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An Examination of the Judicial Mechanism of Protecting the Rights of E-consumers in Nigeria

Muhammad Nuruddeen [1*]
Yuhanif Yusof [2]
Nor Anita Abdullah[2]

[1]*Bayero University Kano*
[2]*Universiti Utara Malaysia*

*Corresponding author: mnuruddeen.pbl@buk.edu.ng

ABSTRACT

Electronic commerce (e-commerce) is the buying, selling as well as advertisement of goods and services on the Internet. Thus, the Internet has now given birth to yet another group of consumers known as electronic consumers (e-consumers). The e-consumers are increasing in number over the years as online commercial transactions become a new way of lifestyle across the globe. Consequently, the United Nations and other international organisations made a call for the establishment of consumer institutions to ensure adequate protection of the e-consumers. This is necessary given the susceptibility of the e-consumers to deceptive and unfair trade practices. Therefore, the objective of this paper is to examine the role of the Nigerian courts in protecting the legitimate interest of the e-consumers. The paper adopts doctrinal and empirical methodologies to achieve its tasks. The paper discovers that the judicial system of protecting the rights of consumers and e-consumer in Nigeria is costly, time-consuming and full of procedural technicalities. The paper also reveals that courts in Nigeria are overburden. Besides, the majority of the Judges handling e-consumer disputes lack requisite expertise and knowledge about e-commerce and Information Communications Technology (ICT) matters. To address problems associated with delay, the cost of ligation and technicalities in judicial proceedings, this paper, therefore, recommends the establishment of Small Claims Courts in Nigeria. The paper also recommends that the Nigerian judges should undergo special training particularly in the areas of e-consumer protection law as well as on the legal aspects of ICT such e-commerce, cybercrimes and electronic evidence.

Keywords*: Justice, E-consumer, Court, E-commerce, Rights, Nigeria*

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INTRODUCTION

Consumer protection is a legal regime that is made up of consumer legislation and the core institutional mechanisms established to promote and protect the rights of the consumers (Apinega, 2013). Consumers deserve adequate protection from both the consumer legislation and institutions (Monye, Umoh, & Chukwunta, 2014). In online or offline commercial transactions, a consumer is a weaker party whose interest is always at the mercy of the mighty businesses (Monye *et al.*, 2014). Hence, consumer protection institutions especially the courts are expected to protect, promote and safeguard the interest of the consumer as provided by the law (Apinega, 2013). Thus, an effective consumer protection institution is a key to safeguarding the rights of the consumers be it ordinary or e-consumers. Therefore, this paper intends to add to the corpus of the existing literature particularly by investigating the issues revolving around the role of the courts in protecting the interest of e-consumers in Nigeria. The extant literature and the in-depth interview conducted in the course of preparing this paper are likely to expose the inefficiency of the courts in protecting the legitimate interest of the ordinary Nigerian consumers and the e-consumers by extension.

Definition of Key Terms

Electronic commerce: the term "electronic commerce" (e-commerce) has no specific definition (OECD, 1997). Thus, scholars, judges and businesses made efforts to define the term e-commerce from different perspectives. For instance, Akintola, Akinyede, & Agbonifo, (2011) defined the term as buying and selling of products or services electronically via the Internet and other communication networks (Akintola *et al.,* 2011). Also, e-commerce is a business where traders use the Internet to promote and sell goods and services for consumers the world over (Omar & Anas, 2014). Here, it is the Internet that allows direct communication between the trader and the buyer without any physical contact (Omar & Anas, 2014). On the contrary, Bali (2004) opined that every time services are rendered and paid for on the Internet, it is e-commerce.

Consumer: The term "consumer" is elastic and has no precise meaning (Ulegede, 2013). The origin of the term can be traced to the Latin word *consumere,* meaning to consume (Badaiki, 2013). Literally, consumer means one who purchases goods and services (Monye, 2006) as opposed to a producer (Hornby, 1974). However, the term consumer is not restricted to direct buyers of goods or services. It is extended to any person who uses or is affected by the goods or services (Akwueze, 2012). Hence, Badaiki (2013) argued that a consumer includes those who use, maintain or dispose of goods not necessarily the direct buyers of the goods. Therefore, "consumer" is a generic and broad term which encompasses all end users of goods and services (Kanyip, 2010). These include the air passenger (Mustapha, 2016), the hirer, the hotel guest, bank customer and the insured or policyholder,

etc. (Andzenge, 2013). Likewise, a consumer is one who makes use of services provided by railway, water, and electricity companies among others (Ulegede, 2013).

E-consumer: The advent of the Internet and e-commerce has brought about a new group of consumers known as "the electronic consumers or e-consumers." An e-consumer is defined as any person who engages in commercial transactions electronically via the Internet (Amin & Mohd, 2013). According to Ilobinso (2015), there is no much difference between an e-consumer and ordinary consumer. The only difference between the two is the mode through which they make purchases (Ilobinso, 2015). The e-consumer uses electronic means such as the Internet while the ordinary consumer uses the conventional markets to do so (Ilobinso, 2015).

