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A JURISPRUDENTIAL EVALUATION OF CONSUMERS' COMPLAINTS IN TELECOMMUNICATIONS MATTERS AND REDRESS TYRANNY UNDER THE NIGERIAN COMMUNICATIONS ACT (NCA), 2003

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Abstract:
Despite the improvements made under the NCA in the processes of consumers' complaints/redress; after the deregulation, liberalization and commercialization of telecoms services sector in Nigeria, the processes of consumers' complaints and redress in telecom matters are still inadequate and ineffective, notwithstanding the provisions of this right enforcement as contained in sections 74, 75, 78, 86, 87, 88 and 105(2) of the NCA; judicial pronouncement in the courts, the activities of the regulator, NCC and the consumers not uninformed of their rights to lodge complaints, are still poor. To achieve remedy to these challenges, doctrinal research method was adopted, which involved the use of statutes – NCA, FCCPA and case laws as primary source; secondary source like textbooks, articles in law Journals, internet sources and other relevant materials. We found out that the above sections of NCA on complaint and redress method particularly sections 88(3) and 105(2) of the NCA are counter-productive to the effective realization of the aims of the NCA but aids the service providers against the right/interest of the telecoms service consumer. The pronouncements of the Courts with the use of technicalities, rules of evidence and form are inhibitive and against the right to redress by the consumer contrary to the intendment of section 76(2) of the NCA 2003. We recommended that sections 88(3) and 105(2) should be amended by inserting new subsections (4) and (3) respectively. The application of technical rules, rules of evidence and form should be eliminated in the adjudication of telecoms service matters and complaint process, to strengthen the cause of justice and restore the lost hope of consumers in the Nigerian telecommunications industry.

Keywords: *Consumers' Complaints, Telecommunications Matters and Redress Tyranny.*

1.1 Introduction

Consumer complaints in telecoms matters are such complaints which refer to dissatisfaction expressed by the consumer regarding telecoms services or products. The common issues of complaints are in respect of service quality, customer service; billing disputes; equipment installation/services; contract services; mechanisms/Channels of resolution of disputes; arbitrary disconnection of lines and redress mechanisms. Consumer redress which provides avenues for consumer to resolve disputes with telecom service providers as well as telecom service regulators/institutions; deals with different mechanisms to resolve consumer and service provider's disputes; improve telecom operator's services and protect consumer rights according to the laws, regulations and guidelines prevalent in telecommunications sector.

There are methods used by the State in resolving consumer complaints in the telecoms sector like the enactment of various laws, regulations and guidelines for compliant processes and the establishment of institutions for the resolution of telecoms disputes. In this article, the ability of the consumer to lodge complaints to the established institutions/keep records, file complaint, have it investigated through established mechanisms, get responses/feedback from the institutions that investigated it, shall be considered. Obviously, the complaint filed and investigated serves not only to provide redress to the grievances but provides an increased efficiency in the provision of services, protect and empower the consumer of telecoms services/products.[1] This article specifically appraises the protection of the consumer under the *NCA* 2003 and its subsidiary legislations in respect to lodging of complaints and redress mechanisms, with a view to assessing how adequate disputes are resolved and consumer rights are enforced.

1.2 Consumers' Complaints and Redress Mechanisms

Section 105(1) of the Act[2] provides:

> The Commission may use any of its powers under this Act in the resolution of complaints received from consumers. In relation to quality service or the failure of a licensee to comply with a consumer code prepared under this chapter.

While subsection 2 of section 105 states that the commission shall establish procedures or guidelines for making receipt and handling of complaints of consumers, regarding the conduct or operation of licensees, the commission may at its discretion, institute alternative dispute resolution processes for the resolution of complaints or disputes provided that the licensee's dispute resolution procedures shall first have been exhausted by the consumer without resolution of the complaints before presenting the complaints to the commission. Flowing from the above section 105(1) and (2) of the Act, it is apparent that:

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[1] J M Hogarth and M P English, 'Consumer Compliant and Redress: An important Mechanisms for protecting and Empowering Consumers' in
International Journal of Consumer Studies 2002 26(3) 217-226, available@www.researchgate.net, accessed 15th May, 2025
[2] *Nigerian Communications Act*, No. 19 2003

(a) Complaint in telecommunications matters or services is aimed at assisting the telecom service or product consumers to lodge and prosecute their grievances relating to quality of service.
(b) Assist the consumers to lodge complaints when they are dissatisfied with any licensee's (service operator) services or products.
(c) Holding service providers accountable for their actions and inactions; ensuring that they adhere to the laws, regulations and guidelines.
(d) It is aimed at resolving specific problems or disputes with telecoms service providers. Example, billing errors, service outages or poor consumer services.
(e) Aimed at specifically protecting consumer rights and ensure that telecoms service providers treat consumer fairly as well as ensuring that the interests of the consumer are promoted.
(f) To improve the practices of the industry and the regulations.
(g) Protect the rights of the institutions regulating the telecoms service providers.

