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CONSUMER PROTECTION: UNPACKING CONSUMERS' RIGHT OF RETURN AND REFUND IN NIGERIA

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ABSTRACT

This article analyses the main features of the return and replacement framework as provided under the Federal Competition and Consumers Protection Act. It demonstrates the inadequacies of the Act, especially with respect to the lack of awareness among suppliers and consumers. It is argued that the lack of awareness on the part of the supplier or seller and consumers in Nigeria is extensive. However, the Federal Consumer Protection Tribunal and the courts have made some progress but so much needs to be done concerning returns and refunds if goods are defective as expressly provided in the Act. Also, worldwide consumer protection organization has not taken root in Nigeria, this may have militated against effective protection of consumers in the country. It may appear that the

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focus of individuals and governments is to obtain goods and services with little or no attention to quality. Similarly, awareness is low on the part of the consumers as to the right they have to return, get a replacement, or refund if goods are defective or goods are not fit for purpose. To support the argument for poor awareness, interviews conducted revealed that the supplier, notwithstanding the provisions of the Federal Competition and Consumers Protection Act, is not concerned about consumer satisfaction or addressing the complaint a consumer may have. It is recommended that the solution to the poor treatment of consumers in Nigeria can only be addressed through awareness creation and enforcement. The article concludes by laying emphasis on the effective creation of awareness and strengthening mechanisms to investigate poor-quality products and address consumers' complaints, where necessary.

Keywords: Consumers, protection, return, replacement, refund, supplier, satisfaction, defective, Nigeria, goods, and awareness

I. INTRODUCTION

It may be contrary to reason to claim that consumer protection is not a problem in Nigeria.[1] The rationale does not mean the protection that is accorded to consumers in Nigeria, like many other developing countries, is sufficient.[2]This is because, in less developed countries, individual ingenuity and government are focused on the accretion and obtaining of goods and services, mostly required urgently in large quantities, with minimal attention to quality.[3]Undoubtedly, these individual and government attitudes pose a great danger to the health of the larger population. According to the United Nations guideline, developing countries have more to benefit from the implementation of consumer protection.[4]The inherent feature of a shortage in goods or services may have an impact on how

[1]Diener Betty J, 'Information and Redress: Consumer Needs and Company Responses' Marketing Science Institute Working Paper; Handy Charles R & Martin PFAFF, 'Consumer Satisfaction with Foods Products and Marketing Service, Washington DC United States Department of Agriculture, Economics Research Service (1975)

[2]Shepherd William G, Market Power and Economic Welfare (New York, Randon House, 1970) 263-267; David Harland, The United Nations Guidelines for Consumer Protection page 247

[3]Ibid Hartland at 257; Andrew Hicks, A Review of Some Aspects of the Nigerian Law of Consumer Credit' 9 Nigerian LJ 34, 41 (1975)

[4]Ibid, Hartland at 259

people perceive defective or deficiency as a problem that needs to be solved.[5]Instructively, defects in a product can be complicated and cryptic, thus difficult to identify.[6] For example, in the case *Olawale v Konga Online Shopping Limited*,[7] the court held that there was no sufficient evidence to identify the defects in the products. This may account for the reluctance to return a poor-quality product that is not fit for purpose, which is basically due to a lack of knowledge of the law on the part of the supplier and the buyer.[8]

Before writing this article, 50 people were interviewed in Wuse Market, and 10 respondents were interviewed in the Garki market, Abuja.[9]A few shops that sell electronics and household wares were also interviewed.[10]The majority of the respondents do not know the right of consumers to return and refund. For example, when respondents/suppliers were asked whether they make allowance for consumers/buyers to return and get a refund or replacement. The answer was a stern and firm 'NO'.[11] However, on replacement, a good number of the respondents agreed that if the goods have not been tampered with and it is still in the state it was bought, the buyer could get a replacement. Nevertheless, the 20 consumers of various goods who were interviewed claimed that most of the time when they return goods, they are given a product higher in monetary value and asked to add money to get a replacement. The respondents who insisted on a refund were outrightly refused, and such cases usually ended up in the police station. The answer was no when asked whether the respondents were aware of the Consumer Protection Commission Tribunal, where consumers could take their complaints to and get redress. Only one person agreed to have heard of the tribunal. However, the majority of the respondents, believed it is a waste of time to approach a tribunal and court

[5]Ibid

[6]Arthur Best & Alan R Andreasen, Consumer Response to Unsatisfactory Purchases: A Survey of Perceiving Defects, Voicing Complaints, and Obtaining Redress Law and Society Review vol 11 (4) (1977) 701-742 at 703; A Michael Spence, Consumer Misperceptions, Product Failure and Producer Liability 44 Review of Economic Studies 561 (1977)

[7](2017) LPELR 42 (602) (CA)

[8]'Research Report on the State of Consumer Protection in Nigeria: A Review of Consumer Protection in the Telecommunications Sector in Nigeria',http://www.consumersinternational.org/media/2255/consumer-protection-in-nigeria-research-report-eng.pdf, accessed: 26 March 2023, 6

[9]Interview, Abuja October 2022

[10]Ibid

[11]Interview Garki, Wuse, Abuja October 2022

as they will end up delaying for years, and the money to pursue this matter will be higher than what they purchase, hence, to the respondents, it does not make sense to get redress from the court or tribunal.