Philosophy Behind Consumer Protection

The vast majority of consumers are often uninformed, weak and powerless. The consumer, when compared to producers is, vulnerable. This is due to the consumers' inequality in terms of bargaining power, knowledge and economic strength (Ukwueze, 2006). The difference in economic strength, for instance, manifests in difficulty usually encountered by the consumers to obtain redress against the producers. Especially nowadays, where the cost of litigation is very high (Kur, 2013). The disparity in bargaining powers also manifests in the insertion of unfair trade terms by the producers. Most at times, the conditions governing the transactions are contained in a standard form that favour producers (Bello, Bisi, & Danjuma, 2012). These disparities informed the ethical, moral, legal as well as the philosophical justifications for protecting the consumer in the market arena (Ukwueze, 2006).

In the context of e-commerce, the gap between the consumers and the traders is even wider. Because parties communicate wholly via the Internet without physical contact (Omar & Anas, 2014). The tendencies of fraud, distortions and unfair trade conducts are higher in e-commerce than in the conventional markets (UNCTAD, 2015). Monye *et al*., (2014) argued that in all commercial transactions whether online or offline, a consumer is a weaker party whose interest is contingent upon the whims and caprices of the powerful businesses. Hence, the consumer needs adequate protection otherwise he/she will be subjected to all sorts of fraudulent and unfair trade deals without having the power to fight for his/her course. Hence, consumer protection entails the provision of an effective judicial mechanism for individual purchasers or users of goods/services to ventilate their grievances at a relatively little cost (Kanyip, 2005).

The Judicial Mechanism of Protecting and Enforcing the Rights of E-Consumers in Nigeria

The Constitution of the Federal Republic of Nigeria 1999 (CFRN) confers on the judiciary the judicial powers of interpreting laws and administration of justice in Nigeria (*Anozia v. AG Lagos State (2010) 15 NWLR (Pt. 1216) 207 at 237*). According to (Sokefun & Njoku, 2016), judicial power means:

> *...the authority vested in courts and judges to hear and decide cases and to make binding judgments on them; the power to construe and apply the law when controversies arise over what has been done or not done under it*.

In this way, the civil rights of a citizen include the consumer rights as guaranteed under the existing consumer protection laws in Nigeria. Sections 36 and 37 of the CFRN, for example, guarantees *inter alia* the rights of a consumer to a fair hearing and privacy. The right of the consumer to fair hearing is connected to his/her right to be heard by courts and tribunals established in Nigeria. This is a cardinal principle of consumer protection regime. Section 36 (1) of the CFRN provides:

> *In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law… in such manner as to secure its independence and impartiality*.

Also, Section 46 of the CFRN guarantees the rights of every citizen in Nigeria including consumers whose right is being or has been violated to approach the court for redress. However, before delving into the proper analysis of the enforcement of e-consumer rights through the judicial mechanism, it is imperative to appreciate the types and hierarchy of courts in Nigeria as follows.

Types and Hierarchy of Courts in Nigeria

In Nigeria, the court is either created by the CFRN or created under any law duly passed by either the National Assembly or House of Assembly of a given state (Section 6 (4) of the CFRN). Courts created by the CFRN are called Superior Courts of Record as stipulated in Section 6 (2) of the CFRN. The Section provides thus:

> *The courts ... established by this Constitution for the Federation and for the States, specified in subsection (5) (a) to (1) of this section, shall be* ***the only Superior Courts of Record in Nigeria****...* (underline for emphasis).

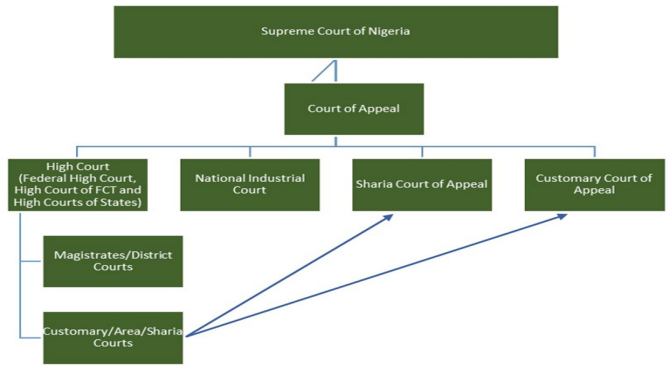
Section 6 (5) (a)-(i) of the CFRN enumerated the Superior Courts of Record in Nigeria. The Superior Courts mentioned in the CFRN include the Supreme Court, Court of Appeal, States and Federal High courts, etc. However, in 2011 the CFRN was amended whereby the National Industrial Court was created and included amongst the Nigerian Superior Courts of Record (*Constitution of the Federal Republic of Nigeria 1999 (the Third Alteration) Act, 2010* (Nigeria: Act No. 3, 2011).

On the contrary, any court outside any of court mentioned in the CFRN is called the inferior court. The inferior courts are created by either an Act of the National Assembly or a Law passed by the House of Assembly of a given state. Examples of inferior courts in Nigeria include the Magistrate Court, District Court, Area/Shariah Courts, and Customary Court, etc.

Additionally, it is worthy to note that Nigeria operates a hierarchical judicial system of administration of justice. Under this system, cases are typically commenced at the inferior courts, and any aggrieved party can go on appeal until he/she reaches the Supreme Court. The Supreme Court is the apex court, and its decision is final and binding on all parties involved. The decision of the Supreme Court is also binding on all courts in Nigeria. (See Figure 1 below, showing the hierarchy of courts in Nigeria).