This is further complemented by the provision of consumers' code by the industry body.[3] Although, there is no interpretation or meaning of the phrase 'consumer code' or 'consumer forum', provided in the Act; however, the purpose of the consumer code are: it provides a model procedure to know whether the service provider is reasonably meeting consumer requirements; whether in course of handling consumer complaints and disputes resolution through the internal arbitration processes, there are problems; it is inexpensive compared to the processes of the ordinary court that are expensive and time consuming; it is used for the protection of consumer information; it provides procedures for other alternative complaints – handling processes as well as the compensation and refund processes.[4]

Other purposes of consumer code, are that it provides information for the consumer to know the rate of services and performances of the service providers; the advertising and representation of services; charging by the service providers on consumer services; billing, collection and credit services available to the consumer[5] The consumer code prepared by the forum must conform to the standard practice approved and ratified by the commission in accordance with Regulations 2 and 3(3) of the code.[6]

1.3 Persons Entitled to Lodge Complaints and Seek Redress/Remedy

Section 104(c) of the Act expressly states that the service providers should adequately address consumers' complaints. It provides thus:

104 All service providers shall in respect of their specific services –

[3] See *NCA* 2003, section 106
[4] Subsection 3 of section 106, *Ibid*
[5] Subsection 4, *Ibid*
[6] *Consumer code of Regulation* 2007 made pursuant to sections 70, 71, 72 of the *NCA* 2003. Generally, the consumer code is made to reasonably meet consumer requirements.

(C) Adequately address consumer complaints, the interpretation section of the NCA, consumer or subscriber means any person who subscribes to and uses a communication service.

And communication as broadly defined by the *NCA* 2003 means any communications, whether between persons and persons, things and things, persons and things, in form of sound, data, text, visual images, signals or any other forms or any combination of these forms.[7] It empowers the commission,[8] to resolve disputes between parties who are subject to the Act, in respect to matters provided under the Act, regulations or guidelines[9].

From the provisions of the Act, persons who are entitled to lodge complaints and can obtain remedy are: (a) consumers or subscribers; or (b) Persons who subscribes to and uses communication services; (c) Parties who are subject to the Act, can lodge complaints of any default and violation of their rights under the Act, regulations or guidelines. Similarly, telecommunications is defined, by the Act, as 'any transmission, emission or reception of signs, signals, writings, images, sounds or intelligence of any nature by wire, radio, visual or other electro-magnetic systems.[10]

However, from the official website of MTN Communications Ltd and other website like telecom service providers; a consumer is a person who enters into a contract with the MTN or any MTN affiliates, for the receipt of services or products for its own.[11] It further states that a consumer who works for an organization can only use the MTN website, Mobile applications, products and services, with the authorization from the employer or organization', consumer who are natural persons, must be of the age of 18 years old before such telecom services can be accessed.[12] The definition of who is a consumer of telecommunications services as contained in the official website of MTN Ltd and other telecoms service providers, presupposes that for a consumer to be entitled to complaint of any defaults and violation of their rights, he must be a person who has entered into a contract with the service provider to provide telecoms services or products or an employee who is employed by an organization, who must be authorized by the employer; in order to use the MTN services.

Critically, the above definition admits of *privity* of contract, lack of freedom of contract and poses a restricted meaning and application, contrary to the meaning and application of a consumer under section 58 *cybercrime (Prohibition, Prevention etc) Act*,[13] Consumer protection under the contract and under

[7] Section 157 *NCA, Ibid*
[8] Otherwise referred to as the Nigerian Communications commission, NCC
[9] Section 73, *NCA, Ibid.* while 'person' under section 157 of the Act, includes a corporate body or partnership and where an individual is required to represent a corporate body or partnership in any circumstances pursuant to the provisions of the Act or tis subsidiary legislations.
[10] *NCA* 2003, *Ibid.*
[11]. E J. Osimiri, 'A Critical Review of Consumer Protection in the Telecommunications sector in Nigeria, being a Ph.D Thesis submitted to the Faculty of Law, Ebonyi State University, Abakaliki (2025), 285
[12] *Ibid*, Available online@<www.mymtn.com.ng> accessed 26th February, 2024
[13] The definition/interpretation section of the Act 2015 provides that consumer means every person or organization who enters into computer based purchase, lease, transfer, maintenance and consultancy service agreements with a computer service provider and the customer and agent of the consumer and includes bank account holders who carry financial cards

the MTN Ltd website/code, is that where a person who is not a consumer under a contract with the service provider suffer any loss, injury or damage in course of supplying goods, use of the services of the service providers' or products, he is not allowed to bring any compliant in this respect and likely he has no right to redress before the service provider, regulator and invariably before the ordinary courts. Consequently, a gratuitous donee or someone (third party) who borrowed and used the products, goods or services, and was injured or sustains damage or loss; he is not entitled to lodge any compliant or entitled to redress/remedy because he is not a party to the contract with the service provider.[14]

Both the MTN provision on the official website and *NCA* 2003, in this respect appears not to admit of any exception to *privity* of contract. This is not only restrictive but a limitation to the protection of users of telecommunication services or products. However, a duty of care is presumed under the law of torts on the service providers in favour of users or consumers of telecommunications services or products.[15] Generally, duty of care under torts is independent of any contract. And any claimant who proves that there is duty of care owed him by the telecom service provider (Defendant) and that the defendant breached the duty, by been negligent and not carrying out the duty or carrying out the duty which caused the other person harm, injury or damage to the claimant, the claimant can sue and claim damages without any contractual relationship between the person who suffered loss, damage or injury and the service provider; on the grounds that the service provider failed to carry out its duty owed the user or consumer of telecoms products or services. Consequently, damages can be claimed against such service provider on prove of same by the user.

