

## E- Commerce and Enforcement of Consumer Rights in Nigeria: Issues, Prospects and Challenges

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### ABSTRACT

*It is an indisputable fact that the internet has added to the quality of life in so many ways including commercial transactions. However, one of the issues that characterise commercial transaction is the unrepentant and continuous violation of consumer right. Consumer right is the amalgam of the right of consumer in relation to consumption of product with the ultimate aim of projecting utility that is commensurate with the value of goods and services. It also encapsulates the liability of defective products and various means of ensuring compliance by the producers. Economic market is characterised by a lot of foul plays ranging from fake meteorology system, defective and substandard products, and epileptic service delivery both in the private and public sectors. This is done mostly with the view to maximising profit at the expense of the consumers who are supposed to be king in the chain of production.*

*The objective of this paper is to examine the various issues, prospects and challenges facing e- commerce. Such issues include but not limited to data protection of e- consumers, formation of e- contract, multiple jurisdictions and unilateral model legal framework.*

*The paper concludes that strict liability approach should be adopted in dealing with erring producer and service providers to a large extent. A legislative review of obsolete laws and enactment of new ones, most especially in the area of e-commerce transaction, is recommended. Thus, improved standard of living, welfare and educating the general populace in the area of consumerism will naturally check the rate of consumer rights violations. The time is now for Governments at all levels to work towards the eradication of poverty.*

**Keywords:** *Consumer Rights, E- commerce, E- consumer, E- contract, Data Protection.*

### INTRODUCTION

In examining the concept of e- commerce in consumerism, one needs to examine the socio-economic issues that affect consumers in electronic transaction. As noted by Akomolede, the socio- economic issues that affect the consumers in electronic transaction include the extent to which the communication (negotiation) between the parties is protected (data protection), formation of contract on the internet, jurisdiction and choice of law where disputes arise between the parties, dispute settlement mechanism in electronic commerce, and taxation of e-commerce goods.<sup>1</sup>

Nigerian economy is saturated with a lot of fake products which make it practically impossible

for the consumer to differentiate between the good and defective products. This is usually experienced in foods and drugs sectors. The issue of defective product is also experienced with the buying and selling of fairly used products, mostly, common with electronics. Most of these electronics are defective goods from advanced countries. They are goods which are regarded as wastes but find their ways into Nigerian market. A consumer who does not have the knowledge of these products will think that the products are safe and sound but after a very short while, it will dawn on the consumer that they are defective products.

### THE SCOPE OF E-COMMERCE

The internet has now become one of the cheapest means of conducting commercial transactions. Buying and selling on the internet, otherwise called electronic commerce, is rapidly growing

<sup>1</sup>T.I. Akomolede, "Contemporary Legal Issues in Electronic Commerce in Nigeria" [2008] 3 *Potchefstroom Electronic Law Journal*, 1

around the globe.<sup>2</sup> Obviously, e-commerce advancement opens up opportunities for any country that is willing to take its advantage. However, e-consumers are at the disadvantaged position in e-commerce transaction compared with the conventional commercial transaction.

Hence, the need to come up with a legal framework for the protection of e-consumer against deceptive and unfair trade practices coming from the e-trader and cyber criminals.<sup>3</sup>

According to Concise Oxford English Dictionary, e-commerce means commercial transactions conducted electronically on the internet.<sup>4</sup> It is also defined as buying and selling of products or services electronically via the internet and other computer networks.<sup>5</sup> E-commerce means transactions that involve buying and selling of goods and services with the aid of the internet, however with particular emphasis on online shopping transaction.<sup>6</sup>

According to Afolayan, electronic commerce refers to the carrying out of business activities based upon the processing and transacting of digitised data, including text, sound, visual images which ultimately result to an exchange of value across telecommunication networks. It is commonly perceived as the buying and selling of products or services over electronic system such as the internet and other computer networks.<sup>7</sup>

United Kingdom Cabinet Office defines e-commerce as the exchange of information across electronic networks at any stage in the supply chain, whether within an organisation, between businesses and consumers or between

private and public sectors, whether paid or unpaid. The key distinguishing feature between e-commerce and other commercial transactions is the electronic element involved.<sup>8</sup> With the development of information technologies as alternatives to paper-based businesses, new types of contracts and goods were created, such as virtual goods, digital contracts, and online transactions.

The scope of e-commerce is wide and includes all electronically mediated transactions between an organisation and a third party. It is not restricted solely to the actual buying and selling of products, but includes pre sale and post sale activities. In more liberal term, once a contract of sale is effected between a seller and a buyer, using such electronic means as the electronic mail, regardless of distance or any geographical barrier, it is within the province of electronic commerce.<sup>9</sup>

Suffice to say that the benefits of e-commerce are many. With the emergence of e-commerce, people can now carry out business without the barriers of time or distance. Purchase can be made at every time of the day. Consumers can now do their shopping at home and in the comfort of their offices without getting to the store. He can browse through many products within minutes, compare price quickly and place orders for almost everything he wants.

In spite of the advantages highlighted above, there have been limitations on what one can buy online. There is the issue of inability to identify, view or touch the items to be purchased as well as vagueness of information about the product offered.<sup>10</sup> There is no guarantee of transaction security and privacy.<sup>11</sup> Anyone can easily start business on the internet. Many fake websites eat up consumers' money. These underscore the need for an adequate legal protection for e-consumers. Otherwise, the e-consumer will be cheated and be subjected to all sorts of unfair trade practices as obtainable in the ordinary commercial transactions.

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<sup>2</sup>Chemzche Omar & T. Anas, "E-commerce in Malaysia: Development, Implementation and Challenges" [2014] 3(1) *IRMBR Journal* 291.

<sup>3</sup>M. Nurudeen, "Legal Framework for E-commerce Transactions and Consumer Protection: A Comparative Study" [2016] *Research Gate*, 2.

<sup>4</sup>Judy Pearsall. *Concise Oxford English Dictionary* (10<sup>th</sup> edn, Oxford University Press. 2002) 453.

<sup>5</sup>K.G. Akintola, R.O Akinyede & C.O Agbonifo. "Appraising Nigeria Readiness for E-commerce towards Achieving Vision 20:20". [2011] 9 *International Journal of Research and Reviews in Applied Sciences*, 334.

<sup>6</sup>Nurudeen, *Op.cit* 4

<sup>7</sup>Afolayan, M.S. *Legal Analysis of Evidential, Jurisdictional and Taxation Issues in Electronic Commercial Transactions in Nigeria*. (Ph.D Unpublished Thesis, 2019)

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<sup>8</sup>United Kingdom Cabinet Office, 1999

<sup>9</sup>Akomolede, *Op.cit*

<sup>10</sup>M. Nurudeen, "Legal Issues in Electronic Commerce: Challenges and Prospect for Nigeria" [2013] 3 *Abuja Journal of Private and Comparative Law*, 168

<sup>11</sup>B.O. Jemilohun & T. I. Akomolede, *Regulations or Legislation for Data Protection in Nigeria? A Call for a Clear Legislative Framework*. [2015] 3(4) *Global Journal of Politics and Law Research*, 10.

