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CRIMINAL LAW: WHAT REMEDY FOR THE CONSUMER OF HOSPITALITY SERVICES?*

Abstract

"[T]he nature and extent of consumer protection regulation in a modern society says a great deal about that society, about its social and economic development, about its legal values, about its sense of justice, about its political sophistication and maturity, about its system of government, politics, policy making and priority."¹ It is the policy of every government to guarantee the safety of lives and property of its populace, by advancing policies that encourage healthy relationship and competition while discouraging sharp practices. Products consumed in every society have health implications for the public. The instrumentality of the criminal justice system is one tool the government uses to ensure that consumers are protected by sanctioning unscrupulous producers. Whether such sanctions meet the aspiration of the consumer of hospitality services engages the discussion in this paper. The paper reveals that what legislation has done is to set standards which providers of hospitality services must comply with. Although the law prescribes punishments for errant service providers, the victim, in this case the consumer, is left with no remedy.

1. Introduction

Hospitality services include services offered by hotels, inns, restaurants, and such allied outfits. The scope of hospitality services for the purposes of this paper shall be restricted to

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¹ E. Belobaba, quoted in F. N. Monye, *The Consumer and Consumer Protection in Nigeria: Struggles, Burdens and Hopes*, (Nsukka: University of Nigeria Press, 2011) p. 8 (59th Inaugural Lecture of University of Nigeria).

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accommodation services² and food services³ as specified in the Hospitality and Tourism Establishments (Registration, Grading and Classification) Regulations.⁴ There are a number of statutes in Nigeria aimed at protecting the consumer.⁵ With the exception of the Consumer Protection Council Act, and perhaps, the Innkeepers and Hotel Proprietors Laws, most of the statutes that regulate the provision and consumption in the hospitality industry in Nigeria are penal in nature. Thus, the task of enforcement of many of the regulations aimed at protecting the consumers of such services is carried out by regulatory agencies created under the relevant statutes.⁶

It has been expressed that private civil law has shown serious flaw in providing adequate protection for the consumer.⁷ The law of contract, for example, with its traditional doctrines of privity of contract, freedom of contract and remoteness of damage, pose serious nightmare for the consumer. The presumption, therefore, is that the use of

² Including hotels, motels, guest houses, and inn services.

³ These include fast food, food canteens, cafes, snack bars, and coffee shop services.

⁴ Reg. 9(2) of the Hospitality and Tourism Establishments (Registration, Grading and Classification) Regulations 1997, B185 made pursuant to ss. 4(2) and 20 of the Nigerian Tourism Development Corporation Act Cap. N137 LFN 2004.

⁵ These include the Consumer Protection Council Act Cap. C25, LFN, 2004; the Nigerian Tourism Development Corporation Act Cap. N137, LFN, 2004; the Trade Malpractices (Miscellaneous Offences) Act; the Innkeepers and Hotel Proprietors Law of the various states of the Federation; the Hire Purchase Act Cap. H4 LFN 2004; the Standards Organisation Act Cap. S9 LFN 2004; the Weights and Measures Act Cap. W3 LFN 2004; the Food and Drug Act Cap. F32 LFN; the Price Control Act Cap. P28 LFN 2004; the National Agency for Food and Drug Administration and Control Act Cap. N1 LFN 2004; and the Counterfeit and Fake Drugs and Unwholesome Process Foods (Miscellaneous Offences) Act Cap. C34 LFN 2004.

⁶ F. N. Monye, "Enforcement of Consumer Protection Laws in Nigeria" (2007) Vol. 3 No. 1 *DELSU Law Review* 89, at p. 90.

⁷ F. O. Ukwueze, "Consumer Protection through Criminal Law in Nigeria" (2008) 1, No. 1 *Nigerian Journal of Public Law*, 123, at pp-124-125; and I. Ehighe, *Consumer Protection Law* (Efurun/Warri: New Pages Law Publishing Co., 2004) at p. 165.

criminal law is a veritable option in providing protection for the consumer of hospitality services. Many developing countries, like India, Malaysia, and Ghana, seek to check businesses and trade practices by penal provisions.⁸ This paper examines the level of protection afforded the consumer of hospitality services within the ambit of criminal law, and seeks to discover whether the penal law and its enforcement mechanism adequately meet the needs of such consumer.

