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LEGAL FRAMEWORK FOR CONSUMER PROTECTION IN NIGERIA

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Abstract

There is a local reasoning ascribing honesty and diligence on both producer and consumer or buyer. The reason is not far-fetched. Commercial transaction is usually conceived as a spiritual relationship, requiring fairness and justice. Consequently, the laws on product liability ordinarily strive to promote the protection of the consumer from the harmful effect of defective and substandard products. There are times, where products fail to meet the required standard capable of ensuring fairness and justice. It is against this background, that the authors argued that the prevalence of laws and rules on consumer protection, ordinarily act as a push-drive and commends the propensity of putting the manufacturer on check against fake, substandard and adulterated products in the process of manufacturing goods. The authors further argued that the concept of consumer protection must be seen to revolve around enforceable remedies available to the ultimate consumer in the event of defective products and substandard goods. The paper demonstrated the need for the existence of regulatory bodies, inclusive of Standard Organization of Nigeria, the National Agency for Food and Drug Administration and Control, the Consumer Protection Council, the Utilities Charges Commission, the National Insurance Commission, the Advertising Practitioners Council of Nigeria, and etcetera, specifically created to provide a platform for regulating activities of the manufacturers against a defective product in the Nigerian market space. The authors therefore maintained that though some of the functions of the aforesaid bodies overlap, their operations have positively impacted on the consumer who is always at the receiving end, and at the same time, created consciousness on the manufacturers as to the standard expected of them in the manufacturing of goods and rendering of services.

Keywords: fake products, manufacturer, consumer, liability, goods and services.

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1. Introduction

The laws on product liability evolved in order to protect the consumer from defective and substandard products. Where products fail to meet required standard aimed at depriving the consumer of satisfaction, the law enjoins the consumer to seek redress in the law court. The prevalence of laws and rules on consumer protection, ordinarily act as a push-drive and commends the propensity of putting the manufacturer on

check against fake, substandard and adulterated products in the process of manufacturing goods. In the light of the foregoing, the concept of consumer protection revolves around enforceable remedies available to the ultimate consumer in the event of defective products and substandard goods. To this end, is the existence of regulatory bodies, specifically created to provide a platform for regulating activities of the manufacturers against a defective product in the Nigerian market space. There exist an avalanche of such bodies which include some of the following-Standard Organization of Nigeria,¹ the National Agency for Food and Drug Administration and Control,² the Consumer Protection Council,³ the Utilities Charges Commission,⁴ the National Insurance Commission,⁵ the Advertising Practitioners Council of Nigeria,⁶ and etcetera. It is imperative to state that although some of the functions of the aforesaid bodies overlap, their operations have positively impacted on the consumer who is always at the receiving end, and at the same time, created consciousness on the manufacturers as to the standard expected of them in the manufacturing of goods and rendering of services.

Some of the regulatory bodies in exercise of powers proper by them, are empowered to confiscate substandard products and seal up premises where those products are manufactured. Significantly, notwithstanding the existence of the regulatory bodies with overwhelming provisional powers, consumers are yet to fully savour the protection envisaged under the law. Consequently, affected consumers reserve the right to sue a manufacturer of defective product or provider of a service premised on the principles of law under the law of tort and/or the law of contract.

It is in the light of the aforesaid that the paper examines the legal remedies available to a consumer and the liability of a manufacturer and a service provider under the Nigerian Legal System. However, prior to the appraisal of the identified remedies, there is need to appreciate the denotative meaning of the term ‘Consumer’ within the frame work of existing statutes and case law.