### CLASSIFICATION OF E-COMMERCE

There are three kinds of e-commerce business models, namely:

- Brick and Mortar: these are companies that have presence only in the physical world and are without a commercial internet presence (virtually every major company of the world now has website). These companies usually use their websites for passive promotional purposes rather than to engage in online commercial activities.
- Bricks and Clicks: these are bricks and mortar companies that combine a physical offline presence with online presence. Examples are Wal-Mart Store, Barnes and Noble who sell from both their physical stores and their websites.
- Pure Play or Dot-Coms: these companies operate exclusively online without any physical presence. They include: Amazon.com, Uber.com, Monster.com etc.

Categories of e-commerce market are:

- Business to Consumer (B2C): they are involved with individual consumers in retail or service settings.
- Business to Business (B2B): it provides goods or services to other business.
- Consumer to Consumer (C2C): this facilitates transaction between individual consumers.

### FORMATION OF CONTRACT IN E-COMMERCE TRANSACTION

E- contracts are completed and signed online and can take many forms. For instance, an email conversation with clear offer and acceptance can be considered as a binding contract.<sup>12</sup> It can also be in form of click to agree contract by clicking “I Agree button” on a page containing the terms of the software license before the transaction can be completed. E- contract is also defined as a contract modelled, executed and enacted by a software system. It can be mapped into inter-related programs, which must be specified carefully to satisfy the contract requirements.<sup>13</sup>

E-contract can be categorised into two, namely: web-wrap agreements and shrink-wrap agreements.

Web-wrap agreements are web based agreements which require assent of the party by way of clicking the “I agree” or “I confirm” button which means accepting the terms and conditions stipulated by the offer

On the other hand, Shrink- wrap agreements are those which are accepted by a user when software is installed from Compact Disc- Read Only Memory (CD- ROM), for example Microsoft Office software.<sup>14</sup>

Formation of e- contract seems to be different from our conventional contract, though they both share the same elements (such as e-offer, e-acceptance etc) but different principles. Akomolede noted that:

*there are very elaborate common law and statutory rules that governs traditional commercial transactions. However, because of the peculiarity of internet contracts, such rules are largely inapplicable to them. The difference is that it is difficult to differentiate offer from invitation to treat. It is often difficult to determine whether or not the advertisement of goods or services on the seller's website constitutes a direct offer to prospective buyers or an invitation to them to make an offer.*<sup>15</sup>

The solution to this puzzle is not readily available, as the common law rules and well known case law authorities on this issue may not be applicable to such electronic transactions as both display and actual sale are often fused together in such transactions.<sup>16</sup> Gringas framed the difference from the angle of acceptance and formation of e- contract when he argued that the determination of the exact time that a contract is formed on the internet remains unsettled.<sup>17</sup>

### DATA PROTECTION IN E- COMMERCE TRANSACTION

E-commerce involves transmission of data from the retailer to the consumers and vice versa. It may be in form of exchange of electronic mails through a mail provider or transmission of data through website. Some of these data are personal, private and sensitive. In view of the openness and accessibility of the internet, the protection

<sup>12</sup>Legal Issues in Electronic Contract. <http://www.savvysme.com.au/article/1910-legal-issues-in-electronic-contracts>. Accessed 13 July, 2019.

<sup>13</sup><http://legalserviceindia.com/article/1350-E-contracts-&-issues-involved-in-its-formation.html> accessed 13 July 2019

<sup>14</sup>*Ibid*

<sup>15</sup>Akomolede *Op.cit*

<sup>16</sup>*Harvela Investment Ltd v Royal Trust Company of Canada Ltd* (1986) A. C. 207.

<sup>17</sup>C. Gringas, & N. Nabarro, *The Laws of the Internet* (Butterworths 1997) 34

of such data has been a constant source of concern for internet users and, consequently, has remained a threat to e-commerce in Nigeria.<sup>18</sup>

Nigerian consumers who want to transact business via the internet will want their privacies regarding data protected, but this is not so. This is because any information fed into the internet could be accessed anywhere in the world by other persons using the internet.<sup>19</sup> Majority of Nigerians do not release their personal information, especially, when related to their finances and this is because of lack of internet privacy, technology, and legal structure to ensure data protection.<sup>20</sup>

This accounts for the reason why banks usually caution their customers not to divulge their Automated Teller Machine (ATM) Personal Information Number (PIN) to any person, including the bank officials. Perhaps, that is why many consumers nowadays source for information online but make purchase the traditional way of payment upon delivery.<sup>21</sup>

Section 37 of the Constitution provides for right to privacy as one of the fundamental rights. It states that:

*The privacy of citizens, their homes, correspondence, telephone conversation and telegraphic communication is hereby guaranteed and protected*<sup>22</sup>

However, it has been argued that Nigeria has neither enacted any specific data protection law nor adopted any functional self regulatory system of data protection.<sup>23</sup>

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<sup>18</sup>Akomolede, *Op.cit*

<sup>19</sup>M. Nurudeen, "Electronic Commerce Transaction in Nigeria: A Critical Legal literature Review" [2017] *The European Proceedings of Social and Behavioural Sciences*. <https://dx.doi.org/10.15405/epsbs2018.12.03.88> accessed 19 July 2019

<sup>20</sup>Deborah Enadeghe, *Comparative Analysis of the Applicable Legal Protection for Purchasers on the Internet in Europe and USA- Lessons for Nigeria* (LLM Thesis, Central European University, Budapest, Hungary 2013)

<sup>21</sup>E. G. Okoro and P. E. Kigbo, "The Problems and Prospects of E-transaction (The Nigerian Perspective)" [2103] 3(1) *Journal of Research in International Business Management*, 13.

<sup>22</sup>Constitution of the Federal Republic of Nigeria (as amended) 1999

<sup>23</sup>A. Tiwalade, D. Ray, and B. Firat, "Privacy and Data Protection in E-commerce: The Effectiveness of

## JURISDICTION AND CHOICE OF LAW IN E-COMMERCE TRANSACTION

Jurisdiction is the foundation and a cardinal principle in every litigation and other legal issues, e-commerce inclusive. According to Akomolede, the question has always been which court assumes jurisdiction in resolving a dispute arising from a contract between the parties in view of the fact that the parties may be residing in different jurisdictions with different legal systems.<sup>24</sup>

The complexity involved in the choice of applicable law has been described as follows:

*The question of choice of law... is particularly difficult in the case of international computer networks where, because of dispersed location and rapid movement of data and geographically dispersed processing activities, several connecting factors could occur in a computer manner involving element of legal novelty.*<sup>25</sup>

The problem is more aggravated because it is possible for parties transacting through the internet to come from different parts of the world with different legal systems. It is important to emphasise that freedom of contract is an established principle in the Law of Obligations and parties to an internet contract can therefore agree on the terms and conditions of the contract including the choice of laws to govern the transactions.<sup>26</sup> Whether parties will aver their minds to same while concluding their transaction is another problem.