Based on the helplessness of the consumers in Nigeria, this article explored the return and refund policy as provided under the Federal Competition and Consumer Protection Act (FCCPA), 2018.[12] The lack of awareness on the part of the consumers and suppliers in Nigeria are extensive. Instances abound in a Nigerian market, where the seller would make clear to the purchaser that there is no return of a purchased item, and that it is the policy of the company or the supplier. There is hardly any receipt in Nigeria issued by the supplier that states on the label the supplier or company's return policy. However, in developed and some developing countries, the receipt would state the time within which a buyer can return goods if they are not satisfied; as provided in the Act.[13]The Federal Consumer Protection Tribunal, high courts, and Court of Appeal have made some progress as demonstrated later in this article, but there is so much that needs to be done concerning the return and refund policy as provided in FCCPA, and the global consumer movement is yet to take root in a country like Nigeria.

The industrial revolution and the development of international trade and commerce have substantially increased business and trade.[14] This has led to a variety of consumer goods being introduced into the market to cater to the needs of the consumers. The advertising methods of the modern era are captivating and influential. There is a high tendency for consumers to purchase goods even though they are defective or the quality is imperfect.

The Committee on Consumer Protection in Britain provides that consumer protection does not have structure; it includes a situation where the law interposes to enforce 'safeguards' to protect buyers and

[12]Federal Competition and Consumer Protection Act (FCCPA), 2018, Federal Republic of Nigeria Official Gazzette, Government Notice N0, 5, Lagos 1st February 2019, vol 106

[13]See Consumer Right Act, sections 20 (15) and (16), 21 (7) (a) and 22 (3); subsection 3 of section 22 provides that, 'the limit for exercising the short term right to reject is the end of 30 days beginning with the first that after these have all happened: (a) ownership or possession of the goods has been transferred to the consumer, (b) the goods has been delivered to the consumer

[14]Raymond KH Chan. An Overview: Themed Section on Globalisation and Welfare System in Asia. Social Policy & Society, Cambridge Journals, Cambridge University Press vol 3 (3) Cambridge University Press, 253

hirers.[15]The main objective is to effect or procure fair and satisfying treatment for the domestic buyer.[16]The report further noted that 'consumer protection' could be conceived as a measure that adds 'directly or indirectly, to the consumer's assurance that he will buy goods of suitable quality appropriate to his purpose; that they will give him reasonable use, and that if he has just complaint, there will be a means of redress.[17]In other words, consumer protection implies the use of legal methods to make sure that consumers can receive a fair return on what they spend.[18] This approach is mainly brought about by the government and is aimed at preventing exploitation by those who sell goods and provide services.[19] The exploitative ploy adopted by the producers and sellers is mainly to introduce into the market, goods and services that are not to the required standards, advertising or describing goods and services inaccurately and unreliable to mislead consumers. To hold the supplier to account, the consumer must be allowed to withdraw from the sale transactions if the goods are defective and do not meet the purpose for which they are purchased.[20] To provide for the welfare of the consumers, protect their interests, and prevent exploitative practices, the National Assembly enacted the Consumer Protection Act, of 2018.

The rest of the article is divided into four sections: section 2 explored the historical context of consumer protection, with particular emphasis on the Sale of Goods Act; section 3 examined the origin of return and refund policy in Nigeria and with a focus on consumer's right of return and refund provided in the Federal Competition Consumer Protection Act of 2018, and section 4 concludes the article with some recommendations. It is important to note that this article does not explore the series of rights that a

[15]Committee on Consumer Protection (1962)

[16]JWA Thornely "Final Report of the Committee on Consumer Protection", *The Cambridge Law Journal*, vol 21 (1) (1963) 1-7; The Molony Report on Consumer Protection HL Deb 14 Nov 1962 vol. 244 cc 653-718, available at https://api.parliament.uk/historic-hansard/lords/1962/nov/14/the-molony-report-on-consumer-protection-1 accessed: 26 March 2023; Final Report 8 (1962) Cmd. No. 1781).

[17]ibid

[18]Arthur Best & Alan R Andreasen, "Consumer Response to Unsatisfactory Purchase: A Survey of Perceiving Defects, Voicing Complaints, and Obtaining Redress", *Law and Society Review* vol. 11 (4) (1977) 701-742 at 702

[19]Kwesie Essie, 'Consumer Protection in Nigeria: The Case fr Reform 16 NYUJ, Int'l L. & Pol 515 (1984) at 516

[20]Reinhard Steen, "The Right of Withdrawal under the Consumer Rights Directive as a tool to Protect Consumers Concluding a Distance Contract"', *Computer Law and Security Review* (2013) 105-119 at 108

consumer has under the FCCPA but focused mainly on the right of return and refund.

