

The Regulatory Framework for the Protection of Consumers of Transportation Services in Nigeria

BY

Chinonyerem I. EMEMOBONG, Esq. (ICSAN)

AND

Emaediong Ofonime AKPAN (LL.M)
Lecturer, Akwa Ibom State Polytechnic
Ikot Osura, Ikot Ekpene
Akwa Ibom State

ABSTRACT

The consumer of transport services in Nigeria is usually at the mercy of transport service providers who foist booker plates agreements on them as terms of carriage. To further worsen their woes, they lack a comprehensive legal framework that takes into cognisance a service liability regime to offer adequate remedy to consumers. This article examines the extant National legal framework for transport service providers. The modicum of protection offered to the consumer is often through the instrumentality of the state, achieving such through legislation targeted at redressing the imbalance in the power relation between the producers and suppliers of services and consumer of transportation services in Nigeria. This study is justified by the need to curtail the practice of shoddy services by the provider of transportation services, thereby, creating laws regulating transport companies and their activities, including criminal penalties for such default. This research proffers recommendations for the lacunae left by existing legal framework.

KEYWORDS: Regulatory Framework, Protection of Consumers, Transportation Services, The National Transport Commission Bill, Nigeria

Introduction

Protection of consumers through the law appears to be a soothing balm for contemporary transactions especially in the transport sector. The rationale behind this protection is premised on the fact that there is need to address the imbalance in the bargaining power between the consumer and the service provider because the consumer is often seen as a weaker party that is unable to protect himself. The Nigerian legal framework on transport services is contained in several documents. This article focuses on Air and Land transport considering that other means of transportation are not in popular use across the country. Additionally, limiting the scope to Air and Land transport affords in-depth analysis of the subject matter.

The National Transport Commission Bill (NTCB) 2016

The National Transport Commission Bill (NTCB) is yet to be passed into Law considering the lack of Presidential assent. It is poised to provide for the establishment of the National Transport Commission as an independent multimodal economic regulator for the transport industry and for other related matters. The NTCB when passed into law will establish the National Transport Commission as an effective, impartial and independent regulatory authority in the transport sector and to set out the objectives, functions and powers of the Commission. It will also promote the implementation of the national transport policy. The NTCB is aimed at providing an economic regulatory framework for the transport sector or regulated transport industry. Additionally, the NTCB is aimed at providing mechanism for monitoring compliance of government agencies and transport operators in the transport industry with relevant legislation and advice Government on matters relating to economic regulation of regulated transport industry. When passed into Law the NTCB will provide for an efficient economic regulation for the transport sector. The Bill in its commencement is targeted at the protection of the rights and interests of service operators and users within Nigeria; and to create an enabling environment for private sector participation in the provision of services in the transport sector.

The term ‘consumer’ is mentioned scarcely in the NTCB, in its pioneer mention, the Commission in the NTCB is saddled with examining and resolving complaints, objections and disputes referred to it as between Government agencies in the regulated transport industry and concessionaires, licensed operators, users, shippers and consumers or any other person involved in the regulated transport industry, using such dispute-resolution methods as the Commission may determine from time to time including mediation and arbitration. It is worthy of note that the NTCB places emphasises on the protection of industry stakeholders however the consumer appears to be the last on the ‘chain of protection’.¹ It appears the NTCB is poised to protect service providers as opposed to protecting consumers. Hence it is trite to state that the welfare of the consumer of transport services is not the primary concern of the NTCB and if passed to law in its present state will be of little or no impact to address the consumer issues addressed in this research.

The NTCB also saddles the would be commission with the responsibility of developing, enforcing and monitoring performance standards and indices relating to the quality of transport services and facilities provided to users, shippers and consumers in Nigeria having regard to the best international performance indicators.² The NTCB makes it mandatory for every regulated transport service operator to publish the tariff rates charged to users and consumers for their respective services and the modifications thereto as may be approved from time to time by the Commission.³ This provision of the NTCB does not cater for the seasonal inflation of fare tariffs by transport service operators.

Generally, the NTCB though yet to be passed into law still falls short of providing adequate protection for consumers of transport services in Nigeria. The Bill is still largely poised at encouraging private participation in the transport sector as opposed to a hybrid of private participation and consumer protection. The Nigerian consumer of transport services is still yet to occupy her hallowed place.

¹ National Transport Commission Bill (2016) Section 6 (1) (c).