### United Nations Commission on International Trade Law Model on E-Commerce, 1996

The United Nations Commission on International Trade Law (UNCITRAL) was established by the United Nations in 1996 to harmonise the laws of international trade. It is the core legal body of the United Nations system that creates accessible, predictable and unified commercial laws. The Commission is composed of 36

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a Government Regulation Approach in a Developing Nations: Using Nigeria as a Case Study" *International Conference for Internet and Secured Transactions (ICITST)* 8<sup>th</sup>-10<sup>th</sup> December, 2014 ; Jemilohun and Akomolede *Op.cit* 10

<sup>24</sup>Akomolede, *Op.cit*

<sup>25</sup>OECD Explanatory Memorandum and Guidelines on the Protection of Privacy and Trans-border Flow of Personal Data, 1980.

<sup>26</sup>*African Petroleum v Owodunni* (1991) 8 NWLR (Pt 210) 351 per Nnaemeka-Agu JSC (as he then was)

Member-States and has its secretariat in Vienna.<sup>27</sup> One of the Model Laws made by the Commission is the Model Law on E-commerce with a set of internationally accepted rules aimed at removing legal obstacles and increasing certainty in electronic commerce. Also, the Model Law aimed at ensuring that the practice of Member-States in the area of e-commerce, as an emerging practice in commercial transactions, is uniform and of acceptable standard.<sup>28</sup> As at 2019, 63 countries have adopted the Model Law<sup>29</sup> but at the time of writing this paper, the Model Law has not been domesticated in Nigeria.

UNCITRAL Model Law is the pioneer legislation on e-commerce. The model law was adopted by the United Nations in 1996 so as to serve as pioneer e-commerce legislation for countries to copy and enact in their respective domains.<sup>30</sup> The cardinal aim of the Model Law is to eliminate barriers as well as obstacles coming in the way of electronic documents, especially with regard to their enforceability before courts of law.<sup>31</sup>

The key principle underlying the Model Law is the concept of “electronic equivalence” found in Article 5 of the Model Law. Although, the Model Law does not deem electronic communications valid, it provides that information or documents will not be denied legal effect or enforceability solely because they are in electronic format.<sup>32</sup>

Other instruments adopted by the UNCITRAL include the 2001 Model Law on Electronic Signatures with a view to facilitating the use of electronic signatures, and the 2005 United Nations Convention on the Use of Electronic Communications in International Contracts that ensures that contracts concluded and other communications exchanged electronically are as

valid and enforceable as their traditional paper based equivalents.<sup>33</sup>

### LIABILITIES FOR DEFECTIVE PRODUCTS UNDER NIGERIAN LAW

#### Tort based Liability

A person seeking to enforce his consumer right in Nigeria under the purview of the Law of Tort can successfully do so by proving negligence. Negligence appears suitable when it comes to enforcing one’s right as far as consumerism is concerned.

#### Negligence

As it stands today, consumers may seek redress where their rights are violated by proving the tort of negligence. In *Blyth v Birmingham Waterworks Co*,<sup>34</sup> Alderson B defined the term negligence as the omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. The Supreme Court of Nigeria in *Diamond Bank Ltd v P.I.C Ltd*<sup>35</sup> defined negligence as the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation. The court held further that it is any conduct that falls below the legal standard established to protect others against unreasonable risk or harm.

For a plaintiff to succeed in an action for negligence, these three elements must be proved:

#### Duty of Care

This implies that there must be a duty of care owed the plaintiff by the defendant. It is on this basis that negligence can be established. As opined by scholars<sup>36</sup>, the duty of care owed the injured party is the crux and the principal ingredient of the tort of negligence and whether same existed is a matter of law.<sup>37</sup> The question

<sup>27</sup>Michael Geist, “A Guide to Global Ecommerce Law”. <https://www.uncitral.org/> accessed 20 July, 2019

<sup>28</sup>Akomolede, *Op.cit*

<sup>29</sup>Ladan, *Op.cit*

<sup>30</sup>T. I. Akomolede, “Contemporary Legal issues in Electronic Commerce in Nigeria” [2008]3(11) *Potchefstroom Electronic Law Journal*, 16.

<sup>31</sup>M. T. Ladan, “Recent Trend in Legal Response and Judicial Attitude towards Electronically Generated Evidence in Nigeria” [2014] 47(1). *The World Jurist Association Law/Technology*, 54.

<sup>32</sup>Geist. *Op.cit*

<sup>33</sup>Afolayan, *Op.cit*.

<sup>34</sup>(1856)11 Exc781

<sup>35</sup>(2009) 18 NWLR Pt 1172 P.67

<sup>36</sup>W.V.H. Rogers, Winifield & Jolowicz on Tort, (14<sup>th</sup> edn, Sweet & Maxwell, 1994) 78; A. Omotesho. The Law of Tort in Nigeria. (Selected Theme) Malthouse Press; O. Aluko & G. Kodilinye. The Nigeria Law of Torts. Spectrums Books.

<sup>37</sup>*Black v. Fife Coal Co. Ltd* (1912) AC. 149, per Lord Kinnear; *Lethang v. Cooper* (1965) 1 Q.B. 232, 241, per Lord Denning M.R

being raised as regards the duty of care is that how will I know I owe another person a duty of care? It is incontestable to state that where there is a fiduciary relationship between two persons such as trustee relationship, father and son relationship, the law will be ready to construe a duty of care.

The law has extended the scope of duty of care beyond fiduciary relationship alone. This was done in *Donogue v Steveson*<sup>38</sup> where Lord Atkinson propounded the “neighbourhood principle”. The facts of that case were that the plaintiff alleged that she and her friend entered a café in Paisley and her friend bought a bottle of ginger beer for her. The dark green colour of the bottle made it impossible to see the contents in it. As plaintiff poured more of the contents of the drinks into her glass, she noticed the remains of a decomposed snail. This, she alleged, caused her shock and severe gastro- enteritis.

The doctrine of privity of contract prevented the plaintiff from bringing forth a claim against the defendants that was founded upon breach of warranty. Nevertheless, the House of Lords in giving judgment in favour of the plaintiff, formally established a new cause of action in the law of torts, held for the plaintiff. Lord Atkin held that the neighbourhood principle places a duty on the manufacturer to take reasonable care that articles or goods made by him are free from defects likely to cause injury to health. He further defined a neighbour as anyone who can be directly affected by the act of another. This gives avenue for a circumstance in which a person could owe a duty of care to another even though there existed no contractual relationship between them.

