

# INSIGHTS

A Publication of Gresyndale Legal



## MAINTAINING A PLEA OF FORCE MAJEURE OR DISCHARGE BY FRUSTRATION IN CONTRACTUAL PERFORMANCE AMID THE COVID-19 PANDEMIC: THE VALIDITY AND EFFECTS.

– *Chima Ochi.*

It is not without saying that global business in recent times has faced its greatest threat since the surfacing of the Covid-19 pandemic. With the imposition of certain restriction as regards movement of persons and goods, the business climate is further threatened as it steps towards imminent downturn. As would be expected, business corporates, investors and other stakeholders in the commercial and corporate world would have entered into various contracts before the breakout of this Covid-19 pandemic.

Considering the present restriction and turmoil resulting from the pandemic, it has become herculean for most contracting parties to perform their obligations under their executed contract. In view of this current brouhaha, most contracting parties have deemed the surfacing of the pandemic as an incident capable of extricating them from fulfilling their contractual obligations by maintaining a plea of frustration or placing reliance on the force majeure clause located in their contracts.

It has therefore become instructive that concepts of Force Majeure in Contracts and Discharge by Frustration are given due consideration so as to elicit the validity and effect in maintaining a plea on same amid the Covid-19 pandemic.

### A PLEA ON FORCE MAJEURE

Force majeure clauses are contractual clauses which alter parties' obligations and/or liabilities under a contract when an extraordinary event or circumstance beyond their control prevents one or all of them from fulfilling those obligations.

### NEWS HEADLINES

COVID-19: Nigerian airlines given new directives as airport prepares to reopen  
 Gunmen abduct Nasarawa CAN Chairman.  
 COVID-19: Nigerian govt clashes with WHO over use of Chloroquine  
 COVID-19: List of five States with highest cases in Nigeria as Kogi gets figure  
 COVID-19: Nigerian govt clears air on June 8 reopening of schools, gives conditions  
 Kogi records first ever cases of coronavirus  
 COVID-19: CAN reveals when churches might reopen  
 COVID-19: CBN issues directive to banks, reduces interest rates  
 Dangote writes Ohanaeze over influx of Almajiris to Nigeria's South  
 COVID-19: Education Minister gives update on reopening of schools, reveals how classes will be taken  
 AfDB President Adesina reacts as US demands his probe,  
 COVID 19: Ganduje abolishes Almajiri system in Kano  
 Nigeria extends Gernot Rohr's contract as Super Eagles coach  
 Alleged NDDC N40 billion scandal: Senate attacks Akpabio, says blackmail won't stop probe  
 Akeredolu lifts ban on religious gathering as Ondo records second COVID-19 death  
 POLITICS- Edo Guber: Pastor Ize-Iyamu clears air on 'receiving endorsement from Buhari, Tinubu, Oshiomhole  
 POLITICS- No man can stop me from returning as Edo Governor- Obaseki

Copyright © Daily Post – Nigeria News

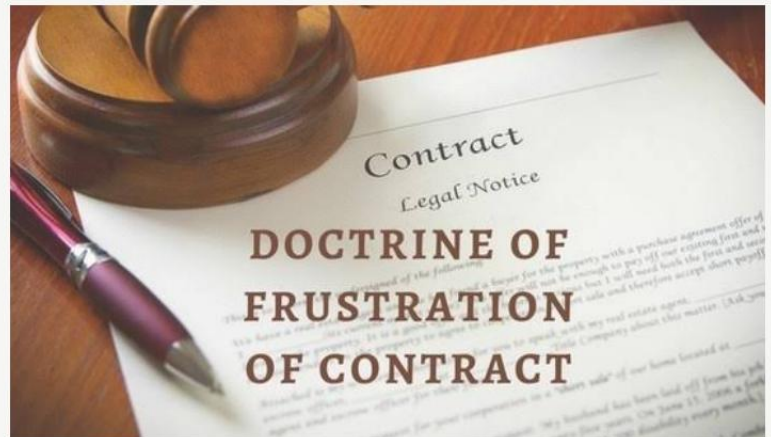
Depending on their drafting, such clauses may have a variety of consequences, including: excusing the affected party from performing the contract in whole or in part; excusing that party from delay in performance, entitling them to suspend or claim an extension of time for performance; or giving that party a right to terminate. The foregoing presupposes that force majeure clauses are creation of contracts and for a party to rely on same in a bid to exculpate itself from liability, it totally depends on the definition of a force majeure event as defined in the contract.