2. Nature and Scope of a Consumer

¹ [Hereafter, The SON]

² [Hereafter, The NAFDAC]

³ [Hereafter, The CPC]

⁴ [Hereafter, The UCC]

⁵ [Hereafter, The NAICOM]

⁶ [Hereafter, The APCON]

The term 'Consumer' is defined as a person who buys goods or uses services.⁷ Furthermore, a consumer could be seen as simply the final or end user of all goods or services produced in the economy.⁸ The Molony Committee in England defined a consumer as one who purchases goods for private use or consumption.⁹

From the above definitions, it is clear that a consumer is the ultimate user of goods and services. But what appears uncertain is whether the above definitions encompass firms or corporate bodies as distinct from reference to an individual being the consumer. A perusal of the provision of the Consumer Protection Committee gives an insight as to whether the term consumer extends beyond an individual person.¹⁰ It provides that a consumer or community that has suffered a loss, injury or damage as a result of the use or impact of any good, product or service may make a complaint in writing or seek redress through a State Committee. From the above, it seems logical to assert that the term individual as used in the definition of consumer goes beyond the individual person per se. It is therefore the intendment of this paper to examine product liability in respect of goods and services and the redress available to a consumer under tort and contract based remedies.

3. Consumer Protection and Civil Liability

The law of contract presupposes an agreement between two parties of full age and capacity, which is legally enforceable where a breach occurs. One of the commonest ways a consumer/manufacturer relationship can arise is by way of contract, albeit with consequent remedy. For instance, in *Printing and Numerical Registering Co v Samson*, Jessel M.R held that:

If there is one thing more than another which public policy requires, it is that men of full age and competent understanding shall have the utmost liberty in contracting and that their contracts, when entered freely and voluntarily, shall be held sacred and shall be enforced by Court of justice.¹¹

Again the Court of Appeal in *Manya v Idris* held that where two free and able parties entered into an agreement, the court has a duty to hold them down and give effect to their contract no matter how inelegantly or ineptly couched. It will be demanding too much of any court to approve unjustifiable departure from or rewrite such contract

⁷ A.S Hornby, (London: Oxford University Press) 6th ed. P. 246

⁸ O. Grady, Consumer Remedies (1982) 60 Canadian Bar Review (No 4) P. 549

⁹ London 1781/1962

¹⁰ S.6 (1) C.P.C Degree 1992

¹¹ (1875) LR 19, 462

except such a contract or part thereof had been properly abrogated.¹² Flowing from the above, there is need to fully appreciate the remedies available to a consumer under the law of contract.

A. Remedies under the Sale of Goods Law

A consumer is protected under a contract of sale of goods by virtue of the Sales of Goods Act.¹³ For the purpose of this enterprise, the sale of Goods Law of the defunct Bendel State shall apply here.¹⁴ Under the Sale of Goods Law, there is protection for the buyer who presumably is the consumer and end user of manufactured products. Where a consumer acquires goods from the seller, it is presumed that the seller has the right to sell by virtue of the Sale of Goods Law, premised on an implied condition of the seller that he has a right to sell the goods and that in the case of any agreement to sell, he will have a right to sell the goods at the time when the property is to pass.¹⁵

It follows therefore that where there is defect in the title of the seller, the buyer or consumer shall be protected provided he acted in good faith and had no knowledge of the seller's defective title. For instance in *Akoshile v Ogidan* the defendant sold a car to the plaintiff which was later discovered to be stolen.¹⁶ The European from whom the defendant bought the car was convicted of stealing the said car. The Supreme Court held that the plaintiff was entitled to rescind the contract and have his money refunded to him as the defendant had no right to sell the stolen car. In the case of *Ageh v Tortya* the Court of Appeal held that where a person who has not title to a property sells to another, the sale is *void ab initio*.¹⁷ This is based on the principle of *nemo dat quod non habet* which means that you cannot give what you do not have.

Another remedy provided under the Sale of Goods Law relates to breach of contract to supply goods in correspondence with description. The Sale of Goods Law¹³ provides that where there is a contract for sale of goods by description, there is an implied condition that the goods shall correspond with the description.¹⁸ In the case of sale by sample as well as by description, it is not sufficient if the bulk of the goods correspond with the sample if the goods do not also correspond with the description.

¹² (2000) F.W.L.R [Part 23] P. 1237

¹³ The Sale of Goods Act -1893, which is a Statute of General Application and virtually all the states in Nigeria operate their respective Sale of Goods Law.

¹⁴ Cap 150 of Laws of Bendel State 1976, now applicable to both Edo and Delta States.

¹⁵ S. 12 (8) Sale of Goods Law Bendel State 1976, now applicable to both Edo and Delta States.

