nation's products via such operation after witnessing a wave of deaths caused by poisoning by popular alcoholic drinks in the nation. At the end of the multiple operations which lasted several hours, imported fake, unregistered, and expired food products worth approximately N1 Billion were evacuated in six Hilux vans and buses which NAFDAC stormed the place with.

⁷⁵Nweke, R., "MTN Confirms Sealing of Abuja Office", [2006], www.itrealms.com.ng/2006_05_01_archive.html=1, accessed, 13th June, 2016.

⁷⁶Sahara Reporters, "NAFDAC Seals Off Chocolate Royale, Seizes Expired Products From MD's Resident", [2015], <https://saharareporters.com/2015/05/23>, accessed, 14th June, 2019.

It is worthy of note that the Nigerian Electricity Regulatory Commission which was established in October, 2005 as part of the reforms in the electricity sector under The Electric Power Sector Reform Act of 2005 is a regulatory body charged with ensuring that:

- The electricity market is efficient.
- Prices charged are fair.
- Access to electricity is maximized both in urban and rural areas.
- Rights of the customers are protected.
- Electricity is adequate, reliable and safe.
- There is a level playing field for the customers, operators and intending investors.

In order to protect customers, the NERC has done the following so far:

1. The Commission has established the following consumer protection measures:
 - Customer Complaints Handling Standards and Procedures.
 - Connections and Disconnections Procedures for electricity services.
 - Customer Service Standards for Distribution Companies and Meter Reading.
 - Cash Collection and Credit Management for electricity supply.
2. The Commission has embarked on numerous public enlightenment campaigns titled e-Power Consumer Assembly to enlighten consumers on their rights and obligations.
3. The Commission has established a Health and Safety Standard Manual and has approved and established a Grid, Distribution, and Metering Codes to ensure standards and safety in the sector.

Attitude of the Courts towards Consumer Protection in Nigeria

A review of some Nigerian decided cases however shows that the courts have not done much to preserve the protection intended for the consumer by the legislature through these statutes. The position of the law is at best unclear particularly in negligence cases. This explains why till date, there is no *locus classicus* on consumer protection and negligence cases. The following cases are however instructive and as such will be examined for a better understanding of the subject:

In *Nigeria Bottling Company v Olarewaju*,⁷⁷ the Plaintiff / Respondent purchased two bottles of coca cola and after taking some contents of the first drink, he noticed visible particles in it and saw similar particles in the unopened drink. He fell ill and consulted a doctor. In an action for damages against the manufacturer of coca cola, he was awarded damages in the trial court. But on appeal by the Defendant / Appellant company, the judgment of the trial court was overturned on the ground that the plaintiff could not establish a link between the coca cola he drank and his ailment.

Similarly, in *Nathaniel Ebelamu v Guinness Nigeria Ltd.*⁷⁸, the Plaintiff had an anniversary celebration and invited his guests for a party in his house. Some of his invitees who drank the Harp brand of beer produced by the Defendant developed stomach pains and were subsequently diagnosed of food poisoning. Laboratory analysis of the contents of the Harp bottle showed that the beer was poisonous. The court held that no nexus had been created between the drinks consumed by the plaintiffs and the unopened one that was used for the Laboratory test. It was further held that a

⁷⁷ (2007) ALL F.W.L.R (Pt. 364) 360.

⁷⁸ (1980) I.P.L.R. 538.

manufacturer owed no duty to ensure that his product was perfect, beyond taking reasonable care to ensure that no injury was done to the consumer.

In the same vein, in *Boardman v Guinness Nigeria Ltd*,⁷⁹ the Plaintiff drank an unwholesome liquid content of Harp brand of beer in a dimly lit room. It was found to contain a considerable amount of sediments. In an action for negligence against the Defendant for the manufacture of adulterated beer, the Defendant gave evidence showing a detailed account of its manufacturing process showing that its drink was produced under the strictest scientific brewing and quality control process, such that the presence of any contaminant would be ruled out. On the basis of this evidence, the court discountenanced the laboratory report which revealed that the beer contained certain bacteria and held that the plaintiff had failed to show that the defendant was guilty of negligence.

