

The Challenges Of Nigerian Consumers And Remedies To Consumers Problems In Nigeria

B.E. Kooffreh *, Melody Bassey Irem** Aboh Pascal Bekongfe***

*LL.B (Hons.), BL. LL.M. Ph.D Candidate & Lecturer Faculty of Law, University of Calabar, Calabar, Nigeria, Email of Corresponding Author: bekooffreh@gmail.com

**LL.B (Hons), BL, LL.M, Ph.D Candidate, Faculty of Law, University of Calabar. Email: melodyirem@gmail.com

***BA(Hons.), LL.B(Hons), BL. LL.M. Lecturer Faculty of Law, University of Calabar, Calabar, Nigeria, Email: Pascalaboh@unical.edu.ng

Abstract: This paper looks at the challenges of the Nigerian Consumer and remedies to Consumer Problems in Nigeria. It examines the need to protect the Nigerian consumer in an ideal economy situation and explore various redress mechanisms the consumer will have to legally enforce his rights without hindrances. The point that must be made of the protection of the Nigerian consumer is that there is a serious imbalance in the power relations and conflict of interest between the Nigerian consumers, the producers and the suppliers of goods. These imbalances, which essentially operate to the detriment of the consumers, ought to be redressed through the intervention of the law and through conscious and concrete regulatory effort by the state.

Keywords: Consumer, Remedies, Challenges, Mechanisms, Rights

1.0 Introduction

The term 'consumer' has been opined to be associated with the phrase 'citizen.'¹ When so associated, the discipline consumer protection law would focus on the protection of the universal rights of the citizen.² A Consumer is seen as a person who buys, utilizes, keeps and discards of goods and services; the end user of the ultimate product.³ Also, the Moloney Committee Report thought of the consumer as an individual who acquires good for private use and consumption. The Committee agreed that the private consumer of services is equally a consumer.⁴ Under the repealed Nigerian Consumer Protection Act, consumer means a person who obtains, make use of, maintain or discards of product or services.⁵ Igweike maintains that this definition is wider than the English conception of consumer the term is however, restrictive in nature when considered against the other relevant Nigerian statutes on consumer protection. However, the Federal Competition and Consumer Protection Act being the extant law on consumer protection in Nigeria, defines consumer an individual who buys or intends to buy products for personal use and not for resale nor as a tool to produce or manufacture further goods or commodities for trade; likewise rendering services.⁶ For proper appreciation of the concept under the Nigerian law, one has to consider all the relevant statutes.

According to B. B. Kanyip, British Case laws described consumer dealings in three distinctive capacities. First a consumer is one who refrains from using an acquired product for business. Second the suppliers of these products or services engage in business operations. And thirdly the Consumer uses the products or services for private as opposed to commercial purposes.⁷ From the foregoing three elements, the woman who was injured in the Nigerian celebrated case of *Nigerian Bottling Company Ltd. v. Constance Ngonadi*⁸ will not qualify as a consumer under English law and the existing Federal Competition and Consumer Protection Act, 2018, because she bought the refrigerator for purposes of her business. In that case, the woman who traded in beer and soft drinks and ran a beer parlour bought a kerosene refrigerator from the Nigerian Bottling Company Limited. The refrigerator exploded and caused extensive injuries to her, her claim against Nigerian Bottling Company Limited was affirmed by the Supreme Court based on the restrictive definition of a consumer under Section 32 of the repealed Consumer Protection Council Act, 1992 .

¹ K. I. Igweike, Consumer Protection in a Depressed Economy: Challenges in the new millennium (University of Jos, 2001) p.4

² Ralph Nader, Oughton, D.W., *Consumer Law: Text, Cases and Material* Amazon: Black Stone Press (1991)1 – 20 & 115.

³ H. C. Black, *Black's Law Dictionary* 6th Edition. St. Paul, Minn. West Publishing Co. (1990) p.316.

⁴ *Moloney Report on Consumer Protection*, CMDD 1781 p.2.

⁵ Section 32 Consumer Protection Council Act, 1992 Cap C.25 Laws of the Federation of Nigeria 2004.

⁶ Section 167(1) The Federal Competition and Consumer Protection Act, 2018

⁷ B. B. Kanyip, 'Overview of Consumer Protection: Law and Policy in Nigeria' NIALS (Lagos, 1996) p.153.

⁸ (1985) 1 NWLR (pt. 4) 739.

