

The 'Consumer' within Nigerian Law: A Case of Moving from Frying Pan to Fire?

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Abstract

This paper examines who the consumer is in Nigerian law. The attempt is to discover whether the scope of who the consumer is in the Act advances consumerism or otherwise. To achieve the objective of this paper, sections of legislation, subsidiary legislation, both Nigerian and foreign, and judicial authorities on the subject matter are analysed. It would appear that the definition of the term "consumer" prior to 2018 when the Federal Competition and Consumer Protection Act was enacted was more inclusive. This is because until then, the definition in section 32 of the now repealed Consumer Protection Council Act was more comprehensive and embraced more parties in the chain of distribution down to the ultimate user or consumer, and seemed to give consideration to tort-base and statutory remedies unlike the position of the FCCPA. This paper therefore posits that the FCCPA is designed to curb unfair trade practices, and to ensure that businesses operate transparently and ethically. To discover the status of the consumer in Nigeria, a comparative approach of analysis of statutory and case laws across jurisdictions is adopted. In doing this, the focus is to answer the question, "Is the FCCPA the consumer's Eldorado or an instrument of his crucifixion?"

1. Introduction

The phraseology "from frying pan to fire" implies that someone or something is moving from one difficult or challenging situation to an even more problematic one.¹ In the context of this paper, has the "consumer" within the Nigerian law, fared better or worse by the enactment of the FCCPA? The expression suggests concern about whether the transitions or changes to consumer regulations, institutions, cases or circumstances

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¹ Olusegun Adeniyi, *From frying Pan to Fire: How African Migrants Risk Everything in their Futile Search for a Better Life in Europe* (Ibadan: Bookcraft 2019)

have potentially led to more difficulties or challenges for consumers or not. Hence, an exploration of the concept within the context of Nigerian consumer protection laws designed to safeguard consumer rights and interests,² and their impact on the protection of the Nigerian consumer.

The paper therefore evaluates the areas where the consumer's protection has been enhanced and areas where the position of the consumer is perceived to have nosedived. To achieve the objective of this paper, it is divided into eight sections, each dealing with a definite area of concern. After a careful consideration of thesis of this paper, the paper is concluded by recommending ways through which enhance protection of the Nigerian consumer ca be achieved:

2. Who is the Consumer?

Etymologically, the term "consumer" emanates from the Latin word *consumer* which can be literally translated to mean consume. This implies that in its ordinary sense, "consumer" refers to a person that consumes or feeds on living organisms and inanimate things in the chain of production. To this end, the word consumer has been defined from multifarious perspectives.

2.1 Statutory Law Perception

The principal legislation on Consumer Protection in Nigeria, the FCCPA, in section 167(1) defined the "Consumer" to:

includes any person- (a) who purchases or offers to purchase goods otherwise than for the purpose of resale but does not include a person who purchases any goods for the purpose of using them in the production or manufacture of any other goods or article for sale; or (b) to whom a service is rendered.

This definition is hinged on privity of contract, that is, it introduced a contract-based regime into the Nigerian architecture for the protection of the consumer. This appears to have worsened the position of the consumer, by adopting a pre-1992 definition.³ Section 32 of the now repealed Consumer Council Protection Act (CPCA), 1992, defined the consumer to mean an individual who purchases, uses, maintains or disposes of product or services. The definition of the consumer under the

² These include the Constitution of the Federal Republic of Nigeria 1999; Federal Competition and Consumer Protection Act 2018; Hire Purchase Act 1965; Sale of Goods Act 1893; Nigeria Communications Act 2003; Nigeria Data Protection Act 2023; United Nations Guidelines for Consumer Protection 1999; and the Model Law on Consumer Protection in Africa

³ Eni Eja Alobu, *Modern Nigerian Law of Contract* (2ndedn, Lagos: Princeton & Associates Publishing Co Ltd 2016) 29-31

CPCA is more preferable and comprehensive to that proffered under the FCCPA as the former encompasses the contract and tort base regimes of consumer protection. The definition proffered by the repealed CPCA was criticised by Ajai⁴ as being too broad. He contended that the use of the terms “maintains” and “disposes” in the repealed CPCA to refer to a consumer was too wide, and maintained that only a manufacturer as opposed to a consumer can be said to validly discard or get rid of goods. It appears difficult to be persuaded by the contention of the learned author, as nothing could be found in the repealed CPCA to suggest that the owner of the goods must be necessarily different from the person who disposes or maintains the product. Hence, even where the person who maintains or disposes of the goods is not the owner, the legal principle enunciated in *Donoghue v Stevenson*,⁵ that has whittled down the doctrine of *privity* of contract can still come to the aid of a consumer who seeks legal redress for perceive wrong. Also, by the departure from the former position of the law via the by-stander rule discussed in *Stennet v Hancock and Peters*,⁶ a passerby injured by a lorry negligently repaired successfully maintained an action against the repairer even where parties had no existing contractual relationship. The by-standing rule and neighbourliness doctrine are exceptions to the privity rule.

Furthermore, it is suggested that a maintenance engineer is a consumer afforded legal protection for the purposes of our discussion so long as he is hurt by a defect in the machine, he is effecting maintenance. In addition, the repealed Act made mention of “users” which therefore implies that a consumer need not be the buyer thereby granting the advantage of covering persons such as users, borrowers, gratuitous donees within the area of risk and bringing them within the umbrella of consumers by avoiding the privity of contract requirement. For instance, under section 19 of Law No. 90/031 of August 10, 1990 applicable in Cameroon that regulates commercial activities a consumer is defined as: “... any person who uses goods to satisfy his own needs and those of his dependent; such a person shall not resell or possess the good or use them in his occupation.” This definition finds support in the United Kingdom Fair Trading Act, only that the latter legislation expands the scope to include the trading consumer.⁷

⁴ Oluwole Ajai ‘Caveat Venditor: Consumer Protection Decree No. 66 of 1992 Arrives in the Nigerian Market Place’ [1992-1993] (23)(26) *NCLR*

⁵ (1932) AC 562

⁶ (1939) ALL ER 578

⁷ Section 137 (2) Fair Trading Act 1973 applicable in the United Kingdom

The United Nations Guidelines on Consumer Protection broadly under Guidelines 3 defines consumers as for the purpose of these guidelines; the term “consumer” generally refers to a “natural person, regardless of nationality, acting primarily for personal, family or household purposes, while recognising that Member States may adopt different definitions to address specific domestic needs.” One wonders if the contract-based approach of the FCCPA does the consumer any good.

