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**THE CHALLENGES
OF CONSUMER
RIGHTS IN
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STUDY IN THE
TELECOMS AND
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THE ROLE OF THE LAWYER IN THE PROTECTION OF CONSUMER RIGHTS IN NIGERIA: LESSONS FROM THE TELECOMS AND POWER SECTORS

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LEGAL FRAMEWORK FOR CONSUMER RIGHTS IN NIGERIA WITH PARTICULAR FOCUS ON TELECOMMUNICATIONS AND POWER SECTOR INDUSTRIES

BY

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INTRODUCTION

“A lawyer lives for the direction of his people and the advancement of the cause of his country.”

Alexander Sapara Williams, first indigenous Nigerian lawyer, July 14, 1855-March 15, 1915.

This topic could not have come at a better time than now when our nation is undergoing very serious challenges of leadership, crisis of leadership and indeed failure of governance, challenges of security of lives and property and indeed the economic well being of the people and when infrastructure delivery has nose-dived to its lowest ebb.

INTRODUCTION:

Due to little attention paid to protection of consumer rights in Nigeria, fraudulent and abusive practices by manufacturers and merchants of goods and services are widespread.

Nigeria, like other countries around the world, boasts of well crafted legal framework that guards against abusive business practices or infringement upon the rights of consumers by merchants of goods and services. Under the 1999 Constitution of the Federal Republic of Nigeria, (as amended) sections 35 and 42 provide for fundamental rights to liberty and discrimination from abusive practices in any form or manner of rendering of goods and services to consumers. These rights are also protected by The African Charter on Human and Peoples Rights ratified by Cap A9, Laws of the Federation of Nigeria, 1990.

This paper addresses the legal framework for consumer rights in Nigeria, with particular focus on telecommunication and power sectors in Nigeria.

THE ROLE OF LAWYERS IN CONSUMER PROTECTION

As has been eminently stated by Alexander Sapara Williams, a lawyer does not live alone and in an island, but has to take up legal and indeed social

issues that will influence his society for good. This much is succinctly stated in the Constitution of our noble association, NBA, as follows:

AIMS AND OBJECTIVES OF NBA

- (a) The maintenance of the honour and independence of the Bar, and the defence of the Bar in its relation with the Judiciary and Executive.
- (b) The promotion of legal education.
- (c) The improvement of the administration of justice procedure, the arrangement of business and law reporting.
- (d) The encouragement of the establishment and maintenance of a system of prompt and efficient legal advice and aid for those persons in need thereof but who are unable to pay for same.
- (e) The promotion and support of law reform.
- (f) The maintenance of the highest standards of professional conduct, etiquette and discipline.
- (g) The promotion of good relations among the members of the Association and between them and Lawyers of other countries.
- (h) The provision of free exchange of ideas between the Association and similar organization elsewhere.
- (i) ***The encouragement, ensuring, and protection of the public right of access to the Courts and of representation by Counsel before Courts and Tribunals.***
- (j) The encouragement of establishment of a National Law Library.
- (k) ***The promotion of the principles of the rule of Law including Fundamental Liberties and the independence of the Judiciary.***
- (l) The protection of aiding of newly qualified members of the Association, the incapacitated and the aged.
- (m) The creation of an Endowment Fund or proper carrying out of any of the above objects.

I have thus reproduced the aims and objectives of the NBA to back up the point that lawyers have the right and indeed a duty to be advocates for the advancement of society, and as promoters and protectors of the rights of the people, especially consumers. A good starting point however, is to know who a consumer is.

i. WHO IS A CONSUMER?

A consumer has been defined by the **Consumer Protection Council Act, CAP C25 Laws of the Federation, 2004** as an individual who purchases, uses, maintains or disposes of products or services.

ii. THE RIGHTS OF THE CONSUMER

A consumer, being the last link in the production chain, has vested legal rights from producers of the goods and services being offered in the market. These rights can be categorized as follows:

CONSTITUTIONAL RIGHTS

CHAPTER IV OF 1999 CONSTITUTION

Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999 contains the fundamental rights of all citizens and persons in Nigeria. These are the rights to life; dignity of human person; personal liberty; fair hearing; private and family life; freedom of thought, conscience and religion; freedom of expression and the press; peaceful assembly and association; freedom of movement; freedom from discrimination; and the right to acquire and own immovable property anywhere in Nigeria.

These rights can be said to have some affinities with consumer protection. Some actually have direct bearing on consumer Protection. For instance the right to *fair hearing* addresses the principle of *access to justice* which is a cardinal principle of consumer protection. Section 36(1) of the Constitution provides –

“In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.”