Figure 1

Hierarchy of Courts in Nigeria



*Source: (*Kalau, 2017)

Enforcement and Protection of E-Consumers' Rights before the Nigerian Courts

As obtainable in all organised countries to which Nigeria belongs, consumers look up to the court for protection and enforcement of their rights (Ekanem, 2011). A consumer is a weeping child and an ordinary man who often suffers maltreatment in the hands of unscrupulous traders. The maltreatment can take the form of deception, unfair trade practices or the misuse of personal data of the consumer. Unscrupulous producers and traders are always looking for opportunities to maximise profit at the expense of the consumer (Ekanem, 2011). To check this tide, the courts become the last resort for aggrieved consumers. This is the case especially when efforts at addressing the consumers' problem at the level of Consumer Protection Council (CPC) of Nigeria has failed. Therefore, the court is the last hope of the common man (Oputa, 2007a, 2007b). The court is the hope of the hopeless and the help of the helpless. Indeed, according to Oputa (2007a, 2007b), the court is the safe sanatorium for an aggrieved consumer.

Problems Associated with Protecting and Enforcing E-Consumer Rights before Courts in Nigeria

In the pursuit of their rights before the Nigerian courts, consumers face several challenges. For instance, in the context of e-commerce, (Nuruddeen, Yusof, & Abdullah, 2016) argued that the Nigerian judicial system does not seem to offer a favourable protection mechanism for e-consumers. Reasons abound. First, the cost of litigation in the country is not affordable to ordinary consumers (Adegboruwa, 2015; Emelie, 2017). Similarly, the judicial system is full of technicalities and unnecessary delays (Olajide, 2013). Above all, the majority of the Nigerian judges are not computer literate, and so they tend to be conservative in their approach to ICT and e-commerce related matters. Thus, the competency of the Nigerian judges to adjudicate on e-commerce disputes is doubtful.

Now, the above-highlighted problems vis-à-vis e-commerce and consumer protection would be examined *seriatim*. However, before then, it is important to note that the problems affect both ordinary and e-consumers when they desire to approach the court for justice. Hence, the analysis of the problems would be carried out in general terms as follows.

Cost of Litigation

Globally, it is believed that accessing the court for justice is one of the priority consumer concerns (Usman, Yaacob, & Rahman, 2016b). Access to justice through court is a vital element of an effective consumer protection regime (Usman, Yaacob, & Rahman, 2015). However, in Nigeria, an ordinary consumer or e-consumer cannot approach the court for justice when his right is violated. This is due to the high cost of litigation in the country (Emelie, 2017). Here, the cost of litigation comprises of lawyer's fees, court fees and

other incidental charges (Emelie, 2017). In fact, litigation is expensive in terms of time, finance and human effort (Akpojivi, 2017; Odigie & Odion, 2011). The expensive nature of litigation in Nigeria discourages many from seeking legal redress either before CPC or the civil courts (Monye *et al.*, 2014).

As pointed above, Section 46 of the CFRN guarantees the right of a consumer to go to court and seek redress when his/her rights have been violated (Adegboruwa, 2015). Equally, when the consumer goes to the court for justice, Section 36 (6) (c) of the CFRN still guarantees his/her right to representation. The consumer can represent him/herself in person or by a lawyer of his/her choice (Nwagbara, 2016). But for effective dispensation of justice in Nigeria, a consumer needs to be represented by a lawyer (Usman, Yaacob, & Rahman, 2016a). However, given the poverty rate in the country, only an insignificant number of consumers can afford to hire a lawyer for representation in a court of law (Usman *et al.,* 2016a). While responding to a question on the practical problems affecting e-consumers in accessing justice e-consumers in Nigeria, Respondent 1 (R1) of this study said:

> *…The average cost of justice is high in Nigeria. Because it is a specialised area dominated by legal practitioners. To be able to make any headway, you need to engage the services of a legal practitioner…*

The inability of citizens to afford legal representation is not a problem peculiar to Nigeria. It is global (Usman, *et al.*, 2016a). For example, Lippman (2014) argued that, in New York, more than 2.3 million litigants came into courts without legal representation. It is also on record that millions of US citizens, particularly consumers, lack legal representation in the country (Cooper, 2014). Merely because they cannot afford to engage the services of a lawyer. According to Cooper (2014), it is embarrassing that this problem is lingering in the so-called developed countries.

But according to Usman *et al.* (2016a), the problem is more embarrassing and alarming in Nigeria. An empirical study conducted by Usman *et al*. (2015) revealed that 70% of the Nigerian consumers could not afford to pay the services of a lawyer in the country. Also, Usman's *et al.* (2015) findings further revealed that "going to the law office to hire a lawyer is like going to a private hospital in Nigeria." Simply put, before one can see the lawyer, one must first settle filing and consultation fees. Plus, transportation and appearance fees whenever the lawyer is to appear before the court.

Despite consumers' outcry of exorbitant lawyer related charges in the country, it was recently reported that the Osun State Judiciary had implemented an upward review of court charges for filing cases (Tribune, 2017). This increase affects the cost of the writ of summons from ₦4,000 to N40, 000, the divorce petition cost from ₦3,000 to ₦25,000. Whereas oath

fees which used to be just ₦200 were also increased to ₦1000 (See Table 1 below for analysis).