Strictly, for a telecom service user or consumer who suffered injury, loss or damage as a result of negligent act of the service provider to succeed, he must prove that there was fault of a particular act or omission, and the user or consumer may not recover for economic loss, without physical injury to him or to his property.[16] Ukwueze, has further opined that telecommunications service consumers or other consumer of other products, may not succeed in action in tort of negligence, if there is no casual nexus between the loss or injury and the act of the service or product producer or goods producer.[17] Regrettably, these are the challenges bedeviling the users or consumers of telecommunications services or products relating to lodging of complaints against the service producer, when there are losses, damage, injury or violation of consumer rights and the redress/remedial processes. Consequently, there is need for the provision of strict liability offence in the Act, so that once there is injury or loss or damage to the user or consumer of telecommunications products or services, the service provider should pay compensation, whether there is proof of negligence or *privity* of contract or not.

[14] *Ibid*
[15] See *NCA* 2003 section 136 see also Regulation 2(a)(b) and (c)
[16] F O Ukwueze, 'Consumer Protection in the Regulation of telecommunications Services of Nigerian, Not yet Uhuru' for consumer, in *Nigeria juridical Review*, 2014, 12, available@<www.unu.edu-201608> accessed 11th June, 2025
[17] *Ibid*

1.4 Types of Claims and Procedure to be adopted by an Aggrieved Consumer

There are two major types of claims under the Act. First, the small consumer claims as provided in sections 4(p) and 75(2) of the Act. Section 4(p) of the Act provides that the commission shall exercise or perform the following functions thus:

> 4(p) examining and resolving complaints and objections filed by and disputes between licensed operators, subscribers or any other person involved in the communication industry, using such dispute – resolution methods as the commission may determine from time to time including mediation and arbitration.

While section 75(2) provides for the publication of guidelines setting out the principles and procedures to take in resolving any disputes or class of disputes in telecommunication matters, apparently, it is the guidelines which classified the types of claims as well as the procedures to be adopted in considering and resolving disputes by the arbitrators and/or the commission. The establishment of the NCC *Dispute Resolution Guidelines* 2004 incorporates the procedure for the resolution of small consumer claims not exceeding One Million Naira only (₦1, 000,000.00).[18]

The principal objectives of the guidelines are to consider and resolve claims that do not have complicated issues of law or rigour of examination of witnesses and without applying technicalities of law to defeat consumers' claims, and also to resolve disputes through arbitration without unnecessary delay and expenses.

Consequently, the procedure specifically aims to promote fairness, impartiality, inexpensive/cost effective, effectiveness, oral hearing and uses documents only in resolving consumer-related disputes in the telecommunications sector. The parties after incorporating their claims, defenses and supporting documents as well as reply to the evidence of the other party in their various written arguments, allows the arbitrators to arbitrate and come out with a draft decision[19]

1.5 Consumers' Claims Procedure

First, the parties to the dispute must have tried resolving the dispute themselves without success, through negotiation[20]. Second, the parties must revert and exhaust all dispute resolution processes of the service provider as contained in the consumer forum and consumer code, *NCA* before presenting the complaints

[18] However, under the proposed amendment of Dispute Resolution Guidelines 2024, currently before the National Assembly, Ad-hoc committee on Telecommunications/ICT, available @www.ncc.gov.ng, accessed 14thjune, 2025. If passed into law will consider small claims complaint not exceeding N10,000,000.00 (Ten Million Naira) Only
[19] Available@www.ncc.gov.ng-data-muscellanus-legal/media-view accessed 14th June, 2025
[20] 19(a) *NCA* 2003, section73

to the commission,[21] by either or both parties. Third, after presentation of the dispute before the NCC, the NCC will appoint its internal arbitrators who are experienced and adopts the NCC arbitration procedures devoid of the procedure contained in the *Arbitration and Conciliation Act*. The arbitrators use and wholly rely on documents only, without oral evidence/ hearing.[22] An arbitrator appointed under the guidelines can issue an interim order, where a dispute directly affects the ability of a party to continue to provide uninterrupted services to its customers.

Fourth, after considering the arguments of both parties as presented in their various arguments in writing, the arbitrator issues a draft decision, which is subject to review and approval by the commission. The approval by the NCC is aimed at confirming, whether the draft decision complies with the requirements of the Act, NCC regulation and guidelines before publication of the final decision.