2.2 Case Law and the Consumer

Lewis, J. summarising the duty owed by the manufacturer to the consumer without giving an express definition to the term consumer in the case of *Daniels & Daniels v White & Sons Ltd and Tarbard*⁸ held as follows:

I have to remember that the duty owed to the consumer, or the ultimate purchaser, by the manufacturer, is not to ensure that his goods are perfect. All he has to do is to take reasonable care to see no injury is done to the consumer or ultimate purchaser. In other words, his duty is to take reasonable care to see that there exists no defect is likely to cause such injury.

It can be gleaned from the above that the consumer should be seen to include anyone who ultimately consumes a product or services. This seems to be the rationale behind the neighbourliness principle handed down by Lord Atkin in the case of *Donoghue v Stevenson*.⁹ Aniagolu, JSC in the juridical authority of *Nigerian Bottling Company Ltd v Constance Obi Ngonadi*¹⁰ capturing the picture of the Nigerian consumer succinctly adumbrated thus:

But nothing appears to be elementary in this country where it is often the unhappy lot of Consumers to be inflicted with shoddy and unmerchantable goods by pretentious manufacturers, entrepreneurs, shoddy middlemen and unprincipled retailers whose avowed interest seem only, and always to maximise their profit leaving honesty a discounted and shattered commodity.

In the European case of *Overy v Paypal (Europe) Ltd*,¹¹ it was held that the definition of a consumer under the provisions of Unfair Terms in Consumer Contracts Regulations 1999 excludes a person whose main purpose of entering into a contract is to use the services for his own private consumption and for business purposes. Thus, except where the

⁸ [1938] 4 All ER 258

⁹ [1932] AC 562

¹⁰ [1985] 1 NWLR (Pt.4) 739

¹¹ [2012] EWHC 2659 (QB)

business or trade purposes are considered by the court as insignificant or negligible the individual will not be entitled to protection as a consumer if he acts for business purposes as portrayed by the facts of the instant case.

In the case of *Bowe v SMC Elec. Prods*¹², the United States of America's court define a consumer in an elaborate term covering statutory, tort, contract and strict liability regimes as:

Individuals who purchase, use, maintain and dispose of products and services. Consumer is a member of that broad class of people who are affected by pricing policies, financing practices, quality of goods and services, credit reporting, debt collection, and other trade practices for which the state and federal consumer protection laws are enacted.

2.3 Scholars' Views

O'Grady¹³ defines a consumer as the final end-user of all goods and services produced in the economy. To Harvey and Parry¹⁴ the term Consumer includes anyone who consumes goods and services at the end of the chain of production. *The Black's Law Dictionary*¹⁵ pungently defines a consumer as a person who buys goods or services for personal, family or household use with no intention of resale, a natural person who uses products for personal rather business purposes. Similarly, Nigerian scholars in the field of Consumer Protection Law like Ekanem,¹⁶ Monye,¹⁷

¹² [1996] 945 F. Supp. 1482, 1485 (D. Colo)

¹³ James O'Grady, 'Consumer Remedies' [1982] (60)(4) *Canadian Bar Review* 549

¹⁴ Brian W. Harvey and Deborah L. Parry, *The Law of Consumer Protection and Fair Trading* (5thedn, London: Butterworths Laws 1996)

¹⁵ Bryan A. Garner, *Black's Law Dictionary* (9thedn, Minnesota: St Paul MN West Publishing 2009) 104

¹⁶ Etefia E. Ekanem, *Law of Consumer Protection and Hospitality Services in Nigeria* (Jamet Publishers, 2019); Etefia E. Ekanem and E. A. Thomas, "Consumer Protection and Carrier's Liability for Flight Cancellation and Delays in Nigeria" *African Journal of Law and Human Rights*, vol. 2 June (2018) pp. 152 – 162; Etefia E. Ekanem, and M. Eseyin, "Who Protects the Consumer: Self or the State?" (2013) vol. 1 *Imo State University Journal of Private and Property Law*, pp. 83-114; Etefia E. Ekanem, "Criminal Law: What Remedy for the Consumer of Hospitality Services?" (2013) vol. 11 *Judicial Review*, pp. 1-18, available at <http://www.unn.edu.ng/publications/files/Article%201.pdf>; Etefia E. Ekanem, "After Two Decades of the Consumer Protection Council Act: The Wilderness' Journey of Consumer Protection in Nigeria" (2014) vol. 8 *University of Uyo Law Journal*, pp. 117-140; and Etefia E. Ekanem and E. R. Eniunam, "In the Woods in Search of who the Consumer is Within the Precinct of Nigerian Law?" (July 2015) vol. 10 No. 2 *University of Jos Law Journal*, pp. 109-127

¹⁷ Felicia N. Monye, *Law of Consumer Protection: Civil Liability* (Vol. 2, 2ndedn, Ibadan: Kraft Books Ltd 2021) 225

Kanyip,¹⁸ Badaiki,¹⁹ and Akomolede and Oladele,²⁰ extend the definition of a consumer to go beyond a purchaser to include individuals involved in contractual relationships as well as the ultimate users who come in contact with goods and services in any way whatsoever. They see the consumer in an encompassing broad sense to cover individual users of goods and or services in general, although Kanyip²¹ excludes corporate entities. Similarly, Schiffman and Kanut²² in their definition made a distinction between organisational consumer from personal consumer. The former is espoused to mean, private organisations who procure goods and services to help them attain the organizational aims and objectives. While the latter was explained to mean, an individual who buy goods and utilizes services for his own use or that of his household.