Table 1

An Upward Review of Court Charges (Osun State)

Fees in Respect of	Old Charges	New Charges	Increment Rate
1.Writ of Summon	₦4,000.00	₦40, 000.00	More than 100%
2. Divorce Petition	₦3, 000.00	₦25, 000.00	More than 100%
3. Oath	₦200.00	₦1000.00	More than 100%

Source: The Nigerian Tribune (19th April 2017)

Asudemade averred that this increase is outrageous and would force lawyers to raise their fees too (Tribune, 2017). Eventually, the whole burden would be shifted to the poor consumer who must pay the lawyers' fees plus the outrageous court charges. Certainly, the situation creates a severe hardship on the consumers. The implication is that the consumers would find it difficult to seek justice when their rights are being infringed upon by the powerful and wealthy traders (Adegboruwa, 2015). Thereby shutting the doors of justice to a common man, the poor consumer (Tribune, 2017). This will not augur well to consumers and other potential litigants who might wish to approach the court for justice (Adegboruwa, 2015). In this respect, Alaran lamented that "If the court is meant to be the hope of the common man, then the cost of litigation should not be made to be extraordinarily exorbitant" (Tribune, 2017).

As pointed above, considering the poverty level in Nigeria, it is safe to say that the poor consumers cannot afford the cost of litigation in the country. Seemingly, this goes contrary to the recommendation of the United Nations Guidelines on Consumer Protection 1985, Model Law on Consumer Protection in Africa 1996 and the OECD Guideless for Consumer Protection in the Context of E-commerce 1999. The cumulative effect of the recommendations of these international legal instruments is that governments should provide for consumers, meaningful access to justices without undue cost or burden (OECD, 1999; United Nations, 2004b). Nigeria needs to align with international best practices in this respect.

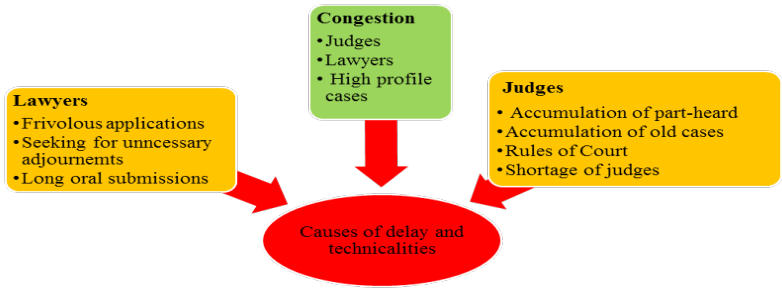
Technicalities and Delay in Proceedings

In addition to the high cost of litigation, the judicial system of resolving consumer dispute in Nigeria is full of technicalities and delays (Anaedozie, 2016; Bazuaye & Oriakhogba, 2016; Usman *et al.,* 2016b). By its very

nature, Nigerian legal justice system is formalistic and technical (Anyebe, 2012). There is too much emphasis on following procedures and formalities rather than the substance and justice of cases (Anyebe, 2012). The judicial technicalities and delays take many forms before courts today (See Figure 2 on Causes of delay and technicalities in judicial proceedings).

Figure 2

Causes of Delay and Technicalities in Judicial Proceedings



Source: Self

The following sub-sections contain detailed analysis about causes of delay as presented in Figure 2 above. The unethical conduct of lawyers being one of the reasons for the delay in the judicial proceeding would be analysed first.

Unethical Conducts of Lawyers

Lawyers, especially those with bad cases normally insist that rules of court must be followed strictly not minding any injustice done to the opponent. The lawyers do file unnecessary interlocutory applications, raise unnecessary preliminary objections and make lengthy oral submissions in our courts (Oniha, 2017). The rules governing trials of various courts in Nigeria oblige judges to entertain all these technicalities (Langseth & Stolpe, 2003). In short, lawyers do employ all forms of technicalities and delay tactics to either defeat justice or postpone the evil day.

Many-a-times, lawyers, seek for frivolous adjournments (Olajide, 2013). They give reasons such as ill-health of counsel or vital witnesses or the absence of witnesses (even when they have been duly served). Sometimes, the lawyers bring abrupt applications that could necessitate adjournment (Olajide, 2013). It is worrisome that when adjournments are granted, they can run into months, at the expense of the quick dispensation of justice. Hence, the common belief among Nigerians that seeking justice in a court of law is a waste of time (Olajide, 2013). Sometimes the relief a consumer is hoping

to get may not come during his/her lifetime. In *Obieuwebi v. CBN (2011) 7 NWLR (Pt.1247) 465,* the Supreme Court, per Rhodes-Vivour, JSC, said:

> *If I may add, this case was filed in the Lagos High Court on the 7th of July 1988. This year makes it twenty-three years ... since it was filed in court. It was sent to the court of Lufadeju J. in 2002 to start de novo. Lufadeju, J. has since retired. That is to say for twenty-three years not a single witness has been taken .... Counsel ought to have proceeded with the trial before the State High Court and at the end of trial appeal on the substantive case (if the need arises) and include jurisdiction. Twenty-three years waiting for his entitlements is clearly too long a time to wait. It must be highly traumatic and a great cost to the appellant, and a waste of precious judicial time. (*underline for emphasis).

