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CONSUMER RIGHTS IN A DEMOCRATIC SYSTEM AND THE EMERGING MARKET IN NIGERIA

—Nnawulezi Uche Augustus*

Abstract *Over the last twenty years, there has been a revolution in the way and manner consumers in Nigeria are treated when it has to do with his right of purchase of goods and services. In some cases, consumers are abused, intimidated or hoodwinked into accepting adulterate goods offered to them by manufacturers or service providers. The central purpose of this paper is to identify some of the strategies upon which the rights of consumers in Nigeria can be adequately protected in the face of the various challenges confronting them and furthermore, to present a coherent framework that will guarantee a sustainable implementation of the international standards for consumer protection in Nigeria. This paper however shall examine the various laws and regulatory agencies put in place to safeguard consumers in Nigeria vis-à-vis the weakness of those mechanisms. The paper relied on documentary evidence and hence scooped much data from secondary sources such as textbooks, journals, articles, periodicals etc. This paper will consider what has driven these dramatic changes in an emerging market in Nigeria. Thus, recommendations are made in this paper. Also, the paper concludes that for an enduring consumer rights in a democratic system in Nigeria, the legal and institutional frameworks for the protection of consumers of goods and services that has hindered effective implementation of the international standards for consumer protection in Nigeria should be reformed and made proactive.*

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I. INTRODUCTION

The legal status of a consumer over the years has been neglected despite the fact that a consumer is the king and his assertions are always right in every commercial transaction between him and the producer or service provider. This belief was demonstrated by Adam Smith when he stated that in every commercial transaction, the interest of the consumer is paramount to that of the producer or service provider¹. Thus, a discourse on consumers rights is not only desirable, but inevitable, given the numerous challenges they faced. In the light of these challenges, another scholar opined that consumers in Nigeria are always in a precarious condition, always prone to a myriad of problems of product safety and product quality as well as unfair trade practice.² In the same vein, in *Nigerian Bottling Company Ltd v. Constance Ngonadi*³ per Aniagolu, JSC observed that:

“It is often the unhappy lot of consumers that are ill-treated by some pretentious entrepreneurs, producers, businessmen and uncultured retailers whose only sole interest is to maximize their profit with utter disregard to the interest of the consumer.”

Apart from the controversy on the rights of a consumer in a democratic system, the consumer protection has received a boost following the landmark law reform commission in exercise of its powers⁴ embarked on a review and reform of the Consumer Protection Council Act, No. 66, 1992 (hereinafter referred to as “CPCA” and all other relevant laws with a view to producing an all-embracing consumer protection legislation which will articulate clearly the rights and obligations of the consumers and providers of goods and services in Nigeria.

In 1980, the air of controversy surrounding the understanding of the rights of a consumer of goods in a commercial transaction was exemplified by the then President of consumer international, Anwar Fazal who incorporated sets of consumer responsibilities to complement consumer rights. He further maintained that absence of a legislation making the rights and interests of consumers the focal point has really made consumers, who are

¹ R.N. Campbell, *Adam Smith: An Inquiry into the Nature and Causes of the Wealth of Nations* (Indianapolis: Liberty class, 1981) p. 660.

² F.N. Monye, *The consumer and consumer protection in Nigeria. Struggles, Burden and Hopes.* (59th Inaugural lecture, University of Nigeria, Nsukka), p. 6.

³ (1985) NWLR (pt. 4) 739 at p. 753

⁴ Nigerian Law Reform Act, 1990 CAP 313, s5 & s7.

usually in a weaker bargaining position, very vulnerable in the hands of suppliers of goods and providers of services.

II. CONCEPTUAL MEANING OF THE TERM “CONSUMER” AND “CONSUMER PROTECTION”

Recent challenges and developments have made experts and scholars in this field to examine the legal status of a consumer in Nigeria and the adequacy and efficiency of the Consumer Protection Council Act (hereinafter referred to as CPCA) in order to recommend provisions to sensitize producers, importers, distributors and consumers of goods and services on their respective rights and obligations under the law. These two concepts are closely related and are very important terms for consumer protection legislation in the sense that they set parameters of the legislation.