Such reviewed decision becomes final and binding on the parties. Fifth, the arbitrators also indicate, where appropriate, schedules for the implementation of the decision.[23] No consumer complaint shall remain unresolved for more than three months. And after the final decision of the arbitrator on consumer complaints, the consumer (parties) shall be informed of the decision. Sixth, Where any consumer is dissatisfied with the arbitrators' decision, based on the complaint, the service provider shall allow the consumer an opportunity for escalation process within the service providers organization. And if the escalation process is not satisfactorily considered by the service provider within 60 days of the initial communication to the service provider of the escalation process, the service provider is authorized to allow the consumer to refer the complaint to the commission.[24] Moreover, by virtue of Regulation 42,[25] no fees shall be charged by the service provider against the consumer within the process of escalation of decision except in certain circumstances where the service provider fix any charges which must be agreed by the consumer, before it can be incurred by the consumer. Further, during the complaint period or billing dispute, the service provider is not allowed to charge any disconnection or credit management action regarding any service relating to the complaint or dispute that is handed.[26]

The small claims complaint/redress procedure though laudable, as there is a fixed period within which the process can commence and end; in order not to prolong proceedings reminiscent of litigation and adjudication in the ordinary courts. However, the challenges posed by the requirements that the arbitrators' decision must be submitted to the commission in draft for approval by the commission before it will be a final decision, binding on the parties, smacks of arbitrators independence or arbitral award. Second, the big monetary claim and procedure under sections 73, 74, 75, 76, 77 and 78 of the Act[27] is to the effect that the commission has powers to resolve disputes between persons who are

[21] Commission, is the Nigerian communication commission (NCC); *NCA* 2003, section 75(1), 75(3) and 75(4)
[22] See chapter 2, paras. 5 and 6 of the Guidelines 2004
[23] See *Dispute Resolution Guidelines* 2004 chapter 3, Regu. 10.
[24] See (n. 22) Regulation 41
[25] *Dispute Resolution Guideline* s 2004, *Ibid*
[26] *Ibid*, Regulation 44, see (n. 16)
[27] *NCA* 2003

subject to the Act (the parties) regarding any matter under the Act or any subsidiary legislation under section 73.

Before parties will lodge complaint to the commission, they must first attempt to resolve the dispute through negotiation.[28] Similar process whereby individuals can settle themselves other than through negotiation is where one party to the dispute provides an undertaken relevant to the subject matter of the dispute and such undertaken was registered by the commission; such undertaken can be adopted by the parties to resolve the dispute.[29] By virtue of section 75 of the Act,[30] a party to a dispute, may lodge compliant of big monetary claim in writing and notify the commission of the dispute. On receipt of the complaint, the commission must be satisfied from the nature of claims in the complaint that: (a) the parties to the dispute could not reach an agreement or agreement cannot be reached within a reasonable time; (b) the claims in the complaint notification are not on trivial, frivolous or vexatious issues; and (c) the consideration and resolution of the dispute is aimed at promoting the objects of the Act or regulations or guidelines.[31]

The commission is duty bound to apply and be guided by the objectives of the Act, in order to sustain dispute resolution process, that is fair, just, economical and effective without applying technical rules/procedure, use of legal forms and rules of evidence in considering and deciding any dispute pending before the commission.[32] The provision of section 77 of the Act empowers the commission to register all decisions made by it at the Federal High Court.

Generally, the Act gives an aggrieved party or a party whose interest is adversely affected the right to apply to the court for judicial review of the decision of the commission within thirty days of the receipt of the decision, on the fulfillment of certain conditions before the application for the review.

Section 87 of the Act,[33] specified the conditions thus: (1) the aggrieved person must request the commission for a statement of the reasons for the decision in writing; (2) after receipt of the request, the commission shall provide a copy of a statement of the reasons for the decision as well as include other relevant information for the decision. Further, the aggrieved persons can within 30 days of the commission's statement of reasons, request the commission in writing to review the decision of the commission as well as specify the reasons and basis for the request.

The commission after reviewing the decision, in view of the submissions of the aggrieved party, must within 60 days from the date of the receipt of the request for the review, and inform the aggrieved person in writing of the final decision and the reasons for the decision.[34] Section 88 of the Act empowers an

[28] *Ibid*, section 74(1)
[29] *Ibid*, sub section 2 section 74
[30] *Ibid*
[31] *Ibid*, subsection 4, section 75
[32] *Ibid*, sub sec 2, sec 76
[33] *Ibid*
[34] *NCA*, 2003, *Ibid*, section 87(1)(2)(3) and (4)

aggrieved person to appeal to the ordinary court for a judicial review of the final decision of the commission. And while the application for judicial review is pending or subsists in the court, the final decision of the commission, is still valid, subsists and binding on the parties except the decision is set aside by the court in a final judgment or order.[35] However, before an aggrieved party can apply to the court for a judicial review of the final decision of the commission, such person is enjoined to first exhaust all other domestic/internal dispute resolution mechanisms and remedies provided under the Act.[36] Section 88 (3) of the Act provides thus:

> A person shall not apply to the Court for a judicial review unless that person has first exhausted all other remedies provided under this Act.

Under the *NCA*, there are four recognized steps and processes to lodge complaint(s) and redress, which are:

First, the consumer should lodge complaint with the service provider, follow it up and exhaust the complaint process with the particular service provider; and if it is resolved, the redress process is over and the consumer obtains remedy of monetary compensation or repair of defective or unsafe product or replacement of any defective product or services.