Equally, an empirical study established the fact that cases linger for over 29 years before the Nigerian courts (Usman *et al*., 2016a). Rhodes-Vivour, JSC in the above case shifted the blame of delaying justice on the lawyers. It is the lawyers who wasted the time of the litigants with unnecessary applications for adjournments. It is so sad that no matter how long a case would last, the litigants must pay the daily appearance fees to the lawyers, cost of filing an appeal and other incidental expenses. An empirical study conducted by Usman *et al*. (2016a) exposed how lawyers contribute in delaying justice at the expense of the litigants:

> *... you go to court, and you see either a lawyer not coming to court or a lawyer not getting prepared for his case and applying for an adjournment for no good cause. It is not good for the litigants. Because the litigant is the one that bears the cost. And the psychological trauma the litigants pass through in the cause of constant adjournment ... makes them lose faith in the whole judicial system which is not quite good. I think we need some kinds of improvement*.

Indeed, these unethical conducts of lawyers do discourage many consumers from the necessary legal action they ought to take to bring unscrupulous traders to justice (Piwuna, 2016; Usman *et al*., 2016a). Hence, scholars are of the view that it is even inappropriate for any consumer redress system to accommodate lawyers (Usman *et al*., 2016a). Pound, (1913) opined that it is a denial of justice in the first place to drive a consumer to employ a lawyer for representation in a court of law. In fact, Usman *et al*., (2016a) argued that the involvement of lawyers in consumer disputes is the biggest contributing factor to the lingering technicalities and inordinate delays in judicial proceedings in Nigeria. According to Onnoghen, JSC "the court has to do something about the situation for the restoration of hope and credibility

in the system for the benefit of all ..." (*Hon. M. D. & Ors v. Chief (Dr.) J. C. Dariye & Anor* (2007) LPELR 928 (SC).

Lack of Enough Judges

Besides the unethical conducts of lawyers, studies still apportioned blame on the Nigerian judges (Olajide, 2013). Olajide (2013), described the judges as lazy and therefore contribute to the inordinate delays in the Nigerian justice delivery. The judges do adjourn cases *sou motou* and give flimsy excuses such accumulation of old cases or too many part-heard cases, etc. On the contrary, a study carried out in Nigeria by the UN indicated that judges are not lazy. Rather they are overloaded with too many cases beyond capacity (Langseth & Stolpe, 2003). There are too many high-profile cases which courts prioritise nowadays than attending to the consumer cases. High profile cases in Nigeria include corruption, terrorism and kidnapping cases which are on the increase in Nigeria today. Thus, lack of enough judges has been identified as one out of many other causes of delay and congestion of courts in Nigeria.

Effect of Delay and Technicalities on Consumer Cases

In any case, the attitudes of judges and the lawyers as identified above have contributed immensely in congesting Nigerian courts today. At the moment, the Nigerian courts are overcrowded with many cases. As pointed above, courts now pay more attention to high profile cases. Usman *et al*. (2016b), averred that consumer cases are left at the mercy of the delay-prone of the courts. Usman, *et al*. (2016b), further averred that this is a manifest denial of justice. It is a trite law that "Justice delay justice deny." If justice is to be done to the consumers, Nigeria needs to provide a less technical and prompt system of settling the grievances of the consumers (Nuruddeen *et al*., 2016). Particularly given the prevailing congestions, technicalities and delay in judicial proceedings as highlighted above (Apinega, 2013). Professor Yadudu (2007) stated that:

> *... without attributing the cause to any single actor or factor, there is, in contemporary Nigeria, an unacceptable, perhaps indecent, level of dilation and delay in the judicial process which tends to erode* ***consumers' or litigants'*** *confidence in the system and encourage resort to some form of self-help out of desperation…* (bold added).

Consequently, it could be safe to say that the judicial setting of administration of justice operating in Nigeria is not consumer friendly. The current judicial setting is not in the overall interest of the teeming Nigerian consumers, e-consumers inclusive. Hence, the arguments of scholars that consumers in Nigeria need a functional and simplified system of resolving their problems (Odigie & Odion, 2011). For example, the establishment of specialised consumer tribunals or Small Claims Consumer Courts (SCCC) in

the country is imperative. Thus, given the prevailing poverty level in Nigeria, SCCC system affords consumers a prompt, cheap and simplified means of accessing justice. The SCCC system does not allow delay and technicalities. The system "is a pro-poor and consumer friendly" (Usman, *et al*., 2016b). It will be of great benefit to consumers if the SCCCs are established both at the State and Federal levels in Nigeria. The establishment of the SCCC will serve the interest of a great number of poor consumers who do not have the means to litigate with the powerful traders. In this respect, (Pound, 1913) attested to this over a century ago, when he pointed out the need:

> *... to make adequate provision for petty litigation in communities ...to provide for disposing quickly, inexpensively, and justly of litigation of the poor ... for the great volume of small controversies which a busy, crowded population, diversified in race and language, necessarily endangers. It is here that the administration of justice touches immediately, the great number of people.*

In an ideal SCCC system hiring a lawyer is not necessary and this will reduce the expenses a consumer is going to incur in the course of seeking redress. This is the practice in Malaysia. Lawyers are not allowed to appear before the Malaysia TCC. Although corporations can be allowed to be represented by their full time employed lawyer as opposed to a private lawyer (Amin & Mohd, 2013).

Similarly, claims which consumers might consider insignificant to peruse are entertained under the SCCC system. In fact, the advantages of SCCC to the consumers and the smooth administration of justice in Nigeria cannot be counted. Suffice it say that, it will reduce the workload and congestion of the regular courts thereby paving the way for quick dispensation of justice in the country.