However, Black’s Law Dictionary⁵ defines “a consumer” as:

“A person who buys goods or services from personal, family or household use, with no intention of resale, a natural person who uses products for personal rather than business purposes.”

Further, the Consumer Protection Act defines consumer as “an individual who purchases, uses, maintains or disposes of product or services”. Thus, this definition has been widely criticized by scholars for not considering the legal status of consumers in a commercial transaction.⁶ In this definition, the term individual excludes artificial persons.⁷ It should be pointed out that the definition of “consumer” varies from jurisdiction to jurisdiction. However, another scholar defines “consumer”⁸ as a person to whom goods, services or credit are supplied or sought to be supplied by another in the course of a business carried on by him.

Similarly, some writers have adopted a broad view of the term “consumer” among whom are Harvey and Barry⁹ who defined a consumer to include anyone who consumes goods or services at the end of the chain of production. In O’Grady’s¹⁰ view a consumer is simply the final or end user

⁵ B.A. Garner, 9th edn., 2009.

⁶ O., Ajai, *Caveat Venditor: Consumer Protection Decree No. 66 of 1992 (Amended No. 23 at p. 26)*.

⁷ Consumer protection decree, No. 66 of 1992, s6 (1)

⁸ See Mickleburgh on *Consumer Protection*, p. 3.

⁹ B.W. Harvey and D.L. Parry, *The Law of Consumer Protection and Fair Trading*, 3rd edn., London, Butterworths, 1980, p. 7.

¹⁰ (1982) 60 Canadian Bar Review No. 4, p. 49.

of all goods and services. The term “Consumer” is further defined as any person, natural or legal, to whom goods or services or credit are supplied or sought to be supplied by another person in the course of a business carried on by that person.¹¹ Notably, the above definitions of “a consumer” is not all encompassing, too narrow and does not reflect the existing norms and practice of the society which experts have advocated for a wider definition of a consumer to accommodate all levels of consumers recognized in tort under the neighbourhood principle vis-à-vis legal persons who buy goods and services for their private consumption.

The Black Law Dictionary defines “consumer protection” as a shield from danger, injury, loss, given to the consumer designed to protect consumers against unfair trade and credit practices involving consumer goods.¹² Consumer protection can be defined as the act of safeguarding the interests of the consumers in matters relating to the supply of goods and services, fraudulent and hazardous practices, as well as environmental degradation.¹³ In a similar view, consumer protection simply means the prevention from accidents, civil or criminal wrongs, or injuries occurring to the buyers or users of goods and services. Thus, it should be pointed out herein that prevention of injury or accident to the consumer is the fundamental objective of the law in consumer protection issues and other related matters therein.

Furthermore, the enabling laws creating offences and/or providing for its control in the interest of the consumer(s) encompasses accident prevention or some policies which serve as a deterrent. For instance, the punishment sections of the laws as provided under the National Agency for Food and Drugs Administration and Control (NAFDAC), Standard Organization of Nigeria (SON) and or any other related food and drugs act. The term “consumer protection” has been defined as rules of law which recognize the bargaining weakness of the individual consumer and which ensures that such weakness is not unfairly exploited.¹⁴ Another author rightly observed that Robert Lowe’s definition of consumer protection is narrower and focuses on consumers obtaining products and services in a commercial transaction. He maintained that this narrow view of the consumer interest is generally regarded as the thrust of consumer protection legislation which confines itself to transactions involving goods and services.¹⁵ In the light of the above

¹¹ See consumer protection legislation and the market place (1981-84) 5 Otago L.R.P. 397.

¹² *Ibid* p. 359.

¹³ F.N. Monye, *op. cit.*, p. 20.

¹⁴ R. Lowe, *Commercial Law*, p. 457.

¹⁵ See Cranston’s *Consumer and the Law*, 3rd edn., p. 8.

definitions of consumer protection, Monye's definition is all-embracing and includes protection in matters relating to the ... of goods and services, protection of consumers against environmental degradation can hardly be said to be a matter relating to supply of goods and services. Thus, protection of consumers against environmental degradation is aptly dealt with in the various environmental laws.