² Section 6 (1) (h).

³National Transport Commission Bill Section 3.

Federal Highways Act

a. Liability of Road Transporters Causing Death by Reckless or Dangerous Driving

The Federal High Ways Act was enacted to prevent and minimise accidents on the highways and clearing obstructions on any part of the roads.⁴ The act was also occasioned by the need to educate drivers, motorists and the general public. The Act is administered by the Federal Road Safety Commission. Under Section 5 of the Act,⁵ any person who causes the death of another person by the driving of a motor vehicle on a Federal highway recklessly, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the Federal highway, and the amount of traffic which is actually at the time, or which might reasonably be expected to be, on the Federal highway, is guilty of an offence and liable on conviction to imprisonment for a term of seven years. It is unclear what measures are put in place for the compensation of passengers of such vehicles or third party road users who may suffer bodily harm, death. The criminal undertone to a felony such as this, which has no direct impact on consumers, offers no direct recompense to persons affected. More often than not motorists who cause the death of persons on the road eventually run for fear of being mobbed or convicted. It is the argument of the writer that the criminal sanctions offer no real succor to the teeming consumer protection issues connected with reckless driving.

b. Liability of Road Transporters for Reckless Driving etc., Driving on Federal Highway

Section 6(1) of the Act⁶ provides to the effect that any person who drives a motor vehicle on a Federal highway recklessly or negligently, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case including the state, condition, and use of that highway, and to the amount of traffic which at the time is or might reasonably be expected to be on that highway shall be guilty of an offence and liable on conviction to a fine of four hundred naira or to imprisonment for two years or to both such fine and imprisonment. Subsection two further provides that if upon the trial of a person for an offence, the court is not satisfied that the person's driving was the cause of the death but is satisfied that he is guilty of driving as mentioned in subsection (1) of this section, the court may convict that person of an offence under this section. It is unclear what reckless is under the Act neither is the instrument for determining such expressly stated in the Act.⁷ The Act appears to be concerned with general road safety as opposed to the specifics of consumer protection.⁸ Hence there are no compulsory compensation provided for by the Act.⁹

c. Liability of Road Transporters for Careless and Inconsiderate Driving

In putting the passerby into consideration, section 7(1) of the Act provides that any person who drives a motor vehicle on a Federal highway without due care and attention, or without reasonable consideration for other persons using the Federal highway shall be guilty of an

⁴ Federal Highways Act (1971).

⁵ Section 5 *ibid*.

⁶ Federal Highways Act (1971).

⁷ Federal Highways Act (1971).

⁸ Federal Highways Act (1971).

⁹ Federal Highways Act (1971).

offence and be liable on conviction to a fine of one hundred naira or in the case of a second subsequent conviction, to a fine of two hundred naira or to imprisonment for six months or to both such fine and imprisonment. Under subsection 2, where a person is charged with an offence under section 6 of this Act and the court is of the opinion that the offence is not proved, then at any time during the hearing or immediately thereafter the court may, without prejudice to any other power exercisable by the court, direct or allow a charge for an offence under this section to be preferred forthwith against that person and may thereupon proceed with that charge, so however that the person charged or his counsel shall be informed of the new charge and be given an opportunity, whether by way of cross-examining any witness whose evidence has already been given against him or otherwise, of answering the new charge, and the court shall if it considers that he is prejudiced in his defense by reason of the new charge being so preferred, adjourn the hearing.¹⁰ Whilst the fines are incredibly low and not in tune with present day realities, they have no impact whatsoever on the consumer who is the victim of the driver's actions.

d. Liability of Road Transporters Driving Under Influence of Drink: Power to Disqualify from Driving in Certain Cases

Section 8 (1) any person who when driving or attempting to drive, or when in charge of a motor vehicle on a Federal highway is under the influence of drink or drugs to such an extent as to be incapable of having proper control of such vehicle, shall be guilty of an offence and liable on conviction to a fine of four hundred naira or to imprisonment for two years, or to both such fine and imprisonment.