¹⁶ 19 NLR 87

¹⁷ (2003) 6 NWLR [Part 816] P. 358

¹⁸ S. 14, Sale of Goods Law

Although sale by description is not defined in the Sale of Goods Law, judicial decisions seem to endorse the view that the consumer can only enforce breach of contract in the event of the goods not complying with description, where the consumer did not see the goods but only relied on the description. In the case of *Varley v Whipp*, a seller described an old reaping machine as new, which said description the buyer relied on and bought the machine without seeing it. It was later discovered that the machine was not new.¹⁹ It was held that the buyer could rescind the contract for failure to comply with description and recover his money.

Apart from compliance with description, the Sale of Goods Law also makes provision for sale by sample.²⁰ Where a contract has been made between a seller and a buyer in respect of sale by sample, there must be a term express or implied to the effect that the sale should be by sample. In *Boshali v Allied Commercial Exporters*, a contract was entered into for the sale of quality textile materials.²¹ The Judicial Committee of the Privy Council held that in a sale by sample of the goods, the subject matter of the contract was supplied by the seller to the buyer, the sample would be taken into consideration as evidence of the description of the goods given by seller and the provisions of sections 14 and 16 of the Sale of Goods Law applied.

It should be noted that where a purchaser buys goods by sample, he shall have reasonable opportunity to compare the bulk with the sample.²² If however, the buyer discovers a defect in the goods after purchase, the seller can no longer be held liable as regards such a defect. In *Mondy v Gregson*, it was held that a purchaser who buys by sample will still have no use for due diligence to avail himself of all ordinary and usual means to ascertain properties of that sample and will be equally bound by whatever he actually recognizes in the sample and what he might by due diligence in the use of all ordinary and usual means, have ascertained.²³

However, where the defect is latent and not easily ascertainable upon examination of the goods, the seller may still be liable. In *Godley v Perry*, a seller displayed plastic toy catapults in the shop window from which a boy of sixteen years bought one.²⁴ The catapult broke during the course of normal use and injured the boy. The seller was

¹⁹ (1900) 1 QB 513

²⁰ S. 18 Sale of Goods Law

²¹ (1961) A.N.L.R 917

²² S. 16 (d) Sale of Goods Law

²³ S. 15 Sale of Goods Law

²⁴ (1868) LR 4 Exq 49

held liable since the defect was not easily noticeable even upon a reasonable examination.

B. Fitness for Purpose

Under the Sale of Goods Law, there is no implied warranty or condition as to the quality or fitness of any particular purpose of goods supplied under a contract of sale where the buyer expressly or by implication makes known to the seller the particular purpose for which the goods are required so as to show that the buyer relies on the seller's skill or judgment.²⁵ It is therefore contended that where the buyer does not specifically, either expressly or by implication make known to the seller the type of goods he needs, the seller is stopped from escaping liability on the basis of the buyer not being specific about the purpose for which the goods are to be used. In the case of *Ijoma v Mid Motors*, Dosumu J, held that where the purpose for which the goods can be used is self-evident and it's only for such purpose, it is completely unnecessary for a buyer to state the purpose for which he wants the type of goods and to indicate that he is relying on the seller.²⁶

I. Merchantability

The Sale of Goods Law provides that where goods are bound by description from a seller who deals in goods of that description (whether he be a manufacturer or not) there is an implied condition that the goods shall be of merchantable quality provided that if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.²⁷

The term 'merchantable quality' is not defined in the Sale of Goods Law. In *Bristol Tramways Co. v Fiat Motors Ltd*,²⁸ Farewell L.J. held that the phrase 'Merchantable quality' is in my opinion used as meaning that the article is of such quality and in such a condition that a reasonable man acting reasonably would after full examination accept it under the circumstances of the case in performance of his offer to buy that article, whether he buys it for his own use or to sell it again. In *Demuren v Atlas Nigeria Ltd*,²⁹ Agoro J. held that the goods should be of such quality and in such condition that a reasonable man acting reasonably would after full examination accept them in the performance of the contract of sale.