2. Criminal Law Approach to Protecting the Consumer of Hospitality Services

The general approach in Nigeria to consumer protection is the use of statutory provisions. These provisions are basically penal in nature. The method adopted by these legislation in the main include: inspection, investigation, standardisation, and prosecution.⁹ This approach appears to stem from the popular notion that prevention is better than cure. Out of the four approaches, it would appear that prosecution seems to be the only one that flows from the breach of some laws, which rubs on crime. Prosecution is rather the last stage in the criminal justice system; for there to be prosecution, there must have been a law (that is standardisation), which must have been breached or believed to have been breached, and such breach or alleged breach must have been arrived at from the result of an investigation. The entire approach, therefore, appears to be within the precinct of crime.

Crime is whatever act or omission has been identified and classified as crime. It is:

A positive or negative act in violation of penal law, an offence against the state ... any act done in violation of those duties which an individual owes to the community and for which

⁸ B. B. Kanyip, "Legal Issues in Consumer Protection in Nigeria", being a paper presented at the Refresher Course for Judges and Kadis, held at Andrews Otutu Obaseki Auditorium, National Judicial Institute, Abuja, from March 23 to 27, 2009, at p. 50.

⁹ *Ibid*; see generally, Monye, "Enforcement of Consumer Protection Laws in Nigeria" above note 6; and Ukwueze, above note 7.

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the law has provided that the offenders shall make satisfaction to the public ... an act committed or omitted in violation of a law forbidding or commanding it, and which is annexed, upon conviction, either or, a combination of the following punishment: (a) death (b) imprisonment ...¹⁰

An act or omission is only a crime when it is prohibited by law and punishment prescribed. The primary objective of criminal law is the safety and interest of the public at large. Usually, the State enforces crime. The State undertakes investigation, and in appropriate cases prosecutes offenders with the aim of securing a conviction, and not necessarily to compensate the victims.¹¹ To establish liability in crime, the prosecution has to prove that the accused person by his action or omission violated a law which prescribes a punishment upon conviction.

3. Impact of Some Penal Based Legislation on Consumer Protection

(a) *The Nigerian Tourism Development Corporation Act*¹²

The Nigerian Tourism Development Corporation charged with the responsibility of setting and enforcing standards in the hospitality industry is established by section 1 of the Nigerian Tourism Development Corporation Act. The mandate of the Corporation includes registering, classifying and grading all hospitality and tourism enterprises.¹³ Section 14 of the Act establishes the Hotel Inspectorate Division and vests it with power to register, classify, grade and monitor hotels and other hospitality establishments, as well as charge fees and impose such sanctions as may be prescribed by the Nigerian Tourism Development Corporation on erring persons. Operating a hospitality establishment in Nigeria requires that such

¹⁰ H. C. Black, *Black's Law Dictionary*, 6th ed. (St. Paul Minn.: West Publishing Co., 1990) at p. 379.

¹¹ Ukwueze, above note 7, at p. 128.

¹² Cap. N137, LFN, 2004.

¹³ S. 4(2)(d) of the Nigerian Tourism Development Corporation Act, *ibid.*

enterprise be registered,¹⁴ classified and graded by the Corporation. Under section 16 of the Act, operating otherwise is prohibited. Further, section 20 empowers the Minister of Tourism to make regulations requiring hotels and similar establishments to display information with respect to prices charged, and prescribing standards to be observed by these establishments.

In exercise of the powers conferred on the Minister by sections 4(2) and 20 of the Act, the Minister has made the Hospitality and Tourism Establishments (Regulation, Grading and Classification) Regulations.¹⁵ Primarily, the Regulations regulate the operations of hotels, inns, *etcetera*, and set appropriate standards for the industry. The Regulations allow officers of the Corporation to enter the premises of hotels and other hospitality establishments for the purpose of inspection to ensure that the quality of their services conforms with the Regulations.¹⁶ The schedule made pursuant to regulation 10 of the Regulations prescribes minimum standards for the classification and grading of hotels from one star to five star, and restaurants are classified and graded as one, two, three, or four crown restaurant.¹⁷ The Regulations prohibit the use of a star or crown by an enterprise other than as classified and graded by the Corporation.¹⁸ To do so constitutes an offence punishable on conviction by a fine of N5,000.