Under subsection 2 if a person is convicted under this section or under section 4, 5 or 6 of this Act he shall, unless the court for any special reason otherwise orders, be disqualified for a period of twelve months or if the court thinks fit, for any greater period (from the date of the conviction) from holding or obtaining a driving license.¹¹ Yet again the Act is bereft under this section of any consumer protection tool. Passenger may board a vehicle unknown to them that such driver had been disqualified from driving.

e. Overloading or Driving a Vehicle in an Unsafe Condition

Where on a Federal highway an offence relating to the overloading of a commercial vehicle or of driving a commercial vehicle in an unsafe condition or at a speed exceeding that prescribed by law is committed, the persons liable to conviction in respect of the offence shall be; the driver; the owner if not also the driver; and a bailee if not also the driver.¹²

However, proceedings against any person as owner or bailee under paragraph (b) or (c) of this section shall not be instituted without the approval of the Attorney-General of the Federation, and it shall be a good defence to a prosecution if the owner or bailee as aforesaid, proves to the satisfaction of the court that no act or omission on his part was conducive to the commission of the offence.¹³ This provision of the act lacks a consumer protection undertone, leaving

¹⁰ Section 7 *ibid*

¹¹ Section 8 *ibid*

¹² Section 15 *ibid*

¹³ Section 15 *ibid*

unsuspecting consumers who have no idea about the state of the vehicle without any compensation. Hence, a consumer who boards an unsafe vehicle which eventually breaks down will have to either wait for its repairs or incur extra cost by boarding another vehicle to get to his destination.

The Civil Aviation Act 2006

The Civil Aviation Act,¹⁴ is the primary law governing the rights of air passengers in Nigeria. The Act which repealed the Nigerian Civil Aviation Authority (Establishment) Act 1999 among other earlier enactments established the Nigerian Civil Aviation Authority (NCAA) as a body corporate with power to sue and be sued in its corporate name.¹⁵ The Nigerian Civil Aviation Authority as a regulatory agency responsible for overseeing the affairs of the Nigerian Aviation industry, which some of the duties include safeguarding the rights of airline passengers in Nigeria. Section 27¹⁶ gives certain powers on NCAA to carry out investigation necessary to ensure compliance with the Civil Aviation Act. The Act additionally, empowers the NCAA to enact the necessary rules and regulations to protect air passengers being the rationale behind the implementation of Consumer Protection Regulation and Consumer Protection Department.¹⁷

The Act gives the Minister of Aviation far-reaching control and supervisory powers over the aviation industry. Section 1 confers on the Minister the responsibility for the formulation of policies and strategies for the promotion and encouragement of civil aviation in Nigeria. The minister is also saddled with fostering sound economic policies that will assure the provision of efficient and safe services by air carriers and other aviation and allied service providers as well as greater access to air transport in a sustainable manner and to assist with ensuring that Nigeria's obligations under international agreements are implemented and adhered to.

The Nigerian Civil Aviation Authority is conferred with broad functions by the Act. The Authority shall be responsible for¹⁸:

- a. the registration of any aircraft in Nigeria and issuance to the owner thereof, of a certificate of registration;
- b. the establishment and maintenance of a system or register for recording the title to or any interest in any aircraft registered in Nigeria;
- c. the prohibition of any Nigerian or foreign registered aircraft from operating within the Nigerian air space, unless a certificate of air worthiness in respect thereof, is issued or validated under the regulations in force with respect to the aircraft; provided that the foregoing prohibition shall not apply to aircraft undergoing test flights or flights to places where prescribed maintenance or repairs are to be carried out;

¹⁴ Civil Aviation Act 2006 cap C

¹⁵ Section 2

¹⁶ *Ibid.*

¹⁷ G. Etomi and partners, 'Enforcement of Passenger rights' 3 October 2018.

¹⁸ Section 31

- d. the inspection and regulation of aerodromes, inspection of aircraft factories and for the prohibition or regulation of the use of aerodromes which are not licensed in pursuance of the regulations;
- e. the prohibition of any person from engaging in air navigation in any capacity whatsoever unless the authority determines that such a person satisfies the requirements of the Act and the regulations made thereunder.
- f. ensuring the efficiency and regularity of air navigation and the safety of aircraft, persons and property carried in aircraft and for preventing aircraft from endangering persons and property;
- g. the prohibition of aircraft from flying over such areas in Nigeria as may be prescribed;
- h. the issue, validation, renewal, extension or variation of any certificate, licence or other document required by regulations (including the examinations and tests to be undergone) and custody and production, cancellation, suspension, endorsement and surrender of any such document;
- i. the registration of births and deaths occurring in aircraft and of particulars of persons missing from aircraft; and
- j. the collation and maintenance of a data bank of aviation and aircraft accidents, incidents and occurrences and promote accident prevention programmes.