2. HISTORICAL CONTEXT OF CONSUMER PROTECTION

The origin of consumer protection in Nigeria, like in most common law countries, is the theory of specific formal legal responses to public concerns. The court in *Aylesbury v Wattes*[21] established that if a seller made an untrue warranty regarding goods, an action was brought under Trespass in the case of deceit. The case of *Rempton v Morley*[22] established the principle that the grounds for action were not the buyer was enforcing the bargain, but only a claim for damages for being deceived into a bad bargain. Where there is no warranty the rule that would apply will be caveat emptor, a man must make use of his judgment.[23] Therefore, a difference was made between warranty and bargain. For instance, in the old English case of *Shipton v Dogge*[24], the court held that the seller was liable without giving a warranty, if he is aware of the defect. The theory behind the action[25] was that the seller of goods by making a statement regarding the quality, had deceived the buyer into making a poor purchase.[26] The buyer, in this case, succeeded without proving that the seller was aware of the defect or that the statement was false. Put another way, the seller was strictly liable for the poor quality of the product sold. In the case of *Chandler v Lopus*,[27] an action was brought against a jeweler for selling a stone, which he claimed to be a bezar, and was later found not to be so. The court held that the fact it was affirmed to be bezar did not amount to a warranty because anyone selling his goods will affirm that the goods are good, it is not a fraud and in the absence of such, the case falls under caveat emptor. This pattern began against the background of the 19th-century common law, which laid emphasis on freedom of contract and caveat emptor. It can be argued that caveat emptor in the seventeenth century did not apply to all matters that come before the court; however, it was beginning to become one of the maxims

[21](1382) B & M 359, the case has do with the sale of blind horse which was said to be sound in sight and limb.
[22](1383) YB Trin 7 Ric. II 30
[23]A Fitzherbert, Natura Brevium (1527) B & M 391
[24](144) Y.B. Trin. 20 Hen. Vol Foll
[25]S M Waddams,' Strict Liability, Warranties and the Sale of Goods' 19 *Toronto Law Journal* (1969) 157
[26]J H Baker, *An Introduction to English Legal History*, Butterworths, 3rded 1990, at 386
[27] (1604) B & M 518

regarded by judges in deciding cases. In the early days, a buyer of goods in medieval England could rely on the protection of both common law and customary courts if the quality of goods was lower than expected. The idea of just price was adopted in the medieval period, and goods produced on sale in markets and fairs were tested against standards adopted in society.

The nineteenth century began the advancement of legal doctrines to protect buyers of goods from harsh and hard challenges that are intrinsic in the commercial environment dealing with bulk buying and big transactions. Contract developed in the form that acknowledged that which include offer, acceptance, and consideration, replacing the medieval action in Assumpsit. Alongside, this development was caveat emptor, which was recognised as a general principle. For an individual who desires a warranty that the goods he was purchasing were sound, the buyer would have to insist that the warranty be expressly stated.[28] However, it could be held in cases where a seller of goods could be held to warrant the quality of goods, even where the seller did not expressly affirm the quality of the goods.[29] The rules laid down in the sale of goods contract continued to be applied after the nineteenth century. For instance, in *Chanter v Hopkins*,[30] the defendant, in this case, made an order for a special furnace which turned out not to be suitable for him. He was not allowed to void the contract because he ordered that specific design. Best CJ emphasized the broad principle that if a person sells a product, he warrants that it is merchantable and that it is fit for the purpose, which it was meant for. However, in the case of *Brown v Edgington,*[31] the plaintiff made an order for a rope for a specific purpose, the seller arranged to manufacture to his specifications, and the seller was held to be liable, following the reason in the case of *Bluett v Osborne*.[32] Lord Ellenborough opined that a person who sells, impliedly warrants that the thing he sells shall answer the purposes for which it is sold'.

[28]PJ Cooke and DW Oughton, *The Common Law of Obligations*, Butterworths, 1989, 29
[29]*Gardiner v Gray* (1815) 4 Camp 1414, Jones v Just (1860) LR. 3 QB. 197, *Brown v Edgington* (1841) 2 Man G. 279, *Randall v Nessie* (1871) 2 QBD 102; Section 15 of the Sale of Act 1893
[30](1834) 4 L & U 399
[31](1841) 2 Man & G 278
[32](1832) 1 Stark NB 384

2.1 Modern Consumer Protection

The origin of consumer protection can be traced to the post-World War II period. It was in 1960 that it became popular.[33] The popularity of consumer protection became a challenge for the current economic theories of laissez-faire and the free market. The free-market theories promoted that the interest of producers and consumers will be advantageous if the freedom of the market is uncontrolled, and sellers or manufacturers are without let or hindrance able to sell their goods.

With rapid industrialisation, the large production of standard goods, rising of monopolies, and the theoretical construct of the free market, the producers had complete control of the market place and consumers were left in the cold. Consumers, in several countries, have continued to object to the concept of caveat emptor and as a result, the Bill of Rights has become the order of the day.[34] These significant changes were reflected in Former President J F Kennedy's four basic rights of consumers first, the right to safety; second, the right to be informed; third, the right to choose, and fourth, the right to be heard.[35]

Before 1962, the consumer protection movement attained a global proportion which led to the establishment of the International Organisation of Consumers Unions (IOCU) in The Hague.[36] The United States, Consumer Association; Great Britain, the Australian Consumer Association, the Consumer Bond of the Netherlands, and the Association des Consummateurs of Belgium were all embraced by the I.O.C.U. The IOCU ensures the exchange of information and educational materials and puts in place a technical committee to represent consumers on international standard bodies.[37]The effort was made by the Organisation to assist developing countries by obtaining a consultative position with Food and Agriculture Organisation and the United Nations Educational Scientific and Cultural Organisation (UNESCO).For the IOCU to be of assistance, there must be a working national consumers' union, which most developing

[33]Warne C, The World-Wide Consumer Movement in R. Gaedeke and W. Etcheson (eds) Consumerism: Viewpoint from Business, Government and the Public Interest (Canfield Press, New York 1972) 17

[34]Magnuson, Consumerism and the Emerging Goods of a New Society, Consumerism: Viewpoints From Business, Government and the Public Interest 3.