### **Breach**

Such duty of care must have been breached by the defendant either by omission or commission.<sup>39</sup>

### **Damages**

Not only will the breach of the duty of care owed the plaintiff be breached by the defendant, for the breach to constitute negligence, damages must result from the breach and these damages must leave no room as to whether it is caused by any other factor, the damages must flow from

the breach of the duty of care owed the plaintiff.<sup>40</sup>

It is trite that for an action in negligence to succeed, there must be some sort of damages suffered by the plaintiff for which the defendant is liable in law. The test often implored in this regard is the “but for test” which connotes that the damages is one which could not have occurred but for the negligence of the defendant.<sup>41</sup>

The above test is illustrated in *Barnett v Chelsea and Kensington Hospital Management Committee*.<sup>42</sup> In the case, the plaintiff’s husband experienced vomiting for over three hours after consuming tea. He was taken to the defendant’s hospital where a nurse informed the officer on duty of his symptoms. He was instructed to go home and consult his doctor. The plaintiff’s husband died some hours later. In an action for negligence against the hospital authority who was vicariously liable for the act of the officer on duty, the court held that in failing to examine the deceased, the doctor breached a duty of care owed. However, the breach was not the cause of the death as the deceased would have died in any case.

Also, the damage suffered must not be too remote.<sup>43</sup> It will be too remote where no reasonable man could have foreseen the damage as a result of breach of the duty of care.

### **Judicial Approach to Tort of Negligence**

The standard of proof in civil matters is based on preponderance of evidence.<sup>44</sup> A claimant who wants to succeed in an action in negligence must prove the three ingredients of the tort of negligence enunciated above.

In plethora of cases, the court has followed the ratio in *Donogue v Steveson*.<sup>45</sup> In *Osemobo v Niger Biscuit Company Limited*<sup>46</sup>, the plaintiff

<sup>38</sup>(1932) AC 562

<sup>39</sup>Okeowo v Sanyaolu (1986) 2NWLR (Pt. 23) 471.

<sup>40</sup>Abubakar v Joseph (2008) All FWLR (Pt 432) 1065 @ 1093.

<sup>41</sup>*Donogue v. Steveson (supra)* Per Lord Macmillan. (1968) 1 All E.R 1068.

<sup>42</sup>*Oversea Tankship (U.K) Ltd v Morts Dock & Engineering Co. Ltd* (The Wagon Mound Case No.1) (1961) AC 388.

<sup>43</sup>Section 134, Evidence Act., Cap E14, 2011. See also *Ilukwe v. Okeke* (2007) All FWLR (Pt. 900) 537 @ 577.

<sup>44</sup>*Op. cit.*

<sup>45</sup>(1973) 7 CCHCJ 71; NCLR 382.

bought a packet of biscuit at a supermarket and upon consuming it, she felt something hard in the biscuit. It was a decayed tooth. Subsequently, she fell ill and had to receive a medical attention. She instituted an action against the manufacturer and the court held the manufacturer liable.

In *Constance Ngonadi v Nigerian Bottling Company Limited*,<sup>47</sup> the plaintiff sustained an injury following the explosion of an evercold (*sic*) kerosene refrigerator sold to her by the Defendant. Judgment was given in favour of the plaintiff. The court held further that a consumer who had suffered injury can sue either the manufacturer or the distributor of the product. This shows that, apart from the manufacturer, other persons involved in the chain of distribution of the products can be held liable. This seems to be in tandem with the provision of Sale of Goods Act which imposes on the seller the duty to ensure that goods sold by him are of merchantable quality.<sup>48</sup>

The court, however, contradicted itself on the principle stated above in *Okwejiminor v Gbakeji and Nigerian Bottling Company Plc*,<sup>49</sup> where the plaintiff drank a bottle of *Fanta* purchased from the 1<sup>st</sup> Defendant. Plaintiff alleged that he found a dead cockroach inside the drink. Subsequent upon this, plaintiff suffered stomach pain and was admitted to the hospital where he was diagnosed of food poisoning. On appeal, the Supreme Court held that the act of the Respondents constituted negligence but raised concern about the liability of the 1<sup>st</sup> Respondent (Gbakeji). The Court, per Muhammed JSC, held that it would amount to a miscarriage of justice to hold the 1st Respondent liable for the damage caused. The position of the court in this regard seems to have compounded the burden of the consumer as it may be possible for the manufacturer of the products not to be within the jurisdiction of the court. As described by Obumnene Okafor, this is capable of making the consumers bear the cost of accidents caused without fault on his part because he cannot sufficiently prove the fault of another.<sup>50</sup>

<sup>47</sup>(1985) 1 NWLR (Pt 4) P. 739

<sup>48</sup>SOGA Section 14(2)

<sup>49</sup>(2008)5 NWLR (Pt. 1079) P.172. SC.

<sup>50</sup>N.J. Obumnene- Okafor, "The Defence of Fool Proof Production Process in Product Liability Cases". <http://www.globalacademicgroup.com/journals/multi-disciplinary%20journal%20of%20research%20de>. Accessed 28 February, 2019.

One will think that the appropriate reasoning of the court would be to hold such retailer liable in the absence of the manufacturer joined as a party and the retailer may decide to initiate third party proceeding or fresh action where he can recover the damages from the manufacturer. This, in our humble opinion, will better serve the interest of justice.

Also, there are cases in Nigeria where the courts have refused the claim of the plaintiff based on the proof of negligence alone. The approach adopted by courts now is that where a manufacturer can prove that there is no likelihood of such breach of duty of care to occur considering the method adopted in manufacturing its product, the court will refuse the claim of the plaintiff even it is *res ipsa loquitur*. This line of defence is called "fool- proof system".

In *Alphonsus Okonkwo v Guinness Nigeria Limited & Obinna & Sons Ltd*,<sup>51</sup> the plaintiff had drinks with one Mr Ajayi in a hotel owned by the 2<sup>nd</sup> Defendant. In the course of taking the drink, plaintiff complained of pains in his abdomen and started vomiting. It was alleged that particles which looked like bark or roots of trees were found in the bottle. Plaintiff was subsequently diagnosed for food poisoning.

During the proceeding, the 1<sup>st</sup> defendant's Manager stated as follows:

*there are four main ingredients in brewing Stout namely: malt, hops, yeast, and water. At every stage of the process of brewing, we have a laboratory control to ensure conformity with specifications. The four ingredients mentioned above are not bark of trees, not roots and not leaves. The final product -Stout- is tested before bottling to ensure that it is good product. The bottles themselves are subjected to strict scrutiny before use... By the process we adopt, it is not possible that any bottle with sediment or particle can be used to bottled the Stout product... The final product- Stout- does not contain bark or trees, root or leaves and there is no way which they can get into the bottle during all the process of brewing up to the bottles being put into the cartons*<sup>52</sup>.