Second, where the complaint is ignored, refused or not satisfactorily resolved, the aggrieved consumer can lodge further complaint before the commission.

Third, on receiving the complaint in writing from the aggrieved party, the commission will intervene since there was no agreement reached by the parties and the commission will invite the other party, using the Alternative Dispute Resolution Method through the appointment of its internal Arbitrators to arbitrate over the dispute by doing so, the commission is bound not to apply any technicalities, legal form/rules of evidence but only the rules of natural justice, equity and merit of each case will be applied to resolve the dispute. If the dispute is resolved, the decision of the commission becomes binding on the parties, and same decision is registered with the Federal High Court for purpose of enforcement.[37]

Fourth, any party that is still aggrieved against the decision of the commission can within 30 days the decision was made, apply and request the commission to state the reasons for the decision and this will be published by the commission for purpose of judicial review of the decision at the Court of Appeal.

From the provisions of the *NCA*, there are serious challenges impeding the applicability and enforceability of the complaint and redress processes, where dispute arises in respect of poor quality service, wrong/inaccurate billing, defective/unfair service delivery and products; depletion of data and

[35] *Ibid*, subsections (1) and (2)
[36] *Ibid*, subsection 3
[37] E.J. Osimiri, (n. 10), 291

other poor online transactions. The challenges is posed by the provisions in the *NCA*, regulations, activities of the service providers, the unwholesome attitude of the regulators, the attitude of the Courts through judicial pronouncements and the activities of the un-informed consumers.

Regulation 39(1),[38] provides that the licensee (service provider) shall provide information that is easily understood about complaint process in various media and format as directed by the commission. Regulation 39(2) enjoins the licensee should ensure that the consumer understands and can identify how a complaint is lodged. The regulation also provides that information on complaint handling should contain consumer's right to complaint and how the consumer can contact the licensee in order to make complaint as well as information relevant to the issues complained about, as contained in the complaint.[39] Piwuna, in identifying the main elements of right to complaint/redress as recognized by the Statutes, states that it includes: (i) right to compensation to the consumer for suppliers' act of misrepresentation, supply of defective products and unsatisfactory services; (ii) the right for quality goods and services to be provided to the consumer and (iii) the right to effective complaint and refusal to accept shoddy services.[40] The Regulation also enjoins the service provider to provide adequate methods of lodging complaints and seeking redress by the physically challenged and the elderly. In other cases, this category of people should be given special care by helping them lodge complaints on their behalf.[41]

The provisions of the *GCCPR* Regulation, *NCA* and the view of the researchers, it is observed that consumer encounter problems while seeking for justice against exploitation, unfair/shoddy practices/services of the service provider, remedy supply of defective/unwholesome products and services, quality service, and processes of compensation to the consumer.

And from the provisions of *GCCPR* 2007, it is explicit that the service provider should inform and create awareness to the consumer on how to lodge compliant. Also, the consumer should be aware on where to lodge complaint and how to contract the service provider on when and how to lodge complaint, follow up the processes of redress and achieve remedy/results from the complaint. This presupposes that when these duties are violated by the service provider, the consumer right to education and information are violated. Unfortunately, it is observed that service providers most time abdicate from their duties, especially the issue of processes of complaint/resolution of consumer complaints, provision of information and detailed service contracts. For example all service providers, claim they have customer care units, consumer complaints centres or consumer friendly centres, but the effectiveness and accessibility of most of these schemes leaves much to be desired. The centres do not comply with legal requirements in dealing with consumer complaints. The Service providers are in the habit of accompanying their offers/services with clauses exempting themselves from all sorts of liabilities. Some

[38] *General consumer code of practice Regulations* 2007
[39] *GCCPR Ibid, Regulation 39(3)*
[40] M G Piwuna, 'Examination of consumer Protection under the Nigerian Communication Act 2003, in *Journal of Education and Social policy* (2016)3 (4), available online@<https://www.eu.dockworkpace.com> accessed 15th June, 2025
[41] *GCCPR Ibid*, Regulation 39(3)

service providers go to the extent of referring the consumers to their websites for terms and conditions etc. And such terms apart from not being generally binding due to certain exemption clauses, it is counterproductive and erodes the confidence of the consumer on the grounds that many consumers are illiterate, physically challenged and cannot read or understand the terms because the service providers do not extensively educate and inform the consumer on their rights to complaint/redress in order to get remedy for violated rights. This is not good for a largely agrarian, illiterate or computer illiterate populace as Nigeria.[42] The Town hall meeting used by service providers to create awareness is restrictive in its spread and approach, as many consumers who live in the rural/remote areas are still left out and not educated or informed on methods of complaints/redress.

In *Multichoice Nig. Ltd v. Azeez & Anor.*[43] The Court held Multichoice Ltd in damages for failure to inform/give notice of increase to the Respondents (consumers) according to the contract. And on appeal by Multichoice Ltd to the Court of Appeal against the trial Court's decision was dismissed. Generally, the views of researchers and judicial pronouncements, demonstrated that lack of information and awareness on the ways, how and when to lodge complaints for redress, is an inhibitive factor and the reason why many consumer and users of telecommunication services suffer injury, damage/lose cases in the Court without remedy contrary to the well-established principle of *ubi ujus ubi remdium* – where there is right, there is remedy.