III. OVERVIEW OF CONSUMER PROTECTION LAWS IN NIGERIA

The idea espoused in this paper is situated within the context of the functionality of these laws i.e. The Consumer Protection Council Act (CPCA 1992), Standard Organization of Nigeria Act (SON) No. 18, 1990, National Food and Drugs Administration and Control (NAFDAC) cap 150, 1990 and Hire Purchase Act (HPA), cap. 169, 1990 respectively; however, consumer protection covers all spheres of life, ranging from the air we breathe, water we drink, food we eat, even drugs we take, etc. The afore-mentioned legislations cover all these spheres. Thus, the concept of consumer protection in the sense that governments have to intervene through legislation is novel even in the advanced western countries. It has been observed that these extant laws are meant to prevent unnecessary and unwarranted violation of consumer's rights. More importantly, these laws are of dual background i.e. Civil and Criminal Laws. It should be pointed out that business organizations and professional bodies as well regulates its conduct by prescribing an acceptable standards of behavior for its members this regulation affords protection to consumers by adopting both compensatory and punitive measures for both he injured and or the offender respectively.

This paper shall only examine the vital areas of protection of those laws, its impact on consumer and will not embark on a comprehensive analysis of these areas of law. Under the civil law based protection, consumer under the law of contract focuses on the simple agreement between two or more persons which the law recognizes as affecting their legal rights and obligations and which is enforceable in law.¹⁶ Consumers have always been protected at common law in contract. It is trite law that a supplier whether producer, manufacturer, distributor or retailer, who has a contract for supply of goods is liable for breach of contract if the product is defective. The party cannot sue the supplier because of the privities of contract principle which pre-

¹⁶ M.O. Adesanya and E.O. Oloyede, *Business Law in Nigeria*, Lagos, University of Lagos and Evans Brothers Ltd., 1972, p. 19.

cludes a person not privy to a contract from suing.¹⁷ More so, consumer protection under the law of contract is concerned with the entitlements of persons who enter into a consumer transaction. Thus, it focuses on the provision of remedy for consumers where there is a breach of the contract by the producer. Also under the privities of contract and consumer protection, it is only a person who is a party to the contract can acquire a right or assume an obligation under it.¹⁸ The legal implication of the above under consumer protection is that if a consumer has suffered loss, injury or damages as a result of defective goods or services, he is entitled to any contractual remedy against the supplier.¹⁹

Additionally, the doctrine of *Caveat Emptor* and consumer protection as it relates to sale of goods and landed property means “let the buyer beware”. In the circumstance, the general rule herein is that there is no duty on a seller to disclose material information relating to the goods which he is about to sell to the buyer. In the strict sense of it, it means that in the absence of fraud, mistake and express guarantee or warranty the purchaser assumes the risk of any defect in the goods. In this case, the seller is not under any obligation to disclose to the purchase any defect that may be in the goods and no warranties would be implied as an incident of such contract.²⁰ We note that under the common law doctrine of “*Caveat Emptor*”, this doctrine constitutes a formidable obstacle for consumers in recovering damages for injury, loss or damage resulting from defective products.²¹ In a similar vein, the essential nature of Sale of Goods Act (1893) is that there shall be a transfer of property in the goods from the seller to the buyer for a price in money. The Act therefore defines a contract of sale of goods as a “contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a monetary consideration called the price”.

Under the Sale of Goods Act, 1883 of the United Kingdom that codified the existing common law on the subject, some terms were implied into the contract for the sale of goods which was subsequently re-enacted by some states in Nigeria to form their own sale of goods laws. Thus, in providing for the obligations of the seller, the law imply certain terms into the contract

¹⁷ See *Priest v. Last* [1903] 2 KB 148, p. 82.

¹⁸ *Price v. Easton* [1833] 4 B & Ad 433 : 110 ER 518; *Tweddle v. Atkinson* [1861] 1 B & S 393 : 121 ER 762.

¹⁹ *Daniels v. R. White & Sons Ltd.* [1938] 4 All ER 258.