The evidence tendered above was accepted by the court and the doctrine of *res ipsa loquitur* was discountenanced with and as such, the plaintiff's action failed. The court held further

<sup>51</sup>(1980) 1 PLR 581

<sup>52</sup>*Ibid.*

that the defendant's precautionary measure was fool-proof and left no room for roots, leaves or bark of trees to be bottled with their Stout. The court held further that the principle in Donogue's case did not create a magic for the recovery of damages against manufacturers of drinks by ultimate consumers of the drinks. Plaintiff in a case of this nature should realize that unless he has obtained admission of certain facts from those he sues, the burden which he has assumed of establishing his case is enormous as there is no presumption that exists in favour of such plaintiff.

### Contract based Liability

Generally, the remedies against defective producers under the law of contract are damages, specific performance, restitution, rescission and reinstatement.<sup>53</sup> Damages is a common law remedy available where a party has breached the term of contract. It is defined as a monetary award to compensate and put the aggrieved consumer in the position he would have been, but for the wrong committed against him.<sup>54</sup>

However, damages as a remedy cannot adequately compensate for the loss occasioned in some cases. The consumer may prefer to have the goods as against having damages awarded in his favour against a producer who has breached the term of sale agreement.<sup>55</sup> This is the rationale for specific performance.

The Sale of Goods Act also makes provision for remedies against a defective producer. The basis of the Sale of Goods Act is the contract between the buyer and the seller. The relationship between the buyer and the seller is regulated by terms (covenants) either impliedly or expressly as contained in the Sale of Goods Act.<sup>56</sup> Of the implied term is that the goods which the buyer is buying from the seller is fit for the purpose<sup>57</sup> and that the goods are of merchantable quality.<sup>58</sup> The civil liability of a producer of defective

products under the law of contract can be explained under these two implied terms stated above.

### GOODS ACQUIRED FOR A PARTICULAR PURPOSE

One can reasonably conclude that goods that do not fit for the purpose for which the buyer buys them are also a defective product. Section 14(1) of Sale of Goods Act aims at protecting buyers where he informs the seller the purposes for which the goods acquired are meant for. The section provides that:

*Where the buyer, expressly or by implication makes known to the seller, the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which is in the course of the seller's business to supply (whether he be manufacturer or not), there is an implied condition that the goods shall be reasonably fit for that purpose, provided that in the case of a contract for the sale of specific article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose.*<sup>59</sup>

Before a buyer can rely on this section of the law, there are three elements that must be proven namely:

- Buyer must have made known to the seller expressly or by implication the particular purpose for which the goods are required. The term particular purpose refers to the specified purpose rather than a special or usual purpose. In *Priest v Last*, the court per Collins M. R. noted that:

*Where the description of the goods by which they are sold, points to one particular purpose only, it seems to me that the first requirement of the sub section is satisfied, namely, that the particular purpose for which the goods are required should be made known to the seller. The fact that by the very term of the sale itself, the article sold purports to be for use for a particular purpose cannot possibly exclude the case from the rule that, where goods are sold for a particular purpose, there is an implied warranties that they are reasonably fit for that purpose.*<sup>60</sup>

- The buyer must show that he relies on the seller's skill or judgment or his agent. In

<sup>53</sup>I.E.Sagay, *The Nigerian Law of Contract*. (Spectrum Publishers. 1999) 618.

<sup>54</sup>B. Kanyip, "Consumer Remedies" [1998] 2(2) *Modern Practice Journal of Finance and Investment Law* 8.

<sup>55</sup>T. I. Akomolede Consuming the Consumers: The Paradox of Law and Regulations in Nigeria. Being an inaugural lecture delivered on the 12<sup>th</sup> day of July, 2019.

<sup>56</sup>Sales of Goods Act, 1893.

<sup>57</sup>Sales of Goods Act s14(1)

<sup>58</sup>*Ibid.* s14(2).

<sup>59</sup>*Ibid.*

<sup>60</sup>(1903) 2.K.B 148.

*Ijomo v. Mid Motors Nigeria Co. Ltd*, Dosunmu J pointed out that

*It is enough to show that the defendants deal in particular type of vehicle bought by the plaintiff. What has to be established is the fact that the buyer expressly or by implication made known to the seller the particular purpose for which the goods are required so as to show that he relies on his skill or judgment that it was reasonably fit for the purpose and that reliance made him buy it.*<sup>61</sup>

- The goods in question must be of a description, which it is in the ordinary course of the seller's business to supply. Once the buyer can successfully prove the above, then it will be construed that the seller has breached the condition which entitles the buyer (who is also the consumer) to some entitlements.

### Merchantable Quality

Section 14(2) of the Sales of Goods Act provides that in a contract of sale of goods, there is no implied warranty or condition that the goods supplied under the contract must be of merchantable quality except as provided under the sub section. This means that the Act incorporated the doctrine of *caveat emptor* but with some qualifications. The section provides that:

*Where goods are brought by description from a seller who deals in goods of that description (whether he be the manufacturer or not), there is an implied condition that the goods shall be of merchantable quality; provided that if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.*<sup>62</sup>

This section does not avail a consumer who has the opportunity of examining the products and ought to discover the defect through his examination.

### Implication of Breach

Section 62(1) of the Act provides that:

*An agreement with reference to goods which are subject of a contract of sale, but collateral to the main purpose of such contract, the breach of which gives rise to a claim for damages but not a right to reject the goods and treat the contract*

<sup>61</sup>CCHJ/9/74. P. 1325.

<sup>62</sup>s14(2)

*as repudiated depends in each case on the construction of the contract...*<sup>63</sup>

In *Cehave N.Y v Bremer Handel Gesellschaft m.b.h.*,<sup>64</sup> the court held that a contract of sale of goods could be classified as:

- Condition in which case any breach would justify repudiation.
- warranty in which case a breach could not possibly justify repudiation but damages only; and
- Intermediate term in which case the remedy for any breach would depend upon the nature of breach rather than the status of the term.

From the above provision, it is crystal clear that where the seller breaches a term of the contract which is regarded as breach of condition, then, the legal implication is that the buyer has every right to treat the contract repudiated and claim the purchase price where same has been paid. The Act expressly provides that a breach of the term contained under section 14(1) and (2) discussed above is a breach of condition. These terms relate to the quality of the goods whether same is defective or not. Where it is breached, it is to the fact that the goods sold are defective and the liability that follows is that the buyer can repudiate the contract.

### STATUTE BASED LIABILITY

The liability of defective producers under the various statutes regulating consumer rights can be examined from both the civil and criminal angles.

### Seizure and Forfeiture

Producer of defective products is liable to seizure and forfeiture of such goods. The various agencies saddled with the responsibility of consumer protection are empowered to seize, detain and or ban such goods from the market. The National Agency for Foods and Drugs Administration and Control (NAFDAC)<sup>65</sup> is empowered to do the following:

- Enter (if need be by force) any premises in which he reasonably believes that any article to which this Act or the regulations apply is

<sup>63</sup>*Ibid.*

<sup>64</sup>(1975) 3W.L.R. 447

<sup>65</sup>The Agency is established by Section 2 of National Agency for Food and Drugs Administration and Control Act, Cap N, LFN 2004.

manufactured, prepared, preserved, packaged, stored or sold.

