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TEMPLARS ThoughtLab

Pricing in Foreign Currency Under Nigerian Law: Where's the Redline?

A critique of the recent judgment of the Federal High Court in FHC/L/353C/2025 - Federal Republic of Nigeria v. Ice by CW & Aniogor Godswill Obiajulu.

1. When Canadian author Marshall McLuhan first coined the concept of "global village" in his 1962 book "*The Gutenberg Galaxy*", he probably never foresaw how, decades later, modern technology, heralded by internet interconnectivity would make the globe feel a lot smaller with people and businesses from diverse countries being able to easily communicate and conclude transactions online. Nigerian businesses, like their counterparts across the globe, found the need to communicate the pricing for their goods and services in more renowned and globally accepted currencies like the U.S. Dollars. More so for Nigerian businesses, the volatility of the Naira to U.S Dollar exchange rate in recent times has encouraged reliance on the US Dollars (USD) as the veritable store of value. These days, it is not uncommon to find various Nigerian businesses – from airlines to hoteliers, realtors, fashion houses and even comic skit makers – listing the prices of their goods and services in U.S. Dollars or some other globally accepted currencies depending on their target market.

2. For obvious reasons, the Nigerian government has made spirited attempts to control what it considers "over-dollarisation" of the Nigerian economy, whilst emphasising that the Naira notes is the recognised legal tender in Nigeria. Recall that sometime in 2015, Templars'

Chike Obianwu, authored a Thought Leadership piece[1] criticising the CBN's **Circular No. BSD/DIR/GEN/LAB/08/013** titled "***Currency Substitution and Dollarisation of the Nigerian Economy"*** which purported to criminalise pricing of goods and services in foreign currency by stating that "*...it is illegal to price or denominate the cost of any product or service (Visible or Invisible) in any foreign currency in Nigeria and no business offer or acceptance should be consummated in Nigeria in any currency other than the Naira.*"

3. Recently, in what appears to be in furtherance of the government's efforts to combat the acclaimed dollarisation of the economy, Nigeria's foremost anti-graft agency, the Economic and Financial Crimes Commission ("the EFCC") issued press releases on its official and verified X.com (formerly Twitter) handle informing that it had secured convictions against a number of Nigerian businesses and business owners for refusing to accept the Naira as a means of exchange. Understandably, these press releases – which have since been circulated widely by various online and print media platforms – have sent shock waves to businesses and generated significant concerns from Nigerian business owners especially those who, for commercial expediency, are constrained to advertise their prices in foreign currency.

4. Of particular interest is the EFCC's press release of 17 April 2024 indicating that it had secured the convictions of one "***Aniogor Godswill Obiajulu"*** and his business enterprise - "ICE by CW" (together: "**the Defendants**") at the Federal High Court, Lagos (*Coram Akintayo Aluko, J.)*.[2] For context, the Defendants were arraigned on a two-count charge:

> ***(1.)*** *"That you, ICE BY CW and* ***Aniogor Godswill Obiajulu****, on the 10th day of December, 2024 in Lagos, within the jurisdiction of this Honourable Court,* ***refused to accept Naira (****Nigeria's legal tender)* ***by accepting the sum of $10,000 (Ten Thousand US Dollars)*** *as a means of payment for the purchase of one diamond Clover bracelet and you thereby committed an offence contrary to and punishable under Section 20(1) of the Central Bank of Nigeria Act, 2007."*
>
> ***(2.)*** ***"****That you, ICE BY CW and Aniogor Godswill Obiajulu, on the 10th day of December, 2024 in Lagos, within the jurisdiction of this Honourable Court,* ***directly retained the total sum of $10,000 (Ten Thousand US Dollars), which sum you reasonably ought to have known forms part of the proceeds of your unlawful activity to wit: pricing and accepting USD as a means of payment for goods and services and you thereby committed an offence contrary to Section 18 (2) (d) of the Money Laundering (Prevention and Prohibition) Act, 2022 and punishable under Section 18 (3) of the same Act."***

5. Remarkably, the Defendants pleaded guilty to the charges and accordingly were summarily convicted. As such, it is safe to conclude that the Court was not afforded the benefit of alternative views such as those canvassed here. That notwithstanding, for the reasons proferred in the succeeding paragraphs, we are of the considered view that the decision to convict the Defendants based on the charges is, with respect, perverse.

[1] https://www.templars-law.com/knowledge-centre/why-the-central-bank-is-legally-wrong-on-dollarisation/
[2] See the EFCC press release on 17 April 2025: https://x.com/officialEFCC/status/1912926925078532166?t=gFJ3jQwQGlp-Z4cuT05uvQ&s=08

6. First, regarding the first count, whilst it is unclear what evidence of the negotiations the EFCC presented to support the assertion that the Defendants "*...refused to accept the Naira*"[3], it does appear, based on the drafting of that count that the EFCC may have assumed that pricing and accepting $10,000 in exchange for the bracelet is somehow tantamount to the Defendants rejecting the Naira. That would be a far-fetched assumption, to say the least.