²⁵ (1960) 1 ALL E.R 36

²⁶ Unrep. suit NO: LD/1448/72

²⁷ S.15 (6) Sale of Goods Law

²⁸ (1910) KB 831

²⁹ (1976) 12 CCHCJ 2709

It is obvious that whether or not goods are of merchantable quality depends on the peculiar facts of a case as well as the terms of contract of sale which the court will examine in order to discover the real intention of the contracting parties. In as much as a buyer or consumer's right to seek redress is fully protected under the law, contracting parties such as a seller and a buyer may include clauses in their agreements to forestall the incidence of liability and this is called exclusion clauses.

II. Exclusion Clauses

The essence of exception clauses is to exclude obligation or liability under a contract. Although exclusion clauses must be agreed upon by both parties, it is in most cases at the detriment of the consumer. Usually, the seller in his bid to escape from liability, device some measures, in the form of exclusion clauses. Once such clauses are contained in a contract, the consumer becomes helpless as courts are bound to give effect to agreement of parties. When exclusion clauses are introduced by the seller, it is the right of a buyer or consumer to either accept or reject them. The courts are however enjoined to set aside any exclusion clause which appears not to have represented the intention of the parties or one of the parties. In *Chapelton v Barry* the court stated that where the contract has been concluded before the introduction of the exclusion clause, or even when they may form part of the contract, the courts may hold that the term had not been brought fairly and reasonably to the attention of the other part.³⁰

However, where an exclusion clause has been properly incorporated into the contract, the consumer cannot claim ignorance of it or that the document was not read to him in as much as it was signed by the contracting parties. In the same vein, where provisions exist in the Statutes containing exclusion clauses, liability or damages will be assessed on the basis of such clauses. In *Iwuoha v Nigerian Railway Corporation*, the appellant who was given a waybill containing exclusion clauses could not recover sufficient damages for his missing packages on the ground that the liability of the defendant company was ~~N~~40.00 in such circumstances as against ~~N~~40000.00 damages which he was claiming. The Supreme Court held that the waybill was a contractual agreement and that the appellant was only entitled to ~~N~~40.00.³¹

³⁰ UDC (1940) 1 KB 532

³¹ (1997) 4 N.W.L.R. Pt. 500) 419

The problem associated with exclusion clauses paved way for the doctrine of fundamental breach to ameliorate the hardship occasioned by such exclusion clauses. In the case of *Chanter v Hopkins*, Lord Abinger stated that if a man offers to buy peas of another and he sends him beans, he does not perform his contract.³²

A fundamental breach is said to occur where a party fails to perform his obligation under the contract thereby depriving the other party of his benefit. Although, the doctrine of fundamental breach was evolved in order to whittle down the harsh effect of exclusion clauses on contracting parties, the House of Lords held in *Photo Productions Ltd. v Securicor Transport Ltd* that the doctrine of fundamental breach was one of interpretations only and does not apply where the parties have equal bargaining power and well able to insure against the risk, the subject matter of the purported exclusion clause.³³ However, in *Narumal & Sons Ltd. v Niger Benue Transport Co. Ltd*, the Supreme Court held that there was no rule of law that an exemption clause is nullified by a fundamental breach of a contract or a breach of a fundamental term.³⁴

Drawing attention from the position of the Supreme Court in the above case, it is apparent that the doctrine of fundamental breach has failed to realize its objective in finding a solution to the problem of exclusion clauses, due to the inability of the decision to put the interest of the consumers into consideration. The doctrine merely acts as a guiding principle of law in cases of consumer/manufactures contracts as regards exclusion clauses/fundamental breach.

C. Tort Based Remedies

The law of tort seeks to adequately protect the consumer against injuries arising from the use of defective products. That protection is in the form of a duty imposed on the manufacturer by law towards persons generally who are users of such manufactured products. The breach of that duty which a manufacturer owes a consumer in the use and enjoyment of the aforesaid product is actionable in a law court at the instance of the consumer. Liability for defective products under the law of tort was relatively unknown until the case of *Donoghue v Stevenson* was decided. Donoghue's case laid