[35]Mark V Nadel, The Politics of Consumer Protection 49 1971

[36]Id at 17

[37]Id

countries do not have, not until recently. Nigeria recently had its consumer protection council. A consumer protection council of Nigeria is struggling to meet its mandate. This is not strange, as most unions in various countries struggle to protect consumer rights. The United States consumer protection is a typical example of the complex nature of the protection of consumers.[38]

Debatably, the consumer protection movement took root in Denmark in 1947 and in Great Britain in 1955, where the government established the 'Consumer Council to enable consumers to vent on matters reserved to producers and traders of goods. However, the consumerism movement started in the United States, where Ralph Nader promoted consumer rights.[39] On 15 March, 1962, the former United States of America (USA) President, John F Kennedy, in his speech laid down four basic consumer rights to the US Congress, where he stated that 'if a consumer is offered inferior products, if prices are exorbitant, if drugs are unsafe or worthless, if the consumer is unable to choose on an informed basis, then his dollar is wasted, his health and safety may be threatened and national interest suffers.'[40] He named four basic consumer rights, as follows: the right to safety, the right to be informed, the right to choose, and the right to be heard.[41]

Subsequently, on 16 April, 1985, the General Assembly passed a resolution which is called the 'United Nations Consumer Protection Resolution'.[42] The Resolution added four more rights to John K Kennedy's four basic consumer rights, as follows: the right to satisfaction of basic needs, the right to redress, the right to consumer education, and the right to a healthy environment.[43] The Consumer Protection Act was enacted to better protect consumers' interests and aimed at making provision for the establishment of councils and other authorities to settle consumer disputes,

[38]Mark V Nadel, *The Politics of Consumer Protection* (Bobbs-Merrill, 1971)

[39]Ralph Nader, *Unsafe at any Speed: The Designed-In Dangers of the American Automobile* (Grossman Publishers, 1965)

[40]John F Kennedy, 'Special Message to the Congress on Protection the Consumer Interest' (15 March 1962), available at https://www.presidency.ucsb.edu/documents/special-message-the-congress-protecting-the-consumer-interest accessed: 28 March 2023

[41]Ibid

[42]United Nations, Consumer Protection' Resolution/Adopted by the General Assembly 39th Sess. 1984-85 16 April 1985 available at <https://www.refworld.org/docid/3b00f2271f.html>; see also, United Nations Conference on Trade and Development 'United Nations Guideline for Consumer Protection' (New York and Geneva, 2016) available at <https://unctad.org/system/files/official-document/ditccplpmisc2016d1_en.pdf,> accessed: 28 March 2023

[43]Ibid

etc. The working of the consumer dispute redressed agencies has served the purpose to some extent under the Act, but the disposal of cases has not been fast due to constraints.

3. PROTECTION OF CONSUMERS IN NIGERIA

The consumer protection laws in Nigeria include common law rules in contracts and torts and several legislative enactments. This subheading surveys the recent development, in government making provision for the protection of consumers, which demonstrates clear patterns. First, rules are being made by the Federal Government; the second trend is the growing tendency of the government to assist consumers positively. Apart from the enactment of laws, which are designed to restrain or prevent certain activities of producers and suppliers, there is an emphasis on the dissemination of information, and the third is that consumers are encouraged to come forward to make complaints about goods that are not fit for purpose. Notwithstanding that common law contract doctrine serves the ends of property owners and industrialists, it also either directly or indirectly assists the common consumers in market transactions. As discussed above, the concept that deals with consumer protection is a misrepresentation, operative mistake, and breach of fundamental terms. The law in Nigeria has considerably improved the condition of the consumer through various legislative enactments in the past in the following categories: first, the food and drug legislation; second, general industry regulations; third, price and consumer credit laws; and four, standards for certain professions. This article will only focus on the aspects related to enactment.

3.1 Food and Drug Legislation

This statute is focused on the regulation of drugs, cosmetics, and the same substances and prohibits the sale of food and drugs that is debased or contaminated.[44] The law bans the sale of cosmetics that are likely to cause harm to the user, whether or not the user complies with the direction on the label.[45] The Act prevents the advertisement of the sale of any food, drug, or cosmetic as a preventative or curative device for certain specified

[44]Section 1 (1)

[45]Section 1 (4) (a) of the Food and Drugs Decree No 35 of 1974, Law of the Federal Republic of the Nigeria

illnesses.[46] Instructively, the above mentioned decree has been repealed and replaced by the Food and Drugs Act Cap F 32 Laws of the Federation of Nigeria, 2004. The Food and Drugs Act provisions are similar to the repealed decree. The Act vested the implementation of the Act on the Minister of Health.[47] In summary, the Act includes provisions that allow the designated officers to supervise the manufacturing of safe and reasonable standards in the preparation, advertisement, and sale of food, drugs, cosmetics, and similar products.