Section 37 deals with *private and family life* and provides that the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is guaranteed and protected. Two popular consumer rights namely, the rights to be heard and to be informed, are also reflected in the Nigerian Constitution. Section 39 provides that every person shall be entitled to freedom to hold opinions and to receive and impart ideas and information without let or hindrance. Based on these fundamental rights guaranteed by the Constitution, the lawyer can engage in any campaign of his choice to raise consumer awareness and the level of consumer protection in Nigeria. Today, the Fundamental Rights (Enforcement Procedure) Rules, 2009 has widened the scope of locus standi in respect of the enforcement of fundamental rights.

Citizens (who are also consumers of products and services) also enjoy the liberty to form and join associations of their choice. They are free to come together to protect or project their interests in accordance with section 40 of the Constitution.

In addition, on the strength of the Constitution, any citizen whose rights have been violated under any law including consumer protection laws can approach the court or any other appropriate body for redress, under section 46. The fundamental rights are so important that failure to observe them in any case vitiates the proceedings. They cannot be derogated from except to the extent allowed by law. Describing the primacy of a fundamental right, Eso, J.S.C, in *Ransome-Kuti v. Attorney-General of the Federation* said:

“It is a right which stands above the ordinary laws of the land and which in fact is antecedent to the political society itself. It is a primary condition to a civilized existence and what has been done by our Constitution, since independence ... is to have these rights enshrined in the Constitution so that the rights could be “immutable” to the extent of “non immutability.”

CHAPTER II OF 1999 CONSTITUTION

It is also the point that consumer rights can be enforced through Chapter II of the Constitution, notwithstanding its non justiciability clause. In *Attorney-General of Ondo State v. Attorney General of the Federation & 35 Ors.* (2002) 9 NWLR (Pt.772) 222, the Supreme Court held that section 13 of the Constitution imposes a solemn duty on all organs of government and all authorities and persons performing legislature, executive powers to observe chapter II of the Constitution.

THE AFRICAN CHARTER

Similarly, most of the rights encapsulated in Chapter II and indeed most consumer protection statutes are reproduced in the African Charter on Human and Peoples’ Rights, which has been domesticated in Nigeria as part of our laws, since March 17, 1983. The Supreme Court in *Abacha v Fawehinmi* (2000) 6 NWLR (Pt.660) 228, held that the provisions of the African Charter are enforceable in Nigeria, as any other law. Such provisions include the rights to receive information; participate freely in the government of the country; work under equitable and satisfactory conditions and receive equal pay for equal work; medical attention, education, participation in cultural life; and economic, social and cultural development.

CONSUMER PROTECTION COUNCIL ACT

The Consumer Protection Council Act, enacted in 1992 and amended in 2014, is the main consumer protection law that specifically deals with the practical enforcement of consumer rights, as the Consumer Protection Council Act is consumer-focussed. It gives direct protection to consumers by providing avenues for them to seek redress. The Act established the Consumer Protection Council (CPC), which is a body corporate with perpetual succession and the power to sue and be sued in its corporate name. Although Lagos State has passed into law The Consumer Protection Agency Law, 2014, nothing tangible has been done to give teeth to the said law, which is still relatively new.

The functions of the Council as conferred by section 2 of the Act are to –

- a. provide speedy redress to consumers’ complaints through negotiation, mediation and reconciliation;
- b. seek ways and means of removing or eliminating from the market hazardous products and causing offenders to replace such products with safer and more appropriate alternatives;

- c. publish, from time to time, the list of products the consumption and sale of which have been banned, withdrawn, severally restricted or not approved by the Federal Government or foreign governments;
- d. cause an offending company, firm, trade, association or individual to protect, compensate, and provide relief and safeguards to injured consumers or communities from adverse effects of technologies that are inherently harmful, injurious, violent or highly hazardous;
- e. organise and undertake campaigns and other forms of activities as will lead to increased public consumer awareness;
- f. encourage trade, industry and professional associations to develop and enforce in their various fields quality standards designed to safeguard the interest of consumers;
- g. issue guidelines to manufacturers, importers, dealers and wholesalers in relation to their obligations under the Act;
- h. encourage the formation of voluntary consumer groups or associations for consumers' well being;
- i. ensure that consumers' interests receive due consideration at appropriate forums and provide redress for obnoxious practices or the unscrupulous exploitation of consumers by companies, firms, trade, associations or individuals;
- j. encourage the adoption of appropriate measures to ensure that products are safe for either intended or normally safe use; and
- k. perform such other functions as may be imposed on the Council pursuant to the Act.

Section 3 gives additional powers to the Council. By this section, in the exercise of its functions under the Act, the Council shall have power to –

- a. apply to court to prevent the circulation of any product which constitutes an imminent public hazard;
- b. compel a manufacturer to certify that all safety standards are met in their products;
- c. cause, as it deems necessary, quality tests to be conducted on a consumer product;
- d. demand production of labels showing date and place of manufacture of a commodity as well as certification of compliance;
- e. compel manufacturers, dealers and service companies, where appropriate, to give public notice of any health hazards inherent in their products;
- f. ban the sale, distribution, advertisement of products which do not comply with safety or health regulations.