Furthermore, under regulation 5(1), the Corporation may order a revocation or suspension of the certificate of registration of a hospitality service where the business of the establishment is conducted in an unhygienic, unclean, unsanitary or inefficient manner; or the food and drink served in the establishment is not properly prepared or served; or the owners of the establishment have failed, refused or ignored to

¹⁴ If it involves an association of more than 20 persons not being a co-operative, the law required that it also be incorporated. See s. 19(1) of the Companies and Allied Matters Act 1990 Cap C20 LFN 2004.

¹⁵ This regulations, hereinafter referred to as "the Regulations", came into effect on January 1, 1995.

¹⁶ Reg. 12 of the Regulations.

¹⁷ Reg. 11 *ibid.*

¹⁸ Reg. 14(4) *ibid.*

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comply with any of the provisions of the Regulations; or where the Corporation is satisfied that the failure or refusal of the establishment to comply with the Regulations or other directions issued by the Corporation constitutes a danger to the health of persons who may patronise the services of such establishment. Where proprietors of hospitality establishments operate their businesses below the regulated standard, sanctions may equally be meted out to such service providers. The duty to enforce the provisions of the Act seems to be imposed on the hospitality establishment and its proprietors. Therefore, regulation 5 implies that besides sanctioning an erring establishment as a corporate entity, the providers of such services may be sanctioned as well.

The Act and the Regulations appear to set standards which providers of hospitality services must comply with for the ultimate benefit of the consumer. Neither the Act nor the Regulations provide for any form of compensation for the consumer who becomes a victim of substandard service. None of these laws seem to make any reference to the consumer who sustains injury from the consumption of substandard hospitality service. Adverting to this lacuna, Koroye describes the consumer as "the forgotten limb of the criminal justice system."¹⁹ Monye, also added her voice to the situation, when she observed as follows;

In the event of a conviction, the stipulated fine or term of imprisonment is imposed on the offender. Nothing is said about the victim of the offence. Thus, ... the victim goes without remedy even where he has been injured²⁰

A careful study of the provisions of the Act and Regulations seems to reveal that they are directed at maintaining acceptable standards in the hospitality industry. Thus, even where the Laws provide sanction against a service provider for

¹⁹ E. Koroye, "Crime Victims- The Forgotten Limb of the Criminal Justice System" (1996/99) 4 *University of Benin Law Journal* 127.

²⁰ Monye, "Enforcement of Consumer Protection Laws in Nigeria" above note 6, at p. 91.

serving unhygienic food, or not properly prepared drink,²¹ no remedy is provided for the consumer who had been served such food. The temptation therefore, is to describe the Act as a legislation with some penal flavour that in the main establishes an administrative agency to regulate the industry with the (commercial) objective of ensuring general standard in the provision of hospitality services, rather than being directed at the interest of the (individual) consumer, the victim of the breach of such standard.

(b) The Consumer Protection Council Act

This is the primary legislation on consumer protection in Nigeria in the absence of a Consumer Protection Act. Although the essence of the Act is the establishment of an administrative body to superintend consumer matters and provide redress when consumer interests are infringed upon, and to some extent provide protection for consumers against hazardous products and services,²² it contains some penal provisions.

Section 9 of the Act imposes a duty on manufacturers and or distributors of products who have become aware of any unforeseen hazard in their product to notify the public and cause such product to be withdrawn from the market. A breach of the provisions of the section attracts a fine of ₦50,000.00 or imprisonment for a term of five years or both. Under section 11 of the Act, any person who issues or aids in issuing any misleading or wrong advertisement about a consumer item is guilty of an offence and liable upon conviction to a fine of ₦50,000.00 or imprisonment for a term of five years or both. Furthermore, by section 12 of the Act, any person who in contravention of any enactment for the protection of the consumer sells or offers for sale any unsafe or hazardous products, or provides any service or proffers any information or advertisement which causes injury or loss to a consumer is guilty of an offence which attracts similar punishment as section 11 of the Act. It is not in doubt that the

²¹ Reg. 5(1)(b) of the Regulation.