3.2 The Poisons and Pharmacy Act

The Poisons and Pharmacy Act[48] requires that all chemists and druggists[49] made it an offence to establish and operate a pharmacy except if it is supervised by the registered company.[50] The main aim of the Act is to regulate the manufacture and distribution of potentially dangerous drugs and to prevent persons that are unqualified from distributing drugs.[51]Also, the Nigerian Livestock and Meat Authority Act (NLMA), of 1971, was enacted to supervise, research, and legislate standards for areas of the livestock and industry that process meat.[52] In 1979, the NLMA was repealed and the National Livestock Production Company (NLPC) was enacted to assume the function of the NLMA, to take over research that relates to the livestock and meat industry.

Another attempt at protecting consumers in Nigeria was the establishment of the Nigerian Standards Organisation Decree of 1971 which was part of the Federal Ministry of Industries. A Standards Council was put in place to guide and direct the Nigerian Standards Organisation in the discharge of its functions. The primary function of the organization was to enforce standards designed and approved by the Council, compile, register, and circulate the standards specification, and carry out research This Act

[46]Id Schedule 1 at A-203

[47]Food and Drugs Act Cap F 32 Law of the Federation of the Nigeria, 2004. Schedules first, fourth and fifty

[48]Pharmacy Ordinance ch. 152 (1458), 5 Laws of the Federation of Nigeria and Lagos (1958) (promulgated March 1 1951) (hereinafter Pharmacy Ordinance). This Act was originally called the Pharmacy Act but in 1964 the Pharmacist Act No 26 of 1964, Laws of the Federal Republic of Nigeria was passed, which modify the provision of Chapter 153

[49]Pharmacy Ordinance

[50] Id, Section 24 (a)

[51]Id

[52] Nigerian Livestock and Meat Authority Act, 1971, section 7

was amended as the Standards Organisation of Nigeria Act.[53] It is the function of the Standard Council of Nigeria to give advice to the Federal Government on standards and specifications, approve standards with regards to materials, commodities, and processes for certification of products in commerce and industry in Nigeria; provide measures for quality control of raw materials and determine the whole policy of the Organisation.[54]

3.3 Federal Competition and Consumer Protection Act

On 6 February, 2019, the President of the Federal Republic of Nigeria signed the Federal Competition and Consumer Protection Bill into law. Before the 2018 Act, the legal and regulatory framework on competition and consumer protection in Nigeria was fragmented, as noted above.[55] The main objective of the FCCPA is to encourage and promote consumer interests and welfare, to proscribe restrictive and unfair business practices, to advance the economy of Nigeria, and to maintain a competitive market in Nigeria. 'The FCCPA put in place the Federal Competition and Consumer Protection Commission (the Commission) which the FCCPA grants the Commission concurrent jurisdiction to regulate matters relating to competition and consumer protection with other sector-specific regulatory bodies.

The implication is that the regulators such as the Nigerian Communication Commission, the Securities and Exchange Commission, and the Standard Organisation of Nigeria, NAFTDAC will continue to regulate competition and consumer protection matter parallel to the Commission. This co-regulation may bring about 'over legislation' on the same matter by multiple regulators. This debate is not our concern here but to explore the specific provision on the right of consumers to return and refund as provided under the Act.

4. ORIGIN OF RETURN AND REFUND POLICY IN NIGERIA

The several consumer protection laws in Nigeria are made up of common law rules in contracts and torts, in addition to many enactments made by

[53](1971) No 56 1976 No. 20. 1984 No. 32. 1990 No. 18 [1st January, 1970]
[54]Section 4 Standards Organisation of Nigeria Act, 1990
[55]'Highlights of the Federal Competition and Consumer Protection Act'

legislatures.[56]Common law contract doctrines serve the purpose of the owners of property and industrialists; the law also, directly and indirectly, assists ordinary consumers in market transactions. Important concepts derived from contracts include misrepresentation, operative mistake, and breach of fundamental terms.[57] There has been judicial distaste for adherence to contracts that can aid consumers who want to seek redress.[58] Although it did not come within the umbrella of the 'common law' as such, it is convenient to briefly discuss the statutory intervention in this aspect by the Sale of Goods Act, 1893, codified before the introduction of common law.[59] The important sections are 13 and 15, which discussed implied terms in a contract, that extract some conditions and warranties from the seller of the goods. However, the Statute also allows the seller to exclude the operation of these implied terms thereby rendering its operation not effective.

Under Nigerian law, there is no specific legislation that deals with the issue of returns and refunds. Nevertheless, the Sale of Goods Act, which applies to the sale of goods in Nigeria, contains some provisions that are important to returns and refunds. As mentioned above, under the Sale of Goods Act, goods must be of merchantable quality, fit for the purpose for which they are sold, and must conform to any description given by the seller. If the goods failed to meet these standards, the buyer may be entitled to a repair, replacement, or refund. Similarly, the Consumer Protection Council Act provides for the protection of the rights of consumers in Nigeria. Under this Act, consumers have the right to demand a refund or replacement if the goods they purchase are defective or do not meet the standards set out in the Sale of Goods Act.