CONSUMER REDRESS

As can be seen from sections 2 and 3 reproduced above, one of the functions of the Council and the State Committees is to provide speedy

redress to consumers' complaints through negotiation, mediation and conciliation.

Section 8 provides what may be regarded as civil rights for consumers. It provides that whereupon an investigation by the Council or State Committee of a complaint by a consumer it is proved that –

- a. the consumer's right has been violated; or
- b. that a wrong has been committed by way of trade, provision of services, supply of information or advertisement, thereby causing injury or loss to the consumer, the consumer shall in addition to the redress which the State Committee, subject to the approval of the Council, may impose, have a right of civil action for compensation or restitution in any competent court.

In *Nigerian Breweries PLC v. David Audu (2009) LPELR-8863*, the Court of Appeal referred to the Consumer Protection Act as an Act which seeks not only to preserve the consumer's civil right of action for compensation, but also empowers the Council to apply to the Court to prevent the circulation of any product which constitutes an imminent public hazard.

COMPENSATION ORDER

Section 13 provides that a court by or before which a person is convicted of an offence may, in addition to dealing with such person in any other way, make an order, known as "Compensation Order" requiring the person to pay compensation for any personal injury, loss or damage resulting from that offence of such amount as it may deem fit or as assessed by a competent professional authority.

This is another novel provision contained in the Consumer Protection Council Act. It gives a victim who cannot pursue his civil claim the opportunity to be awarded compensation by the criminal court which tries an offender under the Act.

WITHDRAWAL OF HAZARDOUS PRODUCTS

The Act imposes a duty on the manufacturer or distributor of a product, on becoming aware after such a product has been placed on the market, of an unforeseen hazard arising from the use of such product, to notify immediately the general public of such risk or danger and cause to be withdrawn from the market such product.

The purpose of this provision is to enable manufacturers and distributors to recall products which are discovered to pose a danger to the public.

WRONG ADVERTISEMENT

Another offence is the issuance of a wrong advertisement about a consumer item. A person who issues any such advertisement is guilty of an offence and liable on conviction to a fine of N50,000.00 or to imprisonment for a term of five years or to both such fine and imprisonment. Instances would include jumbo and advertisements from various promos and draws, promising cars and millions of moeny.

SALE OF HAZARDOUS PRODUCTS

Sale or offer for sale of any unsafe or hazardous product or service is equally an offence²¹ attracting a penalty of N50,000.00 or imprisonment for a term of five years.

SUMMARY OF CONSUMER RIGHTS

- a. The right to safety and protection from hazardous goods and fraudulent services or business practices;
- b. A consumer has absolute right to information, education of products and awareness to the processes, uses and guidelines to the products and services he is being rendered by manufacturers;
- c. The right of choice is key to a consumer of product, to enable such consumer to make the right choice from a competitive and predatory market with beaming adverts and prices from a number of products in circulation;
- d. A consumer has the right to be satisfied that the product is of standard quality and also will be of benefit to his basic needs;
- e. A consumer has the fundamental right of being heard as contained in the constitution as well as redress and compensation whenever his rights are being infringed upon by a manufacturer or merchant;
- f. Also, a consumer has a right to safe and secure environment from noxious industrial chemicals, pollutants and toxic wastes from manufacturing plants.

CONSUMER PROTECTION COURTS

The creation of institutions for the protection of consumer rights is laudable. Three institutions are created by the Act, namely, the Negotiation, Mediation and Conciliation Tribunal, the Mobile Courts and the Small Claims Courts. These institutions, no doubt, will lessen the burden currently borne by consumers seeking to enforce their rights in the formal courts.

APPLICABLE LEGISLATIONS

THE NIGERIAN COMMUNICATIONS ACT 2003

This Nigerian Communications Act 2003 established the Nigerian Communications Commission (NCC) as a body corporate with power to sue and be sued. The Act is very comprehensive in scope and covers subjects such as formulation of national policy on frequency management; requirements for and class of licences; powers and procedures of the Commission; investigations for the purpose of administration of the Act; information gathering; regulations and guidelines, competition practices; interconnection; consumer protection and quality of service; universal access fund; spectrum assignment; technical standards; installation of

network facilities, jurisdiction; and actions against the Commission. As with the laws discussed above, only the provisions that have direct relevance to consumer protection and redress are discussed.