Indeed, the consumers in Nigeria need justice for wrongs committed against them. This can only be guaranteed through cheap avenues like the SCCC (Usman *et al.*, 2016a). According to Oguche (2013), the institutionalisation of the SCCC is going to serve as a morale booster to the Nigerian consumers. R1 strongly recommended it and particularly said that it would benefit e-consumers in Nigeria. He, therefore, shaded more light in the following words:

> *I have worked in a jurisdiction where there is a small claims tribunal. It is very good. The threshold for the amount you go to that court is not very big. The procedure is a summary. So, if you have a claim, say of ₦20, 000, if you go to a regular court to file it, you are going to pay almost half of that amount as filing fees. So, what do you get out of it? Nothing. But if it were a small claims*

> *tribunal with a claim of ₦20, 000 you only pay may be ₦50.00 to file it, and it would be done expeditiously. So, I think it is a very good idea to consider* ***in Nigeria****. (bold added).*

Consumers from Countries such as Malaysia, EU and India have since been benefiting from the SCCC system (Usman *et al*., 2016b). However, in India, it was noticed that allowing representation by lawyers before SCCC resulted in the replication of technicalities and delay associated with the regular courts. According to Usman *et al*. (2016a), the involvement of lawyers in the operations of the SCCC will defeat the philosophy behind establishing it. Therefore, creating the SCCC is not the end. There is the need for the government to monitor its operations effectively. Particularly with a view to ensuring that the objective behind establishing such court is ultimately achieve

ICT Literacy Level of the Judges

The Nigerian judiciary still operates a conventional justice delivery system where filing of cases is done manually (Asonibare & Akaje, 2015). Also, the proceedings of the courts are recorded manually (Asonibare & Akaje, 2015). The judges write in long hands instead of using ICT devices (Olajide, 2013). This is said to be a common practice amongst the developing countries (UNCTAD, 2015). Two reasons for this problem are discernible. Firstly, the ICT is still relatively new in Nigeria (Idigbe, 2010). Secondly, there is the limited ICT knowledge and awareness amongst most of the Nigerian populace including among members of the judiciary (Nuruddeen, Yusof, & Abdullah, 2017). Indeed, the limitation of the ICT knowledge is not only peculiar among members of the judiciary but also common among senior members of the academia particularly the professors (Arenyeka, 2013).

The fact remains, the judges need to have at least the elementary ICT knowledge to be able to adjudicate effectively on matters associated with it (Abubakar, 2014; Oluchi, 2015). The Chief Justice of Nigeria (CJN) said that dispensation of justice could only be optimally achieved in Nigeria if the judges consistently, update their knowledge with the current developments in areas such as the ICT (Mohammed, 2016). Isaac (2015), reported that the CJN admitted the fact that members of the judiciary lack the requisite expertise to handle the emerging ICT related disputes efficiently. The CJN made this known to the public during the 2015 Workshop for Judges on Legal Issues in Telecommunications. The CJN said that the challenges of the ICT *vis-à-vis* the growing need for consumer protection are increasingly becoming complex for courts in the country (Isaac, 2015).

The ICT knowledge is paramount not only to the judges but also to the court clerks as well as the lawyers who represent the consumers before the Nigerian courts (Ahmadu, 2010; Oluchi, 2015). In this respect, Ahmadu (2010) argued that the lawyers and judges must acquire computer knowledge for proper handling of e-commerce disputes.

The practice in India is that a person cannot be appointed to adjudicate on e-commerce and ICT related disputes unless such person is a lawyer and also possesses the requisite IT knowledge (Section 46 (3) of the *Information Technology Act, 2000*). In the circumstance, the UNCTAD strongly recommended for judges in countries like Nigeria, the acquisition of ICT knowledge through periodic training (UNCTAD, 2015). The training must focus on different aspects of cyber law such as e-commerce and electronic evidence.

The need, relevance and necessity for judges to acquire ICT knowledge can be illustrated with the historical antecedent of the *Nigerian Evidence Act (EA), 2011*. Before the enactment of the EA 2011, admissibility of the electronic document in a judicial proceeding was contentious (Osinbajo, 2007). Documents which an e-consumer can rely on in a court of law such as electronic receipts, ledgers, vouchers and other computer printouts were hardly allowed to be tendered in support of claims (Omolaye-Ajileye, 2016). This problem was traced to Section 2 of the *Evidence Act 1945* which defined the document to include:

> *Books, maps, plans, drawings, photographs, and ... any matter expressed or described upon any substance by letters, figure or marks or by more than one of these means, intended to be used or which may be used for the purpose of recording that matter.*

From the above, the term "document" in the strict sense means written or printed statement or information on paper or book (Ladan, 2014). Simply put, the definition does not seem to accommodate the modern electronic documents which are paperless by nature. On this premise, in 1976, the Nigerian Supreme Court (SC) held that under no stretch of interpretation should could court admit electronic documents unless the then EA 1945 is amended. Thus, the SC in *Yesefu v. ACB (1976) 4 SC 1* declared:

> *Though the appellant's counsel made reference to the modern day practice of using a computer in the day–to-day business of the bank. It is my opinion that the law remains as it is and I am bound to apply the law as it is…It would have been much better, particularly with respect to a statement of account contained in a document produced by a computer, if the position is clarified beyond doubt by legislation as had been done in England….*

Subsequently, the above case was strictly followed in the cases of *Nuba Commercial Farms Ltd v. NAL Bank Ltd (2001) 16 NWLR (Pt. 340) 523,* and *FRN v. Femi Fani-Kayode (2008) FHC/L523C/2008* respectively. In the latter case, the court had to add that electronic documents cannot be admissible in Nigeria even if duly certified and relevant.