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[56]The English was first introduced into Nigeria by the Supreme Court Ordinance of 1863, sections 1 and 2 of the law, states that all laws and statutes applicable in England as of January 1 1863 applied in the Territory of Lagos; the Interpretation Act with respect to Lagos and the Federal Territory, Laws of the Federation of Nigeria and Lagos, ch 89 (1958); the Eastern Nigeria High Court Law, No 27 of 1955, with respect to the constituent states of the former Eastern Nigeria; the Northern Nigeria High Court Law, No 8 of 1955, with regard to the constituent states of the former Northern Nigeria and Western Nigeria Law of England (Application), ch 60 (1959) section 45 of the Interpretation Act, Law of Nigeria and Lagos, ch 89 (1958)

[57]Beatson J, Burrows A. and Cartwright J,Anson's Law of Contract, 29 Edition (Oxford University Press. Oxford and New York, 2010); Furmston M P, Cheshire, Fifoot and Furmston's Law of Contract 16 Edition (Oxford University Press, Oxford, 2012)

[58]W Friedman, Law in a Changing Society 17 (abr. Ed. 1964)

[59]The Sale of Goods Act 1893, 30 Halsbury's Statutes of England (3d ed 1971) (hereinafter Sale of Goods Act of 1893)

Tort law concepts are a useful tool for consumers. However, the most relevant aspect of tort law to the consumer is product liability which is developing slowly in Nigeria. The challenge is this aspect of the application has not been far-reaching as one would want, especially because the consumer approach is dispersed needlessly with procedural and obstacles caused by evidence. For instance, in the case of *Okonkwo v Guinness (Nigeria) Ltd and Obinma & Sons Ltd*[60], , the plaintiff sued Guinness, a beverage manufacturer and a hotel proprietor, after he became ill consuming the beverage in a hotel. Foreign particles including roots, leaves, and bark, were found in the bottle. The court held that the plaintiff failed to establish that Guinness was the manufacturer of that specific beverage that he consumed and that if the plaintiff was able to show that the manufacturer was Guinness, it would still be relevant to demonstrate through evidence that the particle was in the bottle at the time the drink left the manufacturer's company.[61] It is important in this situation that the court takes the path of fact speaks for itself to reduce the burden of the plaintiff and look to other Commonwealth countries for guidance. The common law principle does not provide sufficient protection for the consumer in Nigeria.

4.2 Consumer's Right to Cancel

Section 120 regulates the right to cancel reservations, bookings, or orders.[62] It should be noted that this provision is subject to a reasonable amount being charged by the supplier. According to sub-section 2 of the above section, to know whether a fee is reasonably charged, regard must be had to the following: the essential qualities or nature of the goods or service, reserved;[63] the amount of notice of cancellation given by the consumer to the supplier;[64] the reasonable period it took the supplier to find another consumer, that is, the time between the supplier received the notice to cancel and the time the reservation was cancelled by the consumer.[65] This

[60](1980) 1 PLR 583

[61]Id at 596-97

[62]Federal Competition and Consumer Protection Act, 2018, section 120 (1) provides that a consumer shall have the right to cancel any advance booking, reservation or order for any goods or services, subjects to a reasonable charge for cancellation of the order or reservation by the supplier or service provider.

[63]Section 120 (2) (a) FCCPA

[64]Id (b)

[65]ibid (c)

subsection seems to suggest that if the supplier finds a replacement to take over cancelled reservation, then he would charge a reasonable amount. Likely, the supplier may not want to disclose if he finds an alternative consumer to charge an exorbitant cancellation price. This writer thinks finding alternative consumers should not have been listed as one of the grounds that influence the cancellation fee charged. Another point that may be taken into account is the common practice of the industry in question.[66]In summary, the above-mentioned discussion means that the consumer will not automatically relinquish the complete amount or deposit that was paid for the booking or reservation. However, the supplier could impose a reasonable cancellation amount to be paid. The cancellation fee is not more than a fair amount based on the circumstances.[67]

The provision in section 120 (2) (a) to (d) stipulated factors to be taken into account to determine whether the cancellation fee is reasonable. It could be perceived that it is illegal for suppliers to advertise or sell a product at a lower amount with a stipulation that there is no refund if there is a cancellation. Subsection 3 of the section under discussion provides that a cancellation fee may not be imposed if the reason for cancellation of the reservation is due to death or ill-health.[68] Note the Act in subsection 3 of section 120 used the phrase 'may not'; does this mean that the phrase was used to show that the consumer would have to apply to the supplier or the relevant bodies, that cancellation was as a result of hospitalisation or death? It is the view of this author that the word 'shall' should have been used instead.