In addition, the Authority is charged with the responsibility to issue Air Operators Certificates (AOC) and other certificates relating to the safety of air transport undertakings. The Authority is also given the mandate to prescribe the minimum safety standards and all other relevant requirements for the grant, issuance, operation, variation and renewal of such certificates.¹⁹ Furthermore, the Authority is empowered to vary, suspend or revoke any licence issued pursuant to the Act if it is no longer satisfied that holder of the licence is a fit person to operate air transport business based on the circumstances stated in the Act.²⁰ The Authority is obliged to give reasons for its action under the above provision except where such disclosure might adversely affect the security interest of Nigeria or the relations of Nigeria with any other country.²¹ A person who furnishes false information to the Authority for the purpose of obtaining a license is guilty of an offence and liable on conviction to imprisonment for a term of not less than six months or a fine of not less than N500,000.00 (Five hundred thousand naira) or both.²²

Furthermore, the Nigerian Aviation industry is governed by national and international law. National law which domesticated the international law being the Montreal convention 1999 by

¹⁹ Section 34.

²⁰ Section 35; the stated circumstances include inadequate resources and contravention of the provisions of the Act.

²¹ Section 36(1-3).

²² Section 36(4).

virtue of section 48(2) of the Act.²³ The Montreal convention recognises the liability of airline operators in case of passenger death or injuries as well as delay, damage or loss of baggage and cargo. These are possible protective measures for consumers of air transport but there are hitches in realising such measure. For instance, the challenges in enforcing passenger rights due to lack of awareness. Some passengers seem not to be aware of their rights to enable them initiate an action or enforce their rights.

The Civil Aviation Authority is the regulatory body for aviation in Nigeria, which became autonomous with the passing into law of The Civil Aviation Act 2006 by the National Assembly as a result of assent by the president. The Civil Aviation Act is said to be the principal legislation governing aviation in Nigeria. The Act also not only empowers the authority to regulate Aviation safety without political interference, but also carry out oversight functions of Airports, Airspace, Meteorological services, etc as well as economic regulations of the industry. With the foregoing it could be expressed that Nigeria can boast of improved aviation infrastructural facilities at the airports state of the art navigational aids, modern weather forecasting equipment and highly skilled manpower geared towards ensuring the safety and comfort of the flying public who are regarded as the consumers of air transportation services.

The Act states that no Aircraft shall be used by any person in Nigeria for flying, while carrying passengers or cargo for reward, on such journeys or classes of journeys (whether beginning and ending at the same point or at different points) or for such flying undertaking for the purpose of any trade or business, except under the authority of and in accordance with a license permit or other authorisation issued to him by the authority. Considering the position of the aforesaid section of the Act, there is a specific emphasis on reward, trade and business, incinerating that reward is the essence of the protection of the consumers as they specifically paid for the services rendered. On the other hand, business and trade on the part of the air transport service providers cannot be actualised without consideration. Therefore, it has become imperative for the authorisation of air transport providers before operation to ensure that they are qualified to render such services as well as preventing consumer exploitation. The Fair Trading Act by its definition states that a consumer is any person for whom service sought to be supplied in the course of a business carried on by the person supplying or seeking to supply them and who does not receive or seek to receive the goods or services in the course of a business carried on by him. Business or Trade, seems to be the essence of ensuring that consumers are not exploited, in the sense that the provider of services render services for gain or profit on one hand and the consumer to get maximum satisfaction on the other hand.

This means that air carriers need to obtain an operating license before they can operate to ensure compliance as to general safety conditions of crew, operator, airworthiness and other fundamental requirements of an air carrier. Section 19²⁴ states that;

1. For the purpose of obtaining required information for the proper discharge of the function conferred upon it by this Act, any authorized officer of the authority may by notice, in writing

²³ Civil Aviation Act 2006 cap C.

²⁴ Section 19 (1) (2) of the Civil Aviation Act

- a) Require any person who undertakes the business of air transport including carriage of passengers or goods in an aircraft for reward, to furnish such information relating to such business and flights as may be specified in the notices and
 - b) Specify the times and the form and manner in which, any information required under paragraph (a) of this subsection shall be furnished.
2. In carrying out the functions conferred on the authority, an authorized officer of the authority shall have unrestricted access to the business premises, aircraft, structures and other apparatus used by any operator for the purpose of air transport or related operations.