Thus, where the said clause does not categorize a pandemic or an epidemic as a force majeure event, recourse will be had to the rules of interpretation so as to elicit whether the parties intended that pandemic or epidemic to be considered a force majeure event.

Where this plea is rightly upheld, the effect of same will be as stated in the contract.

#### A PLEA ON FRUSTRATION

Frustration is as an abrupt end to a transaction between two parties owing to the occurrence of an intervening event or change of circumstance totally unforeseen by either party, happening subsequent to the formation of the contract and striking at the root of a transaction. In such circumstances, the law recognizes that the premature determination of the transaction is without any default of either party and thereby renders a contractual obligation incapable of performance and conclusion. Parties are equally discharged from further liability under the contract. See *Taylor v Caldwell*.



The foregoing notwithstanding, it should be noted that frustration however, does not apply where for example there is a force majeure clause; or an alternative method of performance is possible; or performance simply became more expensive; or a party has been simply let down by one of its suppliers.

In view of the above, it behoves on the Courts (whilst factoring the above exceptions to a circumstance) to determine whether or not the Covid-19 Pandemic would be regarded as an intervening circumstance capable of discharging parties from performing their obligations in a contract.

#### LEGAL EFFECTS OF FRUSTRATION

Under the common law, rights which had accrued before frustration remained enforceable while rights not yet accrued at the time of frustration are unenforceable and where there is a part performance, a contracting party can only recover on quantum meruit basis.

By virtue of Section 4(2) of the Law Reform Contracts Act, all sums paid or payable to any party in pursuance of the contract before the time when the parties were so discharged shall in the case of sums so paid, be recoverable from him as money received by him for the use of the party by whom the sums were paid and in the case of sums so payable cease to be payable.

Thus it behoves on all contracting parties to be properly acquainted of the legal effects apportioning to a successful

**‘There is one quality which one must possess to win, and that is definiteness of purpose, the knowledge of what one wants and a burning desire to achieve it.’ – Napoleon Hill**



## LIGHT BULB

-Omotolani Akinwande

Offence of Marrying more than one wife



Do you know that under Nigerian law, there are several offences relating to marrying one than one wife? The most common of these offences is Bigamy. The offence of Bigamy, though hardly ever been prosecuted in our Courts due to the low complaint, is provided for under section 370 of the Criminal code. The section states that 'Any person who having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place in the life of such, husband or wife, is guilty of a felony, and is liable to imprisonment for seven years.' In other words, if you are already married and go ahead to marry another person while your current spouse is still alive, you have committed an offence punishable by 7 years' imprisonment. It should be noted however that a person whose previous marriage has already been dissolved or declared void by a court of competent jurisdiction and a person whose husband or wife in the previous marriage has been absent for 7 years and has not been heard of as being alive is not guilty of this offence. It should further be noted that this offence is contained only in the Criminal code and not in the Penal code. It can thus be argued that this offence is not an offence in Northern Nigeria as the Criminal Code does not apply in the North. However, where there exists a similar provision in the Penal Code, one could be guilty of such offence where committed in the North.

Other offences relating to marrying more than one wife are contained in Section 46 and 47 of the Marriage Act. Under section 46 of the Marriage Act, 'whoever contracts a marriage under the provisions of this Act, or any modification or re-enactment thereof, being at the time married in accordance with customary law to any person other than the person with whom such marriage is contracted, shall be liable to imprisonment for five years' while under Section 47 of the Marriage Act, 'whoever, having contracted marriage under this act or any modification or re-enactment thereof, or under any enactment repealed by this act, during the continuance of such marriage contracts a marriage in accordance with customary law, shall be liable to imprisonment for five years'. In other words, if you have married under customary law and that marriage still subsists, you cannot marry a different person under the Act and if you are married under the Act and that marriage still subsists, you cannot marry another person under the customary law again.

So it's good to marry, but ensure that you are not breaching any of the provisions of the law in so doing!



## Chief Akinjide, SAN.

-Oyinkan Alakija Esq.

In the midst of the pandemic came the passing away of a notable icon in the legal profession and in the words of Ralph Waldo Emerson. I pay my tribute:

“

To Laugh Often and much;  
to win the respect of the intelligent people  
and the affection of children;  
to earn the appreciation of honest critics  
and endure the betrayal of false friends;  
to appreciate beauty;  
to find the best in others;  
to leave the world a bit better  
whether by a healthy child,  
a garden patch, a redeemed social condition;  
to know that one life has breathed easier  
because you lived here.