The point being made here was well demonstrated by the 'Wang Hai Phenomenon' in China.⁹ Where Wang Hai, a Chinese peasant took it upon himself to fight against fake products. Under the national consumer law in China, the purchaser of products for personal exploit is allowed twice the purchase price of the goods as damages, if they turn out to be fake or defective. Wang Hai visited several business outlets, acquiring fake products, already known to fake by him and then took up legal against the vendors for damages in line with the Chinese consumer law. The question that arose was whether Wang Hai was a consumer since the motive for buying the goods was not to use them but merely to sue for damages. He knew the goods to be fake and so could not claim to have been deceived by the manufacturers as required under Chinese consumer law. While it was argued that the term consumer should not be given a restrictive meaning as to take Wang Hai out of its purview, the courts in China held that he was not qualified as a 'consumer' and so lost the protection of the Chinese consumer law. Regarding the meaning of the expression consumer under the repealed Consumer Protection Council Act, 1992, there were drawback regarding its utility within the overall framework of the consumer protection concept. Although S. 8 of the repealed Act allows consumers to enforce in a competent court their rights to compensation or restitution over and above whatever redress the Act may have imposed,¹⁰ this is only in relation to criminal matters as civil rights and obligations are not contemplated by the Act. B. B. Kanyip,¹¹ also observed that the implication of the wordings of the Repealed Consumer Protection Act 1992, is that, except for the *Donoghue v. Stevenson*¹² situations, when Nigerian Courts are called upon to decide who is a consumer, there is the greater possibility that they will rely on the force of the three elements enunciated under English law. This would however be so in spite of the decision in the case of *NBC Ltd. v. Ngonadi*,¹³ which in any case did not set out to define the term consumer or lay down the defining principles of consumer protection. The learned scholar further reiterated the fact that in all the statutes granting civil redress to a complaining consumer, a contractual correlation involving the plaintiff consumer with the defendant is a prerequisite for recovery which is the fulcrum of most laws including the Hire Purchase Act, Sale of Goods Act, Carriers and Innkeepers and Hotels Proprietor laws. From the above postulations, the term consumer is generical in nature, embracing different class of persons, more specifically the ultimate users of products and services when they act in their private, not merely business capacities. It is the susceptibility of the individual consumer to exploitation by the producer that marks him off from a business consumer in view of the disparity of bargain supremacy involving the producer with the consumer.

1.1 Theoretical and Historical Background of Consumer Protection Law in Nigeria

Consumer protection can take the form of legislative enactments; establishment of agencies; and adoption of policies and other measures which promote the interests of consumers.¹⁴ Countries all over the world apparently adopt different measures to protect the interests of consumers. In Nigeria, statutory enactments have also been established for the protection of Nigerian consumers. These include the Standard Organization of Nigeria Act, the Consumer Protection Council Act, 1992. This Act was repealed in 2018 and replaced with the Federal Competition and Consumer Protection Act.¹⁵ In addition, Nigeria has established some agencies and sector regulators to regulate designated activities which are equally of benefit to consumers.¹⁶ Regrettably, in spite of the subsistence of these rules and agencies, the level of practical defense for the Nigerian consumers has rather remained low.¹⁷ However, an attempt to delve into analyzing the need, if any, for the legal protection of a consumer, will be futile if the meaning of the term 'producer', with which an existence of relationship between the consumer and the producer emanated, is not ascertained. The term producer therefore,

⁹ Feng Xiaoqing, Luo Shuzhi-'Wang Hai Phenomenon and Legal Protection for Consumers in China' [1988] (6) *Consumer Law Journal*; 359

¹⁰ S. 12 of the Consumer Protection Council Act *supra*

¹¹ Kanyip, *Ibid* p. 151

¹² (1932) AC. 562

¹³ (1985) 1 NWLR (Pt.4) 739 pp. 141-142

¹⁴ *Brown v. Cotterill* (1934) 5 TLR 21; *Power v. The Bedford Motors Co.Ltd.*(1959) 1. R 391; *Barnett v. H. J. Packer & Co. Ltd* [1940] 3 All E . R. 575

¹⁵ Federal Competition and Consumer Protection Act (FCCPA), 2018

¹⁶ 1971 Cap. 59, *Laws of the Federation of Nigeria* 2004; *supra*; others include the *Weights and Measures Act*, 1974, cap. W3, LFN, 2004; the *Food and Drugs Act*, 1974 Cap F 32 LFN, 2004; the *Utilities Charges Commission* Cap U 17, LFN, 2004; the *National Agency for Food and Drug Administration and Control Act* 1993, Cap NI LFN 2004; the *Trade and Malpractices (Miscellaneous Offences) Act* 1993, Cap. T12 LFN, 2004; the *Food, Drug and Related Products (registration etc) Act* 1993, Cap. F33 LFN 2004; the *Counterfeit and Fake Drugs and Unwholesome Processed Food (Miscellaneous Provisions) Act* 1999 Cap. C 34 LFN, 2004; the *Nigerian Communications Act* 2003, the *Electric Power Sector Reform Act*, 2005; and the *Sale of Goods Laws* of various states.

¹⁷ Examples of such agencies are the Standards Organization of Nigeria (SON); the National Agency for Food and Drug Administration and Control (NAFDAC); the Consumer Protection Council (CPC); the Nigerian Communications Commission (NCC) etc.

is again generic and is used to encompass all those persons who stand in the category of suppliers or providers of goods or services. The term incorporates the manufacturer, the distributor, the whole seller, the marketers, the seller, the importer, the retailer, the medical doctor or practitioners, the legal practitioner, the bailee, public utilities providers, etc; be they individual or corporate entities so long as they act in a business capacity.