Despite the lack of clear legislative provisions on the issue, there also existed views that the EA 1945 recognised the electronic document. The proponents of this view include Adodo and Nwokeocha who said that the word "include" as used in the above definition of a document is open-ended (Ladan, 2014). Hence, it is their opinion that the term "document" is broad enough to cover document in an electronic form (Ladan, 2014). This liberal interpretation received a judicial pronouncement in the case of *Esso West African Incorp v. Oyegbola (1969) I NMLR 198*. Here, the SC stated that:

> *... the law cannot be and is not ignorant of modern business methods and must not shut its eyes to the mysteries of the computer. In modern times, reproduction or inscriptions on ledgers or other documents by the mechanical process are commonplace...*

Similarly, in *Ogolo v. IMB (1995) 9 NWLR (Pt. 419) 324,* Onalaja JCA said that the court ought to take judicial notice of documents evidencing electronic transactions. He stated thus:

> *The commercial and banking operations in keeping of account by the old system have changed to a computer which makes Nigerian businessmen to be modernised and in keeping with the computer age which system is so notorious that judicial notice of it can be taken under Section 74 of the Evidence Act.*

Rhodes-Vivour JSC., in *Oghoyone v. Oghoyone (2010) 3 NWLR (Pt. 1182) 564, at 585,* seemed to have brought an end to the controversy when he held:

> *The issue as to the admissibility of computer generated evidence has been the subject of controversy for quite some time now in Nigeria ... presently, the legislature is working on appropriate amendments to accommodate such evidence. As it stands today, computer printout of bank statement of the account* ***being a good example of electronic documents*** *can be admitted in evidence. (bold added).*

However, three issues are worth noting from the decision in *Oghoyone's* case. Firstly, by admitting the electronic document, Rhodes-Vivour JSC has contradicted the above cited *Yesefu's* case which is also a Supreme Court case. Secondly, Rhodes-Vivour JSC has partly accepted the decision in *Yesefu's* case, since he agreed that there was no proper law that allows for the admissibility of electronic documents in Nigeria. Moreover, he even made it very clear that the then National Assembly was working on such a law. Thirdly, Rhodes-Vivour JSC employed the doctrine of judicial activism to slightly differ from *Yesefu's* case whereby he interpreted the EA

1945 "as it ought to be, not as it is." Oputa, (2007b), applauded this kind of judicial activism when he said:

> *We, **the judiciary** are not to fold our hands and do nothing. No, our judges have to so interpret the law that it makes sense to our citizens in distress and assure them of equal protection of the law, equal freedom under the law, and equal justice. And this is what judicial activism is all about…*

Nonetheless, it is important to note that the decisions of the SC in *Yesefu* and *Oghoyone* have grave consequences on Nigerian judicial system. They have deepened the extant controversy surrounding the admissibility of electronic documents in Nigeria. The effect is that the inferior courts have the option to either follow *Yesefu* or *Oghoyone* since both cases emanated from the same SC. According to Ladan, (2014), this is not healthy to nation's legal system. Thus, it has been argued that the solution to the problem is a clear legislative enactment as earlier pointed in the *Yesefu's* case.

Indeed, an explicit legislative enactment came into being in 2011 when the EA 1945 was repealed and replaced by EA 2011. The EA 2011 retained the paper based definition of document (as in the EA 1945) and then went further to extend the definition to any document of electronic nature. For the avoidance of doubt, Section 258 (1) of the EA 2011 provides that a document includes:

> *(a) books, maps, plans, graphs. drawings, photographs, and also includes any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of these means, intended to be used or which may be used for the purpose of recording that matter;*
>
> *(b) any disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced from it, and*
>
> *(e) any film, negative, tape or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced from it; and*
>
> *(f) any device by means of which information is recorded, stored or retrievable including computer output.*

Consequently, with these unambiguous legislative provisions, parties can now rely on electronic documents to prove claims before the

Nigerian courts. For example, e-consumers can now safely tender any form of electronic documents such as electronic receipts to establish their claims against e-traders. In this way, Nuruddeen *et al.*, (2016) argued that the enactment of the EA 2011 serves as a supporting pillar for the growth and development of e-commerce and consumer protection in Nigeria.

However, enacting the EA 2011 is not the end to the problem. It is evident that even with the EA in place, Nigerian courts still do reject electronic documents when parties seek to tender them in evidence. For example, in the case of *Kubor v. Dickson (2013) 4 NWLR (Pt. 1345) 534 at 550*, the SC held:

> *A party that seeks to tender in evidence a computer generated document needs to do more than just tendering same from the bar. Evidence in relation to the use of the computer must be called… since the appellant never fulfilled the pre-conditions laid down by law,* ***therefore, the e-documents tendered in evidence*** *were inadmissible…* (bold added).