OBJECTIVES OF THE ACT

The primary objective of the Act is to create and provide a regulatory framework for the Nigerian Communications Industry and all matters related thereto and specifically to –

- a. promote the implementation of the national communications or, telecommunications policy as may from time to time be modified and amended;
- b. establish a regulatory framework for the Nigerian communications industry and for this purpose to create an effective, impartial and independent regulatory authority;
- c. promote the provision of modern, universal, efficient, reliable, affordable and easily accessible communications services and the widest range thereof throughout Nigeria;
- d. encourage local and foreign investments in the Nigerian communications industry and the introduction of innovative services and practices in the industry in accordance with international best practices and trends;
- e. ensure fair competition in all sectors of the Nigerian communications industry and also encourage participation of Nigerians in the ownership, control and management of communications companies and organisations;
- f. encourage the development of a communications manufacturing and supply sector within the Nigerian economy and also encourage effective research and development efforts by all communications industry practitioners;
- g. protect the rights and interests of service providers and consumers within Nigeria;
- h. ensure that the needs of the disabled and elderly persons are taken into consideration in the provision of communications services; and
- i. ensure an efficient management including planning, coordination, allocation, assignment, registration, monitoring and use of scarce national resources in the communications sub-sector, including but not limited to frequency spectrum, numbers and electronic addresses, and also promote and safeguard national interests, safety and security in the use of the said scarce national resources.

FUNCTIONS OF THE COMMISSION

Almost every function conferred on the Commission is relevant, one way or the other, to consumer protection. In view of this, most of the functions as stated in section 4 of the Act are reproduced below:

- a. the facilitation of investments in any and entry into the Nigerian market for provision and supply of communications services, equipment and facilities ;
- b. the protection and promotion of the interests of consumers against unfair practices including but not limited to matters relating to tariffs and charges for and the availability and quality of communications services, equipment and facilities;
- c. ensuring that licensees implement and operate at all times the most efficient and accurate billing system ;
- d. the promotion of fair competition in the communications industry and protection of communications services and facilities providers from misuse of market power or anticompetitive and unfair practices by other service or facilities providers or equipment suppliers ;
- e. granting and renewing communications licences whether or not the licences themselves provide for renewal in accordance with the provisions of the Act and monitoring and enforcing compliance with licence terms and conditions by licensees ;
- f. proposing and effecting amendments to licence conditions in accordance with the objectives and provisions of the Act ;
- g. fixing and collecting fees for grant of communications licences and other regulatory services provided by the Commission ;
- h. the development and monitoring of performance standards and indices relating to the quality of telephone and other communications services and facilities supplied to consumers in Nigeria having regard to the best international performance indicators ;
- i. making and enforcement of such regulations as may be necessary under the Act to give full force and effect to the provisions of the Act ;
- j. management and administration of frequency spectrum for the communications sector and assisting the National Frequency Management (NFM) Council in developing a national frequency plan;

- k. development, management and administration of a national numbering plan and electronic addresses plan and the assignment of numbers and electronic addresses therefrom to licensees ;
- l. proposing, adopting, publishing and enforcing technical specifications and standards for the importation and use of communications equipment in Nigeria and for connecting or interconnecting communications equipment and systems ;
- m. the formulation and management of Nigeria's inputs into the setting of international technical standards for communications services and equipment ;
- n. carrying out type approval tests on communications equipment and issuing certificates therefor on the basis of technical specifications and standards prescribed from time to time by the Commission ;
- o. encouraging and promoting infrastructure sharing amongst licensees and providing regulatory guidelines thereon ;
- p. examining and resolving complaints and objections filed by and disputes between licensed operators, subscribers or any other person involved in the communications industry, using such dispute-resolution methods as the Commission may determine from time to time including mediation and arbitration ;
- q. preparation and implementation of programmes and plans that promote and ensure the development of the communications industry and the provision of communications services in Nigeria ;
- r. designing, managing and implementing Universal Access Strategy and programme in accordance with Federal Government's general policy and objectives thereon ;
- s. advising the Minister on the formulation of the general policies for the communications industry and generally on matters relating to the communications industry in the exercise of the Minister's functions and responsibilities under the Act;
- t. implementation of the Government's general policies on the communications industry and the execution of all such other functions and responsibilities as are given to the Commission under this Act or are incidental or related thereto ;
- u. generally advising and assisting communications industry stakeholders and practitioners with a view to developing of the industry and attaining the objectives of the Act and its subsidiary legislation;

- v. representation of Nigeria at proceedings of international organisations and fora on matters relating to regulation of communications and matters ancillary and connected thereto ; and
- w. general responsibility for economic and technical regulation of the communications industry

CONSUMER PROTECTION AND QUALITY OF SERVICE

The Act imposes a duty on all service providers to –

- a. meet such minimum standards of quality of service as the Commission may, from time to time, specify and publish;
- b. deal reasonably with consumers; and
- c. adequately address consumer complaints.

Both the Commission and service providers are required to establish dispute resolution procedures for resolution of consumer complaints. But in seeking redress, an aggrieved consumer is required to exhaust the dispute resolution process of the service provider before approaching the Commission.