S. Rachagan noted that consumer protection problems span from consumers lack of technical expertise, absence of a competitive market, the linkage and overlap of political and producer's interest in business, widespread corruption at all levels including the judicial process, poorly organized consumer organizations, Minimal participation in consumer protection, economic planning in general and the political process by the general public or the civil society, which reduces the effectiveness of implementation and the failure of the few existing consumer groups to express, at the international level, the consumer cause in terms of the priorities of developing economies, which are primarily the maintenance of national unity, the eradication of poverty and rapid development. Consumer protection measures are, therefore, seen as capable of increasing the cost of goods and services and the cost of enforcement and redress where disputes arise. In Nigeria, unfair, dishonest and fraudulent trade practices exists because manufacturers, wholesalers, retailers, businessmen, transporters, petty traders including market women and even tout who provide most of the consumer goods and services have long joined together in trade, business and manufacturers' associations to promote their respective collective interests against the consumers while the common law affords the Nigerian consumer little protection as enunciated in the principle of 'Caveat Emptor' ('let the buyer beware'). Enormous variety of goods are being thrust into the Nigerian consumer market daily, for purchase and use. Many of these goods are manufactured, sealed and supplied with no or little opportunity for immediate examination. The same is also the case with the complex web of consumer services; repair garages, washing and dry cleaning and transport operations, banking, hotel and insurance services, construction works etc. Legal protection therefore, inevitably becomes imminent to redress the inequity among the individual end user and the producers and suppliers of these products and services. This, would compensate for the inequalities of bargaining power, technological and managerial expertise and other advantages of the producers and suppliers of these products and services in Nigeria.

Nigeria is at a disadvantaged position at the international trade practices when compared with the developed economies. This has resulted in the latter always using the former as dumping ground for their unwanted, expired, deficient and low quality products. For instance, the influx of second hand goods into Nigeria on a daily basis is hardly challenged on ground of merchantable quality because the existing law favoured the sellers and suppliers by considering them as having been bought 'as they were.' Counterfeiting of products posed greater danger to every society and the less the awareness or protection, the more it gained root into Nigeria. Globally, the effect of counterfeit goods had caused the consumer of such goods and services a lot of mishap and injury.¹⁸ It is pertinent to note the United Nations Policies aimed at Consumer Protection in Resolution 39/248 of 9th April, 1985 expanded by Economic and Social Council in Resolution E/1999/INF/2/Add.2 of 26th July, 1999 and recently amended by the General Assembly in Resolution 70/186 of 22nd December, 2015 wherein guidelines for consumer protection which member states were enjoined to implement were unanimously adopted. These guidelines laid down basic principles and government obligations on consumer polices. In these guidelines are the basic rights of the consumer; the right to choose, the right to safety, the right to be informed, the right to consumer education, the right to healthy environment and the right not to be exploited. Nigeria being a member of the United Nations is equally enjoined by the Resolution of the United Nation General Assembly to implement these guidelines. Though part of the basic principles are provided for in some of the rules of liability under the consumer laws and those couched by the tort of negligence and the criminal law, the implementation of these rules need to be more purposeful towards the provisions of sustainable consumption patterns that will promote a more environmentally friendly use of products, right to examine products and the promotion of durable, repairable and reusable products. This will lead the Nigerian consumers to assess their interests that ought to be protected and the extent of the protection provided by the law. Various complaints of the consumer include fake, adulterated, substandard products, presence of foreign materials in drinks, fraudulent trade practices, inflationary and extortionist prices of goods.¹⁹

In general, consumer grievances and interests that need to be cosseted concerns interests in quality, price, quantity and fair trade practices in respect of goods. There has been some degree of protection such as the guard against substandard goods under the Sale of Goods Act.²⁰ The law may also grant immunity in certain instances such as lawyers are immune from liability in respect of the conduct of cases.²¹ Also, the Nigerian consumer is yet to have or be in possession of the requisite knowledge and expertise to be able to assess the quality of goods and services thrust into the consumer market. Another reason is that most Nigeria consumers are either semi illiterate or technically uninformed on the product they seek to purchase. The consumer is thus left at the whim and caprices of the producers and suppliers. In the light of the above, it therefore, becomes necessary that the law should intervene positively to

¹⁸ D. N. Akunyili, 'Counterfeiting: A Global Problem' *Calabar Law Journal* [2004] (4); 2

¹⁹ R O Ugbe, B F. I. Anyatang, B.E. Kooffreh, A. U Agi 'Consumer Redress Channels Under Nigerian Laws: A Comparative Analysis' *Journal of Law, Policy and Globalization* (2020) 104

²⁰ S. 14 of the Sale of Goods Act, 1893.