³² (1838) 4 M & W 399

³³ (1989) A.C 827

³⁴ (1989) 2 N.W.L.R (Pt. 106) 730

down the principle of tortious liability arising from defective product.³⁵ Since tortious liability essentially borders on negligence, a proper appreciation of *Donoghue v Stevenson* is necessary. In that case, the appellant bought some ice cream and ginger beer in a bottle which was not transparent. After consuming some quantity of the ginger beer, the appellant's friend poured the remaining quantity and it was found to contain decomposed snail. The appellant suffered shock and gastro enteritis. It was held that the manufacturer owed a duty of care to the consumer. Lord Atkin stated that:

A manufacturer of products, which he sells in such form as to show that he intends them to reach the ultimate consumer in the form in which they left him with no reasonable possibility of intermediate examination and with the knowledge that the absence of reasonable care in the preparation or putting up of the products will result in an injury to the consumer's life or property owes a duty to take reasonable care.³⁶

It is obvious that for a consumer to successfully sue on account of defective product claiming damages, he must establish the following: (i) the defendant owed him a duty of care; (ii) that the defendant breached that duty and (iii) that the Plaintiff suffered loss/damage as a result of the said breach.³⁷

Lord Wright stated that 'negligence means more than a heedless or careless conduct..., it properly connotes the complex concept of the duty, breach and damage thereby suffered by the person to whom the duty is owed.'³⁸ From the above definition, tortious liability in respect of defective product must revolve around the duty of care which the manufacturer of product owes the ultimate consumer of such products. Even when such duty has been established, liability cannot flow from the manufacturer unless the consumer is able to show that the manufacturer breached that duty of care and that he suffered damages. Although tortious liability in consumer protection has been able to effectively tackle the problem of privity of contract, it is however observed that negligence in product liability is not easy to establish. The law appears to lean more on the side of the manufacturer than the consumer. A consumer is strictly required to prove his case through evidential burden. The enormous burden of proof placed on the consumer has given manufacturers escape route from tortious

³⁵ (1932) A.C. 562

³⁶ *Donoghue*, supra, Per Lord Atkin

³⁷ *Makwe v Nwukor* (2001) FWLR (Pt. 63) 1

³⁸ *Lochgelly Iron & Coal Co. v McMullan* (1980) P.L.R 583

liability. In *Ebelamu v Guinness Nig. Ltd*³⁹ the plaintiff sued the defendant who suffered from gastro enteritis as a result of some sediments contained in the defendant's harp beer which the plaintiff consumed. It was held that since poor storage conditions could produce sedimentation, the plaintiff did not discharge the burden that the defendants were responsible for the defect. Similarly, in *Okonkwo v Guinness (Nig.) Ltd*,⁴⁰ the plaintiff complained of stomach disorder after taking drinks from a hotel, he subsequently filed an action against the defendants for negligence. It was held that since the plaintiff could not prove that the foreign matters contained in the drink entered the stout bottle at the factory, his case was dismissed.

However, in *Demuje v Nigerian Breweries Plc.*,⁴¹ the plaintiff who took a bottle of Maltina wherein he vomited a cockroach and suffered from muscular tremor, stomach upset and high blood pressure was awarded Two Million Naira damages in his favour by the court for negligence on the part of the manufacturer.

It is therefore correct to state that the facts of each case will determine whether or not a manufacturer will be held liable for the loss suffered by the consumer in respect of defective products.

D. Advertising

Manufacturers usually advertise their products in a bid to attract patronage as well as drawing the attention of the consumer to the said products. In as much as the law allows a manufacturer to recommend and commend his product by puffing same, some consumers may be carried away into entering a binding contract on the basis of the said puff. Exaggeration is at times employed by the manufacturers to market their products. However, where such exaggeration becomes a contractual term, the manufacturer will be held liable. In *Carlill v Carbolic Smoke Ball Co*,⁴² the defendant advertised in the newspapers that they would pay the sum of £100 to any person who contracted influenza after using their products three times a day for two weeks. The plaintiff bought and used the product as specified and yet caught influenza. When she sued to enforce the undertaking, the defendant contended that the advertisement was a mere puff and not a contractual term. The Court of Appeal held that the defendants were liable to the plaintiff as the said advertisement was not a mere puff.