On the other hand, Badaiki²³ defines a consumer as a person natural or corporate to whom goods, services, and credit facilities are supplied or likely to be supplied, otherwise than in the course of business and for ultimate use in the course of a business carried on by the supplier. For Schiffman and Kanut²⁴ consumer can be defined by classifying him into two kinds; one the personal consumer and two the organisational consumer. According to them, the personal consumer is the individual who buys goods and services for his own use, for the use of his household or for just one member of the household or even as a gift from a friend. While the organisational consumer encompasses private business, Government agencies, and institutions, all of which must buy products, equipment and services in order to run the organisation whether or not for profit.

To answer the question who is a consumer? Enyia and Abang opined that, a consumer is a citizen whose protection is regarded as one of his fundamental rights and that the nature of a particular transaction is another determinant factor that can be used to describe a consumer. In

¹⁸ Benedict B. Kanyip, *Consumer Protection in Nigeria: Law, Theory and Policy* (Rekon Books Ltd., 2005) 2

¹⁹ A. D. Badaiki, 'Towards an International Legal Regime of Consumer Protection for Developing Countries: Nigeria as a Case Study' [1993] (6) (4) *Justice Journal* 43-61

²⁰ Ifedayo Timothy Akomolede and Olajide Oladele, 'Consumer Protection in a Deregulated Economy: The Nigerian Experience' [2006] (3) *Research Journal of International Studies* 16

²¹ Kanyi, op cit.

²² LG Schiffman and LL Kanut, *Consumer Behaviour* (Eagle Wood Chiffs, Prentice-Hall Inc 1978) 4-8

²³ A. D. Badaiki, "Towards an International Legal Regime of Consumer Protection for Developing Countries: Nigeria as a Case Study" [1993] (6) (4) *Justice Journal* 43-61

²⁴ L. G. Schiffman and L. L. Kanut, *Consumer Behaviour* (Englewood Cliffs: Prentice Hall Inc. 1978) 4-5

this regard, certain tests were enunciated for the identification of a consumer.²⁵ First, to qualify as a consumer according to the author, reference must be made to individual or other protected persons who are not contracting in their capacity as business entities. Second, the supplier must contract in business capacity and thirdly, the goods supplied must be intended for private and not commercial use.²⁶ Placing reliance on section 32 of the repealed CPCA,²⁷ the authors posited that the definition of a “consumer” as an individual who purchases, uses, maintains or disposes of products or services is apt and appears to accommodate anyone in the chain of consumption, whether or not he is the direct purchaser or producer of the products or service²⁸.

2.4 Jurisprudential Analysis

A critical analysis of the foregoing juridical, statutory and scholarly authorities reveals that the word consumer within the purview of Consumer Protection Law can be understood in two broad senses: One, a consumer refers to any person who purchases, uses, maintains or disposes of tangible goods, products or articles like cars, food, clothes, cosmetics, beverages, equipment that enjoys legal protection in which he is inured with the legal right to seek for redress against the person who caused the injury or damage. Here the consumer is also known as the buyer, owner, hirer, and user. Two, a consumer can also be regarded as a person who patronises services such as banking, transportation, hospitality, professional or technical that enjoys legal protection in which he is inured with the legal right to seek redress against the person who caused the injury or damage. Here the consumer is called by various names *inter alia*, a customer in the banking sector; clients in the legal profession; patients in the medical profession; informant in the information sector; guests in the hospitality sector; a passenger in the transportation sector; insured in the insurance industry; subscriber in the telecom sector.

The above definition of consumer finds solace in the celebrated case of *Donoghue v Stevenson*;²⁹ *Nigerian Bottling Company Ltd v*

²⁵J. O. Enyia and T. A. Abang, “In search for a Consumer Protection Antidote in Nigeria: A Case for the Amendment of the CPC Act, 1992’ [2018] (10)(3)*IJCR* 66733-66742

²⁶David Ought and John Lowry, *Textbook on Consumer Law* (2ndedn, New York: Oxford Higher Education 2007)

²⁷Sections 165 and 167 of the Federal Competition and Consumer Protection Act, 2018 has repealed the Consumer Protection Council Act, Cap. C25, LFN, 2004

²⁸Felicia N. Monye, *Law of Consumer Protection: Statutory Liability* (Vol. 1, 2nd edn, Lagos: Kraft Books Ltd 2021) 36-38.

²⁹[1932] AC 562

Ngonadi,³⁰ and *Jeph Njikonye v MTN Nigeria Ltd.*³¹ wherein the tort base regime and contract base regime for providing legal redress to consumers as well as the express provisions of section 167(1) of the Federal Competition and Consumer Protection Act 2018. Taking into consideration concepts like foolproof in the line of cases dealing with manufactured products in which extraneous materials have been found inside a bottle of Guinness³². Thus, with such hurdles as the ones aforementioned, claimants who feel aggrieved by defective products and services may be discouraged from pursuing a legitimate cause of action in a court of law. Happily, the provisions of section 146 of the Federal Competition and Consumer Protection Act, 2018 has placed the onus of proof on the person making the undertaking thereby removing the hitherto constraints existing under the repealed CPC Act that made the rules of liability put in place then a herculean task for consumers to surmount. It is hoped that when the provisions of the FCCP Act, 2018 are tested in judicial proceedings, our courts will by judicial activism muster courage to overrule the Guinness line of reasoning and decisions while growing consumer protection law.