²¹ S. 9 of the Legal Practitioners Act Cap. 207, LFN 1990; *Rondel v. Worsley* (1969) AC 191.

protect the consumers from vulnerability, harsh conditions and disadvantages positions as identified above. The scope and quality of such legal intervention can be summed up in the words of Harvey²² thus:

"If the law is to avoid venturing into the area of regulation of production so as to change society for the better or for worse according to taste, its role outside the criminal law must instead be primarily both to protect the consumer against misrepresentations of a contractual nature and to protect the prudent shopper on the basis of information. If all relevant information about a class of goods is available to the prudent shopper, together with information about the true cost of the goods, if credits are available, then at least a prudent shopping decision can make the consumer's eyes fully open".

Most of the literature on the subject of consumer protection in Nigeria begins with a consideration of the common law as well as the statutory and regulatory regimes. These literature deals with the theoretical and historical background of consumer protection, the development of consumer protection, breaches of consumer rights, enforcement of consumer rights, local and international efforts towards protection of consumers rights. There are also immense contributions of scholars in the areas of regulatory and institutional frameworks. However, a common thread that apparently runs through these works is a general discussion about consumer protection, history, goals, development, and promotion of the law on consumer protection. Igweike²³ has in a paper delivered in the 12th University of Jos Inaugural Lecture dealt with the general position of the consumer in a depressed Nigerian economy like those of the third world countries. The author assessed the vulnerable condition of the consumer in the market place. He maintained that the average Nigerian consumer is exploited in the market place. Both manufacturers and service providers persistently hold the consumer to a disadvantage position through sharp business practices such as the provision of fake, expired and substandard goods and poor services. Clearly, Igweike's work also demonstrates consumer's desire for protection from sharp, fraudulent and dishonest commercial dealings.

Felicia Monye²⁴ gave a vivid description of the law of consumer protection in general. She emphasized the importance of consumers' critical awareness through intensive enlightenment campaigns for efficient protection of consumer rights. Her works describe the existing framework which regulates standardization of products, advertisement, liability for defective product, enforcement of consumer rights through the law of contract and tort. She also stressed the need for availability of various channels of redress for victims of consumer offences in Nigeria. In the same vein, she advocated for the introduction of strict liability regime to address the problems associated with contractual and tortious claims for efficient enforcement of consumers' protection in Nigeria. The works however, do not provide a general legal framework that may be used for the protection of consumer in Nigeria. Kanyip²⁵ in his work espouses a similar view like Igweike about the vulnerability of the consumers to exploitation by producers and service providers due to the unequal bargaining power in the market place. The author maintained that the manufacturers and service providers position is defined by their superior knowledge of production processes in addition to their strong financial position over the consumers. He considered that the main problem of the consumers is that they are mostly illiterates or ignorant of the various production processes. He further opined that a defective product in the hands of a consumer may lead to the complete loss of capital investment due to lack of money. Although, the author has copiously dealt with areas that affect consumers in the market place, less discourse was placed on the rule of foolproof production process in Nigeria, so as to ascertain the best view that should be acceptable as legal standard by the consumer, based on the opinion of our courts of law in Nigeria.

Apori and Ibanga²⁶ in their exposition on the role of regulatory agencies in the telecommunications sector maintained that consumer protection in the telecommunications sector is an evolving process that requires a balance of the interest of the actors both the service providers and the consumers. However, there was no particular mention of the protection of Nigerian consumers of defective products. Duru & Igwe²⁷ graphically set out the historical antecedents of consumer protection of defective products globally. Their work emphasised the need of a framework for strict rather than fault based liability. However, less focus was placed on how the

²² Brian Harvey, *The Law of Consumer Protection and Fair Trading*, (3rd Edition) London, Butterworths (1987)18

²³ Igweike, *op. cit*, p.6

²⁴ F. Monye, 'Liability for Defective Products'[1990 – 1998] (6) *Nigerian Juridical Review*, Faculty of Law, University of Nigeria, Enugu Campus;137 – 157;

²⁵ B. B. Kanyip, *Consumer Protection in Nigeria: Law theory and policy*(Abuja: Rekon Books Ltd., 2005)26

²⁶ K. A. Apori & M. Ibanga, 'Regulatory Agencies in the Telecommunications Sector & the Protection of the Nigerian Consumer' [2006](7– 10) *Calabar Law Journal*; 161.