DUTY OF CARE

The Act, in section 136, imposes a duty on licensees in installing their networks to take reasonable steps to ensure that they cause as little detriment and as little damage as practicable. In particular, a duty is imposed on all licensees to take all reasonable steps to –

- a. act in accordance with good engineering practice;
- b. protect the safety of persons and property;
- c. ensure that their activities interfere as little as practicable with –
 - i. the operations of a public utility;
 - ii. public roads and paths;
 - iii. the movement of traffic;
 - iv. the use of land; and
- d. protect the environment.

ADVERTISING AND REPRESENTATION OF SERVICES

The Code acknowledges and adopts the Nigerian Code of Advertising Practice made by the Advertising Practitioners Council of Nigeria (APCON). In addition, it makes provisions with reference to telecommunications services. For instance, in any advertisement promoting availability of a service, any geographical or technical limitations which will substantially affect the performance of the service must be disclosed.

As regards telemarketing, providers are prohibited from engaging in unsolicited telemarketing, wonder promos, etc, unless the stipulated conditions are met, namely, disclosure of the identity of the provider, full price of the service; and absolute right of the recipient to cancel the purchase or service within seven days of the communication. The mode of cancellation depends on the preference recorded by the consumer at the time of contract i.e. “call” or “do not call” preferences.

CONSUMER BILLING AND CHARGING PRACTICES

The Code makes detailed provisions on billing, charging and related matters. Consumers in Nigeria often complain about inaccurate billing. In view of this, it is necessary to reproduce the two vital provisions of the Code on this matter.

Item 21 of the schedule to the Code provides – A licensee shall at all times endeavour to-

- a. ensure that billing is accurate and timely;
- b. ensure that billing accuracy is verifiable;
- c. ensure that sufficient information shall be on the bill or otherwise readily available to the consumer for verification of the bill without any charge;
- d. ensure that upon a bona fide request from a consumer, the Licensee shall inform or provide the consumer with timely, accurate and current information about its billing terms and conditions and options relevant to that consumer;
- e. retain records of a consumer’s bill and related charges for a minimum period of twelve (12) months.

Furthermore, a licensee shall ensure that, as minimum, the following information is included in any bills issued by it or on its behalf –

- a. the consumer’s billing name and address;
- b. the licensee’s current business name, address and registered number;
- c. a way of identifying the bill uniquely;
- d. the billing period;
- e. a description of the charges (and credits) for which the consumer is billed;
- f. the total amount billed, applicable credits, payments or discounts, and the net amount payable by the consumer (or repayable by the licensee);
- g. the date on which the bill is issued;
- h. the bill (or refund) payment due date;

- i. methods of bill (or refund) payment;
- j. methods of contact for complaints and billing inquiries; and
- k. any call charges applicable for complaints and billing inquiry calls.

Other requirements include itemised details of charges; timing for issuance of bills, receipts and consumer payment advice and billing frequency.

The Commission has taken some steps to ensure accurate billing.

One such step was the directive mandating service providers to give billing notification to GSM subscribers at the end of each call or SMS. This directive which took effect from 01 November 2012 requires, in the case of phone calls, call duration, total cost of call and new account balance. This should however be extended to data usage. This is an improvement on the old system. But it does not solve the problem of inaccurate billing which may not be easily verifiable through the call details given at the end of each call.

Technical knowledge may even be needed. This being the case, much revolves on the Commission to monitor the billing systems of providers to ensure that they do not take advantage of the ignorance of consumers.

ELECTRIC POWER SECTOR REFORM ACT, NO. 6, 2005

By virtue of section 31 of this Act, the Nigerian Electricity Regulatory Commission was established and empowered by section 32 to perform the following principal objectives:

- i. To create, promote and preserve efficient industry and market structures and to ensure the optimal utilization of resources for the provision of electricity;
- ii. To maximize access to electricity services by promoting and facilitating consumer connections to distribution systems in both rural and urban areas;
- iii. To ensure that an adequate supply of electricity is available to consumers;
- iv. To ensure that the prices charged by licensees are fair to consumers and are sufficient to allow the licencees to finance their activities and to allow for reasonable earnings for efficient operation;
- v. To ensure the safety, security, reliability and quality of service in the production and delivery of electricity to consumers;
- vi. To ensure that regulations is fair and balanced for licencees, consumers, investors and other stakeholders, and
- vii. To present quarterly reports to the President and National Assembly on its activities.

Further to the objectives of Nigerian Electricity Regulatory Commission, section 32 (2) of the Electric Power Sector Reform Act outlines the functions of NERC as follows:

- i. Promote competition and private sector participation, when and where feasible;
- ii. Establish appropriate consumer rights and obligations regarding the provision and use of electricity services;
- iii. License and regulate persons engaged in the generation, transmission system operation, distribution and trading of electricity;
- iv. Approve amendments to market rules;
- v. Monitor the operation of the electricity markets, and
- vi. Undertake such other activities which are necessary or convenient for better carrying out of or giving effect to the objectives of the commission.

