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TEMPLARS ThoughtLab

Jurisdiction in Cross-Border Product Liability Claims: *The Nigerian Framework*

Introduction

The rapid expansion of global trade, digital commerce, complex technologies like Artificial Intelligence (AI) and cross-border supply chains over the past half-century has fundamentally transformed the landscape of product liability. Today, despite the best efforts of regulatory bodies, products manufactured in one jurisdiction are routinely marketed, sold and consumed in another, often with limited visibility into their origin or supply chain. This reality is particularly evident in Nigeria and many other developing economies. A common example is that of motor vehicles manufactured in East Asia, which are frequently imported in parts and assembled locally for the Nigerian market.

For businesses operating in Nigeria or trading with Nigerians, this interconnected environment raises a critical threshold question in any dispute: **where a consumer claims to have suffered injury as a result of a product manufactured abroad, which court has jurisdiction?**

As discussed below, the question of jurisdiction is not merely a procedural question but one that can potentially determine the litigation strategy to be adopted, the cost exposure, and ultimately, the outcome of a case. It is in this light that this publication examines how Nigerian courts should approach jurisdiction in product liability disputes with cross-border elements and also highlights the practical implications for companies doing business in Nigeria.

Product Liability in a Cross-Border Context

Product liability is the area of law in which manufacturers, distributors, suppliers, retailers or others who make products available to the public are held responsible for the injuries caused by such products. Product liability thus arises where a defective product causes harm to a consumer or property. The legal framework regulating product liability in Nigeria include the Federal

Competition and Consumer Protection Commission Act (FCCPCA), 2018; the Sale of Goods Act; the Sale of Good Laws of the various States, the Law Reform (Torts) Law of the various States, etc.

Where the victim of a defective product bought the product directly from the manufacturer, he would have a claim in contract against the manufacturer, in accordance with the terms of the product manuals distributed alongside the product. However, the product will usually be bought from a distributor or retailer. If the victim wishes to sue the manufacturer, in the absence of a contract with the manufacturer, such a claim has to be brought in tort. Thus, claims for product liability may be based on breach of contract; negligence; breach of duty i.e. where there is a defect in the manufacturing process or the product design; failure to warn or provide adequate instructions on product usage; breach of express or implied warranties; etc. In the case of ***Nigerian Bottling Co. Ltd. v. Ngonadi (1985) 1 NWLR (Pt 4) 739*** which involved an 'Evercold Refrigerator/Cooler' that exploded and caught fire while in use, causing severe burns to the plaintiff, the Supreme Court of Nigeria made it clear that in product liability cases, a claimant can legally proceed against not only the manufacturer but also the distributor or retailer.

One recurring issue in cross border product liability disputes is the question of whether the courts of a country can validly exercise jurisdiction over foreign manufacturers. For tort-based product liability claims, it is squarely within the purview of the conflict of laws rules of the forum to determine whether or not to assume jurisdiction over such claims.

Take for example, the case of a man who crashed his Honda motorcycle on a California highway killing his wife instantly and severely injuring himself. He claimed that the accident was caused by a blow-out in the rear tyre and he therefore sued the manufacturer of the tyre, Cheng Shin, a Taiwanese company in a State court in California. On its part, Cheng Shin filed a cross-complaint seeking indemnification from the manufacturer of the tyre valve, a Japanese company called Asahi. Although the main claim was ultimately settled, leaving the cross-complaint, the question that was ultimately posed to the US courts was whether Asahi had "minimum contact" with the State of California as to vest its courts with jurisdiction over the claim. Put differently, was Asahi directly targeting the Californian market as to come within the jurisdiction of the court. This is a question that Nigerian courts will increasingly face in the coming months and years, as cross border trade continues to expand.

Legal Framework Governing Jurisdiction in Nigeria

There are three major legal frameworks that govern or regulate jurisdiction of courts in Nigeria: (i) the Constitution of the Federal Republic of Nigeria, 1999 (as amended); (ii) the Rules of the various Courts in Nigeria, and (iii) decisions of Courts.