These condition may be described as consumer protection. Strategy to checkmate air carriers on their activities as well as their operational standards. In terms of crimes, with the exception of the offence of dangerous flying, the Civil Aviation Act²⁵ does not specifically provide for any serious crimes as opposed to regulatory offences. Although an attempt is made in section 13 to make persons liable to criminal prosecution in Nigeria for any act constituting a criminal offence in Nigeria committed on board a Nigerian registered aircraft outside Nigeria, but however, it does not specifically create an offence. The term of the convention has been adapted and incorporated into the new Civil Aviation bill awaiting passage at the National Assembly. In addition, the proposed bill creates several aviation related offences amongst which are offences in relation to act of violence or destruction at aerodrome, endangering or destroying or damaging an aircraft or damage to air navigation and other facilities.²⁶

A Critique of the Civil Aviation Regulation (CAR) 2012: Part 19

Part 19 of the CAR deals with passengers' Rights and Airlines Obligations to passengers. The Part addresses consumer protection issues and sets out compensation for overbooking and denied boarding as well as delays and cancellations of flights. Part 19 of the CAR applies (i) to passengers departing from an airport located within the Nigerian territory to another airport within Nigeria ; (ii) to passengers departing from an airport located in another country to an airport situated within Nigeria, unless they received benefits or compensation and were given assistance in that other country, if the operating air carrier of the flight concerned is a Nigerian carrier ; (iii) to foreign air transportation with respect to non-stop flight segments originating at a point within Nigeria.

The Regulations do not apply to passengers travelling free of charge or at a reduced fare not available directly or indirectly to the public. However, it applies to passengers whose tickets are issued under a frequent flyer programme or other commercial programme by an air carrier or tour operator.²⁷ Under Regulation 19.1.3 the NCAA fails to put the consumer first by letting carriers take advantage of 'unsuspecting' consumers. The writer finds it uncanny that the Regulations would exempt consumers who take advantage of such promos. A typical example is the current promo run by 'Ibom Air' a state owned carrier. The carrier during its promo sold its tickets for N15,000 and such tickets expired when the passenger does not show. Hence, the passenger was left without the option of travelling with same ticket at either an increased or the usual tariff rates. More often than not, the passenger is only informed that the ticket is non-

²⁵ Cap C 13 LFN 2004.

²⁶ E. Uwa, C. Unaegbunam, 'Getting the deal through Air Transport 2006 www.sskohn.com

²⁷ Regulation 19.1.3

refundable after purchase, perhaps the passenger would have made a different decision. While it may be understandable that a free ticket should usually come with no obligations considering that no consideration was furnished this is not the same case with a promotional ticket. It is the position of the writer that promotional tickets ought to be covered by the CAR. If a Carrier can cancel or reschedule flight and be liable to compensate the passengers, so should a passenger who fails to show for a promotional flight be allowed the option of a refund with surcharges, or payment of additional funds to equate same with the normal tariff rates within a reasonable time frame.

Under the CAR 19.2.1. A passenger who shows-up on a later date or time other than the scheduled date or time of departure on his or her ticket may be considered for wait-listing on another flight subject to seat availability after meeting the airlines requirement(s). An air carrier may overbook a scheduled flight in contemplation of the possibility of some passengers not showing up for that flight.²⁸ The foregoing goes to emphasise that the NCAA is poised at ensuring that air carriers' economic interest is put first before that of its passengers. The CAR makes it almost impracticable for a consumer to claim for compensation in some circumstances one of such being the 'no-show'. Carriers are encouraged to gamble with the welfare of passengers by encouraging over-booking in anticipation of 'no-show', this appears deceitful and a calculated attempt to deprive passengers of their right to board, especially since the CAR allows the carrier the remedy of asking any passenger to de-board the aircraft in the case of overbooking.²⁹ This is in total disregard of the realities of such occurrences. In March 2015, an Arik carrier scheduled to leave Abuja to Lagos by 2pm after being postponed to 9pm. During boarding many of the passenger onboard were made to stand as the seats were exhausted.³⁰

Third Party Insurance Act

The liability regime for service providers of road transport services in Nigeria is embedded in The Motor Vehicles (Third Party Insurance) Act.³¹ The Act is the main legislation on the compensation of accident victims hence, it is not necessarily borne out of the need to protect consumers of road transport services. The Third Party Act, which has been in existence from colonial times, precisely since 1945³² has been the subject of academic discourse. The Act has been said to be ineffective on various fronts.³³ For Agomo, the third party is in a precarious situation because the Act is "defective in several respects."³⁴ First is as a result of the marriage between the law of tort and insurance which means prior proof of fault before insurance can pay. Second is the restrictive nature of the Act. Finally, she noted the unnecessary adherence to the doctrine of precedents by the courts.³⁵

The Act covers the insured against any liability he may owe a third party which arises from the use of the insured motor vehicle. The insured's (*i.e.* the owner of the vehicle and in this context,

²⁸ CAR 19.2.2.