Still, the truth is that in Nigerian, courts treat electronic documents with deep scepticism because of the belief that such documents are susceptible to manipulation (Omolaye-Ajileye, 2016). In *ESIEC and Ors v. PDP and Anor (2013) LPELR 20411*, Justice Onyemenam, states that "with our modern information communication technology, anything is possible. Electronic documents can easily be tempered without leaving any sign of alteration or modification. Thus, the authenticity of electronic documents becomes doubtful in the mind of the court (*Araka v. Egbue (2003) 7 SCNJ 114)*.

Hence, a proper appreciation of the provisions of the EA 2011 requires rudimentary ICT knowledge and training (Abubakar, 2014). This goes back to the earlier argument that Nigerian judges need specialised training on the cyber law to enable them to deal with the problem associated with electronic document and e-commerce transactions. In 2015, the UNCTAD revealed that if e-commerce is to be successful, judges in countries like Nigeria need to be trained in that area (UNCTAD, 2015). It was also opined that legislators, lawyers and court personnel should be involved in the training (United Nations, 2004a). It is a belief that capacity building and training programmes can raise the level of expertise or competence of whoever is handling e-commerce-related cases (United Nations, 2004b). Thus, capacity building among the major stakeholders will play a pivotal role in ensuring that consumers' grievances are properly addressed.

Institutions such as UNCTAD, UNCITRAL, the United Nations Office on Drugs and Crime and the Council of Europe render assistance by way of giving training to consumer protection institutions particularly in developing countries like Nigeria (UNCTAD, 2015). The members of the

judiciary in Nigeria stand to benefit a lot from the training offered by these institutions particularly in the areas of e-commerce and consumer protection. Nigeria needs to tap this advantage.

CONCLUSION

This paper has examined issues regarding the protection and enforcement of e-consumer rights through the judicial mechanism in Nigeria. Here, the judicial mechanism means the procedure of enforcing consumer rights by way of filing a civil action in a court of law. The paper revealed that the Nigerian Constitution empowers the court to hear and determine disputes concerning civil rights of the citizens which includes consumer rights. The paper observed that the e-consumer in Nigeria looks up to the court for justice when his/her right is violated. However, this paper established that courts in Nigeria today are beyond the reach of e-consumers. The cost of litigation is expensive; judicial proceedings are full of technicalities and delay. The extant literature and the empirical studies disclosed that the lawyers and judges contribute to the delay and congestions of the courts in Nigeria. Above all, the lawyers, judges and their staff lack the necessary skills and expertise to handle e-commerce disputes in the country. Hence, the judicial system of enforcing and protecting the rights of e-consumers in Nigeria is faulty and needs a complete overhaul.

RECOMMENDATIONS

This paper, therefore, recommends that the issue of high cost of litigation, delay, technicalities and congestion associated with consumer litigation in Nigeria could be addressed through the establishment of SCCC in the country. The SCCC is a pro-poor and consumer friendly system where the filing fees for lodging complaint is affordable. The SCCC entertains claims which a consumer might consider insignificant to pursue. The procedure of settling disputes before SCCC is simple and prompt because technicalities are not allowed. In fact, the establishment of the SCCC would serve the interest of a great number of poor Nigerian consumers who do not have the means to litigate with the powerful traders.

Where the SCCC is established, the government should monitor its operations. Lawyers should not be allowed or be discouraged from representing parties before the SCCC. Otherwise, the technicalities and delay associated with the regular courts would also find their ways into the proceedings of the SCCC.

The SCCC regulations should clearly spell out a time limit within which consumer disputes should be resolved. The orders of the SCCC should be given equal force as that of High Court in the country. In specific terms,

the paper recommends that the SCCC should have a division for handling e-consumer disputes. Those who would be appointed to handle e-commerce disputes must have requisite knowledge and experience in the areas of e-commerce law and consumer protection. These recommendations are informed by the practice in other jurisdictions such as Malaysia, India and EU as well as the qualitative data collected while conducting this research.

Similarly, the paper recommends that the Nigerian judges should undergo special training particularly in the areas of e-consumer protection law as well as the legal aspects of ICT such e-commerce, cyber crimes and electronic evidence. Other stakeholders such as the court staff and lawyers also need to undergo such kind of training too. Noting that capacity building among the major stakeholders will play a pivotal role in ensuring that e-consumers' grievances are properly addressed. Not forgetting the fact that capacity building and training programmes can raise the level of expertise or competence of whoever is handling e-commerce-related cases

Equally, the paper recommends the creation of E-commerce Disputes Division (EDD) in every high court in Nigeria. This arrangement is to be reflected at the Court of Appeal and Supreme Court. Thus, the Court of Appeal and the Supreme Court should have something like E-commerce Disputes' Appeal Division (EDAD). Following the practice in India, this paper recommends that in recruiting judges for EDD and EDAD, the government should give priority to persons who have ICT knowledge in addition to legal practice experience.

Finally, the paper recommends that the Nigerian judges and lawyers should seek guidance on how to interpret and apply e-commerce statutes particularly from the website of the UNCITRAL Secretariat. The UNCITRAL Secretariat has established a system for collecting and disseminating information on court decisions and arbitral awards relating to e-commerce disputes. The acronym for the system is "CLOUT" (Case law on UNCITRAL texts). The CLOUT promotes international awareness of e-commerce laws among judges, arbitrators, lawyers, parties to commercial transactions and other interested persons. Also, the CLOUT promotes the uniform interpretation and application of e-commerce legislation across the globe. Nigerian judges, lawyers and academics need to tap this advantage.

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