²² Ukwueze, above note 7, at 138.

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provisions of these sections of Act can be extended to services, and indeed, hospitality services.

The wordings of section 12 have attracted some comments by writers.²³ The use of the phrase, "Any person who in contravention of any enactment whatsoever for the protection of the consumer" in the section is not clear and has created problem of interpretation. The meaning of the phrase is hazy, and it is not clear as to whether it extends to other legislation on consumer protection. If it does, one then wonders if the provisions of the section can be invoked to convict, say, a service provider, who has been found liable under a purely civil law, like the appellant hotel in *Hill Station Hotel Ltd. v. Adeyi*,²⁴ who was held liable for the loss of the respondent's Peugeot 504 saloon car in the hotel premises. That is, would it have been possible for the said respondent hotel and, or the proprietor of the said hotel in that case to be tried and convicted of breaching the provisions of the Innkeepers and Hotel Proprietors Law, the law being an enactment for the protection of the consumer? The ordinary meaning of the provisions of section 12 is to the effect that it extends to other legislation for the protection of consumers like the National Agency for Food and Drug Administration and Control Act, the Counterfeit and Fake Drugs and Unwholesome Process Foods (Miscellaneous Offences) Act, the Standards Organisation Act, the Weights and Measures Act, and even the Innkeepers and Hotel Proprietors Law. Monye seems to reason that conceding to such interpretation is capable of creating serious absurdities because each of these laws, except the Innkeepers and Hotel Proprietors Law, creates its own offences and penalties.²⁵ She contends further and persuasively too, that it would be unreasonable to apply

²³ *Ibid.* See also K. A. Apori, "Cutting a Swath around the Nigerian Consumer: The Consumer Protection Council Decree 1992," (1993/1994) 3 *Edo State University Law Journal* p. 154.

²⁴ [1996] 4 NWLR (Pt. 442) 249

²⁵ F. N. Monye, *Law of Consumer Protection*, (Ibadan: Spectrum Books Ltd., 2003) at p. 16.

the penalty provisions in one law to offences in another law.²⁶ In addition, it would be most ridiculous to extend the meaning of the provisions of the section to cases of civil liability, as in the *Adeyi's case*. It is contended that to do so would contradict a fundamental principle of criminal jurisprudence which provides that, "A person shall not be convicted of a criminal offence unless that offence is defined and the penalty thereof is prescribed by a written law."²⁷ The effect of this constitutional principle seems to suggest that the law defining the elements of an offence and the one prescribing penalty must be one and the same law.²⁸ It is submitted, that to extend the meaning of the provisions of section 12 of Act to include cases of civil liability would amount to an illogical interpretation and over stretching of the meaning of the law.

Section 8 of the Act, provides thus:

Whereupon an investigation by the Council or State Committee of a complaint by a consumer, it is provided that –

- (a) the consumer's right has been violated; or
- (b) that a wrong has been committed by way of trade, provision of services, supply of information or advertisement, thereby causing injury or loss to the consumer, the consumer shall in addition to the redress which the State Committee, subject to the approval of the Council, may impose, have a right of civil action for compensation or restitution in any competent court.²⁹

²⁶ See s. 17(1) of the Interpretation Act 1964 Cap. I23 LFN 2004.

²⁷ S. 36(1) of the Constitution of the Federal Republic of Nigeria as Amended 2011. It should be noted that s. 12 of the Consumer Protection Council Act does not expressly specify punishment for offenders.

²⁸ Ehigheua, above note 7, at p. 179; and Ukwueze, above note 7.

²⁹ S. 78 of the Penal Code and s. 365 of the Criminal Procedure Code generally empower the court that has convicted an accused person of an offence to make a compensation order. It must be admitted, however, that there are no equivalent provisions in the Criminal Code and the Criminal Procedure Act. Part 29 (ss. 255-260) of the Criminal Procedure Act, which deals with Cost, Compensation and Damages does not make any provisions for compensation order. The provisions of s. 435 of the Act which resembles a compensation order relates only to probation and even at that, the maximum amount of compensation payable to the victim of a crime is fixed at an amount not exceeding ₦20.00.