This is to have succeeded. ”

Quotes: * morning **midday ***evening			
NGN	USD	GBP	EUR
	BUY / SELL	BUY / SELL	BUY / SELL
28/05/2020	445 / 453**	530 / 545**	465 / 475**
28/05/2020	445 / 455*	530 / 545*	460 / 470*
27/05/2020	445 / 455	530 / 545	460 / 470
26/05/2020	450 / 460	530 / 545	460 / 470
25/05/2020	450 / 460	530 / 545	460 / 470

source: www.abokifx.com

**'There is one quality which one must possess to win, and that is definiteness of purpose, the knowledge of what one wants and a burning desire to achieve it.' – Napoleon Hill**



## FINANCIAL RAZZMATAZZ

-Chima Ochi

### TEMPORARY SUSPENSION OF CHEQUES CLEARING IN THE NIGERIAN CLEARING SYSTEMS

The emergence of the Covid-19 Pandemic has so far introduced varying policies that has sought to alter the ancient landmark in the sands of different discipline and industry. The financial, business and economic industries is not overlooked in this era of policy changes which are geared to ensure safe health and aid the economy. In view of this, the burning question would be whether these policies have done more harm than good in view of the boomeranging effect it may have on stakeholders in the economy, particularly SMEs.

One of such policies is the CBN circular to deposit money banks to suspend indefinitely the clearing of cheques in the Nigerian Clearing systems as from 31st March, 2020. This the CBN made known vide its circular of 30th March, 2020 (BKS/DIR/GEN/CIR/07/002). By the said Circular, the CBN anchored their decision to suspend the clearing of cheques so as to ensure a hitch free clearing and settlement activities.

It is a known fact that a vast majority of business in Nigeria make use of cheques to foster the payment of goods and services which they enjoy and benefit from. Most of these businesses are SMEs. In light of this directive, a vast majority of corporates were held spell bound as regards settling payments for certain services as cheques were no longer being honoured by Banks. The incidences of cheque clearing is through truncation (an electronic platform hosted by NIBSS) hence there is basically no need for physical meeting of bankers to ensure that cheques are cleared. In the event that an argument is made that the cheque itself is a conduit by which the infection could be passed on to another person, one is keen to inquire why there is no similar circular as regards suspending the acceptance of deposits in banks.

The foregoing array of arguments thus brings to light the hardship which this circular may have had on business owners who had hitherto relied on cheques for the settlement of their transactions.

Alas, in the wake of the sundry revolts since the suspension of cheques clearing, the CBN had to revisit its position by lifting the suspension of cheques in the Nigerian clearing system which had lingered for nearly a month. This the apex did vide its circular of 27th April 2020 (BKS/DIR/GEN/CIR/07/003). Thus, effective from April, 28th 2020, Deposit money banks are enjoined to commence the acceptance of cheques as a means of settling payment from businesses, a welcome relief to many businesses.

## HUMAN RIGHTS JARGON

-Ini Edinyang

### Globalisation and Human Rights: An Introduction

We hear the phrase, 'the world is a global village' but do we actually know what it means. The semantics of this phrase can be expressed in the word, "Globalization".

According to the World Health Organization, Globalization can be defined as the increased interconnectedness and interdependence of peoples and countries of the world. The benefits of Globalization abound from Open borders, access to new markets, migration of labour, access to technology and innovation etc. However, one of its key characteristic is the spread of liberal ideas.

An expression of this dimension of globalisation is the receipt, domestication and ratification of human rights codifications such as the Universal Declaration of Human Rights, International Covenant of Civil and Political rights, International Covenant on Economic, Social and Cultural Rights, Declaration on the right to development by nations of the world via their membership in the United Nations, a bye product of globalisation. One of the main objectives of the United Nations is fostering cooperation between nations in order to solve economic, social, cultural, or humanitarian international problems.

The United Nations was formed in the year 1945 following the end of the second world war (1939-1945) as nations of the world at the time came together to form a union that will promote international cooperation among the nations of the world. As at today, 193 countries out of the 195 countries of the world are member states of the United Nations.

What we see here is the principle of globalisation coming into play to promote a wide coverage of enjoyment of human rights across the world.



2nd Floor, Pent A, Lofty Heights Building,  
Ganiyu Bola Hussein Close, Off Rahaman  
Adebayo, 2nd Roundabout, Lekki Phase 1,  
Lagos, Nigeria.

Email: [oyinkan@gresyndale.com](mailto:oyinkan@gresyndale.com),  
[gresyndale.legal@gmail.com](mailto:gresyndale.legal@gmail.com)  
Phone number: 08085963121



**GRESYNDALE**  
OYINKAN ALAKIJA ESQ.