3. Areas of Concern to the Consumer in the Act

3.1 The Definition of the Consumer

FCCPA 2018 has taken the consumer from frying pan to Fire in the following areas. One, is in the definition of the consumer. This restrictive scope of definition ascribed to the consumer limits the concept to one who contracts in goods and services³³. It tends to exclude tort base remedies, in favour of contract, on its face value except the statutory rights and duties therein provided, which threatens further development and application of the *Donoghue v Stevenson*³⁴ principle. Just like the Nigerian statutory law definition, the Thailand Law introduces the doctrine of privity of contract into its definition. Thus, the term consumer is defined in the Thailand Consumer Protection Act 1998 thus:

“Consumer” means buyers or persons receiving services from persons engaging in business and includes persons who are offered or are persuaded by person engaging in business to

³⁰ [1985] 1 NWLR (Pt.4) 739

³¹ [2008] 9 NWLR (Pt.1092) 229

³² *Boardman v Guinness (Nig.) Ltd* (1980) NCLR 109; *Ebelamu v Guinness* (1983) 1 FNLR 42; *Osemobor v Niger Biscuits Company Ltd.* (1973) NCLR 382; *Okonkwo v Guinness* (1980) 1 PLR 583

³³ EtefiaEkwere Ekanem, *Law of Consumer Protection and Hospitality Services in Nigeria* (Uyo: Jemat Publishers 2019) 6-8

³⁴ (1932) AC 562 at 599

purchase goods or to accept services and includes the legitimate user or the legitimate acceptor of services from the business sector even though he is, not a payer of a remuneration commission therefore.

The above problem has been addressed by the Indonesian Law on Consumer Protection 1999 in laying emphasis on the end-user as distinct from a contractual party, although same is also protected when it provides in its definition of consumer as anybody using goods and/or services which are available in the community both for his own purpose, for the purpose of his family and other people as well as other living creatures and which are not to be traded. The European Community Council Directives defines a consumer in the following words: Consumer means a natural person, who is in a transaction covered by this Directive, is acting for purposes which can be regarded as lying outside his trade or profession.³⁵

3.2 Pre-Action Notice, Condition Precedent and Promotion of Technicalities

The requirements of condition precedent and pre-action notices by NCC Act³⁶ and other legislation before a consumer can institute an action in court appears to have taken the consumer from frying pan to fire of having his matter struck out or dismissed based on technical justice. The Bureaucratic bottleneck by first having recourse to administrative procedure before having recourse to court does not seem to advance consumerism as the decision of the court in *Barr. Mike Nkwocha v MTN Nigeria Communications Ltd*³⁷ gives credence to this.

3.3 Jurisdictional Conundrum between the Tribunal and Regular Courts

Jurisdictional conundrum seems to have been created by the establishment of the Competition and Consumer Protection Tribunal by the FCCPA. This is on the principle of *expressio unis ex exclusioalterius*.³⁸ There are plethora of legislation through which a consumer can explore in seeking redress for an injury arising from defective product, service or misleading information by manufacturers, service providers, suppliers or

³⁵ Felicia N. Monye, *Law of Consumer Protection: Civil Liability* (Vol. 2, 2ndedn, Ibadan: KraftBooks Ltd 2021) 39. See also section 3(1) of the Unfair Terms in Consumer Contracts Regulation Act 1999 defines a consumer to mean: any natural person who in contracts covered by these Regulations, is acting for a purpose which is outside his trade, business or profession.

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³⁷Appeal No. CA/A/2007/05 Judgement delivered on Wednesday 23 January, 2008 (unreported)per Mary Ukaego Peter Odili, JCA (as she then was) now JSC who read the lead judgment.

³⁸*Sea Transport Services Nig. Ltd v Owners of The MT "Harmburg Star"* (2023) LPELR-60616 (CA)

advertisers. Primarily, the Constitution of the Federal Republic of Nigeria, 1999 being the grundnorm has provided for the hierarchy of courts together with their jurisdictions including issues of appeals and the creation, constitution and composition of the courts at all levels.³⁹ Thus, in the judicial authority of *Odutola v NITEL*,⁴⁰ the issue in contention was which was the court with the requisite jurisdiction to hear the plaintiff's suit as between the Federal High Court and the High Court of Ogun State. It is to be parenthetically noted that, the issue of jurisdiction is both constitutional and fundamental to the success of a matter in court.⁴¹ Also, the decision of the court in *Njikonye v MTN Nigeria Telecommunications Ltd.*⁴² explains jurisdictional conundrum.

The Court of Appeal after a careful review of many cases held that, the High Court of Ogun State is vested with the requisite jurisdiction to hear the matter. This conclusion was arrived at, on the basis that, it is not enough for the appellant to be praying for declaration and injunction for his matter to qualify as one to be decided by the Federal High Court. For a matter to go the Federal High Court, the acts complained of, and which one is seeking a declaration and injunction must be in connection with the executive or administrative actions or decisions of the respondent and agency of the Federal Government. The learned Justice⁴³ went on to ask certain questions; "can the act of debiting the appellant's bill, tossing the appellant's telephone line; making available a breakdown of the appellant's call schedule, be described as acts made in a management capacity? Do they flow from an executive action or decision by the respondent? The answer is an emphatic no!" The Court stressed that, debiting a customer's telephone bill; tossing a customer's telephone line for non-payment of telephone bill; and making available a breakdown of a customer's call schedule are acts made in the respondent's "usual field". Accordingly they fall into the class of the usual functions, day-to-day, nitty-gritty work of the telecommunications business which may be technical but certainly not administrative nor executive acts.