²⁷ S. A. Duru & O. W. Igwe, 'The Law of Negligence and liability for Defective Product' [2007] (11) *Calabar Law. Journal*; 154 - 177.

existing regulatory framework seems to promote consumerism as a way of life. Anyatang & Kooffreh²⁸ noted that Health and safety is critical to ensuring organisations operate effectively and to make sure employees as well as customers are protected from unfair, dishonest and fraudulent trade practices that can cause harm or even death. Their work examined the objectives of the EU legislation on Occupational Safety and Health which are to prevent risk and promote safer and healthier conditions in EU workplaces with a view to improving job quality, working conditions, promotion of competitiveness, increased productivity and improved sustainable social security systems. They also noted that Nigerian Occupational Safety and Health legislations at work are generally framed to the extent that they do not cover employees more less consumers well. Agomo²⁹ described the notion of consumer protection of a defective product with particular emphasize on the criminal and civil remedies. The author concentrated on civil remedies namely, damages as a remedy for defective product, the rules of Contract Law and to some extent Tort Law which lay down the rules on damages for breach of contract. However, the work stops short of providing an overall framework that may be used either generally or specifically in the study of consumer protection in Nigeria, and did not explore the existing legal framework with a view to determine their effectiveness and efficiency in consumer protection. Iwok and Kooffreh³⁰ noted that an end user because of his purchasing power is allegedly the "king of the market place". Nonetheless, the realism in the present day is that the end user has become the sufferer of many unjust and unscrupulous campaigns adopted in the marketplace, by the manufacturer of commodities and services.

Ehiguelua³¹ like Agomo concentrated on the various types of remedies that are available to the consumer in criminal and civil proceedings. His work described the existing laws and statute which provide for consumer protection. However, his work like Monye's did not explained the efficiency of the law for consumer protection. Apori³² dealt with certain issues in consumer protection such as the concept of merchantability, Consumer Concerns and the model Sale of Goods Edict, Consumer Protection Council (CPC) Decree, 1992, advocacy for a strict liability regime in defective product law. The author in his work argued that where the principles of tort or contract cannot be complied with for a claim to be successful, then both areas of law should be fused to present a stronger case. With greatest respect this course of action may lead to doctrinal problems, instead strict liability regimes should be imposed. Enyia³³ emphasized the need for the protection of Nigerian Consumer to be integrated into the Telecommunications Industry in order to enhance effective protection of the consumer through better telecommunications service delivery system. However, this paper will particularly postulate the need for protection of the Nigerian Consumers of defective products. Ugbe, Anyatang, Kooffreh and Agi³⁴ recommended that consumer protection should be drafted into the concurrent and residual list of The Constitution³⁵ and consumer associations should be empowered to institute and prosecute cases of product defects on behalf of consumers in Nigerian courts.

1.2 The Concept of Defective Products

According to Monye,³⁶ "it is rather difficult to determine when a product may be said to be defective. This is because defect is a relative term. A product which poses some hazards to life or property is certainly defective. But even this is also relative. A poison, a chemical or an explosive label and warning may not be construed as defective products which are not dangerous to health but nonetheless unfit for their stated purposes may present some difficulties." She further points out the absence of any statutory definition of defect in Nigeria, thus leaving the field wide open to judicial direction. Defective product also means a product that is unjustly defective for regular use, and not fit for the proposed use, or it is innately defective in its design or make up. A manufacturer's or seller's tort liability for a defective product exists as negligence, strict liability, or breach of warranty.³⁷ A number of writers like

²⁸ B. FI Anyatang & B.E Kooffreh, 'Health and safety under Nigerian laws: A comparative analysis' International Journal of Law. Volume 6; Issue 4; 2020; p. 246-252

²⁹ C. K. Agomo, 'Liability for Defective Products' [2005] (1) (1) *Consumer Journal*;1

³⁰ A. Iwok & B. Kooffreh, 'An Appraisal of the Legal Regime Available for the Protection of Consumers of Telecom Services in Nigeria' (2014) vol 29; p.1-9

³¹ I. Ehiguelua, *Consumer Protection Law* (Warri: Law Publishing Co., 2004) 21

³² K. A. Apori, 'Cutting a swat around the Nigerian consumer: *The Consumer Protection Council Decree 1992*' [1993/94] (3) *Edo State University Law Journal*.;154; K. A. Apori, 'Towards A strict liability standard in Defective Product Law' *Benue State University Law Journal*. [1991 – 1992] (1)

³³ J. O. Enyia, 'Legal Regulation of the Telecommunication Industry in Nigeria: *The Consumer Protection Perspective*' (2012) Unpublished PhD thesis submitted to Faculty of Law University of Calabar.

³⁴ R O Ugbe, B F. I. Anyatang, B.E. Kooffreh, A. U Agi 'Consumer Redress Channels Under Nigerian Laws: A Comparative Analysis' *Journal of Law, Policy and Globalization* (2020) 104

³⁵ Constitution of the Federal Republic of Nigeria 1999 (as amended)

³⁶ Monye, *op.cit.*

³⁷ B. A. Garner, *Black's Law Dictionary* (7th edition. 2000)342.

Abbott, Pendlebury and Wardman,³⁸ have classified product defects into three broad aspects, namely, manufacturer's defect, which occurs when the product deviates from the norm; design defect, and lastly, an after production warning defect. The meaning of defective product may be further examined under common law, statutes and judicial decisions.