The provision of section 88(3) *NCA* 2003, which provides that all internal dispute resolution mechanism of the service provider must first be exhausted before an aggrieved consumer can apply to the ordinary court for judicial review, is a major roadblock and setback against consumer complaint/redress and militating against obtaining remedy. The process is very cumbersome, time consuming and a source of failure in the of many cases instituted by consumers, who inadvertently did not first go through all dispute resolution methods provided of the service provider are in the Act.

This is also a precursor to the application of technical rules in telecommunications matters where rules of natural justice and equity ought to apply. These have adversely impacted on the enforceability of the consumer rights to complaint/redress. In *Adeola v. Ayeova,*[44] the court held that an aggrieved party must exhaust a line of action provided by a statute, for the determination of an issue before going to the courts, otherwise the suit will be in contravention of a condition precedent and incompetent. Also in the case of *Babalola v. Apple INC,*[45] the Supreme Court affirming the Court of Appeal decision, held dismissing the appeal by the Appellant, that the Appellant failure to comply with the provisions of sections 6 and 8 of the *Consumer Protection Act* 1992 (which is in *pari material* with section 88(3) of the *NCA* 2003) for not fulfilling the condition precedent of given pre-action notice and the suit was not ripe for hearing and consequently incompetent.

[42] F.O Ukwueze, (n. 16); E. J. Osimiri (n. 10) 257
[43] (2010) 15 NWLR (Pt. 1215) 40, 46
[44] (2009) ALL FWLR (Pt. 458), 365
[45] (2021) 18 NWLR (Pt. 1799) at 26-221 para C-G and D-E

Although the purpose of pre-action notice as required under section 88(3) of the *NCA*, is to checkmate the consumers' from springing surprise on the service providers as well as enable the service providers to have pre-knowledge of the nature of claim before they are brought to the Court; but it is the researchers view when such pre-condition to bring an action in Court, is inhibitive, or hindering the citizen access to the law Courts, such statutory provisions will be *ultra vires* and a nullity for been unconstitutional.[46] Therefore, merely creating awareness and publications of news of matters in the website of NCC, or service providers; is not adequate, as many subscribers may not access these websites. The right to information/education of consumers of telecommunications products/services is essential to make telecoms service consumers to know their right on how to use certain facilities and how to lodge complaints/redress.[47]

1.6 Are the Complaints and Redress Provisions of the *NCA*, 2003 a Bar to Recourse to Other Alternatives or Avenues of Redress?

Generally, a cursory look at the provisions of the *NCA* 2003, regulations and guidelines relating to complaints handling, appears that it is intended to constitute a bar to other avenues of redress in telecommunications matters. According to Atoyebi, [48] complaint procedure under *NCA* 2003, its regulations and guidelines does not constitute a bar for the telecommunication service consumer not to take an alternative or other avenues to complaint and get redress. And aggrieved telecommunication service consumer can also complain before the Court or through the Federal Competition and Consumer Protection Commission, otherwise called FCCPC and obtain redress/remedy. The functions of the FCCPC are established by virtue of section 17 of the *Federal Competition and Consumer Protection Act*, otherwise called *FCCPA* mainly for the protection of the consumer rights/interest. Although the *FCCPA* does not specifically apply to telecommunications matters, but it applies to all commercial activities and under takings conducted or having effect within Nigeria through the relevant provision of section 104 of the *FCCPA*. For clarity, section 104 of the *FCCPA* provides thus:

> Notwithstanding, the provisions of any other Laws, but subject to the provisions of the constitution 1999, in all matters relating to competition and consumer protection, the provisions of Federal Competition and Consumer Protection Act, shall override the provisions of other Laws.

[46] See the minority decision in *Orakul Resources v. NCC Ltd &* Ors. (2022) 6 NWLR (Pt. 1827) 539 at 606-607, Ratio 4, paras. H-A per Eko JSC.
[47] Imasi Ngofa, 'Telecommunications Industry in Nigeria, *in Port Harcourt Journal*, published by Faculty of Law, Rivers State University, Nkpolu-Orowokwo, 2021 10(1), 51 at 157-58; Njikoye v MTN Communications Ltd (2008) All FWLR (pt. 413)1343 @1365 per Omoleye JCA
[48] O M Atoyebi, and Janet Udoka, 'Telecommunications services in Nigeria: A look at the legal Remedies Available to consumers', online@<www.omaplex.com.ng, accessed 24th June, 2025

From the provisions of the section, it is obvious that apart from the *Constitution of the Federal Republic of Nigeria,* 1999, as amended, the provisions and applications of the *FCCPA* covers or has supremacy application over any other laws in Nigeria on consumer protection, commercial matters and competition activities. Consequently, the provisions of *FCCA* operate on all sectors of the economy.[49] It is therefore a multi-sector regulator. Under section 146(1) and (2) of the *FCCPA*, the consumer can seek redress or enforce its violated rights or contravention of any provisions of the *FCCPA* that may negatively impact on the interests, welfare and rights of the consumer through the recognized processes. Section 146 provides thus:

> 146 (1) 'A consumer may seek to enforce any of the rights under the Act, a transactions or agreement or otherwise resolve any dispute with an undertaking that supplied goods or services to the consumer by: (a) Referring the matter directly to the undertaking that supplied the goods or services for settlement, (b) Refer the matter to the applicable industry sector with jurisdiction, if the undertaking is subject to the jurisdiction of the regulator, or (c) file a complaint directly with the commission.
>
> 146(2) notwithstanding the provisions of subsection 1 of this section, an aggrieved consumer can directly approach a Court with appropriate jurisdiction for redress.

It will be reasonable to say that from the provisions of section 146(2) where a consumer right or any provision of the *NCA* is violated, instead of the consumer going through the rigours of sections 86 – 88(3) of the *NCA*, such consumer can lodge his complaint by suing the service provider directly to the ordinary court in accordance with sections 104 and 146(2) of the *FCCPA.* In the case of *Patrick C. Chukwuma v. Peace Mass Ltd*,[50] where Patrick, a legal practitioner adopted the option provided under section 146(2) *FCCPA.* And instead of applying to the undertaken or the service provider or National Union of Road Transport Workers Enugu Branch, sued the Defendant at Enugu High Court for damages and refund of his transport fare paid to the Defendant. The court held that the Defendant is liable in damages in the sum of N500,000.00 in favour of the Plaintiff. The court further held that the policy of the Defendant of no refund of fare paid when services is not rendered is illegal as it is intended to misled, deceive or subject the consumer to fraudulent conduct, and aimed at overriding the provisions of sections 120, 104 and 129(1)(b)(iii) of *FCCPA.*

It need to be highlighted that despite the fact that the impact of section 146(2) of the *FCCPA* is a respite to consumer complaint/redress processes compared to the complaint/redress under the *NCA*, the

[49] Jackson Etti and Edu, 'An overview of the Federal Competition and Consumer Protection Act, 2019, available online@<www.storage/emula-PHX5'ownlable.com> accessed 24th June, 2025
[50] Unreported Suit No. E/524/2021, which judgement was delivered on 7th April, 2022 by Hon. Justice C.O. Ajah of Enugu High Court.

damages awarded by the court to the plaintiff in the case of Chikwuma is low and contrary to the damages to be awarded to a successful party under section 55 of the *FCCPA*.[51] Further, the provisions of *NCA* 2003 on complaint/redress mechanism are not adequate to oust the jurisdiction of the Courts as provided in the Constitution of the Federal Republic of Nigeria 1999, as amended.[52]

1.7 How Adequate are Dispute Resolution and Enforcement Methods of Consumers' Rights under the *NCA* in Nigeria?

Comparatively, lodging of complaint/redress and enforcement mechanisms under sections 146(1) and (2) and 148(1) of the *FCCPA* and sections 74, 75, 78, 86, 87 and 88(1)(2) and (3) of the *NCA* 2003; the provisions of the Law under *FCCPA* appears to be seamless and does not work hardship on the consumer applying and enforcing its violated right. An aggrieved consumer under the *FCCPA* can either lodge complaint or enforce his rights through the undertaking, specific sector regulator or to the FCCPC. And alternatively, such aggrieved consumer can directly sue the undertaking to the ordinary court without passing through the rigmarole of applying through the undertaking to the FCCPC. However, the complaint mechanism and enforcement processes under the *NCA*, through sections 74, 75, 78, 86, 87, 88(3) and section 105(2) are very cumbersome, time consuming and a source of failure of many consumer claims/complaints in the ordinary courts.

This is a major challenge in obtaining redress/its enforcement under the *NCA*, as it is very restrictive, and circuitous. Many consumers are not educated and are not aware of their rights to seek remedy through this rigorous process. Even the elite consumers that are aware of the complaint and enforcement processes try to avoid it because it is time wasting, cost ineffective and a means of denying the consumer the right to choose which channel of complaint.[53] In *Orakull Resources Ltd v. NCC*,[54] The Supreme Court in a majority judgement of 4 to 1 Eko JSC dissenting, affirming the decision of the Court of Appeal, and dismissed the Appeal for being incompetent on the grounds that the Appellant did not fulfill the conditions precedent in sections 86, 87 and 88 of the *NCA*.