²⁹ CAR 19.3.1

³⁰ It was not reported if this flight eventually took off. www.lindaikajiblogspot.co.uk

³¹ Cap M22, Laws of the Federation of Nigeria (LFN) 2010 hereinafter referred to as The Third Party Act.

³² The Act was enacted as Ordinance No. 53 of 1945, its commencement date was 1st April, 1950.

³³ C. K. Agomo, "The Position of the Third Party Under the Compulsory Motor Vehicle Insurance Legislation," in J. A. Omotola (ed.) *Essays On Nigerian Law*, Vol. 1 (Lagos: Faculty of Law, 1989) pp 43-60.

³⁴ *Ibid.*

³⁵ *Ibid.*

the service provider) own losses are not covered by the provisions of the Act. The object of the law is the third party. Since one can only be a passenger in a vehicle while making use of the services of a transportation services provider, it is obvious that it is the third party who is a consumer for the purposes of this Act. This accords perfectly with the philosophy behind consumer protection – recognising the inequality of the bargaining power between the consumer and the producer or service provider and ensuring that the latter does not unduly exploit this inequality to the detriment of the former.³⁶

A critical look at the Act reveals far reaching provisions made by the legislature for the protection of the consumer. To start with, the Act makes it compulsory for every motorist, not just road transport service providers to have insurance.³⁷ To ensure this, presentation of insurance certificates is made a condition precedent for the licensing and registration of any vehicle. This is to make sure that the victims of road accidents are compensated irrespective of the financial status of the insured by the use of the risk transfer mechanism of insurance. To further ensure consumer protection, the Act prohibits insurers either from entirely relying on certain conditions and terms to deny liability to the consumer or putting them (insurers) to the strictest proof before they can deny liability. The law does not allow death or bankruptcy of the insured defeat consumer rights. However, it is unclear as what extent the government has placed modalities to ensure that infrastructure for transport services are adequate, considering that its lack has led consumers to patronise private persons irrespective of the risks associated with such.

Constitution of the Federal Republic of 1999 as Amended

Chapter IV of the constitution of the FRN, hereinafter referred to as the Constitution does not on the face of it make direct statement of consumer rights. However, it has not expunged the existence of consumer rights existence in Nigeria. The right to safety and health appears to be an inference from the constitutional provision of the right to life. In other words, based on these fundamental rights guaranteed by the constitution, the consumer may advocate and engage in any campaign to raise awareness to ascertain the level of consumer protection in Nigeria. This may also be as consumerism. Danger arises when a consumer in terms of transport services, receives shoddy services which in most cases are likely to cause harm to human life of which the constitution advocates and has given right to life to every person.

However, the violation of consumer rights, alongside the violation of constitution is still being considered in Nigeria as a breach of either contractual or tortious rights. Analysing the foregoing, there is a global perspective that consumer rights have become entrenched in the Constitution of Nigeria.³⁸ Seemingly, the constitution of the Federal Republic of Nigeria by such inference, consumer rights maybe regarded as the hallmark of consumer protection as such rights are drawn from the Nigerian constitution.³⁹ The Constitution in aiding to raise the

³⁶ E. L. Okiche, “The Relevance of Bankruptcy Law to Consumer Protection” *Unizik Law Journal*, Vol. 7 No. 1 2010 p. 249.

³⁷ s. 3 Third Party Insurance Act, also Insurance Act, s. 69.

³⁸ K O Eze, N Eluwa and B Nwobodo, ‘The Nigerian Consumer @ 50’ (2010) Retrieved from www.m2weekly.com Accessed 20/3/2019.

