

Consumer Rights/Public Health and Safety- Fijabi v Nigerian Bottling Company-Matters Arising

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Context

- Recent epidemics- Ebola, Aids, Tuberculosis, Lassa Fever
- Speed of information dissemination-improved technology, the internet, social media
- Rise in Public health & Consumer rights vigilance

Fijabi Adebo Holdings Ltd v NBC

Facts

- Suit commenced in 2008 as suit no LD/13/2008. Judgement was delivered on 15/2/2017 by Oyebanji J of the Lagos High Court.
- Sometime in 2007 Claimant placed orders with defendant for over 4,000 crates of soft drinks-coca cola, Fanta orange, sprite, soda water Fanta lemon and Fanta pineapple.
- These were loaded onto containers at defendant's premises and exported by claimant to the United Kingdom. On getting there, the UK health authorities had health concerns about the Fanta and sprite products. The products were found to have excessive levels of 'sunset yellow' and Benzoic acid compounds used in the manufacture of soft drinks. These products were therefore impounded and destroyed in the UK.

Fijabi Holdings Ltd vs NBC & NAFDAC- Facts (contd)

- The claimant therefore sued the 1st defendant inter alia, for negligence in preparation and manufacture of the products. The 2nd defendant was sued for negligence in carrying out her function of proper administration of food manufacturing as it relates to the products.
- Claimant claimed amongst other things a declaration that 1st defendant was negligent and an Order directing the 2nd Defendant to conduct and carry out routine Laboratory tests of all the soft drinks and allied products of the 1st Defendant to ensure and guarantee the safety of consumable products produced from the 1st Defendant's Factory.

Fijabi Holdings Ltd vs NBC & NAFDAC- Facts (contd)

- The court found that countries have different levels of allowance for the compounds complained of by the claimants and that the 2nd defendant's approval of the quantities used by the 1st defendant in the soft drinks was within the allowable limits in Nigeria. The court dismissed the claimant's claim but nevertheless made the following order

"The 2nd defendant shall forthwith mandate the 1st defendant to within 90 days hereof include on all the bottles of Fanta and Sprite soft drinks manufactured by the 1st Defendant, a written warning that the content of the said bottles of Fanta and sprite soft drinks cannot be taken with Vitamin C as same becomes poisonous if taken with Vitamin C."

Fijabi Adebo Holdings Ltd v NBC

Facts

- The court found grounds for this order from the evidence of a defence witness who testified that though the levels of benzoic acid used in the 1st defendant's products were within recommended limits, the compound becomes poisonous at certain levels when taken together with Vitamin C.
- The court justified its order by stating

“From the aforementioned, it is manifest that the 2nd Defendant has been grossly irresponsible in its regulatory duties to the consumers of Fanta and sprite manufactured by the 1st Defendant. In my respectful view, the 2nd Defendant has failed the citizens of this great nation by its certification as satisfactory for human consumption, products, which in the United Kingdom failed sample test for human consumption and which become poisonous in the presence of Ascorbic acid ordinarily known as Vitamin C, which can be freely taken by the unsuspecting public with the 1st Defendant's Fanta or Sprite.”

Matters Arising

- Courts readier, now, to protect Public health and uphold the right to health
- NB
 - Article 16
 - Every individual shall have the right to enjoy the best attainable state of physical and mental health.
 - State Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.
- Influence of International Conventions e.g. WHO Framework Convention on Tobacco control-and best practices. See *BAT vs Cabinet Secretary Ministry of Health & 4 Ors* Judgment of M Ngugi J. of High Court of Kenya [2016] eKLR

Matters Arising

- Role of judges as law makers
- "In a constitutional democracy, the primary lawgiver is Parliament—an assembly of elected representatives of the people. But Parliament is not the only lawmaker; judges too make laws, in the process of interpreting the law. It was once said that judges do not make laws; but that is a fairy tale." O. Dingake . - in *Human Rights, TB, Legislation, and Jurisprudence* Health and Human Rights Journal [v.19\(1\); 2017 Jun](#) PMC5473060 see at [/www.ncbi.nlm.nih.gov/pmc/articles/PMC5473060/](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC5473060/)
- Caution-Non justiciability of certain 'rights'.
 - -Cap 2 of the 1999 Constitution of Nigeria and S,6(6)(c) 1999 constitution of Nigeria; A.G. *Ondo State v A.G. Fed (2002) 9 NWLR (pt 772)*; *Okogie v A.G. Lagos State (1981) NCLR 2187*
 - *AG v Tapela & Ors* CACGB-096-14 and *AG vs Mwale & Ors* CACGB-076-15 decisions of the Court of Appeal of Botswana (consolidated appeals)

Matters Arising

- Difficulty of proof in consumer rights and public health cases
 - Poor facilities
 - Non availability of or reluctance to divulge information by officials of government etc.
- Locus standi –amendments to Nigeria’s Fundamental rights Enforcement Rules as e.g.
- Role of Class actions and Freedom of Information Acts and the administrative writs

Matters Arising

- Consumer and Public Health Rights as human rights
 - Dingake
 - Ukwueze F O, 'Towards a New Consumer Rights Paradigm'-Elevating Consumer Rights to Human Rights in South Africa, article published in South Africa journal on Human Rights Vol 32, 2016-Issue 2