The provisions of sections 86, 87 and 88(3) of the *NCA*, when applied in complaint/redress process, is frustrating and amounts to NCC been on appeal over its earlier decision. The action of NCC in this respects are also contrary to sections 1 and 36 of the *CFRN*, 1999, as amended.[55] It is the researchers view that since sections 86, 87 and 88 (3) of the *NCA*, are capable of divesting the consumer of his right

[51] See E.J. Osimiri, 'An Appraisal of the Enforcement of Consumer Rights under the Federal Competition and Consumer Protection Act, 2019: The challenges in Enforcing Consumer Rights in Nigeria, *in Alex Ekwueme Federal University Law Journal*, Vol. 1204, 273-274
[52] Section 6(6) of the *Constitution of the Federal Republic of Nigeria*, 1999, as amended.
[53] See E.J. Osimiri, (n.)
[54] (2022) 6 NWLR (Pt. 1827) 539 at 582-599.
[55] Section 1 provides that the constitution is supreme aid its provisions shall have binding force on all authorities and persons throughout Nigeria, while section 36 guarantees every citizens of the country in any civil rights and obligations and provides that in determination of any civil rights and obligations, including any determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a Court or tribunal established by law, and constituted in such a manner as to secure its independence and impartiality.

to fair hearing, the minority decision of Eko JSC in above case of *Orakul Resources Ltd*,[56] is preferred, as the minority decision (though this is not legally the ratio and constitutionally the decision of the court) decided to the contrary and consistent with the constitutional provision on fair hearing.

Further, an aggrieved consumer, who commenced the process of lodging complaint but either by omission or commission could not complete the process or wait for the service provider to neglect, refuse or ignore or raise contentious claims against the consumer's claims, thereby allowing a dispute to be established; the consumer cannot successfully sue and get judgment or go for a judicial review in the Court. In the case of *Obe v. MTN Nig. Ltd*,[57] where the Appellant sued for breach of contract of service and even though the Appellant tendered letters of complaint at the trial court, the Supreme Court affirming the decision of the trial Court, held that the Appellant did not adduce evidence of a dispute between the parties from the complaint and cannot be entitled to his claims. The appeal was dismissed. In most cases, consumers' effort from the High Court to the Supreme Court is wasted, frustrated and/or little or nothing significant is gained after many years of litigation in the ordinary Courts when this process is adopted. Therefore, sections 74, 75, 78, 86, 87 and 88(1)(2)(3) particularly section 88(3) of the *NCA*, are statutory provisions, technically aiding the service providers to destroy the complaint/redress process under *NCA*, which is contrary to the intendment of section 76(2) of the *NCA*. Consequently, the provisions of the law as stated in the above sections are technical rules/applications that hinder the resolution of disputes and the consumers' right to compliant(s)/redress; which makes the dispute resolution and the enforcement methods under the *NCA*, inadequate.

1.8 Conclusion

There is much debate on the protection of consumers of telecommunications services through complaint/redress process. This is on the ground that from the statutory provisions, judicial processes and the activities of the regulatory institutions; there are roadblocks hindering the effective compliant/redress processes and adequacy of the enforcement of the right of the consumer of telecommunications to remedy. The challenges are replete in the judicial pronouncements in the reported cases and other cases not contained in this paper. Sections 74, 75, 78, 86, 87 88(1)(2)(3) and 105(2) of the *NCA* is strongly recommended for amendments; if not amended, the negative effects on consumer complaints/redress process will defeat the intendments of section 76(2) and the general intendment of the Act in the realization of consumers' right to lodge complaint and obtain remedy. And the NCC inability to effectively invoke the provisions of sections 71 and 72(1) of the *NCA* to review these inhibitive sections of the Act relating to lodging of complaints in order to effectively and adequately redress and enforce certain obvious consumers' grievances, which are no longer necessary to promote the objectives of the Act, interest of the consumer and national interest.

[56] See (n. 48) 606 paras E-F, G-H, 606-607 paras H-A and 607 paras A-B, ratios 2, 3, 4 and 5
[57](2021) 18 NWLR (pt. 1809) 415

1.9 Recommendations

In view of the above findings, we hereby recommend as follows:

i) Sections 88(3) and the proviso to 105(2) of the *NCA* should be amended by adding subsection 4 after subsection 3 of section 88, and provide that: notwithstanding the subsections (1) and (3) of section 88, an aggrieved consumer can directly sue to the ordinary court, whether the aggrieved party has exhausted the internal redress methods or not. This gives the consumer the option to either exhaust the internal redress method before applying for judicial review or sue directly to the ordinary court without recourse to exhausting the internal complaint/redress process. Subsection 3 should be added to section 105(2) as an amendment to the effect that whether the aggrieved consumer exhausts the internal dispute resolution methods of the service provider or not, he can sue directly to the ordinary court. The rules of technicality, rules of evidence and legal form of processes should not be applied, as it is done for small consumer claims proceedings.

ii) It is necessary that consumer education and awareness meetings should not be limited to Town hall meetings in the urban areas and the use of NCC and/or service providers' website/portals only. There should be wide and extensive education/awareness campaigns and information dissemination process in the communities and rural areas; Churches; Schools; offices; market places; and other public places on the use of and methods of lodging complaints, where to lodge complaints, when to lodge complaints, get feedback and available remedy for the nature of complaints.

iii) The establishment of a special court on consumers and telecommunications/information matters is advocated. This will promote fairness and reduce the time wasted in the ordinary courts that may not be specialized in matters of this nature.

iv) The provision that mandates the arbitrators to submit their draft decision to the NCC for approval is arbitrary and should be amended so that the arbitrators should produce a final decision, but subject to judicial review before the ordinary court, if any party to the proceedings is aggrieved with the decision of the arbitrators.