4.3 Consumer's Right to Return Goods Under FCCPA

Before we explore the sections, it is important to point out the relevance of return policy to economic development. It has been noted that a return policy gives a sense of security to consumers because they can return a product if it fails to meet their expectations. Confidence is the fact that they can return a product and this can lead to increased consumer spending,

[66]ibid (d)

[67]Section 120 (5)

[68]Id section 120 (3)

> A supplier or service provider may not impose any cancellation fee in respect of a booking, reservation or order if the consumer is unable to honour the booking, reservation or order because of the death or hospitalisation of the person for whom, or for whose benefit the booking, reservation or order was made.

consequently driving economic growth. An unambiguous and consumer-friendly return policy can promote and increase sales by encouraging consumers to make purchases without being unnecessarily afraid of losing their minds. This increases revenue for businesses, which then ultimately benefits the overall economy. Another importance of a fair and transparent return policy is that it aids a positive brand reputation for a company. It creates trust among consumers and they recommend such companies with good return policies, which would lead to repeat business and word advertising for the company. Thus, a good return policy can encourage and boost consumer confidence, drive sales, and build brands.

The Consumer Protection Act in Nigeria is known as the Federal Competition and Consumer Act (FCCPA). It was signed into law in January 2018. In addition to any other law or enactment in Nigeria which protects consumers against unsafe or defective products, section 122 provides that a consumer may return the product to a seller and get a refund.[69] The Act stipulates the return of products where a customer is not satisfied with the goods. Section 122 does not replace the right every consumer has concerning the return of unsafe or defective goods, nor does it substitute any other right that is in place between a supplier and consumer to return goods for a refund.[70] The provision gave additional rights, to the advantage of the consumer, to return to the suppliers within a reasonable time.[71] This right is directed at goods in the aspect of the agreement that comes with direct marketing, where the consumer decides to rescind the agreement during the cooling-off.[72] Section 132 provides that in any transaction

[69]FCCPA, Section 122

In addition to the consumer's right to return unsafe or defective goods under any law or enactment, the consumer may return goods to the supplier and receive a full refund of any consideration paid for those goods, if the supplier has delivered-

a. Good intended to satisfy a particular purpose communicated to the supplier and within a reasonable time after delivery to the consumer, the goods have been found to be unsuitable for that particular purpose; or
b. Goods that the consumer did not have an opportunity to examine before delivery, and the consumer has rejected delivery of the goods within a reasonable time after delivery to the consumer for the reason that the goods do not correspond with description, sample or that they are not of the type and quality reasonably contemplated in the sales agreement

[70]Section (1) (a)

[71]Section 122 (1) (a)

[72]See sections 177 -132 of the FCCPA

concerning goods to the buyer or a consumer, there an implied warranty shall comply standard in contemplation.[73]

The FCCPA, section 122, provides that consumers have the right to return goods bought within a reasonable time frame if the goods are defective, do not satisfy the consumer, or fail to meet the standard or purpose for which they were purchased.[74]Subsection 2 of section 132 clearly states that 'within three months after the delivery of any goods to a consumer, the consumer may return the goods to the supplier of those goods, without penalty and at the undertaking's risk and expense.' This can only happen if as mentioned in subsection 1 of section 132, the goods did not satisfy the requirements and standards contemplated.[75] It can be argued that the timeframe within which to return goods by the consumer is too long because, in some jurisdictions, a reasonable time is interpreted to mean 14, 30, or 28 days.

However, some circumstances lead to the goods taking a long before it is returned to the supplier, especially where the movement of goods may not be easy due to poor transportation. In the same way, section 122 of the FCCPA laid out the procedure that goods can be returned,[76] if the goods are unsuitable for the purpose for which they were communicated to the supplier. The consumer, going by the subparagraph, may return the goods because the goods do not meet the description, sample or not of quality contemplated in the transactions.

Particularly where the consumer did not have the opportunity to examine the goods before it was delivered and then rejected delivery. In other words, in a situation where the consumer refused to take delivery and where the goods are not suitable for the purpose for which it was bought, the goods may be returned at the risk and expense of the supplier.[77]

Nevertheless, certain goods may not be returned under this provision. Subsection 3, certain goods may not be returned in some situations among other things, public health or a public regulation prohibits the return of goods to a supplier the moment it is supplied, for instance, the medicine that has been dispensed to a customer by a pharmacy. Usually, in other situations, once the goods are returned, the supplier must refund the

[73]Sections 132 (1) and 131 (1) and (2) of the FCCPA
[74]Id
[75]Section132 (1) and (2) FCCPA
[76]Section 122 (1) (a) of FCCPA
[77]Id

consumer the price paid for the goods. If the goods have not been opened and are still intact in the original packaging, the consumer may not be charged an amount in respect of the goods.

The courts have explored the section mentioned above through various judicial decisions. This demonstrates a new reawakening to enforce consumer protection. The court has reinforced the importance of making sure that online retailers have a precise and clear return policy, and that their consumer understands that they have the right to return goods if they are unsatisfied. In the case of *Jumia Nigeria Limited v Mr. Ajayi*[78], which involved the sale of mobile phone, where Ajayi ordered for a mobile phone from Jumia online platform but later decided to return, alleging that it was defective and not fit for the purpose. Jumia refused to accept the goods, stating that the phone was not in the condition that it was bought and delivered and it has been tampered with by Ajayi. The matter went up to the Court of Appeal, and the Court held in favour of the respondent and ordered the appellant to accept the return and make a refund to the respondent. Similarly, in the case of *Kazeem v Simba Group Limited*[79], the plaintiff, Kazeem, bought a brand-new motorcycle from Simba Group Limited. Subsequently, the motorcycle developed a fault not long after the purchase, and the plaintiff returned it to the seller, the defendant for repairs. Notwithstanding the several attempts at repairs, the motorcycle remained faulty and the plaintiff, as a result of this, requested a refund. The defendant refused to give a refund. He argued that the terms of the sale were final and the plaintiff had waived his return of the motorcycle. Kazeem sued the defendant for a refund and damages for breach of contract. At trial, the court held in favour of the plaintiff on grounds that the defendant breached the terms of sale by selling a motorcycle that was unsatisfactory quality and not fit for the purpose. The court ordered that a full refund be provided to the plaintiff. The case underscores the importance of making sure that goods sold to consumers are of satisfactory quality and for purpose and that consumers have the right to return and where necessary compensation and damages be paid.