³⁹ FCA/L/10/82

⁴⁰ (1980) P.L.R. 583

⁴¹ Unreported, Suit No: EHC/236/94, Delta High Court

⁴² (1893) 1 QB 256

In Nigeria, some regulatory bodies such as Advertising Practitioner Council of Nigeria,⁴³ the National Agency of Food Drug Administration Council⁴⁴ and the Consumer Protection Council,⁴⁵ have rules and sanctions which regulate advertising practice in Nigeria. The NAFDAC Act empowers NAFDAC to regulate and control advertisement of food, drugs, cosmetics, medical device, bottled water and chemicals and issue guidelines on and monitor the advertisement of such products.⁴⁶ In order to check excessive practices, the Consumer Protection Council has power to ban advertisement of products and services which do not comply with safety or health regulations.⁴⁷

These measures as a matter of fact were put in place to protect the consumer from misleading advertisement by the manufacturers. The consumers are further protected from dangerous products. The Tobacco Smoking (Control) Decree 1990 makes it compulsory for manufacturers of tobacco products to add a warning that ‘the Federal Ministry of Health warns that Tobacco smoking is dangerous to health; smokers are liable to die young.’

Significantly, there are so many legislations in force to protect the consumer from unscrupulous manufacturers. It could therefore be safe to conclude that the remedy available to a consumer is fully protected/guaranteed with respect to product liability. However, there are some critical observations. Some of the constraints of the consumer in the face of existing rules and judicial pronouncements on product liability include the following:

I. Constraints of the Nigerian consumer in product liability.

It is settled that legislative rules and enactments have been made by successive Governments to protect the consumer from product defects. In so far as the consumer has a right to pursue his remedy under civil law, be it contract or tort, it has not been easy for the consumer in discharging the onus of proof on the balance of probability required under the Evidence Act.⁴⁸ It would therefore appear to amount to a situation where a piece of legislation confers rights/remedies on a consumer and another piece of legislation makes it impossible to pursue that remedy as a result of procedural

⁴³ [Hereafter, APCON]

⁴⁴ [Hereafter, NAFDAC]

⁴⁵ [Hereafter, CPC]

⁴⁶ S.5 NAFDAC Act

⁴⁷ S.3 CPC Act

⁴⁸ Sections 5, 135, 136 & 137 of the Evidence Act, Cap 112 LFN 2004

impediments for accomplishing such a conferred right or remedy. It is very common to observe that even where there is the clearest evidence before court that a manufacturer was negligent in the manufacturing of a product thereby causing damage to the consumers, the courts still require strict proof before awarding damages. In the case of *Ebelamu v Guinness Nig. Ltd.*,⁴⁹ the plaintiff's claim against the defendant who suffered from gastro enteritis was dismissed by the court on the ground that since poor storage conditions could produce sedimentation in Harp beer, the plaintiff did not discharge the burden that the defendants were responsible for the defect. Guinness Company knew that poor storage could produce sedimentation and yet made no effort to correct the anomaly thereby leaving the poor consumer to bear the brunt of the manufacturer's inadequacies. The reasoning the court in the above case ought to have properly evaluated the evidence before it by ascribing liability to the defendant company for not being able to package products that would stand the test of time and give the consumer ultimate satisfaction and value for his money.

Furthermore, the doctrine of *res ipsa loquitor* has not been properly applied in the Nigerian courts. Even where the facts of the manufacturer's negligence speak for themselves, the courts still insist that the manufacturer's liability be proved by preponderance of evidence. The approach of the Nigerian court tends to hijack the protective remedies available to the consumer under the various legislative enactments. More worrisome is the fact that even when a consumer relying on *res ipsa* is able to establish that the manufacturer owes him a duty of care and that he breached that duty, he is under a legal obligation to prove strenuously that the injury suffered by him arose directly from the aforesaid breach. In *Okonkwo v Guinness (Nig.) Ltd*⁵⁰ the plaintiff's claim failed merely because the court held that the plaintiff was unable to prove that the foreign matters contained in the stout bottle which caused him injury entered the bottle at the factory or that the bottle was tampered with by the retailer. In dismissing the case, Obi Okoye J. held that the doctrine of *res ipsa loquitor* does not apply in product liability cases.