²⁰ K.I. Igweike, ‘Consumer Protection in a Depressed Economy: The Nigerian Experience’, Lagos, Nigerian Institute of Advanced Legal Studies, 2001, p. 359, *UTC Nigeria Plc. v. Maobison Interlink & Associates Ltd.* [2004] 10 CLRN 87.

²¹ *UTC Nigeria Plc. v. Maobison Interlink & Associates Ltd.* [2004] 10 CLRN 87.

of the sale of goods. These terms are implied into the contract in order to give it business efficacy. Also, this term will only be implied by the court if it is obvious that if the parties had adverted their minds to it at the time of the contract, they would have adopted it unanimously.²²

Furthermore, this paper notes that international law played a significant role in the contract of sale of goods, though usually seen in terms of regulating relations between states, its effects however extend to individual and corporate persons in the very direct sense of facilitating and regulating all manner of activities, even reaching into areas where national laws apply but are affected by international considerations.²³ Notably, the direct effect of international law in this regard on transactions involving corporations has been evidenced in cases in which arbitral tribunals deployed rules governing international law to settle disputes between states and foreign company or companies, as the case may be.²⁴ Generally speaking, the law governing contracts for the sale of goods was put into statutory form (codified) by the Sale of Goods Act 1893. Thus, being a pre-1900 English statute of general application, the English enactment was applicable in Nigeria. However, several states of the federation later re-enacted the Act as part of their state laws.²⁵ Furthermore, as for the states that do not have their own laws on the subject matter, the 1893 Act still applies as a pre-1900 English statutes of general application. So, for ease of reference and convenience, the Act is a codification of the law governing the sale of goods. It is the backbone of international trade in all countries of the world which has provided modern uniform legislation for the international sale of goods that would apply whenever contracts for the sale of goods are concluded between parties within a place of business in contracting states.

Indeed, in the formation of the contract of sale and the determination of price, Sale of Goods Act of 1893 provides no special provisions concerning formalities in the making of a contract of sale. It is therefore not necessary to observe complex formalities to create a contract for the sale of goods. On the other hand, the consumer protection under the Hire Purchase Act of 2010²⁶ usually contains implied terms intended to protect the hirer in this case the consumer. Also, there is an implied warranty that the owner shall give the hirer quiet possession and except for condition as to fitness

²² Hutton v. Warren [1836] 1 M & W 466, p. 194 : 150 ER 517.

²³ R.K. Gardner, *International Law*, Pearson Education Ltd., 2003, pp. 1-2.

²⁴ *Texaco Overseas Petroleum Co. v. Libyan Arab Republic*, 1979 LR 531.

²⁵ *See the Sale of Goods Law, Cap S2, vol. 7, Laws of Lagos State, 2003.*

²⁶ *See Cap C20, LFN, 2010.*

for a particular purpose, all other implied terms cannot be expressly or otherwise excluded in the contract.²⁷ The hire-purchase device immigrated into Nigerian legal system when the need for secured financing of these consumer goods arose.²⁸ Suffice it to say that in spite of these consumer protection provisions in the Hire Purchase Act, consumers in Nigeria are deprived of the benefits derivable from the protection offered by the statute because of the abysmally low monetary limit of the Act. Thus, this accounts for the waning of the hire purchase transactions in Nigeria because other than motor vehicles, the goods that come within the scope of the Act are very few indeed. This shows that there is a compelling need to amend the Hire purchase Act to increase its financial limit in order to reckon with hire purchase transactions in Nigeria.

IV. CONSUMER PROTECTION UNDER THE LAW OF TORT

The principal aims of law of tort include appeasement, compensation, deterrence as well as loss distribution.²⁹ Its effect is to transfer resources from one party to another in order to return the victim to his or her position prior to the loss or injury suffered.³⁰ Another landmark development of consumer protection law through common law is that of product liability in tort against suppliers of goods where the defective goods cause damage or injury to a consumer. While under contract of sale of goods only a consumer who is a party to the transaction can seek redress against the supplier or manufacturer, the situation is different under the law of tort. Thus, such a person is regarded as a third party or an intruder in the transaction under the Sale of Goods Act.³¹ It is to avoid the injustice that would result in some cases if an injured user of a defective product is left without redress, that the courts evolved the doctrine of negligence with its vital ingredient, “foresee-ability” in Donoghue’s case. This case has of course, resurrected the spirit of an equally landmark case³² which exhibited a major judicial activism in protection of consumers.