- Examine any article in the premises which appears to her to be an article to which this Act or the regulations apply or anything in the premises which she reasonably believes is used or is capable of being used for the manufacture, preparation, preservation, packaging, storage or sale of any such article.<sup>66</sup>
- Of importance to this paper are paragraphs e and f of the above section which provide that the agency has the power to:
- examine any book, document or other record found on the premises which she reasonably believes may contain any information relevant to the enforcement of this Act or regulations and makes copies thereof or extract there from; and
- Seize and detain for such time as may be necessary for the purpose of this Act, any article by means of in relation to which he reasonably believes any provision of this Act or regulation has been contravened.<sup>67</sup>

From the above provisions, it is clear that the Agency has the power to detain such goods that contravene the regulations of the Agency. Thus, a producer of defective product or products (though not defective) that have not been certified by the Agency can incur liability of seizure.

In most cases, defective goods detained by the Agency are usually destroyed. It is plausible to say that such producers or manufacturers of defective goods may incur forfeiture of the goods and such producer cannot maintain a law suit against the Agency in any manner. It is worthy of mention that apart from the civil liability provided for in the Act, section 25 of the Act makes it an offence to obstruct officials of the Agency in the discharge of their duty. It is also an offence to contravene the provisions of any regulations made under the Act.<sup>68</sup> Such person will be guilty of an offence and liable on conviction to the penalties specified in the regulations.

As part of the power of the Consumer Protection Council, is the power to prohibit and ban goods of defective nature. Subject to section 3 of the Act, the Council shall have power to do the following:

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<sup>66</sup>*Ibid* s25

<sup>67</sup>*Ibid*

<sup>68</sup>*Ibid*.

- apply to court to prevent the circulation of any product which constitutes an imminent public hazard;
- compel a manufacturer to certify that all safety standards are met in their products;
- cause as it deems necessary, quality tests to be conducted on a consumer product;
- demand production of label showing date and place of manufacture of a commodity as well as certification of compliance;
- compel a manufacturer, dealer and service company where appropriate, to give public notice of any health hazards inherent in their products; and
- Ban the sale, distribution, advertisement of products which do not comply with safety or health regulations.<sup>69</sup>

From the above, it is clear that a producer of defective products is liable to incur ban of his products from market by the Council.

### Criminal Liability

The various statutes enacted to protect consumer from defective products make provision for criminal liability. The National Agency for Foods and Drugs Administration and Control (NAFDAC) Act provides that any person who contravenes the provisions of any regulations made under this Act is guilty of an offence and liable on conviction to the penalties specified in the regulations<sup>70</sup> and where no penalty is specified, the person shall be liable to a fine of N50,000 or imprisonment for a term of one year or to both such fine and imprisonment.<sup>71</sup>

The Standard Organisation of Nigeria Act provides for punishment for any person who fraudulently misrepresents to consumers to believe that the standard of the goods he is buying is Nigeria Industrial Standard or who uses the certification mark resembling that of Nigeria Industrial Standard. Such a person is liable on conviction to a fine not less than ₦1,000,000.00 or to imprisonment to a term not exceeding 2 years or both.<sup>72</sup> Failure of manufacturer or producer to comply with mandatory industrial standard is liable to a fine of not less than 20% of the value of the product or N2,000,000 (whichever is higher) or to

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<sup>69</sup>*Ibid* s3

<sup>70</sup>s25 (2)

<sup>71</sup> *Ibid* s25(3)

<sup>72</sup>Standard Organisation of Nigeria Act, 2015. s26(1).

imprisonment to a term of 3 years or both. Where the offence is committed by a seller, to a fine of not less than 15% of the value of the product or N1,000,000.00 (whichever is higher) or imprisonment for a term not less than 2 years or to both.<sup>73</sup>

The Weight and Measure Act, 2004 stipulates the units, means, and modes of weighing and measuring items used for trade in terms of weight, length, capacity, volume, and area with a view to ensuring compliance with Nigerian trade standard.<sup>74</sup> The Act makes it an offence to sell, offer or expose to consumers, any loaf of bread that is less than 225 grammes in its net weight. Such offender is liable to a fine of N500 or imprisonment for one year.<sup>75</sup> The Food and Drugs Act also makes it an offence to manufacture, prepare, preserve, package or store for the purpose of selling any food, drugs, or cosmetics without registration in accordance with the provision of the Act.<sup>76</sup> The offence is punishable with a fine of N50,000 or to an imprisonment for a term not exceeding two years or to both fine and imprisonment; in case of a corporate body, to a fine of N100,000.<sup>77</sup>

The prosecution of the defendant is instituted either through the Police or through the regulatory agencies established by the provision of the law.

### E-COMMERCE AND CONSUMER PROTECTION IN NIGERIA

Nigeria is not left behind in terms of Information Communication Technology development and e-commerce. Nigeria has recorded over US\$ 2 million worth of internet transactions per week and close to US\$ 1.3 billion monthly with an estimated growth rate of 25% annually.<sup>78</sup> However, general studies conducted on e-commerce in Nigeria supported the assertion

that Nigeria legal system lags behind in ICT based legislation.<sup>79</sup> The existing statutory laws are quite inadequate to address the pressing legal issues affecting e-commerce and e-consumer in the country.<sup>80</sup> These issues include data protection, electronic evidence, cybercrime, trans-border issues, e-payment system, e-signature *etc.*<sup>81</sup> In fact, Nigeria is yet to domesticate any of the international legal instruments on e-commerce, particularly, the UNCITRAL Model Law of 1996.<sup>82</sup>

Electronic commerce is still at a developing stage in most developing nations, Nigeria inclusive. There is no elaborate legal and regulatory framework for electronic commerce in Nigeria. There are, however, pockets of commercial legislation and decided cases that directly or indirectly affect electronic commerce in Nigeria. Efforts at regulating e-commerce related activities are still at the stage of a Draft Bill before the National Assembly. This Bill is known as the Electronic Transaction Bill, 2017 which is modelled on the UNCITRAL Model Law on e-commerce. The Bill provides for the validity of contracts, matters of evidence, electronic signatures and payment system, amongst other issues.

In a similar vein, the Sale of Goods Act, 1893 is rather too old and obsolete to cater for modern day commercial transaction such as e-commerce. It is rather unfortunate that the Federal Consumer and Competition Protection Act, 2018 blatantly disregarded the concept of e-commerce as there is no provision in the new law for online commercial transactions.

According to the Organisation of Economic Co-operation and Development (OECD) Guidelines for Consumer Protection in the Context of E-commerce, 1999, consumer statutes and

<sup>73</sup>*Ibid* s26(2)

<sup>74</sup>Cap W3, Laws of Federation of Nigeria 2004.

<sup>75</sup>*Ibid.* s27. According to the Act, bread is defined to mean bread in any form other than bread, crumbs and include the following and any part of any of the following, that is to say, fancy loaves and milk loaves.