Constitutional and statutory basis

Jurisdiction in Nigeria is primarily governed by the Constitution of the Federal Republic of Nigeria, 1999 (as amended) which creates the superior courts of record in Nigeria, vests the judicial powers of the Federation and those of the States on these courts, and delineates the jurisdiction of these courts to try certain matters. This is also supported by statutes of the National Assembly and the Houses of Assembly of the various States.

In the case of product liability matters, the appropriate court to hear and determine such claims are the High Courts of the various States and that of the Federal Capital Territory, Abuja which are the courts with general jurisdiction over tort-based and contractual claims in Nigeria. However, the Federal High Court may in limited circumstances have jurisdiction to hear tort-based claims depending on the subject matter of the claim.

Rules of Courts

It is imperative to state prefatorily that the Rules of Courts do not confer on, or oust the jurisdiction of, courts in Nigeria. Nevertheless, the procedural rules of court, particularly the various State High Court (Civil Procedure) Rules, play a critical role in jurisdictional questions. These rules govern service of originating processes including on defendants outside jurisdiction and lay down the conditions under which leave may be granted to a claimant to serve a process on a defendant abroad. The failure on the part of a claimant to comply with these procedural requirements may render proceedings incompetent.

Judicial Principles

Nigerian courts have developed guiding principles for assuming jurisdiction, focusing on whether the defendant is within jurisdiction; whether the cause of action arose within jurisdiction; and whether there is a sufficient nexus between the dispute and Nigeria. In cases where there is a dearth of Nigerian case law, recourse is often made to the decisions of the courts of England & Wales and those of other common law jurisdictions which may be of persuasive effect on the courts in Nigeria.

Jurisdiction of Nigerian Courts in Cross Border Product Liability Claims

One of the most distinctive features of the Nigerian adjectival legal system is the primary position that Nigerian law places on jurisdiction such that a decision of a court no matter how beautifully written would amount to a nullity when it proceeds from a court that lacks jurisdiction. It is therefore of utmost importance to resolve the issue of jurisdiction once raised, to avoid embarking on an exercise in futility.

The complexity of the question of jurisdiction of courts in cross border product liability claims is compounded by the fact that multiple parties may be involved in such disputes such as foreign manufactures, local importers and distributors, retailers and e-commerce platforms. This multi-layered structure often creates uncertainty as to where claims may be brought and against whom.

There are three major instances where Nigerian courts will assume jurisdiction over cross border product liability claims. One, a Nigerian court will readily assume jurisdiction where the defendant is resident in Nigeria or carries on business in Nigeria. This often places local distributors and importers at the forefront of product liability litigation. It also extends to foreign manufacturers who have local office in Nigeria. Two, even where a manufacturer is based abroad, Nigerian courts will willingly assume jurisdiction over a product liability claim where the defective product was sold or supplied in Nigeria and the injury or damage occurred in Nigeria. Put differently, Nigerian court may validly hear and determine a claim where the cause of action arose in Nigeria. The third jurisdictional pathway acceptable in most of the common law world including Nigeria is where a defendant to a cross border product liability claim expressly or impliedly submits to jurisdiction which may otherwise lack jurisdiction over him. In the case of Nigeria, a defendant expressly submits to jurisdiction through a contractual forum selection or jurisdiction agreement and impliedly submits to jurisdiction by entering appearance and participating in the proceedings on the merits without objecting to the jurisdiction of the court.

Overall, Nigerian courts may assume jurisdiction where there is a real and substantial connection to Nigeria, such as: distribution of the product in Nigeria; a local subsidiary or distributor acting on behalf of the manufacturer; harm suffered in Nigeria; etc.