More so, the principle of Res Ipsa Loquitur which would have given succor to consumers in negligence cases was downplayed by the court.³³ This

²⁷ *Lowe v. Lombank Ltd.* [1960] 1 WLR 196 : [1960] 1 All ER 611.

²⁸ *See* The Interpretation Act, Cap. 123, vol. 8, 2004, LFN.

²⁹ G. Williams, *The Aims of Law of Tort* (1951) 4 CLP 137.

³⁰ P. Cartwright, *Consumer Protection and the Criminal Law: Theory and Policy in the UK* Cambridge, Cambridge University Press, 2001, p. 15.

³¹ *Donoghue v. Stevenson* [1932] AC 562.

³² *George v. Skivington* [1869] LR 5 Ex 1.

³³ *Okonkwo v. Guinness (Nigeria) Ltd.* [1980] 1 PLR 581.

paper however advocates for a reform that will proffer a lasting solution to this problem. However, a serious impediment to consumer redress under the tort of negligence is the non-recovery of damages for pure economic loss. A claim may only be allowed for pure economic loss where it can be linked to injury to person or property. An attempt to establish recovery for pure economic loss that is accompanied by physical damage has not been very successful.³⁴ It should be pointed out in this paper that, for an adequate consumer protection in a democratic system like Nigeria, major changes in the law relating to liability for negligence should be properly looked into as a matter of urgent necessity. It is in the light of the foregoing that this paper suggest an introduction of strict liability for defective products which is not based on fault in order to alleviate the hardship caused by the need to prove negligence before a consumer obtains redress, especially as an average consumer has no means of knowing how the manufacturer or producer produced his products or whether he used the right process in doing that. More so, for a consumer right in an emerging market in Nigeria to be adequately protected, a person who is injured by a faulty article or service should be entitled to compensation whether or not he was the person who purchased the article or service, provided he obtained it lawfully. In other words, the doctrine of privities of contract should be abolished.

V. CONSUMER PROTECTION UNDER CRIMINAL LAW

A person incurs individual criminal responsibility when liability for a particular crime can be ascribed or attributed to that person. Attribution in this case is premised on the satisfaction of the conduct elements that constitute the *actus reus* of the offence and provided that the accused possessed the required violation and knowledge or foresight. In the light of the widely accepted belief that a consumer is the king in a commercial transaction, this paper however noted that this belief is different in Nigeria and other developing economies where consumers have no say of their own but rather rely more on government intervention agencies for protection.

More importantly, most statutes that impact on consumer protection in Nigeria are penal in nature and may be categorized, for administrative convenience there as those that aim at protecting the consumer by prohibiting dealings on certain products, the regulation of the standards or quality of products to ensure the safety of the consumer and those that merely seek to regulate measurement, control prices and other forms of trade practices in

³⁴ *Murphy v. Brentwood DC* [1990] 3 WLR 415.

order to protect the consumer from exploitation by producers. Thus, some of these criminal law enactments under consumer protection are Criminal Code Act³⁵ applicable in the southern states, the penal code Act³⁶ Northern states of Nigeria, the Food and Drugs Act³⁷ the Standard Organization of Nigeria Act³⁸ the National Agency for Food and Drug Administration and Control Act³⁹ the National Law Drug Enforcement Agency Act,⁴⁰ the Consumer Protection Council Act⁴¹ and so on.