<sup>76</sup>Food and Drugs Act, Cap F33, LFN 2004.

<sup>77</sup>*Ibid* s6.

<sup>78</sup>Adepetun Caxtoon- Martins, "Development of E-commerce in Nigeria: The Impact of the Supreme Court Decision in Kubor v Dickson (2014)4 NWLR (1345) 534- 594" [2015] ACAS- LAW, 1.

<sup>79</sup>Jonah Nwokpoku. Nigeria Needs Legislation on E-commerce. Vanguard Newspaper, December 1, 2014; G. Bamodu,, Information Communication Technology and E commerce: Challenges and Opportunities for the Nigerian Legal System and Judiciary. [2004] 2 *JILT*, 2 ; Akomolede *Op.cit*

<sup>80</sup>Nwokpoku *Op.cit*.

<sup>81</sup>Akomolede, *Op.cit*

<sup>82</sup>M. Nurudeen, "Analysis of the Legal Framework for the Operations of E-commerce: A Nigerian Perspective" [2014]6&7 *Ahmadu Bello University Zaria Journal of Private and Comparative Law (JPCL)*; 256.

government policies and practices are expected to minimise fraudulent, deceptive and unfair commercial conducts.<sup>83</sup> Such protections are necessary because they boost confidence of consumers and create a more balanced relationship among actors of commercial transactions.<sup>84</sup>

In a bid to promote e-consumers, legislative intervention in respect of cybercrime is needed. This is necessary in order to protect consumers and ensure a more friendly and protected cyberspace. This is because cybercrimes pose a lot of challenge to e-commerce and have, indeed, made internet transaction unsecure and vulnerable to series of manipulations by persons who are not parties to such transactions.<sup>85</sup> However, the Cybercrimes (Prevention, Prohibition, etc) Act, 2015 was promulgated to curb this challenge. The Act brings to life a legal framework for the prohibition, prevention, detection, investigation and prosecution of cybercrimes and for other related matters. The intendment of the Act is to, among other things, define what constitutes cybercrime and provide penalties for the perpetration of such crimes in Nigeria.<sup>86</sup> Cybercrimes such as the identity theft and internet scam have, hitherto, remained a serious threat to e-commerce transactions and e-consumers in Nigeria.<sup>87</sup>

The Cybercrime Act makes extensive provisions on issues such as intercepting electronic message,<sup>88</sup> computer related fraud,<sup>89</sup> theft of

electronic devices and, most importantly, rules relating to electronic signature,<sup>90</sup> among other things.<sup>91</sup> Problems associated with e-commerce protection have been highlighted by Enadeghe to include: delay in delivery, delivery of wrong/defective goods, or no delivery at all<sup>92</sup> and such e-consumer may not have anywhere to go and lodge complaints or seek redress.<sup>93</sup> There is, therefore, the need for an effective framework to govern the conduct of e-commerce in Nigeria.<sup>94</sup>

### Challenges Facing Consumer Right

There are various challenges facing consumer rights. These challenges pose serious threat to consumers. This is because consumers do not have all the necessary education in respect of all consuming products. Consumers will still rely on the prowess of the manufacturer or its agents (retailers) in order to take decision in respect of products and services. Also, the new trend of commerce (e-commerce) is faced with many challenges thereby depriving e-consumers the right to take the full benefit of this trend. Some of these challenges are discussed hereunder.

### Government Policy

Government policy is very vital in protecting consumer right. Individual consumers cannot protect their right except government intervention. However, some of the government policies expose consumers to risk. The importation of e-waste (electronic waste) into Nigeria is one of the factors that expose consumers to risk. Most of these products, no doubt, are substandard and there is the need for Government to declare total war against it and flush same out of Nigerian market. Further to this, service providers are not living up to

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<sup>83</sup>OECD, Guidelines for Consumer Protection in the Context of Electronic Commerce:

<sup>84</sup>Ahmad Aihusban. "The Importance of Consumer Protection for the Development of Electronic Commerce: The Need for Reform in Jorda". (Ph.D Dissertation, University of Portsmouth, 2014) 15.

<sup>85</sup>A. David and O.O Abiodun, *Policing Cyberspace in Nigeria* (Nigerian Life Gate Publishing Company 2009) 11

<sup>86</sup>Prior to the enactment of the Cybercrime Act 2015, the offences that constitute cybercrime in Nigeria are were not offences within the contemplation of Nigeria Criminal Justice System. This is because the constitution has provided that an act of commission or omission is not an offence which is not written down in any law.

<sup>87</sup>Deborah Enadeghe, "Comparative Analysis of the Applicable Legal Protection for Purchasers on the Internet in Europe and USA- Lessons for Nigeria.) (LL.M Thesis, Central European University, Budapest, Hungary, 2013) 24.

<sup>88</sup>Cybercrime Act 2015, s9

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<sup>89</sup>*Ibid* s14

<sup>90</sup>*Ibid* s15 & 20

<sup>91</sup>*Ibid* See also s22, 30, 33- 36, 37- 40 and 58.

<sup>92</sup>Deborah Enadeghe. *Op.cit*

<sup>93</sup>J. Nwokpoku, Nigeria Needs Legislation on E-commerce. Vanguard Newspaper, September 19, 2015. <http://www.vanguardngr.com/2014/12/nigeria-needs-legislation-on-e-commerce/> accessed 19 July 2019

<sup>94</sup>A. S. Abubakar, and F. O. Adebayo, Analysis of Electronic Transaction Bill in Nigeria: Issues and Prospects. [2014] 5(2) *Mediterranean Journal of Social Sciences*, 217.

expectation. Internet service providers need to be adequately sanctioned when there is a poor service delivery.

### *Corruption*

Hardly can any person discuss challenges facing anything in Nigeria without mentioning corruption. The issue of corruption has become a virus in Nigeria. It is not limited to those who are exercising governmental powers alone but even to the private sectors. From the ports to the market and also to industries, substandard goods are produced with the aim of making huge profits.<sup>95</sup>

### *Inadequate Regulation and Supervision*

The general feeling of consumers seems to be that most regulatory agencies saddled with the responsibility of protecting consumer rights are not adequately supervised. There are laws made to protect consumers but it is unfortunate that most of these laws are not adequately administered. Despite the fact that bulk metering has been abolished by Nigerian Electricity Regulatory Commission in its ruling in Victoria Garden City' case,<sup>96</sup> distributions companies did not adhere to it. According to Odigie, adequate statutory provisions exist for the protection of consumers, the laws are unable to offer the expected protection to consumers. This shortcoming is compounded by lack of awareness on the part of consumers, inadequate publicity, low level of public enlightenment by appropriate regulatory agencies, and the lackadaisical attitude of those responsible for enforcement of applicable laws.<sup>97</sup>

### *Poverty and Ignorance*

Poverty is another problem militating against the protection of consumer rights. Some of these consumers are constrained to buy products which are not likely to be defective because of

inadequate fund. Many consumers refused to seek redress against defective producer because of poverty.<sup>98</sup>