The conflict between the jurisdiction of the Federal High Court and State High Court is yet to be laid to rest. Thus, on the contrary, the Court of Appeal in *MTN Nigeria Communication Ltd v Suntan Ventures Ltd.*⁴⁴

³⁹ Sections 6 and 230-292 of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended)

⁴⁰ [2006] All FWLR (Pt.335) 73

⁴¹ *Madukolu v NKemdilim* (1962) 2 All NLR 581

⁴² [2008] 9 NWLR (Pt.1092) 229

⁴³ Per Amina Adamu Augie, JCA who presided and Read Lead Judgment in *Odutola v NITEL Ltd* at p.91

⁴⁴ (2009) LPELR-CA/L/350/2009

relied on the provisions of section 251(1)(s) of the Constitution of the Federal Republic of Nigeria, 1999 and sections 91, 92 and 138 of the Nigerian Communications Act, 2003⁴⁵ to hold that, it is the Federal High Court that has exclusive jurisdiction over all matters, suits and cases however arising out of or pursuant to or consequent upon the NCC Act or subsidiary legislation. The court went on to rule that it is crystal clear that the matter of the plaintiff, when married with the provisions of the Constitution and that of the Nigerian Communications Act, 2003, the Federal High Court, to the exclusion of the State High Court, has the requisite jurisdiction to hear telecommunication matters.

Also, agitating ones minds is the jurisdiction conferred on the high court by the provisions of the FCCPCA. This has become pertinent as the definition of the court and judge given by section 167 of the Act refers to Court of Appeal. Even the conundrum in respect to the jurisdictional conflict between the Federal High Court and the High Courts of the States and the Federal Capital Territory is still a raging tempest confronting consumers seeking judicial remedies for the injuries suffered. It is important to note, that in matters of simple contracts between subscribers and a telecommunications outfits; the Court with the competent jurisdiction is the High Court of the State or the High Court of the FCT, Abuja and not the Federal High Court of Nigeria as was decided by the Court of Appeal in the case of *Jeph C Njikonye Esq v MTN (Nig) Communication Ltd.*⁴⁶

The Court of Appeal Abuja Division placing reliance on the provisions of section 257(1) of the Constitution of the Federal Republic of Nigeria, 1999 held that jurisdiction is vested on the High Court of the Federal Capital Territory, Abuja to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue subject to the provisions of section 251 and other provisions of the 1999 Constitution. It is recommended that the NCC Act, 2003 be amended to clarify the jurisdictions of the Federal and States High Courts in regards to telecommunication actions, parties and reliefs. For now, it is our humble opinion that, where the NCC is a party the court with the proper forum is the Federal High Court but where it is subscriber-service provider relationship, which is a simple contract, then, the High Courts of the FCT and the States should be the proper venue to institute such matters. Consumers who intend to enforce their rights may be faced with the

⁴⁵ Cap. N97, LFN, 2004

⁴⁶ [2008] 9 NWLR (Pt. 1092) 339

challenge of conflict of laws as to which court has jurisdiction as well as the applicable law of the forum. This is because the definition court in the FCCPA refers to the Court of Appeal. Thus, which judicial body has jurisdiction as between the Courts and the Tribunal in presiding over consumer matters⁴⁷.

3.4 Fair Hearing in Consumer Complaints against Regulatory Institutions

The consumer appears to have been moved from frying pan to fire when issues of fair hearing are brought to bear. Thus, where a consumer has complaints or grievances against the Central Bank of Nigeria, Federal Competition and Consumer Protection Commission and other regulatory agencies, subjecting the consumer to have recourse mandatorily under sections 87 and 88 of the Communications Act 2003⁴⁸ seems to negate the principle of *audi alteram partem* and *nemo iudex in causa sua*. More so, it seems an unnecessary stumbling block to justice and clog in the will of progress for consumers to enforce their rights guaranteed under the law. This is in view of the fact that none of the regulatory agencies can act impartially or give a decision against another as required under section 36 of the 1999 Constitution. Consumers therefore should enjoy unfettered access to justice by having the right to court under section 6(6) of the Nigerian Constitution. Thus, in *Sifax (Nig) Ltd v Phoenix Capital Ltd & Anor*⁴⁹ the Apex Court held to the effect that the twin pillars of natural justice and fair hearing are: *Audi alteram partem*-you must hear both sides; and *Nemo iudex in causa sua*- you must not be a judge in your own cause. Hence, section 88(3) of the Nigerian Communications Commission Act, which provides to the effect that one shall not apply to the Court for a judicial review unless that person has first exhausted all other remedies provided under this Act does not seem to be in the interest of the consumer.

4. Areas Where the Lot of the Consumer has been bettered off

4.1 Data and Privacy Protection

The Nigeria Data Protection Act, 2023 seems to be an important step in protecting personal data in Nigeria. As a result of the implementation of its provisions, there seems to be less need to rely on section 37 of the

⁴⁷ Michael P. Okom, *Basic Principles of Conflict of Laws* (Port Harcourt: Wisdom Printing & Graphic Co 2005)

⁴⁸ Cap N97 Laws of the Federation of Nigeria 2004; Etefia E. Ekanem, 'Institutional Framework for Consumer Protection in Nigeria: An Analysis' [2011] (2)(1) *International Journal of Advanced Legal Studies and Governance* 33-48

⁴⁹ (2023) LPELR-59979(SC) 16 paras A-B per Helen Moronkeji Ogunwumiju, JSC

Constitution of Nigeria, to create data protection in legal processes. Despite worries over the Commission's independence due to the Minister of Communications and Digital Economy's significant influence over the Governing Council's operations and leadership, the Act's formation of an independent Commission seems intended to improve data protection procedures. The Act seems to have contributed significantly to the sector's growth, but not without its drawbacks. The exclusion of "competent authorities" from the application of the Act may be seen as a noteworthy flaw that can lead to abuse. There is also the failure of the Act to provide for deadlines for responding to requests for exercising data subjects' rights and notifying those who may be impacted by data breaches. In the overall, despite the seemingly inadequacies of the Nigeria Data Protection Act, 2023, it has significantly contributed to the development of the information and technology sector by paving the way for improved personal data protection in the nation's digital space,⁵⁰ even though the provisions of Act are yet to be tested in court. However, the provisions of sections 50, 51, 53 and 59 of the Act seems to protect the digital rights of subscribers, data subjects and consumers and vest them with the right to enforce same in the court of law.