7. To be clear, section 20 (5) of the CBN Act[4] makes it a crime for a person to **refuse** to accept the Naira as a means of payment. The provision is clear and unambiguous and as such is, by law, required to be given its literal interpretation.[5] What this then means is that it is a criminal offence for any person carrying on business in Nigeria to reject or refuse to accept payment in Naira, that being the legal tender in Nigeria. In our respectful view, it is false equivalence to assume that a person who, for business expediency, chose to advertise their goods or services in foreign currency, has automatically rejected payment in Naira. In any case, under Nigerian law, criminal convictions cannot be based on such assumptions.[6]

8. The second count-charge is even more curious. In count two, the EFCC appears to suggest that pricing and accepting the USD as a means of payment is an unlawful activity and therefore an offence under section 18 (2) (d) of the Money Laundering (Prevention and Prohibition) Act, 2022 ("**the MLA**").[7] For the avoidance of doubts, there is nothing in section 18(2)(d) of the MLA that remotely criminalises pricing, negotiating or consummating transactions in USD or any other foreign currency. Section 18 of the MLA simply makes it an offence to retain possession and control of any funds determined to be proceeds of an unlawful activity. Put simply, section 18 of the MLA is a generic provision that creates what, in law, is considered an ancillary or auxiliary offence. It is ancillary in the sense that its commission is necessarily tied to the commission of a specific, and in most cases, more serious offence which, in this case, would have been the alleged breach of section 20 (5) of the CBN Act.

9. As a matter of Nigerian law, the courts have traditionally upheld the concept of parties' freedom to contract. Parties are at liberty to negotiate and consummate their contracts on whatever terms they deem fit, and the courts would generally enforce whatever terms are agreed to by the parties provided they are not illegal and were negotiated at arm's length by the parties. In fact, there are plethora of decisions of the Supreme Court of Nigeria that have not only enforced contracts consummated in foreign currency but have also awarded special damages in foreign currency. The courts only insist that the judgment creditor can also be paid the Naira equivalent of the sum awarded in foreign currency.

10. For instance, in ***Saeby Jernstoberi M.F. A/S v. Olaogun Knt***.[8], the Supreme Court, whilst considering the jurisdiction of Nigerian courts to award judgment in foreign currency, held:

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[3] As of the time of this publication, despite the best efforts, the authors were unable to obtain a copy of the judgment and the proofs of evidence in support of the charges preferred against the accused person.

[4] Section 20(5) of the CBN Act reads:

> "*A person who refuses to accept the Naira as a means of payment is guilty of an offence and liable on conviction to a fine of ₦50,000 or 6 months imprisonment. Provided that the Bank shall have powers to prescribe the circumstances and conditions under which other currencies may be used as medium of exchange in Nigeria.*"

[5] See: ***Cotecna Int'l Ltd. v. Churchgate (Nig.) Ltd***. *(2010) 18 NWLR (Pt. 1225) 346*

[6] See: **Okeke v. State** (1999) 2 NWLR (Pt. 590) 246.

[7] Section 18 (2) of the MLA provides: "*Any person or body corporate, in or outside Nigeria who directly or indirectly* – (d) *acquires, uses, retains or takes possession or control of any fund or property, intentionally, knowingly or reasonably ought to have known that such fund or property is, or forms part of the proceeds of an unlawful act, commits an offence of money laundering under this Act.*

[8] (1999) 14 NWLR (Pt. 637) 128, (Pp. 145-146, paras. H-B) SC

> *"Courts in Nigeria can assume jurisdiction to entertain and determine cases where sums in foreign currencies are claimed. The old rule to the contrary is judge made which has no relevance in the light of present-day circumstances of extensive international commercial relationships. Where an award is made in foreign currency, the judgment will be for the payment of the amount in foreign currency, or its naira equivalent converted for the purposes of the enforcement of the judgment at the time of the judgment."* [9]

11. We are of the considered view that had the court adverted its mind to the above trite position of our law, its decision, especially with respect to the second count of the charge, would most likely have been different. There is simply no law in Nigeria today that outrightly or remotely criminalises listing your prices in foreign currency, neither is there one that criminalises negotiating and consummating contracts in any currency other than Naira. There is no reason to assume that a person who quoted their prices in foreign currency has automatically rejected the Naira as an equivalent means of payment for the same goods or services. It is trite law in Nigeria that no one can be prosecuted, much less convicted, for an offence that is not specifically codified in any of our wide range of statutes.[10]

Conclusion

12. Although the Nigerian government's policy on "de-dollarisation" of the economy is understandable and commendable, we are of the considered view that it is a stretch too far to try to metamorphose such policy to an outright offence especially where the business has not indicated an outright refusal or rejection of the Naira. This was precisely the point the Supreme Court warned against in ***Statoil (Nig.) Ltd. v. Inducon (Nig.) Ltd***[11] where the apex court held quite unequivocally:

> "A government policy is not law and cannot override the autonomy and freedom of contract. The freedom and autonomy of contract is the fundamental principle of contract law. Parties to a contract have the freedom to determine the terms of their contract. No other person, not even the court can determine the terms of the contract between the parties thereto."

13. For the forgoing reasons, we are of the respectful view that the judgment of the Federal High Court, Lagos in ***F.R.N. v. ICE by CW and Aniogor Godswill Obiajulu*** *(supra)* may have been rendered per incuriam.

14. Nigerian businesses, like their counterparts, should be able to list, advertise and sell their goods and services in any foreign currency provided that they do not reject or refuse to accept the Naira as the means of payment when offered for the same products/services listed or advertised in foreign currency,

[9] See also: ***Momah v. Vab Petroleum Inc.*** (2000) 4 NWLR (Pt. 654) 534 (P. 552, paras. D-F) (SC).
[10] See: **Aoko v. Fagbemi** (1961) 1 ANLR 400.
[11] (2021) 1 NWLR (Pt. 1774) 1. See also: ***Nika Fishing Co. Ltd v. Lavina Corp.*** (2008) 16 NWLR (Pt. 1114) 509; **W.C.C. Ltd v. Batalha** (2006) 9 NWLR (Pt. 986) 595.