### *Attitude of Consumer to the Enforcement of their Right*

Most consumers are not willing to seek redress where their rights are violated. They prefer to keep it to themselves and let go of it than to complain to appropriate quarters.<sup>99</sup>

### *Cost of Litigation*

It is a fact that the cost of litigation is high and some consumers may not be able to afford it. The cost of litigation in seeking redress may even be more than the cost of defective product thereby discouraging consumers from seeking redress in court of law.<sup>100</sup>

### *Uncertainties in Litigation Occasioned by Legal Technicalities and Problem of Proof of the Dangerous State of Unwholesome Problem*

The burden of proof placed on the consumer by the various judicial authorities seems to be another challenge to consumerism. The Court should be more inclined in protecting the consumer rather than creating a shield against flood of litigation on the manufacturer and service providers.<sup>101</sup>

### *Weak Bargaining Power*

It is not an exaggeration to say that manufacturers or retailers have an advantage over and above the innocent and ignorant consumers. This advantage is mostly used unduly over the consumers in order to make economic gains. This is one of the major problems facing consumerism in Nigeria.<sup>102</sup>

<sup>95</sup>A. A. Adeyemi, "Corruption in Africa: A Case Study of Nigeria" in T.M. Mushanga (ed) *Criminology in Africa*. 47 Rome Mcfarland & Co. Publishers. 1992, Pp.83-84. See also, Femi Odekunle "Illustrations of Types, Patterns and Avenues of Corruption in Nigeria: A Typography" in Awa U. Kalu et al (eds.) *Perspective on Corruption and Other Economic Crimes in Nigeria*. P. 94

<sup>96</sup>Victoria Garden City's Case with Suit No: NERC /H/03/07

<sup>97</sup>D.U. Odigie, "Consumerism and the Law: Proposals for an Enhanced Consumer Protection Regime" [2007] 2(1) *Ikeja Bar Review*, 102.

<sup>98</sup>B. A. Hassan & J. Amadi, *Crime and the Criminal Justice System in Nigeria*. Pearl Publishers, 2009, 208.

<sup>99</sup>Enforcement of Consumer Rights: Strategies and Recommendations. 2016. [Http://www.nigerianlawguru.com](http://www.nigerianlawguru.com) accessed on 8<sup>th</sup> January, 2020.

<sup>100</sup>Dele Peters, *Minimising Delays in the Administration of Civil Justice in Nigeria*." In F.A.O. Yusuf (ed) *Issues in Justice Administration in Nigeria*. 2008. V.D.G. International Limited, 449.

<sup>101</sup>T. I. Akomolede, (2004) "Delay in Dispensation of Justice in Nigeria: Alternative Dispute Resolution to the Rescue" in Akinseye – George, Y. (ed) *Quintessential Journal of Contemporary Law and Practice*, 181.

<sup>102</sup>Gates T. And Jacob, K. (2009) "Payments Fraud: Perception versus Reality" *Economic Perspectives*. 6:7.

### Challenges of E- Consumer

#### Lack of Adequate Legal Framework for Protection

It is a truism that there is no adequate legal framework for protection of e-consumers in Nigeria. This is because e-commerce transactions are not well covered by the law not to talk of consumers in e-commerce. The Cybercrime (Prohibition and Prevention) Act, 2015 is a right step in the right direction but the implementation of the Act remains another thing. There is no elaborate legal and regulatory framework for electronic commerce in Nigeria. E-commerce is a specie of commercial transactions, though a special one, there are pockets of commercial legislation and decided cases that directly or indirectly affect it in Nigeria.<sup>103</sup>

#### Poor Internet Services/ Web Design

Another factor affecting e-consumer is poor and epileptic internet service. E-commerce can only function well where there is high quality of internet service. Where there is poor internet service, e-consumers may be affected. This may occur at payment channel where e-consumer will be debited for uncompleted transactions. Poor web design is another factor affecting the productivity of e-consumer. Factors like slow download time, non standard link colour, looping animation,<sup>104</sup> etc constitute a clog in the wheel of e-consumers.

### CONCLUSION AND RECOMMENDATIONS

This paper examines the various views as well as definition by scholars in the field of consumer right protection. Consumer protection is a social consciousness of consumer from unscrupulous producers over the years and it has attracted the attention of various Governments of Nation States and even the United Nations. Consumerism started as a social movement of citizens who agitated for protection of consumer rights. Virtually all countries have promulgated legislations that protect consumer right, including Nigeria.

The new trend in consumerism is the protection of the e-consumers who engage in e-commerce. Legislations aimed at protecting consumers are

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<sup>103</sup>T.I., "Akomoledé Contemporary Legal issues in Electronic Commerce in Nigeria" [2008]3(11) *Potchefstroom Electronic Law Journal*, 14

<sup>104</sup>D Nainani, & A. Patel, "Challenges and Issues of E-commerce" (2016) 4(11) *International Journal for Research in Applied Science and Engineering Technology*, 301.

oblivious of the fact that commercial transaction will take a new trend and there is the need for them to be amended in order to meet the current reality. However, some jurisdictions have responded positively by providing a legal framework for e-commerce and protection of e-consumers but Nigeria still lags behind as there is no legal provision for e-commerce and e-consumers. This has caused a great set back to Nigeria as the internet has remained unsafe for consumers in Nigeria.

There are factors militating against consumer right and e-consumers in Nigeria. While some of these factors emanated from the Government, consumers are not left out. It is pertinent to state that the Legislature should wake up to their responsibility and enact laws aiming at promoting e-commerce and e-consumer in Nigeria.

#### Recommendations

- Existing legal framework on consumer protection should be reviewed with a view to meeting the current realities. Agencies established under these laws should be adequately funded so as to function maximally.
- Government should establish an agency saddled with the responsibility of promoting e-commerce transaction and protecting e-consumers. This agency should be empowered to prosecute and deal with offenders in this regard before a special tribunal whose members are Information Communication Technology compliance. Not forgetting the fact that accesses to justice and redress mechanisms for e-consumers are fundamental when it comes to the enforcement of their rights.
- Relevant regulatory bodies should be empowered by law to blacklist and periodically publish both in print and electronic media, detailed particulars of erring manufacturers and service providers.
- It is also recommended that Government should take bold steps in improving the standard of living of the citizens thereby encouraging them in consuming quality goods.
- With these recommendations, it is hoped that effective and efficient consumer protection regime both in the conventional commercial transaction and electronic commercial transaction in Nigeria will be guaranteed which will, *inter alia*, lead to the following:
  - increase in revenue generation

## E- Commerce and Enforcement of Consumer Rights in Nigeria: Issues, Prospects and Challenges

- Satisfaction of Nigerian consumers by getting value for their money through consumption of quality products.
- Promote the use of e-commerce among consumers and ensure e-consumer protection.

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