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The section is more appreciated when read with section 13. The latter section allows the court before which an accused person is convicted of an offence under the Act to, in addition to dealing with such person in any other way, make compensation in favour of victims of the offence. The combined effect of the provisions of sections 8 and 13 appears to be that an injured consumer in addition to whatever criminal action he might press against the service provider, can maintain a civil action to redress an infraction of his right under the Act. The Court of Appeal in *Martins v C. O. P.*,³⁰ gave credence to this position. In that case, the Court, overruling the decision of the High Court, upheld the decision of the Chief Magistrates Court to the effect that the accused person who was convicted of the offence of breach of trust under section 314 of the Penal Code, in addition to the sentence of two years' imprisonment or N5,000.00 fine, pays the sum of N753,075.85 as compensation to his employer who were the complainant in the charge.

Monye wonders whether such civil action is to be premised on the outcome of an investigation by the Consumer Protection Council or State Committee.³¹ One seems to be at a loss to concede, with respect, to the argument of the learned prolific writer. The intention of the draftsman of the Act appears clear and leaves no such doubt as expressed by the writer. The wording of section 8, seems to leave no doubt that civil action is to follow investigation by the Council or Committee, and that such right of action arises "... in addition to the redress which the State Committee, subject to approval of the Council, may impose, ..." The implication of this seems to be that an injured or aggrieved consumer's right of civil action under the Act is dependent on the complaint first being investigated by the Council or Committee, and the erring service provider being prosecuted at the end of such investigation. That is, the civil action may only flow from the outcome of such investigation. Although it is not clear whether the injured consumer must personally lodge the complaint,

³⁰ [2005] NWLR (pt. 278) 1075.

³¹ Monye, "Enforcement of Consumer Protection Laws in Nigeria" above note 6, at p. 94.

there is, however, nothing to suggest that a complaint by a third party other than the injured consumer would not suffice to be investigated, and for the latter to rely on the outcome and initiate a civil action.

All that the Act expects of the consumer is to lodge a complaint for the Council or Committee to investigate. Where the Council or Committee fails or refuses to investigate such complaint for whatever reason, the injured or aggrieved consumer loses the right of a civil action under the Act. It is contended that hinging the consumer's right to civil action on the outcome of investigation by a government agency over which he has no control unnecessarily fetters the consumer's right.³² Monye has canvassed that the section be amended to "... confer civil rights in the manner of the Sale of Good Laws/Edicts"³³, which allows an aggrieved buyer the right to a civil action for remedy against any breach of the law without first applying to any government agency.

(c) Other Penal-Based Consumer Legislation

There are other criminal law based legislation aimed at protecting the consumer of hospitality services. These include the Counterfeit and Fake Drugs and Unwholesome Processed Foods (Miscellaneous Provision) Act,³⁴ the Food and Drugs Act,³⁵ the Food, Drugs and Related Products (Registration, etc.) Act,³⁶ and the Trade Malpractices (Miscellaneous Offences) Act.³⁷ These statutes are penal in nature, so the enforcement of their provisions is primarily the duty of the designated regulatory agency. In the Trade Malpractices (Miscellaneous Offences) Act, alleged suspects are usually investigated by a

³² *Ibid.*; See also I. Ehighe, "Compensation for Consumers Affected by Criminal Conduct: A Ray of Hope from the Decision of the Court of Appeal in *Martins v. C. O. P.* [2005] NWLR (pt. 278) 1075" (2006) Vol. 2 No. 1 *Consumer Journal*, p. 25.

³³ *Ibid.*

³⁴ Cap. C34 LFN 2004.

³⁵ Cap. F32 LFN 2004.

³⁶ Cap. F33 LFN 2004.

³⁷ Cap. T12 LFN 2004.

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Special Trade Malpractices Investigation Panel supervised by the Ministry of Commerce. On completion of such investigation, the Panel's report is forwarded to the Attorney General who has the discretion of preferring a charge against the accused person. At the end of such investigation and prosecution, the victims of such crimes derive no compensation from the enforcement of the provisions of these laws.