ELECTRICITY BILLING SYSTEMS

Of note in this regard is the notorious estimate billing system, by which consumers continue to pay for electricity that is not consumed at all. They also pay to maintain meters which is not their property. So, whether you are metered or not, you indirectly pay to sustain the electricity distribution companies. I believe it offends the basic principles of contract to charge and receive payment for services not rendered.

Notwithstanding the above, the Nigerian Electricity Regulatory Commission has established a Tribunal that sits and takes complaints from consumers, like a normal court. The procedure is regulated by NERC Business Rules 2006. The Rules seek to protect the interests of electricity consumers.

It is noteworthy however that the Commission (NERC) abolished bulk metering in its ruling on the Victoria Garden City Case No.NERC/H/03/07. It was a case filed by a customer against the VGC Estate Management. It is indeed gratifying that NERC has now officially abolished the obnoxious policies of Fixed Charges, Bulk Metering, Estimate Bills, Maintenance Fee and such sundry wicked charges. It is a testimony of the power of resistance by Nigerians, the courage of Honourable Justice Mohammed Idris and indeed the gallantry efforts of the Chairman of NERC, Dr. Sam Amadi. I also commend the Secretariat of the NBA and the Conference Planning Committee for listing this issue for this Conference as it has brought it to the front burner.

THE LEGAL FRAMEWORK

In most cases, attention is focused on tort-based as against contract-based actions. This decision is informed by the fact that tort-based actions (negligence) provide a veritable option to claimants who are not in privity of contract with the person being sued i.e. the manufacturer in most

cases. Decided cases have, however, shown that the ability of claimants to take advantage of this option is seriously restricted by the burden of proof imposed by law. To succeed, the claimant must discharge this burden by establishing the three ingredients of negligence, namely, duty of care, breach of duty and consequential damage. The first element i.e. duty of care is now taken for granted following a plethora of cases which have firmly established that anyone in the chain of production and distribution owes a duty of care to the ultimate consumer.

The twin elements of breach of duty and consequential damage require convincing evidence on the part of the claimant. He must show the acts or omissions, which constitute negligence. In addition, he must show that the negligence resulted in damage to his person or property. These requirements constitute an uphill task. Claimants are often confronted with the defence of “foolproof” system of production and the defence of lack of nexus between the act complained of and the alleged injury or damage. Attention is focused on cases involving these elements. See in this regard, the cases of *Donoghue v. Stevenson* (1932) A.C. 562; *Nigerian Bottling Co. (Nig.) Ltd. v. Ngonadi* [1985] 1 NWLR (Pt.4) 739; *Ebelemu v. Guinness (Nig.) Ltd.* FCA/1/101/82 (1993); *Boardman v. Guinness (Nig.) Ltd.* (1980) NCLR 109; *Soremi v. Nigerian Bottling Co. Ltd.* 1977) 12 CCHCJ 2735.

DEFENCES

A common practice which manufacturers adopt in Nigeria in a bid to absolve themselves from liability is the defence of foolproof system of production. This is one of the challenges that a plaintiff has to face in a product liability case. Cases reviewed show that judicial attitude have worked against consumers in majority of the decisions involving consumer rights.

CONSUMER RIGHTS PROTECTION

As it has been established that a consumer has a fundamental right to be protected from unfair and abusive business practices of manufacturers and merchants, it follows that the 1999 Constitution of the Federal Republic of Nigeria, the Consumer Protection Council Act, Nigerian Communications Commission Act, Electric Power Sector Reform Act, and other enabling laws have guaranteed such rights. These are group of laws designed to ensure that the rights of consumers are protected and as well ensure that fair trade competition and the free flow of truthful information in the market place is achieved through the instrumentality and mechanisms of these laws.

In the case of *Ransome-Kuti v. Attorney General of the Federation* (**supra**), the court held that:

“A fundamental right is a right which stands above the ordinary laws of the land and which is antecedent to the political society. It is a precondition to a

civilized existence..., the entrenchment of a right in the constitution does not create rights where none existed before; rather it is merely intended to protect existing rights from subsequent legislative interference and to enable their assertion against arbitrary, oppressive and illegal executive action”.

Thus, a consumer, whose rights have been infringed upon by manufacturers, is entitled under the Nigerian laws to seek redress in the appropriate court of law for possible compensation and punishment of errant manufacturers and merchants. In the case of *Nwosu v. Nwosu (2012) 8 NWLR (Pt.1301) 5*, the court held that: “A legal right is a right cognizable in law. It means a right recognized by law and capable of being enforced by the plaintiff. It is the right of a party recognized and protected by a rule of law, the violation of which would be a legal wrong done to the interest of the plaintiff, even though no action is taken.”