With all due respect, this decision has thrown a clog in the wheel of consumer protection in Nigeria. A better view would have been to examine what happened in this particular case, because no matter how foolproof a system might have been, human frailty and mechanical fault may interfere in the process of manufacturing and that can never be ruled out. Moreover, in such cases the principle of strict liability and *res ipsa loquitur* ought to have been the guiding principle.

Still in line with this reasoning, in *Nigerian Bottling Company Ltd v Okwejiminor*,⁸⁰ the Plaintiff / Respondent drank a bottle of fanta and thereafter found sediments in the bottle. The Court of Appeal held that the admission by the Plaintiff / Respondent that he took breakfast of bread and tea in the morning was fatal to his case and this decision was upheld by the Supreme Court thereby compounding the plight of consumers.

Curiously, in the much earlier case of *Osemobor v. Niger Biscuits Co. Ltd and Nassar & Sons*,⁸¹ a manufacturer was held liable for injuries resulting from the presence of a decayed tooth in the biscuit bought by the plaintiff in a supermarket. In arriving at the decision, Kassin J, stated that a consumer of a biscuit would reasonably not be expected to carry out an examination of the product before consuming it. In the course of its judgment, the court stated further that:

A manufacturer of products which he sells in such a form as to show that he intends them to reach the ultimate consumer in the form in which they left him with no reasonable possibility of intermediate examination, and with the knowledge that the absence of reasonable care in the preparation or putting up of the product will result in an injury to the consumer's life or property owes a duty to the consumer to take that reasonable care.

More recently however, in *Emmanuel Fijabi Adebo & Fijabi Adebo Holding Limited v NBC Plc and NAFDAC*,⁸² a Lagos High Court sitting in the Igbosere area of Lagos ordered the National Agency for Food and Drug Administration and control (NAFDAC) to compel the Nigeria Bottling Company (NBC) Plc to put a written warning on Fanta and Sprite bottle stating that both soft drinks are poisonous when consumed along with Vitamin C. The court also held that NAFDAC failed Nigerians by declaring as fit for human consumption, products discovered by tests in the United Kingdom as turning poisonous when mixed with Ascorbic Acid, popularly known as Vitamin C.

⁷⁹ (1980) N.C.L.R. 109.

⁸⁰(2008) N.I.P.J.D. 51.

⁸¹(1973) N.C.L.R. 382.

⁸²Unreported Suit No.LD/13/2008, <http://www.lexology.com/library/detail.aspx?22171143-1f49-8a07-71a3753ba080>, accessed, 15th June, 2019.

From a global standpoint, consumers are offered protection from a variety of sources, such as legislation, industry codes of practice, standards, enforcement agencies, and consumer groups. But the system is most effective when everyone is working towards common principles and goals. To this end, the United Nations Guidelines for Consumer Protection adopted in 1985 and revised in 1999 proposed a list of objectives described as ‘legitimate needs’: right to choose; right to consumer education; right to consumer redress; freedom to form consumer groups; and promotion of economic interests of consumers.

Several of these objectives appear to have their origins in human rights, such as the right to safety for instance, which echoes the Universal Declaration of Human Rights’ Security of Person.⁸³The freedom to form consumer groups and availability of redress can be traced both to political freedom, as well as to the right to access to justice. Consumer advocates should therefore consider and evaluate the relative importance of these multiple objectives for the consumer in each country.

Summary

Despite the fair attempts that have been made by various national governments both at domestic and at the international level, the truth still remains that the Nigeria consumer is still a long way from being king in the real serve of the word. It has been observed that although Federal Competition and Protection Commission Act appears to have addressed some of the shortcomings of the erstwhile Consumer Protection Council in principle, it has only been passed into law and so only time will show its potency in practical terms. It is therefore safe to conclude and reiterate that mere existence of the law in our statute books is not enough. Practically speaking, specific protective and compensatory measures are necessary to guard against indiscriminate infringement on any of the consumer rights. It is believed that doing so would strengthen the FCCPC and the Act itself.