In Nigeria, the concern of penal-based law is to punish offenders and not necessarily to compensate victims.³⁸ Two primary theories of punishment may be identified to explain this position. The first is the *Theory of Retribution*, which is also known as retributive justice. The theory posits that punishment meted out to offenders should be in accordance with a moral law that requires it. It reasons that some moral nexus must exist between offences and punishments, as punishments are not just imposed; but are a reflection of the societal perception of the offences from the moral standpoint. Ukwueze submits that the law, through retribution, seeks to satisfy the primitive human instinct for vengeance, and mirrored the society's revulsion for crime.³⁹ The second is the *Theory of Restitution*. This theory justifies punishment for its benefit to the society, and holds that lawbreakers are punished for the sake of the society only. This theory explains that whatever punishment is prescribed for a wrong done must at all times be of beneficial use to the society. To be beneficial to the society, punishment must aim at deterring or reforming the convicted person.⁴⁰ Therefore, punishment is either to **deter**

³⁸ Monye, "Enforcement of Consumer Protection Laws in Nigeria" above note 6, at p. 95; see also Ukwueze, *above note 7*, at pp. 128-129; I. B. Babangida, "Address delivered by the President, Commander-in-Chief of the Armed General Ibrahim Badamasi Babangida" at the opening of a 3 day National Conference on Compensation and Remedies for Victims of Crime in Nigeria, held at Abuja between June 28 and 30, 1989, in *Compensation and Remedies for Victims of Crime in Nigeria*, edited by B. Ajibola, (1990) 5 Federal Ministry of Justice Law Review Series, p. 1.

³⁹ Ukwueze, *above note 7*, at p. 128.

⁴⁰ G. Williams, *Textbook of Criminal Law* (London: Stevens and Sons, 1978) at p. 25.

the convict, or serves as a warning to others.⁴¹ An appropriate sentence for an unscrupulous hospitality service provider should therefore serve the consuming public in at least two ways; it should deter other service providers who may be tempted to breach extant regulations, and it should also deter or reform a convicted service provider from further violating regulations or impel him to become honest.⁴² It is reasoned that stringent enforcement of these penal legislation in the hospitality industry will ensure the sustenance of a high standard of services provided in the industry, and ultimately gives the consumer value for his money. To achieve this however, an effective enforcement mechanism must be in place. The effectiveness of the mechanism in Nigeria remains a source of worry to many.⁴³

In modern trend, particularly in Britain, there appears to be a paradigm shift from the theory of retribution, which now has few philosophical supporters,⁴⁴ to utilitarianism. The expression of Lord Diplock in 1972 in England in the *Tesco Supermarket Ltd. v. Nattrass*,⁴⁵ to the effect that the deterrent effect of penal provisions protects the consumer from the loss he would have sustained if the offence had been committed seems to have given judicial approval to the adoption of utilitarianism. The theory seems to have a close link with the philosophy of protecting the consumer of hospitality services, which include measures adopted to prevent injury to the person of guests, and loss or damages to guests' property. These measures include setting of certain minimum standards

⁴¹ Ukwueze, above note 7, at p. 128.

⁴² Per Hilbery, J in *R. v Ball* (1957) 35 Cr. App. R. 164.

⁴³ See G. O. S. Amadi, "Political Jaywalking and Legal Jiggery-Pockery in the Governance of Nigeria: Wherein Lies the Rule of Law?" being the 57th Inaugural Lecture of the University of Nigeria, presented on March 31, 2011.

⁴⁴ See generally, P. Cartwright, *Consumer Protection and Criminal Law: Law, Theory and Policy in the UK* (London: Cambridge University Press, 2001); Goff & J. Gones, *The Law of Restitution*, 4th ed. (London: Sweet & Maxwell, 1993); and Williams, above, note 40, at p. 26;

⁴⁵ [1972] A. C. 153, at p. 194. This was a case involving contravention of the English Trade Description Act of 1968.

for the provision of hospitality services, control of advertisement and prohibition of certain trade practices and imposition of penal sanctions for their violation. Conviction or acquittal is the aim of every criminal trial. Where a hospitality enterprise or a service provider is found liable, he is sentenced to a term of imprisonment or fined upon conviction. Beyond convicting errant service provider, Nigeria's criminal law justice system, leaves the victim with no compensation.