VI. NOTABLE EFFECTS OF THE OVERLAPPING FUNCTIONS OF THE CONSUMER PROTECTION STATUTORY REGULATORY AGENCIES

Undoubtedly, the regulatory agencies such as the Consumer Protection Council (CPC), the Standard Organization of Nigeria (SON) and the National Food and Drugs Administration and Control (NAFDAC) established by government to protect consumer rights have either failed or have been unable to brace up for the challenges of the twenty first century. Thus, this paper notes among other things that in Nigeria today, consumers are still ignorant of their rights and not aware of the particular agency to channel their complaint to. There appears to be some overlapping in the functions of these agencies charged with protection of consumers in their respective operations. Having looked at the apparatus setting them up, we note in this paper that the apparent overlapping of functions would not present any hindrance to the smooth operations of these agencies but would rather complement and strengthen their tasks of protecting the consumer. Also, there are some statutes which, need to be streamlined in order to reduce the number of statutes on the same subject matter and or to reduce duplication. From the foregoing expression, and without prejudice to the powers of the consumer protection councilor state committee to negotiate, mediate or conciliate in matters referred to it by a consumer or producer, a section of the magistrate court or High Court should be established to deal with small claims.

³⁵ Cap C 38, vol. 4, LFN, 2010.

³⁶ Cap F 32, vol. 6, LFN, 2010.

³⁷ Cap S 9, vol. 13, LFN, 2010.

³⁸ Cap N1, vol. 9, LFN, 2010.

³⁹ Cap C 34, vol. 3, LFN, 2010.

⁴⁰ Cap N 30, vol. 9, LFN, 2010.

⁴¹ Cap C 25, vol. 3, LFN, 2010.

VII. SIGNIFICANCE OF CONSUMER PROTECTION LAW REFORM

This paper examines those areas of protection that are fundamental in nature that deserves urgent reform given the position of a consumer in a democratic system. In view of the fact that consumer protection covers all spheres of our lives ranging from the air we breathe, water we drink, food we eat and even drug we take. There are various legislations covering all these. However, a reform of the law by providing an enforcement mechanism that will be proactive or alternatively reforming the existing law to incorporate ADR centers for small claims will be desirable. It should be noted that S.2 (a) of the CPCA had already empowered the council to give speedy redress to consumer's complaints through negotiations, mediations and conciliations. Regrettably, the council lack enforcement powers to make this beautiful provision effective.

The proposed reform should aim at evolving a comprehensive, coherent and national consumer protection regime based on appropriate policy choices as to the basis of liability both in contract and tort. Also, at the level of legislation, there is a compelling need to revise our sale of goods laws which in their present forms do not offer adequate protection to the consumer. The relevant rules of contract and tort should be consolidated and codified into a concrete and formidable consumer protection code. Strict liability regime should cut across both products and services in this case the reformed sale of goods laws should incorporate the remedies of refund, replacement and repair of defective products at the option of the buyer in appropriate cases. To this end, the Nigerian Law Reform Commission on Consumer Protection Law has recognized the urgent need and has embarked on the exercise on how to improve on the existing CPC Act so as to ensure that there is on ground, a consumer protection regime that articulates the protection of consumers with respect to product liability of products suppliers.⁴² The reform should as well, address the visible overlapping functions between the Consumer Protection Council and the Nigerian Communication Commission in relation to the regulation of telecommunication sector.

VIII. CONCLUSION

This paper explores the strategic interest and protection desired by a consumer in a democratic system and emerging market in Nigeria, especially

⁴² Nigerian Law Reform Commission, Workshop papers on the reform of consumer protection laws (2006) p. 4.

by examining the existing legislations and or the regulatory agencies in place so as to ascertain its functionality in terms of the protection of the rights of an innocent consumer. The paper concludes by advocating that for there to be adequate protection of consumer's right, there should be a coherent body of consumer protection law in Nigeria, rather than a lopsided case laws or statutory rules. More so, while the rules of privities of contract remained sacrosanct, the doctrine of Caveat Emptor has greatly been modified by the terms implied under the sale of goods laws and the hire purchase Act. But in spite of the statutory modification of the doctrine, the unbridled application of exclusion or limiting clauses remains a severe impediment to consumer redress. The concept of redress transcends reparation or compensation for injury already suffered to include prevention of injury, loss or damage, hence the prescription of criminal law could be regarded as a form of redress. Finally, some of the regulatory agencies like the standard organization of Nigeria and the consumer protection in the area of criminal law though clothed with legal personality lack the power to prosecute offenders.

What proceeds from the foregoing, therefore, is that a wider definition of a consumer to accommodate the category of consumers recognized in tort under the neighbourhood principle and also legal persons who buy goods and services for their private consumption.