Further, the Federal Competition and Competition and consumer Protection Commission needs to embark on a more aggressive and sustained sensitization of consumer on their rights while also pushing for the further amendment of specific section of the FCCP Act to give aggrieved consumers unfettered access to courts to pursue their rights. In so doing, the Legal Aid Council and the office of the Public Defender should be charged specifically with the responsibility of taking up such cases as of right in view of the fact that majority of the consumers of most products in Nigeria belong to the large population of indigent citizens who cannot on their own afford the services of a personal lawyer.

6.2 Conclusion

The advent of the Federal Competition and Consumer Protection Act is a turning point for the journey towards Consumer Protection in Nigeria. This is in view of the fact that before the coming into force of this law, there was no single statute dealing with the rights and obligations of parties in relation to products and services in Nigeria as a result of which the sector-specific approach was adopted with laws and agencies put in place to regulate specific areas of Consumer Protection such as food and drugs, energy, telecommunications, product standards, aviation, banking, and financial services.

As a former colony of the United Kingdom, many Nigerian statutes are modeled in line with English statutes. This historical link is also reflected in the decisions of the Nigeria courts which adopt, on persuasive basis, the decision of English courts particularly those of the House of Lords. Nigeria

⁸³Consumer International, ‘A Guide to Developing Consumer Protection Law’, (2011) <https://www.fao.org>, accessed 15th June, 2019.

equally belongs to some international, regional, and supranational organizations which influence the consumer law of the country. In the light of the salient features of the Federal Competition and Consumer Protection Act, 2019 it is obvious that Nigeria has, subject to the identified gaps, attained and appreciable level of Consumer Protection.

Recommendations

In view of the above state of facts, the following recommendations are hereby put forward to strengthen the obvious effort of the Nigeria government to join the global trend towards safeguarding the citizens by way of Consumer Protection.

- Nigeria courts should adopt a more proactive and objective approach to the issue of proof in food poisoning and other products failure cases as exemplified by the decision in *Osemobor v Niger Biscuits Co. Ltd and Nassars and Sons* by imposing strict liability on manufacturers.
- The Nigeria courts should apply the principle of *res ipsa loquitur* in clear cases of manufacturing defects since in such cases the plaintiffs may not always be able to discharge the burden of establishing negligence and linking same to his loss or injury.
- Service providers such as telecommunication companies and public utilities personal should be placed on compulsory reorientation on the need to prioritise customer satisfaction in line with the rationale behind the establishment of SERVICOM.
- The Nigeria Bar Association should encourage lawyers to take up consumer advocacy and cases either privately, or under formal structures such as the Legal Aid Council and the Office of the Public Defender.
- Countries should ensure that the enforcement agencies have the necessary resources to promote effective compliance with consumer protection policies, and to take a action against those who do not comply.
- All countries should promote the use of both national and international standards which give detailed guidance on goods practice in specific areas such as e-commerce, financial services, sustain ability, customer satisfaction, and complaints handling.
- To ensure that consumer are adequately protected when using essential goods services such as food, drugs, equipment and services, national policies should be put in place to cover monitoring, product quality, distribution, accessibility, clear labeling, and consumer education.
- Countries should establish frameworks for regulation and enforcement, with oversight bodies that have the necessary authority and resources to carry out their mission. Nations should also put appropriate controls in place to protect consumer assets and financial information
- Every state should demonstrate fair treatment including transparency about conflicts of interest and taking responsibility for the actions of authorized agents
- Partnerships should be encouraged between states and Non- governmental organizations as well as civil society organizations towards providing clear information to consumers about their rights, duties, as well as available remedies where necessary.
- Countries should ensure that Consumer Protection Polices keep up with the fast rate of change in the area of e-commerce, giving equal levels of consumer protection to transactions carried out both offline and online.

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