Another case that highlights the relevance of selling satisfactory quality and fit for purpose goods and the consumer's right to a refund is

[78](2017) LPELR 433 (86) (CA)
[79](2019) LPELR 46539 CA

Samsung Electronics West Africa Ltd v Mrs. Obiageli Nwosu.[80] In this case, the plaintiff, Mrs. Nwosu, contacted the defendant for repairs. Several attempts were made to repair the television yet the television remained faulty and the plaintiff asked for a replacement or refund of her money. The defendant refused to replace or make a refund to the plaintiff. The plaintiff sued the defendant, seeking a replacement or refund as well as compensation for the losses incurred as a result of trying to find a solution to the faulty television. The trial court held in favour of the plaintiff, that the television was not of satisfactory quality and therefore not fit for purpose. Dissatisfied with the decision of the lower court, the defendant appealed to the Court of Appeal, which upheld the decision of the lower court. The court stated that providing only repairs for a faulty product was not in tandem with the consumer protection laws. The Court held that the respondent was entitled to have the television replaced. The decision underscores the obligation of sellers to comply with consumer protection laws and provide fair and reasonable return policies.

Another case worth mentioning is *Olawale v Konga Online Shopping Limited*[81], The appellant, Olawale, purchased a mobile phone from Konga Online Shopping Limited, the respondent; however, after he took delivery of the phone, he discovered that it was defective and requested that the phone be replaced or his money refunded. The defendant refused his request, which led to a legal dispute. The trial court found in favour of the respondent, stating that the appellant has failed to provide enough evidentiary support to prove that the phone was defective. The appellant went on appeal to the Court of Appeal. The court affirmed the decision of the lower court's decision, stating that there is no sufficient evidence to hold otherwise. In *Oluwagbemi v Jumia Nigeria Limited,*[82] the appellant, Oluwagbemi, ordered a television from the respondent but had a different television delivered to the appellant. Subsequently, the appellant requested a refund but was turned down by the respondent. The trial court found in favour of the respondent for the reasoning that the appellant has provided sufficient evidence to grant the order that he prayed for or support his claim. The appellant went on appeal against the decision of the lower court. The Court of Appeal followed the reasoning of the lower court stating that

[80](2017) LPELR 43398 (CA)
[81](2017) LPELR 42 (602) (CA)
[82](2020) LPELR 51639 (CA)

the appellant failed to provide to the court that the television delivered to him was not the one he ordered from the respondent.

5. CONCLUSION

The article argued that notwithstanding the provision of the FCCPA empowering the consumer to return and get a refund or replacement if goods are defective or failed to meet the purpose for which it is bought, the level of awareness on the part of the seller and the buyer is extensive. According to the interview conducted by this author, suppliers believe, it is their goods and no law or body can dictate to them how to sell them. More so, they believe, if there is a return and refund policy, consumers can take advantage of it and return even when there is nothing wrong with such a product. However, as discussed above in the cases of *Oluwagbemi v Jumia Nigeria Limited*[83]and *Olawale v Konga Online Shopping Limited*[84] it must be shown to the court that the goods are defective or are not fit for purpose if evidentiary support is insufficient, the court will not grant the request of the plaintiff.

As mentioned above, the laws are there but there is no awareness, the recommendation made in this article is consumer education. The Nigerian government can assist to make the assumption valid that consumers are aware of what they want. This can be done by developing a formal and strategic programme of consumer education in public schools. Such a programme should have its foundation in all educational systems. There should be training in the school systems in the art of consumption and training students on productivity. In another clime like the USA, their educational philosophy is dominated by the belief that the only way to advance national welfare is by promoting and increasing production.[85]

Another point is the need for information services. There is a wide notion that a consumer should be able to judge the quality of goods that they consumed. This can scarcely be valid in this modern complicated economy. There is an extensive range of products, from all kinds of brands and this can be impracticable for consumers to judge wisely. It is recommended that the power of the Consumer Protection Commission and

[83]Op cit note 63
[84]Op cit note 62
[85]Leland J Gordon, Protection of the Consumer' Annals of the American Academy of Political and Social Science, downloaded from Z-Library accessed: 14 March 2023

NAFTDAG be extended. These bodies must ensure that labels state a return policy within a reasonable period, for instance, 30 days, counting from the date of the purchase. It is the view of this author that there is steady but slow consumer protection by the Nigerian government, what is left now is the active engagement with consumers and suppliers.