4. Criminalising Legislation on Protection of Consumers of Hospitality Services: Potency?

It may be queried thus: does criminalising consumer protection law in Nigeria bring succour to the consumer who has suffered loss or injuries?⁴⁶ Criminalising consumer protection issues through legislation, *prima facie*, seems to do the consumer no good. This position sounds illogical, considering the premise that every system of criminal justice is aimed at providing succour in some ways to the consuming public.⁴⁷ Regulating the protection of consumers of hospitality services through criminal sanction is not without some inherent advantages. First, there is the likelihood that service providers, for fear of being sanctioned and blacklisted by the government would comply with safety regulations. Secondly, there appears to be a general misperception of hospitality services in Nigeria. Many, because of religious inclination, condemn and cast in bad light such services as being product of immorality. For fear of being castigated, some consumers who are faced with shoddy services may opt not to complain. Thirdly, the criminal justice mechanism brings justice within the reach of the poor who would, ordinarily, not have been able

⁴⁶ Ukwueze, above note 7, at p. 128; see also Ehigheua, *Consumer Protection Law*, above note 7, at pp. 169-170; Nasir, M., "Criminal Justice: Restitution, Compensation and Victims' Remedies", in B. Ajibola (ed.), *Compensation and Remedies for Victims of Crime in Nigeria*, (1990) 5 Federal Ministry of Justice Law Review Series, 13 at p. 19.

⁴⁷ O. Agbede, "Modalities for the Enforcement of Financial Compensation for the Victims of Crimes", in *Compensation and Remedies for Victims of Crime in Nigeria*, above note 38, at pp. 23-24.

to afford the cost of civil action to justify their rights. Furthermore, in the face of the power imbalance, where consumers are typically in a weak bargaining position because of disparity in knowledge and resources between consumers and service providers,⁴⁸ the consumer's access to civil remedy is somewhat narrowed. In a developing country like Nigeria, where illiteracy and poverty stare the vast majority of the populace in the face, and with the near non-existence of legal aid provided by the state for civil action in this area of the law, the use of administrative agencies to sustain and enforce standard is of immense social significance. Fourthly, it avoids multiplicity of proceedings. For the court, this has the potential effect of reducing its workload, and if charges are diligently prosecuted, will minimise, if not completely eliminate the chronic delay of cases in courts.⁴⁹ Monye reasons that consumers benefit from criminal law provisions. She posits that:

[C]onsumers are the ultimate beneficiaries of an effective regulatory regime. Thus, when the activities of providers of products and services are effectively controlled, consumers will enjoy quality products and services. This will bring about the much needed consumer satisfaction, thus reducing cases of consumer complaints.⁵⁰

As comforting as these advantages appear, they do not necessarily suggest that the criminalising of consumer legislation presents a system that meets the aspirations of consumers of hospitality services in Nigeria. Although several consumer legislation in Nigeria rely on criminal sanctions for their enforcement,⁵¹ such penal sanctions hardly adequately

⁴⁸ Cranston, *Consumers and the Law*, (London: Weidenfeld & Nicolson, 1978) p. 3; Kanyip, *Consumer Protection in Nigeria: Law, Theory and Policy*, (Abuja: Rekon Books Ltd, 2005) pp. 2-3.

⁴⁹ Agbede, above note 47., at p. 24.

⁵⁰ Monye, "Enforcement of Consumer Protection Laws in Nigeria," above note 6., at p. 96.

⁵¹ *ibid*, at p. 95; Koroye, above note 19, at p. 136; and Badaiki, "Towards an International Legal Regime of Consumer Protection for Developing Countries: Nigeria as a Case Study," *Justice Journal*, Vol. 6, No. 4, (1993) at p. 54.

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protect the consumer/victim. Penal legislation in Nigeria are hardly aimed at providing redress to that consumer of shoddy hospitality services, the victim of the breach. Justice Balogun, stated the obvious when he expressed to the effect that "our laws have not made any 'adequate' provisions for the compensation of victims of crime, as distinct from restitution."⁵²

Penal provisions on hospitality services in Nigeria are more or less industry based; that is, aimed at maintaining acceptable standards in the industry, perhaps, impelled by the desire of the government to industrialise the country. The consumers of such regulated services are hardly provided any remedy, even when they end up as victims from their consumption of the service in question. Also, there is a general lack of awareness in Nigeria about victim issues, even by academics, legal practitioners and judges. In the criminal justice system, victims are forgotten; victim issues are at best considered to be issues within the precinct of social sciences, but not law or the justice system. This general ignorance has aided the continued strangulation of the consumer of hospitality services within the system.⁵³.