2.0 Challenges of Nigerian Consumers

In Contemporary times, Countries have engaged laws for the protection of the rights of consumers as they engage in purchase and use of goods and services. This practice is known as Consumer Protection. It seeks to prevent abuses of consumers, reduction in harm occasioned from the use of products, and provide consumers with a platform to obtain redress, in the events of harm. Nonetheless, the Nigerian Consumer is bedeviled with the following challenges:

1. Ignorance on the subsistence of consumer rights, consumer protection mechanism enshrined in consumer laws, as well as redress structures provided to obtain remedies for harm suffered.
2. Governmental strict bureaucratic stands more often than not has dampened the interest of the Nigerian consumer in reporting incidences of unfair trade practices, substandard and faulty products by the producer to respective governmental institutions, as consumers would rather in the alternative opt to forgo the physical and financial losses occasioned from the use of the sub-standard product.
3. The legal mechanism for the protection of the Nigerian Consumer is fraught with inherent defects, most especially in the area of effective implementation of the provision of the enabling laws to adequately protect the Nigerian Consumer. Some of these defects include conflict of interest arising from overlapping functions of the regulatory agencies in charge of consumer protection matters; absence of efficient manpower and gadgets to detect defective products.
4. The Nigerian consumer is grunted by sharp malpractices from the suppliers who engage in nefarious activities such as black marketing, misleading advertisements, sales of expired products, artificial scarcity of products leading to irregular rise in prices occasioned by the consumer. Also, customers encounter sales representatives who cannot give correct details on a commodity due to lack of expertise or inappropriate training by their employers. Sometimes such individuals overstate the intrinsic worth of the commodities and compel the consumers to pay money for products, which may not meet the needs of the customers.

3.0 Remedies of the Consumer

Remedies of the consumer can be categorized into two namely, civil remedies and statutory remedies. Civil remedies depend generally on whether the action is based on contract or on tort while statutory remedies can be invoked for the contravention of a statutory provision.

3.1 Civil Remedies

In a tort based action, the remedy available to the consumer is a claim for damages. Such damages can take the form of special or general damages. In the case of special damages, each item of the damages must be justified with credible evidence. For instance, where medical expenses are alleged, the claimant must produce evidence of payment for such expenses. Similarly, where cost of repairs is claimed, evidence of the said cost must be produced. As regards general damages for personal injuries, there is no fixed amount as each case depends on the discretion of the court. In *Soremi v. Nigerian Bottling Co. Ltd.*³⁹ the court held that:

"Non pecuniary loss is a very different field. Little can be stated with certainty as to the amount of damages for physical injury. Indeed, full compensation cannot be given in the sense that no amount can fully compensate for serious physical injury. Beyond this, no yardstick exists for measuring in money the compensation to be accorded a given amount of physical pain or mental suffering because, as far as money goes, the loss is imponderable and any amount awarded must be in the nature of conventional sum. The difficulty then is in deciding what proportions the conventional sum should take for there is no reason, in logic or economics, why for a specified period of suffering the award should be \$10, rather than \$1,000 or indeed any other figure. Here a solution can only be found by taking as the test what our particular society would deem to be fair sum, such as would, in the words of Lord Devlin in *West v. Shepherd* allow the wrong doer to hold up his head among his neighbours and say with their approval that he has done the fair thing. While on this basis different societies are

³⁸ K. R. Abott, N. Pendlebury and K. Wardman, *Business Law London*(Amazon: ELBS, 1995)209 – 210

³⁹ (1977)12 CCHCJ 273

likely to end up with different figures within any particular system the level of awards should show a measure of internal inconsistency".

The fact of the case was to the effect that the plaintiff saw the presence of a screwed up piece of paper in a bottle of spirit. However, the bottle was not opened but the plaintiff claimed that the sight of the piece of paper made him nauseated as he had taken a bottle of drink from the same batch a short while before the incident. Applying the above principle, the court considered that plaintiff's claimed for the sum of ten thousand naira (#10,000.00) was manifestly excessive. He was awarded the sum of five hundred naira (#500.00) only. A review of personal injury cases in Nigeria shows that the Nigerian Courts are rather conservative in the award of general damages. In *Solu v. Total (Nig) Ltd*⁴⁰, the plaintiffs claimed the sum of six million naira for serious personal injuries sustained by them as a result of the explosion of a defective gas cylinder supplied by the defendants. The court reiterated the basic that the award of general damages is at the discretion of the court but emphasized that the court must act judiciously based upon the principle that damages are awarded to compensate the injured person and not to punish the wrong doer. The claims of the plaintiffs were rejected as being speculative and shrouded in sentimentalism which a court of law frowns upon. The court awarded the sum of forty – five thousand naira (#45,000.00) as damages for personal injuries suffered by the plaintiffs. The same pattern of conservative damages is also noticeable in other personal injury cases. Examples are *Osemobor v. Niger Biscuit Co. Ltd.*⁴¹ Here the sum of six hundred and fifty nine naira and ninety eight kobo (#659.98) was awarded for a decayed tooth which caused nausea and vomiting; the sum of thirty thousand naira(#30,000.00) was awarded for serious personal injuries and permanent disfigurement in *Nigerian Bottling Co. (Nig) Ltd.v. Ngonad*;⁴² *Technoplastic (Nig) Ltd. v. Salejatu*⁴³ the sum of ten thousand eight hundred naira(#10,800.00) was awarded the plaintiff for the loss of three fingers; while twenty thousand naira (#20,000.00) was awarded for compound fracture of fibula and tibia in *Nigerian Airways Ltd v. Solomon Olu Abe*.⁴⁴ However, an appreciable sum was awarded in *Dumuje v. Nigeria Breweries Plc & Anor*.⁴⁵ In this case, the plaintiff bought a bottle of malt from the defendant. While drinking it, he felt a hard material in his esophagus. He made attempts to throw up and eventually expelled a decayed cockroach. The plaintiff maintained that he experienced sicknesses arising from that occasion to include muscle vibration, insomnia, abdominal pains and had to seek medical relief in the hospital. He was awarded Two Million Four Hundred Thousand Naira (#2,400,000.00) as damages. In contract based actions with particular reference to breach of contract of sale of goods, the remedies of the consumer are based on the provisions of the Sale of Goods Laws. These are:

- i. Rejection of goods and action for damages
- ii. Specific Performance
- iii. Action for refund of price

The above remedies may appeal to a businessman but not to a consumer. The right of refund is limited because it must be shown that there is a total failure of consideration. This will therefore, not cover a case where the claim is that the performance of the product is unsatisfactory. The remedies of repairs and return/ replacement which may be more beneficial to consumers are not covered. This buttresses the limitation of the Sale of Goods Act as an instrument for consumer protection.

3.2 Statutory Remedies

Under statutory remedies, it has been noted that a breach of a provision of Consumer Protection statutes may lead to injury to person or property. Can a victim of such a breach recover damages for injuries suffered there from? In other words, apart from paying the predetermined penalty or serving the years of custody, does the wrongdoer bear a duty to compensate the victim of his unlawful act? With the exclusion of the Repealed Consumer Protection Council Act and the extant Federal Competition and Consumer Protection Act⁴⁶ which provides for compensation, other existing consumer laws are silent on this matter. It is suggested that these laws be amended to make provision for compensation of the victim.

⁴⁰ (Unreported) Lagos State High Court, suit No. ID/619/85;1988

⁴¹ (1973) 7 CCHCJ 71

⁴² *Ibid*

⁴³ (1986) 2 NWLR 771

⁴⁴ (1988) NWLR (Pt.90) 524.

⁴⁵ *Suit No.CA/EK/71/2014 on 14th July, 2015*

⁴⁶ (FCCPA), 2018

3.3 Judicial Remedies

The judiciary exist as the final place of hope for the common man and a consumer looks up to the court for safety from the frolics and vagary of crooked producers, who engage in quick and iniquitous trade practices to make the most of earnings at the consumer's expense.⁴⁷ The judiciary make available a prime setting for securing remedy in consumer protection matters. Remarking on the vulnerability of the Nigerian consumer, Aniagolu, JSC, in *Nigeria Bottling Co. Ltd., v. Ngonadi*⁴⁸ articulated:

"nothing appears to be more elementary in this country where it is often the unhappy lot of the consumers to be inflected with shoddy and unmerchantable goods by some pretentious manufacturers, entrepreneurs, shady middlemen and unprincipled retailers whose avowed interest seems only and always, to be to maximize their profits leaving honesty a discounted and shattered commodity."

Sadly, the reality of consumer experiences in Nigeria does not reflect the aforesaid assertions as Nigerian Courts are yet to fully consider consumer litigation of paramount potency. This was exemplified in the case of *Hill Station Hotel Ltd., v Adeyi*,⁴⁹ where His Lordship Edozie, JCA asserted that there was no legal statute in the country most applicable to address the Hotel Proprietor's and Innkeeper's liability. The Learned Justice acted hasty in arriving at his conclusion and his Judgment captures the attitude of the Courts on matters of consumer protection in Nigeria. The learned Jurist should have followed the Common Law stands which holds an Innkeeper Strictly Liable for the loss of a lodger's goods, as enshrined in the English Innkeepers Act of 1368.⁵⁰ Even more, statutory regulations of hotel and hotel proprietorship in Nigeria comes within the purview of the legislative powers of the state.⁵¹ The Nigerian consumer seems to have obtained a better treatment in the more recent case of *Edward Okwejinor v. Gbakeji* and the Nigerian Bottling Co. Plc.⁵² The fact of the case has it that Mr. Edward Okwejinor, as Appellant at the Apex Court, consumed a bottle of Fanta which he later found to contain a decomposed cockroach. This lead to the Appellant experiencing loss of appetite and abdominal pains. At the trial court, the Appellant obtained judgement in his favour, having successfully proved the ingredients of negligence specifically pleaded in his writ, however, the Court of Appeal entered judgement for the 2nd Respondent, Nigeria Bottling Co. Plc. Dissatisfied with the decision of the Court of Appeal, the Appellant proceeded to the Supreme Court and obtained Judgement in his favour. However, inspite of the Appellant's victory, consumers have been placed at a disadvantageous position following the statement made by his Learned Justice Per Muhammed JSC, in the instant suit, wherein he stated that "from the totality of the evidence adduced, it would amount to a serious miscarriage of justice to hold Gbakeji, the 1st respondent, who was the retailer of the drink liable". The said avowal by His Noble Lord on Gbakeji, the 1st respondent in the suit vitiates the principles of the Tort of Negligence in the sense that persons in the distribution chain cannot discharge themselves of liability on the justification that they were not the manufacturers. Strict adherences should be had to principle of joint and several *tortfeasors*, as it may be impracticable for the consumer to access the manufacturer of the product and also there exist privity of contract between the consumer and the retailer which based on the rules of contract, keeps out the manufacturer. In addition, based on the Sales of Goods Law, the Retailer owes a duty to the consumer to ensure that his products sold are free of defects, fit for purpose, and of merchantable quality.⁵³ In Ngonadi's case the Supreme Court maintained that section 15(a) of the Sale of Goods Law of Bendel State⁵⁴ draws no dissimilarity among manufacturer and retailer and as such both are liable in the event of a violation of implied warranty on fitness. In contract the retailer's liability is indisputable as retailer's liability is not only allowed by the law of tort, but also by contract.

