

Online Contracts: Court Of Appeal Affirms Validity of Updates To Terms And Conditions For Technology-Based Services

As the digital economy rapidly expands, users of services and products offered through technology channels are increasingly entering into mass-market standard form contracts. These contracts cover a wide range of everyday activities, from e-commerce transactions and payment services to social media, telecommunications, and various subscription-based services. While the principles of contract law in traditional commercial transactions are well-established, a recent decision by the Court of Appeal in the case of *Tunji Adeniran v. MTN Nigeria Communications Limited* (APPEAL NO: CA/IL/38/2022), delivered on March 18, 2024, demonstrates the practical application of these principles to user contracts in the context of tech-based services, which have become more prevalent.

The primary question was whether MTN had the contractual authority to provide Value-Added Services (VAS) to the Appellant (a Subscriber) under the Terms and Conditions governing the provision of network services. The Appellant's contention was that VAS was not included in the initial Terms and Conditions, and he did not consent to the updated Terms. The Subscriber challenged the Trial Court's decision, which held that the Terms and Conditions allowed MTN to provide VAS to the Subscriber as part of the Network Services, and that no privacy rights were breached because users were provided with opt-out options if they did not require the services.

Slingstone LP successfully represented MTN both at trial and on appeal. The Court of Appeal upheld our argument on the validity of modifications to user contracts in tech-based services and made the following key findings

Some Key Issues

- Disputes between a technology service provider and a subscriber are contractual in nature and are governed by the Terms and Conditions on the product/service website. In this case, the Terms permitted future updates or modifications as notified through the website.
- A physical signature on the Terms and Conditions is not required for a valid agreement to use a technology-based service, such as telecommunications, considering the peculiarities of technology processes, user contracts, and the forms that electronic contracting takes in the real-time operation of technology systems.
- By the very nature of user contracts for subscription-based technology services, the practical and sufficient way of giving notice to customers is to make the updated terms available electronically and direct the user/customer to read the comprehensive terms and conditions.
- No law requires individualized renegotiation of amendments or updates to the Terms and Conditions with each customer, nor does it require the subjective awareness of the Appellant for notice to be effective.
- A consumer is bound by the updated terms if they continue to use the service after receiving notice of the modification of the terms (without using the available opt-out option), and this does not violate consumer choice principles.
- Continued use of a technology service signifies agreement to the terms as modified from time to time.

While more complex forms of electronic contracting between users and technology service providers can introduce complexities, this decision highlights the fundamental approach of Nigerian law in addressing the challenges relating to the formation, modification, and operation of user contracts.

This case addressed practical questions regarding forms of consent required for electronic contracting, modification of terms and conditions by technology service providers, and forms of notice required for subsequent modifications to contracts after the user has subscribed to the service.

The case also raises the application of the mitigation of damages doctrine in the context of alleged torts arising from the provision of tech-based services. Specifically, the opt-out option provides users the opportunity to discontinue a service to prevent the risk of losses (if any) associated with the use of the services.

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Concluding Remark

This landmark case renews interest in the dynamics of digital transactions, electronic contracting and the significance of Terms and Conditions which shape the interactions between consumers and technology-driven businesses.

By providing clarity on electronic contracting in telco services, the decision provides practical guidance for both service providers implementing updates and users of their services.

While more complex forms of electronic contracting between users and technology service providers can introduce complexities, this decision highlights the fundamental approach of Nigerian law in addressing the challenges relating to the formation, modification, and operation of user contracts. By affirming the fundamental principles of contract law while adapting to the realities of the digital ecosystem, the Court of Appeal has provided a firm groundwork for progressive application of the law to more emerging innovative product and service offerings.

Have a question?

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