CLASSIFICATION OF CONSUMER PROTECTION CASES

Basically, there are two types of consumer protection rights cases as follows:

- a. Individual law suit, and
- b. Class action law suit.

a. INDIVIDUAL LAW SUIT

The celebrated case of *Donoghue v. Stevenson (1932) AC 562* also known as “the snail in the bottle case” established the first three basic legal principles of “negligence”, “duty of care” and “neighbor principle”, where an individual can institute a civil action against a manufacturer if the respondent’s negligence caused the plaintiff some injury or loss of property. Legal action under consumer protection rights laws can be instituted at the federal as well as state high courts in all states across Nigeria. Where a victim files a complaint against any company for unfair business practice, such actions can also be enforced by government agencies and offices of attorneys general.

b. CLASS ACTION LAW SUIT

A class action law suit involves a group of affected individuals or consumers whose rights have been infringed upon by a manufacturer, company or merchant of products, goods and services. A familiar case in this type of action is the 1996 Kano trovafloxacin trial litigation involving *Abdullahi v. Pfizer* and *Adamu v. Pfizer* where five children given trovafloxacin died as well as six of those given ceftriaxone. On February 23, 2011 pfizer announced an out of court settlement of the sum of \$75 million to affected families.

In the above type of case, the balance of power tips in favour of the consumer. An individual whose rights have been violated can join

together with others who have similar claims against the same defendant due to the economic scale that exists with a class action lawsuit.

CHALLENGES OF TELECOM CONSUMERS IN NIGERIA

Nigerian GSM subscribers are the most short-changed consumers in the world, even when the telecommunication operators generate most profits from these consumers. In the case of *Adegboruwa v. Nigerian Communications Commission*, the complainant sued the respondents for poor service delivery and arbitrary hike in tariff plan by telecommunication operators in Nigeria; the courts seem rather complacent to reach judgment in favour of teeming Nigerian consumers who have been subjected to disparaging exploitation by GSM operators since 2002 that the matter was instituted in court.

For years now, millions of Nigerian helpless subscribers have borne the brunt of poor service delivery with little or no effort made by the judiciary or government agencies to bring perpetrators to book.

Other noticeable challenges in the telecommunication sector as witnessed by subscribers are high cost of internet subscription, poor ICT infrastructure, lack of maintenance of base stations and weak fire optic cable services.

Every day, cases of abuse of consumer rights are brought to public glare in the telecommunication sector but they naturally fizzle out as a result of weak regulatory system.

CHALLENGES OF ELETRICITY CONSUMERS

Electric power generation began in 1896 and since then, so many reforms have been carried out by various regimes and administrations, but there seems to be no end to the epileptic power supply, unfair and fraudulent business practices witnessed in the power sector. See pages 20 and 21 of *The Guardian Newspapers of Sunday, August 9, 2015*.

The challenges faced by consumers in the power sector apart from poor power supply are: high electricity tariff, poor metering system, inadequately maintained transformers and cables, power fluctuation and high voltage.

With the present poor state of power supply which has affected businesses across all sectors of the economy, it is considered that an improved power supply in Nigeria will gladden the mind of consumers, investors and foreigners who would want to invest in Nigeria.

In totality, other challenges can be outlined thus:

A. Inadequate regulation and supervision

The general feeling of consumers is that the regulatory agencies, especially the Nigerian Communications Commission and Nigerian Electricity Regulatory Commission have both connived with operators to short-change consumers, as if these agencies are up and doing, most

complaints and cases of consumer rights abuses will not arise or minimised.

B. Awareness about consumer protection laws by consumers

Many consumers in Nigeria have little knowledge about existing laws that protect their rights as consumers of products and services. This low awareness is not class, education, gender or location sensitive. The low awareness is further compounded by the low literacy level and apathy to formal litigation. The cost of litigation (finance, time, and other resources) is high.

In other words, consumers in Nigeria basically rely on the age long obligations of service providers to the consumers who have paid for the products/services. The average consumer does not know the laws that protect him/her in a transaction. Not only are many consumers ignorant about the existing laws, there appears to be apathy towards seeking redress.

This implies that the ability of many consumers to seek redress is limited given that they do not know the position of the law with regards to their rights as consumers of products and services.

C. Awareness about obligations of consumers

In as much as consumers are to be protected by laws the consumers have responsibilities under the law, to avail themselves of their rights and seek to enforce them.

D. Attitude of consumers to the enforcement of their rights

Oftentimes consumers will not want to challenge the utility agencies and other authorities to assert their rights.

At the moment, consumer rights NGOs are very few and not very visible. They should work harder to educate the people on their rights. They are to serve as advocates of the masses; they know the laws and have the mission of consumer protection. These consumer NGOs should readily intervene to help the masses.