The above case seems to have leaned towards the protection of the manufacturer than the consumer and it is the attitude of courts on the issue of strict proof that appears to divest the consumer of his benefits and remedies in the area of product liability.

Another factor that has limited the consumer's right to damage in case of product liability is the use of exclusion clauses by manufacturers or service providers to

⁴⁹ Supra

⁵⁰ Supra

escape liability. Cases abound in tort and contract of instances where exclusion clauses are introduced to avoid liability. In the case of *Ibidapo v Lufthansa Airline*⁵¹ the appellant boarded the respondent's aircraft from Lagos to Frankfurt. On getting to Frankfurt he discovered that his typewriter was missing. The appellant subsequently sued the respondent claiming damages. The respondent later brought a motion challenging the competence of the suit itself on the ground that by virtue of Article 29 of the Warsaw convention, the action was time barred. The court upheld the objection of the respondent whereupon the appellant appealed to the Supreme Court. The Supreme Court held that the claim was time barred. In the case of *Iwuoha v Nigerian Railway Corporation*,⁵² the appellant's claim for damages arising from the respondent's negligence in the loss of his packages, was dismissed owing to the exclusion clause contained in the waybill which the respondent gave to the appellant. In the cases above, it was apparent that justice was sacrificed on the altar of exclusion clauses and if such a trend is allowed to continue, the consumer's interest in pursuing his rights in cases of product liability may continue to wane. It is in the light of the aforesaid that certain recommendations must be proffered at this juncture.

4. Recommendation

The goal of consumer protection in Nigeria cannot be achieved if the existing legal rules and particularly case law are not reviewed. It is therefore recommended that the strict burden of proof required under the law be relaxed when cases of product liability are considered.⁵³ It is recommended the need to enact legislative measures to fully guarantee the right of the consumer to seek redress in courts. To this end, the subsisting legislations appertaining to consumer transactions should be amended to recognize the right of the consumer as well as barriers in the form of exclusion clauses expunged from the existing legislations in cases of product liability.⁵⁴ There is ample need to engage non-governmental organisations to sensitize consumers on the dangers associated with defective products, with an aim to ensure consumer protection.

5. Conclusion

⁵¹ (1994) 4 N.W.L.R (Pt. 49) 124

⁵² Supra

⁵³ Evidence Act, Cap 112, Laws of the Federation, 2004

⁵⁴ This should be a purely legislative action.

It has been demonstrated the need to improve the regime of product liability. Consequently it is maintained that the responsibility of the manufacturer to the consumer should be on the basis of strict liability. Once it is established that a particular product is defective, the manufacturer should be made to indemnify the consumer in damages. When such awareness is created in the mind of the manufacturer, the incidence of defective products will gradually dwindle and become a thing of the past. In the United States of America, manufacturers now exercise great caution, skill and expertise in the manufacturing of products following the pronouncement of Justice Cardozo in *McPherson v Buick Motor Co.* to the effect that the standard of responsibility now required of manufacturers has assumed the characteristics of strict liability.⁵⁵ In the light of the above, the strict liability requirement to be attached to manufacturer diligence was demonstrated in *Greenman v Yuba Power Products Inc.*, where the plaintiff was severely injured while using a defective tool given to him by his wife.⁵⁶ In an action against the retailer and manufacturer, damages were awarded in favour of the plaintiff. On appeal to the Supreme Court of California, the court affirmed the decision of the lower court and imposed strict liability in tort on the manufacturer.

Drawing attention from the above cases, it has been observed the need to impose strict liability on the manufacture is a desideratum as well as imperative in order to enhance the production of quality products. Such imposition will further guarantee consumer satisfaction and cordiality between the manufacturer and the consumer. The benefits of strict liability on the part of the manufacturers and in relation to products/consumers in the United States of America speak volume of quality goods and services associated with the business climate of US as evidenced in the flourishing economy. It is therefore maintained that once such a measure is introduced in Nigeria, the notorious incidence of defective products, fake and adulterated drugs currently bastardizing the economy and strangulating the consumer, will be consigned to the dust bin of history.

⁵⁵ 217 NY 382

⁵⁶ 27 Cal Rep. 697