³⁹ *Ibid.*

standard of living and improving the social welfare and well-being of consumers which is basically the primary aim of consumer protection Laws,⁴⁰ in order to empower all consumers to enable them enjoy their rights. These rights are necessitated due to the irregularity of bargaining power in terms of transport services between the transport service provider and consumers of transport services to protect and compensate vulnerable consumers. However, in some jurisdictions consumer protection has not yet become part of the constitution, but in one way or the other they relate to consumer right, but nevertheless not specifically mentioned. Some of these may include constitution of the Federal Republic of Nigeria, the constitution of the Republic of South Africa 1996 and the constitution of India. For instance, in Nigeria constitution, though not specifically mentioned, the provisions appear in a way that it will entirely affect the life and right of citizens who are bulk of the consumers in Nigeria. Thoroughly viewing the provisions one may observe some semblance between constitutional rights and consumer rights. Rights such as the consumer's right to safety and health closely related or may as well be termed as right to life. Right to safety and health can be inferred from the constitution as everyone is entitled to orders refraining institutions and companies including state from anything that would violate or harm a consumer. However, it is pertinent to point out that the scope of the right to life under section 33 of the Nigerian constitution is limited, and does not envisage the fact that one can lose his right to life by patronising transport services that are shoddy. It may be instructive to point out that the right to health appears not to be in contemplation within the ambit of section 33 of the Constitution.

Considering section 39⁴¹ which provides that “every person shall be entitled to freedom of expression, including freedom to hold opinion and to receive and impart ideas and information without inference”. Obviously this provision has to do with consumerism (enlightenment of consumers). Consumers safety are somewhat at risk due to the fact of inadequate information concerning the quality, safety and reliability of services they seek to have. It also appears that two consumer rights are submerged under which are consumer right to information and consumer right to choice. With the aid of consumerism targeted at education, consumer will be well informed.

Passengers (Consumer) Rights and Challenges in Nigeria

Traveling by air and road confers certain rights to passengers which among others include: right to the full value of passengers money; right to book and confirm tickets with the transporter of the passengers choice; right to the provision of a conducive environment before, during, and after such journeys; right to seek redress for all irregularities during a flight; right to timely feedback in respect of matters/complaints lodged with service providers; right to be fully informed about the status of such service (flight or road transport); right to be treated with respect and dignity irrespective of race or physical condition. It is arguable whether consumers enjoy these rights. Passengers often face difficulties such as denied boarding against the will of passengers; delays and cancellation of a scheduled flight, unfair treatment of consumers' *etcetera*. Even where a passenger's right is breached, it is mostly not addressed satisfactorily by both the existing laws and the regulatory agencies.⁴² For example a passenger who misses his

⁴⁰ *Ibid*,

⁴¹E. Uwa, C. Unaegbunam, 'Getting the deal through Air Transport 2006 www.sskohn.com

⁴² A Mustapha, 'An Appraisal of Air Passenger Protection Laws for Delay of Flight in Nigeria' (2017) 7(1) *International Journal of Social Science and Humanity*.p,22.

bus or his flight as a result of cancellation or long delay often suffers many forms of damages (which may include social and economic loss in the form of missing important appointments, interviews and loss of profit for business transactions).

In the same vain, air carriers enjoy some discretion and protection to the detriment of consumers. A good example is where a carrier may deny a passenger boarding involuntarily in accordance with its boarding priority. This is because there is no corresponding law that mandates an air carrier/ transporter to compensate a booked passenger who is late to the bus station, airport or who do not show up at the exact date or time of departure. Equally there appears to be no provision giving the passenger the right of revocation of contract of carriage and to be entitled to immediate refund of his full fares with substantial damage in case of delay by road transporter or air carrier. The absence of any or satisfactory explanation in some cases from the air carrier is indeed an issue of great concern. Some passengers who are faced with any of these challenges usually recourse to grumbling than taking any legal or procedural steps because the law is not wholly protective and satisfactory. Similarly, where consumer rights are breached, they are left vulnerable, because they either accept what is provided as compensation by the service providers, no matter how inadequate, or back out from the bargain as there is little or no room for them to argue for their losses. This is a gap in the legal regime. It is also worrisome to note that even where passengers choose to institute a legal action against service providers, they are faced even by a greater challenge of delays and technicalities of legal proceedings. For instance, in the unreported case of *Aderamola and Others v. ADC Airlines*⁴³ the plaintiff in a consolidated case claim \$600 as general and special damages arising from recklessness and willful misconduct of the defendant, its servants and agents resulting to the crash of the defendants DC9 Aircraft on 26th July, 1995 at James Spring Payne Airport, in Moronvia, Liberia. This case has been lingering since 1995 and has been handled by eight different judges.