4.0 Recommendations

⁴⁷ Monye, *Ibid*

⁴⁸ *Supra*

⁴⁹ (1996) 4 NWLR (Pt.442)294 @ 312.

⁵⁰ Borrie, Gordon and Diamond Aubrey L., *The Consumer Society and the Law* (3rdedn). Middlesex: Penguin Books, (1997)14 – 15 and 238 – 242.

⁵¹ Item 18 Part II to the 2nd Schedule to the Constitution of the Federal Republic of Nigeria 1999.

⁵² *Okwejinor v. Gbakeji and Nigerian Bottling Co. Plc. (1998) 8 NWLR 295.*

⁵³ Ss. 13 – 15 Sale of Goods Act 1893; ss. 12 – 14 Sale of Goods Law Cap.117 Laws of Akwa Ibom State 2000; ss. 14 – 16 Sale of Goods Law Cap174 Laws of Lagos State 1994;ss 14 -16 Sale of Goods Law Cap 150 Laws of Bendel State 1976 applicable in Edo; ss. 15- 17 Sale of Goods Edict No.15 of Kaduna 1990

⁵⁴ Now applicable in Delta State, with similar provisions in S. 14 Sale of Goods Act, *supra*, s 13(1) Sale of Goods Law of Akwa Ibom State, *supra*, s 15(a) Sale of Goods Law of Lagos State, *supra*, s. 16(1) Sale of Goods Edict of Kaduna State, *supra* and s.13 (1) Sale of Goods Law of Rivers State, *supra*.

There is no gainsaying the fact that liability for defective product is an important area of consumer law. It seeks to respond to the needs of consumers who are injured by defective products and to act as a deterrent against the marketing of unsafe products. The truth is that it is not easy to set out principles to guide consumer policy. The appropriate solution is to adopt approaches for example, the willingness of industry to deal with the problem, the extent of potential harm on the consumer, the effectiveness with which regulatory agencies are prepared to deal with the problem of access to justice where consumers choose to make claims etc. In Nigeria, the position of things is less satisfactory given the incoherent nature of the provisions of the laws which liability for defective product rules apply. It is highly recommended that strict liability should be adopted by Nigerian courts in questions of liability for defective products. One of the purposes of the law is to resolve the changing problems of the society. However, the current institutional structure in Nigeria does not meet the needs of the consumers. Also, the courts should act more proactively whenever a consumer comes within reach of it for redress. Resort should be had to the basic principles of the constitution as well as global standards such as the United Nations Guidelines on consumer protection, the principles of equity, justice and purposeful advancement of the consumer welfare. The regulatory mandate and operational efficiency of statutory agencies should be strengthened and devoid of ambiguity for instance, the performance of the functions of the Standard Organization of Nigeria and National Agency for Food And Drugs Administration and Control in some cases conflict with that of the Consumer Protection Council, especially in relation to the regulation of services and quality standards. Furthermore, for there to be efficient consumer protection, there must be a consumer policy that will ensure that the market place is competitive. This can be enhanced by rules against unfair trade practices and positive disclosure requirements. The reason for the need of these regulations is for the protection of the disadvantaged Nigerian consumer in power relations against dishonest competitors. In addition, consumer rules should protect the weak from market determined outcomes which are considered to be unfair. Consumer guidelines should serve as a distributive instrument for the construction of a more just and equitable society. All these are aimed at empowering the consumer, enhance compensations for defective products, checking consumer exploitation by especially the producers and hence reducing the control of the producer over the consumer.