4.2 Specific Rights and Privileges for the Consumer Statutorily Guaranteed

The remedies to which a consumer protection or advocacy group can pursue on behalf of aggrieved consumer(s), or subscriber pursuant to section 152 are *inter alia*:

- (a) Filing a complaint with the Federal Competition and Consumer Protection Commission⁵¹
- (b) Filing a complaint before the Consumer Protection Tribunal for redress/compensation.
- (c) Instituting an action before a court of competent jurisdiction for any of the civil reliefs.⁵²
- (d) Appealing against the decisions of either the Commission or Tribunal to Court of Appeal
- (e) Filing application for judicial review of administrative or judicial action in court.

The foregoing does not preclude the consumer from seeking to enforce his right directly by himself or take necessary steps in resolving disputes with undertaking in respect of goods or services supplied to him.

⁵⁰Iheanyi Nwankwo, 'Nigeria's Data Privacy First Responders' *Wordpress* (4 April 2018)

⁵¹ FCCPA 2018 s 148(1)

⁵² FCCPA 2018 s 149(2)(3)

One can do this by approaching the regulator⁵³ of the particular sector, industry or profession, or by filing a complaint directly with the Commission⁵⁴ or by approaching a court of competent jurisdiction⁵⁵ to seek for redress. In other words, the remedy could be administrative, judicial, contractual,⁵⁶ civil or criminal in nature. Nevertheless, consumers should make conscientious effort in exhausting the procedure for complaints to the service providers, regulatory agencies or the Commission before resorting to action in court. Any of the alternative disputes resolution remedies would equally serves the purpose. Therefore, recourse to litigation should be a matter of last resort due to the problems inherent in the court systems, such as high cost of litigation and technicalities which usually delay court proceedings.

4.3 Right of Cancellation of Reservation

One of the effects of exclusion clauses and limiting terms is that they impede the right of the consumer who has suffered damages, injury or loss in a contractual relationship from recovering damages. This means the consumer may have a right, but he cannot have remedy because his rights have been curtailed, restricted or denied by exculpatory terms. Happily, the courts are arising to the occasion through the application of the provisions of the Federal Competition and Consumer Protection Act 2018. Thus, in the case of *Patrick C. Chukwuma v Peace Mass Transport Company Ltd*⁵⁷ where Hon. Justice C.O. Ajah declared the no refund policy as illegal, null and void in light of the provisions of Sections 120, 104, 129 (1) (a) and (b) (iii) of the Federal Competition and Consumer Protection Act, 2018. The Plaintiff, Patrick C. Chukwuma instituted this suit after the Defendant refused to refund his bus fare despite failing to convey him to his destination. The incident that led to the suit occurred on the February 10, 2021, when the Plaintiff purchased a ticket from the Obollor-Afor branch of Peace Mass Transit Limited to convey him to Enugu. Following a two hours delay occasioned by the absence of passengers, the Plaintiff returned to the ticketing office and asked for a refund of the N500 he paid as the transport fare.⁵⁸ However, staff of the Defendant refused to refund the money, insisting that their company policy was that money paid for transport non-refundable and citing the

⁵³ FCCPA 2018 Ss 147 and 146(1)(b)

⁵⁴ FCCPA 2018 s 146(1)

⁵⁵ FCCPA 2018 s 146(2)

⁵⁶ FCCPA 2018 Ss 146(1)(a), 142(1) and 143

⁵⁷Unreported Suit No: E/514/2021 judgment delivered 22 April 2022

⁵⁸Samgena, D. Galega, 'Strict Liability For Defective Products in Cameroon?: Some Illuminating Lessons From Abroad' [2004] (48) *Journal of African Law* 247-253

statement written on their ticket to that effect as conclusive proof of their position.

When the Plaintiff tried to explain to the defendant's staff that their policy was unlawful, as the law mandates them to refund fares for services not rendered, they retorted in a rude manner, prompting the learned counsel to leave their park and seek alternative means of travelling to Enugu. A letter written by the lawyer to the Peace Mass Group of companies demanding an apology and refund was neglected, prompting the lawyer's law firm to institute the action. In the action, the Plaintiff asked the court to determine a sole question which was "whether the Defendant's policy of "no refund of money after payment" is in violation of section 120 of the FCCPCA 2018 especially when the contractual obligation to convey the Plaintiff to his preferred location was terminated". The Plaintiff, represented by his lawyers, led by Tochukwu Odo, among other grounds, argued that the FCCPCA 2018 is the primary law on questions of consumer transactions in Nigeria and that by virtue of section 120 of the law, the consumer has a right to cancel any advance booking, reservation or order for any goods or services subject only to the deduction of a reasonable charge by the service provider.⁵⁹

The Defendant through their counsel, Titus Odo raised technical arguments on the jurisdiction of the court and mode of commencement of the suit, which Hon. Justice C. O. Ajah of the Enugu High Court of Justice in his judgment, promptly dismissed the objections of the Defendant and upheld the arguments of the Plaintiff. The Court, after a thorough analysis of the provisions of the FCCPA 2018 *vis-a-vis* the conduct of the parties in the case, held to the effect that the policy of no refund of money after payment was illegal, null and void in light of the provisions of Sections 120, 104, 129(1)(a) and (b) (iii) of the Act. The court thereafter made a declaration that the refusal of the Defendant to refund the Plaintiff the money paid as transport fare from Obollor-Afor to Enugu on February 10, 2021 was unlawful. The court further ordered the Defendant to pay the sum of N500,000 as damages to the Plaintiff.⁶⁰

5. Comparative Analysis with Other Jurisdictions

The study observed that while the United Kingdom model established a specific institutional framework via the creation of the Office of Fair

⁵⁹Benedict B. Kanyip, *Consumer Protection Laws in Nigeria* (Being a PhD Thesis of the Faculty of Law, Ahmadu Bello University, Zaria, 1997) 328

⁶⁰Felicia N. Monye, *The Consumer and Consumer Protection in Nigeria: Struggles, Burdens and Hopes* (59th Inaugural Lecture of the University of Nigeria delivered on 26 May 2011) 8

Trading which was later abolished and replaced with the Financial Conduct Authority, which is saddled with the responsibility to enforce the provisions Consumer Credit Act and other credit laws under the English system, Nigerian legislation on the other hand, did not make provisions specifically establishing an agency of government by way of institutional regime for the enforcement of consumer credit laws and the enhancement of the protection of consumer involved in credit transactions. This lack of institutional framework for the regulation of consumer credit transactions creates gap and makes the Nigeria legal regime inadequate in the protection of credit consumers. Whereas the presence of an institutional framework under the English model affords enhanced protection to the consumer involved in credit transactions in that country.