⁴³ (FHC/L/CS/1057/1995),

Conclusion

This article addressed the regulatory framework for the protection of consumers of transportation services in Nigeria. It further accessed international conventions and their domestic application in Nigeria. The incidences of passenger rights and challenges in Nigeria were also examined. It was revealed that there was a general lack of awareness of the rights by consumers. In addition, the procedure for obtaining redress appears cumbersome. The National Transport Commission Bill (NTCB) is yet to be passed into Law considering the lack of Presidential assent. An examination of the Bill revealed that though it is yet to be passed into law it still falls short of providing adequate protection for consumers of transport services in Nigeria. The Bill is still largely poised at encouraging private participation in the transport sector as opposed to a hybrid of private participation and consumer protection. The Nigerian consumer of transport services is still yet to occupy her hallowed place.

The Federal High Ways Act was enacted to prevent and minimise accidents on the highways and clearing obstructions on any part of the roads, the Act is also laced with criminal sanctions for reckless driving. The criminal undertone to a felony such as this which has no direct impact on consumers offers no direct recompense to persons affected. More often than not motorists who cause the death of persons on the road eventually run for fear of being mobbed or convicted. It was the argument of the writer that the criminal sanctions offer no real succor to the teeming consumer protection issues connected with reckless driving. The Act was discovered to be largely lacking in provisions targeted at consumer protection. The fines provided such as that for careless driving was found to be paltry (N100).

Furthermore, the Nigerian Aviation industry is governed by national and international law. National law which domesticated the international law being the Montreal convention 1999 by virtue of section 48(2) of the Act. The Montreal convention recognises the liability of airline operators in case of passenger death or injuries as well as delay, damage or loss of baggage and cargo. These are possible protective measures for consumers of air transport but there are hitches in realising such measure. For instance, the challenges in enforcing passenger rights due to lack of awareness. Some passengers seem not to be aware of their rights to enable them initiate an action or enforce their rights.

The liability regime for service providers of road transport services in Nigeria is embedded in The Motor Vehicles (Third Party Insurance) Act. The Act is the main legislation on the compensation of accident victims hence, it is not necessarily borne out of the need to protect consumers of road transport services. The Third Party Act, which has been in existence from colonial times, precisely since 1945 has been the subject of academic discourse. The Act has been said to be ineffective on various fronts. For Agomo, the third party is in a precarious situation because the Act is “defective in several respects.” It was also revealed that Third Party Insurance Act does not allow death or bankruptcy of the insured defeat consumer rights. However, it is unclear as what extent the government has placed modalities to ensure that infrastructure for transport services are adequate, considering that its lack has led consumers to patronise private persons irrespective of the risks associated with such.

In examining the passengers (consumer) rights and challenges in Nigeria, it was discovered that traveling by air and road confers certain rights to passengers which among others include: right

to the full value of passengers money; right to book and confirm tickets with the transporter of the passengers choice; right to the provision of a conducive environment before, during, and after such journeys; right to seek redress for all irregularities during flight; right to timely feedback in respect of matters/complaints lodged with service providers; right to be fully informed about the status of such service (flight or road transport); right to be treated with respect and dignity irrespective of race or physical condition. It is arguable whether consumers enjoy these rights. Passengers often face difficulties such as denied boarding against the will of passengers; delays and cancellation of a scheduled flight, unfair treatment of consumers' etcetera. Even where a passenger's right is breached, it is mostly not addressed satisfactorily by both the existing laws and the regulatory agencies. For example, a passenger who misses his/her bus or flight as a result of cancellation or long delay often suffers many forms of damages (which may include social and economic loss in the form of missing important appointments, interviews and loss of profit for business transactions).

Recommendations

1. There is need to have a sector specific compendium of laws on transportation services as a whole.
2. Nigerian legislation needs to be overhauled to ensure that consumers are placed as priority as opposed to service providers.
3. Consumers must have the option to submit a complaint (and supporting documentation) and to exchange information with the airline in enforcing their rights.
4. Transportation is evolving and technology has permeated every facet, hence it is now possible to ensure that passengers know the status of the driver's license and fitness to man the steering of any vehicle.
5. There ought to be more considerations for the consumer of aviation services as most of them do not know their rights. Hence, the Civil Aviation Authority needs to embark on sensitisation of consumers.