One of the leading authorities on product liability in the common law world is the case of **Distillers Co (Biochemicals) Ltd v Thompson [1971] AC 458**. In that case, an English pharmaceutical company, Distillers manufactured certain products which turned out to contain a substance, thalidomide, which

was later known to cause severe birth defects if taken by pregnant women. Distillers, through its Australian subsidiary, marketed one of its products, 'Distival' in New South Wales, Australia where it caused extensive damage to a new born child. A claim was brought before the court of New South Wales, and the question was whether the courts of New South Wales had jurisdiction over a product manufactured in England by an English pharmaceutical company which had no place of business in Australia. The Privy Council in answering this question in the affirmative established that the "place of the tort" for jurisdictional purposes is the place where the substance of the cause of action, i.e. the damage, occurs. Since the damage occurred in Australia, the court of New South Wales had jurisdiction. In the absence of Nigerian authorities on the point, these and similar decisions have persuasive effect on Nigerian courts.

That said, it should be noted that there are procedural requirements under Nigerian law for bringing claims against foreign manufacturers. These include the requirement to obtain permission of the court to serve processes outside jurisdiction and also demonstrate that the case falls within recognised jurisdictional grounds.

Consumer Protection and Regulatory Oversight

Nigeria's consumer protection regime has significantly strengthened in recent years, particularly with the enactment of the **Federal Competition and Consumer Protection Act 2018**. The **Federal Competition and Consumer Protection Commission (FCCPC)** is empowered to investigate defective or unsafe products; order recalls and compensation; sanction non-compliant businesses.

The above regulatory framework expands the potential exposure of both local and foreign businesses and may influence how courts approach jurisdictional questions, especially where consumer welfare is at stake.

Forum Non Conveniens and Judicial Discretion

Lastly, even in cases where the case falls within recognised jurisdictional grounds, Nigerian courts may refuse to exercise jurisdiction unless it is shown that Nigeria is an appropriate forum for the dispute. While the doctrine of *forum non conveniens* is not always expressly articulated, Nigerian courts exercise discretion in determining whether to assume jurisdiction or to stay proceedings and decline jurisdiction in favour of a more appropriate forum. The relevant considerations include the location of witnesses and evidence, applicable law, convenience and cost, interests of justice, etc.

Practical Risks for Businesses and Strategies for Mitigation

The foregoing poses differing risks for businesses. Foreign manufacturers may be exposed to the jurisdiction of Nigerian courts through agency or distribution channels and potential liability despite the lack of physical presence in Nigeria. On their part, local importers and distributors are the primary target for litigation and have limited ability to shift liability except in the case of strong contractual protections. Lastly, E-commerce platforms and digital platforms face increased jurisdictional exposure and heightened regulatory scrutiny through online sales into Nigeria and may therefore be easily seen as targeting Nigerian market as to come within the jurisdiction of Nigerian courts.

For these reasons, businesses can take proactive steps to manage jurisdictional risk, including:

- Structuring distribution arrangements with clear allocation of liability;
- Incorporating robust jurisdiction and choice of law clauses in their product manuals;
- Including indemnity provisions in supply agreements;
- Ensuring compliance with Nigerian product and consumer standards; and
- Maintaining adequate insurance coverage for cross-border risks.

Conclusion

In an increasingly globalised marketplace, jurisdiction is often the first, and most decisive, issue in product liability disputes. Nigerian courts will willingly assume jurisdiction where there is a meaningful connection to Nigeria, particularly in cases involving consumer harm. As such, businesses cannot assume that operating from outside Nigeria insulates them from liability before Nigerian courts.

A proactive and well-structured legal strategy particularly at the contracting and distribution stages is therefore essential to managing jurisdictional exposure and mitigating risk.

Most importantly, business must note that if their products can reach Nigeria, their business may be subject to Nigerian jurisdiction. Thus, ensuring that their contractual framework, compliance processes, and risk allocation mechanisms are fit for purpose is no longer optional, it is now a commercial necessity. Nevertheless, there are a number of defences available to manufacturers and other defendants in product liability claims. Consequently, there is no substitute for quality legal advice and representation prior to, and while being sued in Nigeria.

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