The provisions of the extant legislation in the United States of America such as Consumer Credit Protection Act 1968, Fair Credit Reporting Act, Truth in Lending Act and Electronic Fund Transfer Act, Equal Credit Opportunity Act and Fair Debt Collection Practices Act are lagging in the Nigerian consumer credit legal regime. In fact, the Electronic Transaction Bill is still a mirage till today and the issue of financial literacy and the education of the consumer on the nitty-gritty on credit matters is still being treated with levity.

The South African National Credit Act 2005 provides for an institutional framework known as the National Credit Regulator (NCR) separate from the institutional and regulatory framework. Despite the realisation of the importance of credit to the Nigerian economy, the Nigerian credit environment cannot be said to have made any meaningful headway in developing the credit industry to bring it at par with the standard obtainable in other developing economies of the world. The Nigerian credit environment is to ensure that unlike the current situation whereby the Central Bank Nigeria and the Federal Competition and Consumer Protection Commission are the major regulators of the various legislative instruments regulating credit transactions in Nigeria. A lesson is learnt by borrowing a leaf from South Africa and revisit the situation by establishing a separate institution with supervisory role in the regulation of consumer credit transactions to ensure effective implementation.⁶¹ This is because the effective enforcement of consumer protection laws, credit laws and regulations depend largely on the regulatory and supervisory agencies existing within the legal system. The

⁶¹Etefia Ekwere Ekanem, 'After Two Decades of the Consumer Protection Council Act: The Wilderness' Journey of Consumer Protection in Nigeria' [2014] (8) *University of Uyo Law Journal*, 117at 140.

effective use or otherwise of this institutional framework to a large extent determines the level of consumerism in Nigeria. Thus, monitoring compliance with financial consumer protection regulations is an essential element of effective implementation of the legislation and while south Africa has recorded success, Nigeria is still lagging behind and characterise by archaic laws and absence of the political will to do the needful⁶².

6. Recommendations

6.1 Consumer Education, Campaigns and Enlightenment

Consumerism primarily refers to the movement aimed at lobbying government and relevant institutions to make policies for the regulation of products and services as well as ensuring compliance by the service providers, advertisers and manufacturers with best practices in favour of the consumer. It may also mean, the pressure from consumer organisations or advocacy groups to influence institutional, statutory, regulatory or professional changes for the wellbeing of the consumers. This can be achieved via self-regulation, consumer information, educational services, hence, section 151(1)(a) FCCPA 2018 allows consumer protection groups to carry out education activities, advice, and publications to the consumers with or without collaboration with the Federal Competition and Consumer Protection Commission, campaigns⁶³ permits consumer advocacy groups to engage in research, market monitoring, surveillance and reporting in the course of promoting consumer protection and consumers' rights. The Act gives approval to the role of consumer groups to promote consumers' rights and interests and these objectives can be achieved via workshop, symposia or seminars.⁶⁴ The concept of consumer protection dates back to biblical times where in Deuteronomy 22: 8, it is provided that: "when you build a new house, be sure to put a railing around the edge of the roof, then you will not be responsible if someone falls off and is killed." The need to safeguard the well-being of consumers has led to the enactment of special codes, rules, and procedures.

Ralph Nadar goes down in history as the pioneer of modern consumer protection advocacy in its institutionalised and globalised form when in 1965, he revealed in his publication "Unsafe at Any Speed: the

⁶²F. O. Ukwueze, 'Legal Remedies for Consumers of Telecommunications Services in Nigeria' [2011 - 2012] (10)*The Nigerian Juridical Review* 132

⁶³FCCPA 2018 s 151(1)(b)

⁶⁴ section 151(1)(c) FCCPA. See also section 151(1)(d) and (e) on legal representation by groups.

Designed-In Dangers of the American Automobile” the deadly flaws in automobiles. This move gave birth to myriads of legislation for the protection of consumers, buyers, and users in the United States of America. In several jurisdictions at regional, provincial, national and international levels activities of consumer advocates and groups geared at achieving the goal of consumer protection have received legal recognition in section 151 of the FCCPA.

At the international level, the United Nations General assembly in 1985 adopted Guidelines on Consumer Protection as contained in resolution 39/248 of April 9, 1985. The rights contained in the Guidelines include the right to safety, to choose, to be heard, to be informed, the right to a healthy environment, the right to redress, the right to consumer education and the right not to be exploited.⁶⁵ Unfortunately, these rights are merely guidelines and do not have the force of law. Consumerism as a movement has become a world phenomenon that defines the standards for the world community to adopt in ensuring promotion of consumer protection as provided in section 151(1)(f) of the FCCPA that enjoins consumer advocacy groups to participate in conferences and affiliate themselves with national and international associations concern with consumer protection matters. In Nigeria by the express provisions of section 151(2) of the FCCPA the Federal Competition and Consumer Protection Commission may on certain terms and conditions accredit consumer protection/advocacy groups that undertake to protect or represent consumer interests either generally or collectively in the country. Furthermore, this thesis as research work is an effort of consumerism understood in terms of advocacy in that it is as an aspect of contribution towards the ongoing efforts at consumer protection. To this extent, the status of the consumer in Nigeria is advanced.