E. What consumers should do to protect their interests

Consumers should endeavour to obtain receipts when they purchase products or services. They should ask for specific receipts and not general receipts without addresses or details of the supplier. This will help an aggrieved customer to make his claim in the event of a default. The consumer should strive to keep away tribal/religious sentiments when entering into transactions. They should be ready and willing to go to court if a transaction goes sour.

F. Adequacy of existing consumer protection laws

The onus of proof is on the complainant as against the government or her agencies.

G. Poverty

It is not with any controversy that poverty plays a negative role in the fight against consumer rights abuses, as the cost of litigation is high. There is also the fact that many Nigerians would not want to waste their money in pursuing their rights.

H. Lack of faith in the judicial system

Most Nigerians do not have faith in the Nigerian legal system. Some would not even dare challenge the status quo because they believe they would not win without the usual interference of the big and mighty in the society.

I. Cost of Litigation

One major issue is that of cost of legal services in Nigeria to a large extent, discourages consumers from seeking redress.

J. Corporate might

There are instances when the name, status and reputation of the producer or supplier work to intimidate consumers to even dare to sue. The mere fact that corporate entities have large organised legal departments creates fear and discourages consumers, who lack the resources to confront such entities.

K. Purchase of fake products

Many consumers noted the existence of substandard and fake products in the Nigerian market. When asked if they had ever bought any fake product, many said they had at one time or the other. A male participant said that he had bought fake products in the past mostly textile materials. He said he knew that they were substandard because they faded on just the first or second wash

SUGGESTIONS AND NEEDED REFORMS FOR CONSUMER PROTECTION RIGHTS IN NIGERIA

Even though the Consumer Protection Council Act can be said to be a right step in the right direction given the consumer-oriented provisions discussed above, there are some obvious gaps which impede the practical implementation of the provisions of the Act. For instance, the CPC is required to go through the Attorney-General of the Federation to enforce its orders. Section 16 provides that the Attorney-General of the Federation may, at the request of the Council, apply to a court for an order commanding any person, partnership, company, trade association etc., to comply with the provisions of the Act or an order of the Council in

pursuance thereof. This administrative bottleneck is unnecessary. A direct power of prosecution in all cases falling within the Council's scope of functions is necessary.

Proper funding by government is required, as inadequate funding is also a major problem confronting the consumer protection associations and organisations.

Another remarkable matter about the Consumer Protection Council Act is that it is the only law that makes specific provisions on **voluntary consumer associations**. As part of its functions, the Council is enjoined to encourage the formation of voluntary consumer groups or associations for consumers' wellbeing. In pursuance of this mandate, the Council has issued the Guidelines for Registration and Affiliation of Consumer NGOs with the Council. So far, many NGOs have been registered by the council.

At this point, to protect consumers from these abusive, unfair and fraudulent business practices in the telecommunications and power sector, the following suggestions and reforms have been canvassed:

SUGGESTIONS:

- i. There should be more awareness campaign by the Consumer protection council of consumer rights and existing laws which can help victims to obtain compensation from manufacturers;
- ii. Consumer protection council are encouraged to use various channels of information dissemination to publish banned and faked products in the market;
- iii. Telecommunication operators are encourage to boast their customer care service baseline to effectively deliver services in the internet connectivity, tariff plan and other value added services;
- iv. Government should encourage more private participation in the power sector, to boost competition and discourage the monopolistic practices of the existing companies,
- v. A reduction in the fixed price as currently charged by the distribution companies, will encourage the patronage of consumers.

REFORMS:

- i. Government reforms are needed in issuance of generation, distribution and transmission licenses in the power sector to encourage private participation and boost healthy competition;
- ii. The fundamental nature of consumer protection rights action should be the yardstick for the judiciary to be speedier in dispensation of justice;

CONCLUSION:

The fundamental right to be heard has been guaranteed by the 1999 Constitution of the Federal Republic of Nigeria as amended. This means that every consumer's right has been protected under the law and as such

if any consumer have the believe that a company or merchant has violated or infringed upon any of his or her rights by abusive and fraudulent business practices, should not hesitate to seek legal advice from a lawyer and possible redress where needed.

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- e. Nwosu v. Nwosu (2012) 8 NWLR (Pt.1301) 5;
- f. Donoghue v. Stevenson (1932) AC 562;
- g. Abdullahi v. Pfizer;
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- k. Igheriniovo v. S.C.C nig Ltd (2013) 10 NWLR (Pt.1361) at 138;
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- n. Orhue v. NEPA (1998) 7 NWLR (Pt.557) 187;
- o. Iwunze v. FRN (2013) 1 NWLR (Pt.1334) 119;
- p. Adegboruwa v. Nigerian Communications Commission;
- q. Pages 20 and 21 of the Guardian Newspapers of Sunday, August 9, 2015.

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