The object of penal justice system is punishment. Thus, a hospitality service provider who consistently violates the law may constantly pay fine upon conviction, while the consumer/victim of the shoddy service is left without a remedy. One then wonders how criminal law protects the consumer of deficient hospitality services.⁵⁴ Where a consumer is injured by

⁵² Balogun, "Problems of Victims in the Administration of Justice", in B. Ajibola (ed.), *Compensation and Remedies for Victims of Crime in Nigeria*, above note 38, 38 at p. 61; and Babangida, above note 38, at p. 2.

⁵³ M. Mauguire, & J. Shapland, "The Victim Movement in Europe", in A. J. Lurigio, W. G. Skogan, & R. G. Davies, (eds.), *Victims of Crime: Problems, Policies, and Programs*, (Newbury Park, 1990) cited by Koroye, above note 19.

⁵⁴ Kanyip expresses, "Where criminal sanctions are imposed, the consumer may not have personal satisfaction given that criminal remedies are treated separately from civil as the wrong committed are strictly speaking wrongs against the state." B. B. Kanyip, "Consumer Redress" (1998) Vol. 2, No. 2, *Modern Practice Journal of Finance and Investment*

substandard hospitality service and wants redress, he has to initiate a civil action, a process, which according to Babangida, "involves expenditure of money in terms of court charges and lawyers' fees for professional services."⁵⁵ It can, therefore, be stated that the degree of satisfaction of an injured consumer of substandard service is called to question, when the erring service provider is either imprisoned or fined for infringing the law. It is contended that restitution by way of compensation would afford such injured consumer better satisfaction. The problem here is that in our criminal justice system, there is hardly any provision for judges and magistrates to go outside the law with which the accused person is being charged and provide remedy for the victim, for instance, order that the convict pays to the victim a sum representing the latter's medical bills or damages. A case is hereby made for a policy adjustment in the Nigerian criminal law system to make room, in appropriate cases, for the consumer who has been injured by substandard hospitality services to be compensated. It is recommended that relevant laws on consumer protection, particularly, the Nigerian Tourism Development Corporation Act be amended to empower the courts to award compensation to the consumers if the provisions of the statutes breached cause injury to the consumer.

5. Conclusion

Hospitality service is a species of service of its own class; it involves foods, drink and accommodation. Substandard food or drink has the propensity to kill the consumer like poison, while a hotel guest who when spending the night in such hotel with his valuables is at the mercy of the service provider. This paper reveals that where he is injured or suffers loss as a result of breach of some penal legislation by the service provider, he is provided with no remedy by the extant criminal law within the

Law, 76 at p. 78; See also A. D. Badaiki, "Towards an International Legal Regime of Consumer Protection for Developing Countries: Nigeria as a Case Study," above note 51 at p. 54.

⁵⁵ Babangida, above note 38.

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industry. What the Regulations have done is to set up standards which providers of hospitality services are expected to comply. This is akin to the Regulations issued by the Standards Organisation of Nigeria prescribing standard for products. Though the Act prescribes punishments for service providers who violate these regulations, the victim, in this case the consumer, is left with little or no remedy. The remedy provided by these regulations is to have such victim see the service provider or enterprises prosecuted to conviction, and that is, only where the victim does not predecease the trial by reason of the injury he sustained. The relief apparently provided by sections 8 and 13 of the Consumer Protection Council Act seem to be, however, watered down by the unnecessary fetter of the consumer's right in section 8. A call is hereby made for the amendment of the provision of section 8 to remove the unnecessary restriction on the consumer's right, and give the consumer the option of instituting a civil action to enforce the infraction of the provisions of the Act which affects him without the need to first petition the Council or Committee. It appears that presently, criminal legislation seems to have forgotten that for every breach of industry regulation, there is a consumer or potential consumer (to be) affected by such breach.