6.2 Compensation to the Consumer

In the *locus classicus* of *Donoghue v Stevenson*,⁶⁶ Lord Atkin succinctly and brilliantly articulated thus:

The rule that you are to love your neighbour becomes in law you must not injure your neighbour; and the lawyer's question, who is my neighbour? Receives a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who,

⁶⁵Olumide K. Obayemi, 'Competition in the Nigerian Telecommunications Industry' [2014] (5) *Beijing Law Review* 283-297 <<http://www.scirp.org/journal/blr>>Accessed 29 November 2022

⁶⁶ (1932) AC 562

then, in law is my neighbour? The answer seems to be persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question.

Following this line of reasoning, the courts in Nigeria have applied the principle aforesaid in the case of *Osemobor v Niger Biscuits Co. Ltd*,⁶⁷ where the defendant company was held liable for failure to exercise reasonable care in the production of biscuit. In the instant case, the presence of a decayed tooth was found in a biscuit manufactured by the defendant company. Thus, it can be seen that applying the neighbourhood principle, every manufacturer, advertiser, seller or distributor must ensure that he observes reasonable care so that his message or information contained in his advertisement does not mislead the consumer thereby occasioning injury or damage to him. The real problem seems to be that going by the definition of “consumer” in the FCCPA, the ultimate user of the chattel or services, who could be an infant, a foetus, spouse, *etcetera*, may not find protection as a consumer by reason of the privity of contract principle introduced by the Act.

6.3 Inter-Agency Cooperation

The provision of section 151(1) of FCCA 2018 that encourages collaboration between the Commission and other agencies and consumer protection groups or forum is a welcome development. This accords with section 5 of the Standards Organization Act, 2015 that states viz:

Subject to the provisions of section 4 of this Act and any other law in that regards, the Organisation shall- (a) organize test and do everything necessary to ensure compliance with standards designated and approved by Council; (b) undertake investigation as necessary into quality of facilities, systems, services, materials and products whether imported or manufactured in Nigeria; (c) evaluate quality assurance activities including certification of systems, products and laboratories throughout Nigeria.

A cursory perusal of the foregoing section 5 of the Standards Organization of Nigeria Act 2015 and section 5 of NAFDAC Act, 2004 seems to reveal duplication of functions of the regulation of laboratories, products, instruments, materials, and services in Nigeria by the two administrative

⁶⁷[1973] NCLR 382

agencies of government.⁶⁸ This, certainly, cannot be a plus to the consumer.

7. Findings and Contribution to Knowledge

The paper reveals that there was a time Nigeria did not have a dedicated legal or institutional regime for the protection of the consumer, except perhaps, whatever could be gleaned from common law. The now repealed Consumer Council Protection Act 1992 was enacted as a means of providing the much canvassed institutional and legal architecture for protecting the consumer and regulation of consumer matters in the country. Furthermore, the work unravels that due to the seemingly inadequacies associated with the CPC Act 1992, there was a lot of public outcry and criticisms that forced the government to enact the FCCPA in 2018 as a replacement after about 26 years of the existence of the CPC Act 1992. More so, the FCCPA 2018 was x-rayed and found wanting, inadequate in some vital issues bothering on consumer protection. Chief among these is the restrictive definition of the consumer in the guise of introducing the privity of contract principle to the definition of consumer. In the same vein, the essay finds out that while there are areas where the FCCPA has significantly developed and improved on the subject of consumer protection, there are areas the consumer seems to have been moved from “frying pan to fire” and therefore calls for necessary legal, policy and reforms to improve the status of the consumer.

Flowing from the aforesaid, this study has contributed to knowledge by projecting the plight of the consumer despite the extant laws on the subject. The essay has equally contributed to knowledge by pointing out areas of the law that need improvement by way of enactment, amendments or overhauling. In this regard, the paper stimulates further research in this aspect of the law. Pinpointing the weaknesses of the extant institutional framework for better protection to all categories of consumers is another way the essay contributes to knowledge. More so, this work by proposing reforms of the law on consumer protection by holding undertaking, manufacturers or service providers accountable for liability for defective, substandard or adulterated product or poor-quality service contribute to knowledge in consumer protection law in Nigeria. In addition, the study contributes to knowledge by promoting consumer education, rights and privileges for Nigerian to attain international best

⁶⁸Aaron O Twerski, ‘Liability For Direct Advertising of Drugs To Consumers: An Idea Whose Time Has Not Come’ [2005] (33) *Hofstra Law Review* 1149

practices in consumer protection matters,⁶⁹ and extend the frontiers in answering the question, “who is a consumer” in Nigeria.

8. Conclusion

The FCCPA aims to promote fair competition in the Nigerian market and protect the rights of consumers. The implementation and impact of the FCCPA are ongoing, and its effectiveness in enhancing the status of Nigerian consumers can be evaluated based on several factors. The Act seeks to protect the rights of consumers, such as the rights to quality goods and services, to be informed, and to seek redress for unfair trade practices. The FCCPA aims to prevent anti-competitive practices in the Nigerian market, fostering fair competition amongst businesses; this is intended to prevent monopolistic behaviour that may potentially expose consumers to harm. While the FCCPA holds the potential to enhance the status of Nigerian consumers by promoting fair competition and providing mechanisms for redress, its actual impact, it appears, would be better assessed over time as its provisions are implemented and its effectiveness monitored. Collaborative efforts amongst regulatory bodies, businesses, and consumer advocacy groups are essential for realising the intended benefits of the Act and for enhanced protection for the consumer in Nigeria. As potent as the FCCPA may be, one major setback appears to be the restrictive definition of who is the consumer in the Act.

⁶⁹Etefia E. Ekanem and Akebong Samuel Essien, ‘A Critique of the Federal Competition and Consumer Protection Act 2018’ [2019] (1) (2) *IJOCLLEP*17