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# ASSESSING THE EFFICACY OF SALE OF GOODS LAW AS A TOOL FOR GUARANTEEING THE RIGHTS OF TRADERS AND PURCHASERS

**Kenekayoro .T. Peter***

**Abstract**
*This study adopts a doctrinal legal research methodology to critically examine the efficacy of the Sale of Goods Law (SGL) in protecting the rights of traders and purchasers. Through a detailed analysis of legal principles, statutes, case law, and international conventions, the study evaluates the legislative innovations introduced by the SGL. It identifies Section 44 of the Bayelsa State SGL as a pivotal provision that strengthens consumer protection by mandating the right to examine goods before acceptance. The study also highlights the incorporation of the principle of utmost good faith as defined in Article 68, recommending its application as a mandatory condition in the execution of sales contracts. Furthermore, it calls for the removal of the negligence exception within the legal interpretation of utmost good faith to discourage careless conduct by contracting parties. The study concludes that the SGL, as currently enacted, plays a foundational role in promoting fairness, accountability, and economic justice in commercial transactions.*

**Keywords**: Rights, purchaser/buyer, seller, payment, property, trade.

## 1. Introduction

The Sale of Goods Act of 1893, originally a Statute of General Application of English origin, governed commercial transactions in Nigeria prior to independence. In recent years, however, Nigerian states have taken proactive steps to enact their own Sale of Goods Laws (SGLs) to regulate trade within their respective jurisdictions. These legislative developments represent a significant shift toward localized and context-specific regulation of commercial transactions. Using the Bayelsa State Sale of Goods Law as a case study, this research argues that there are noteworthy improvements in the regulation of trade and sales, particularly in areas such as the purchaser's right to examine goods and the incorporation of the principle of utmost good faith. Section 44 of the Bayelsa SGL, for example, establishes the right to examine goods as an indispensable precondition for acceptance under a contract of sale, while Article 68 promotes good faith in commercial dealings. Given these developments, it becomes important to assess the efficacy of the SGL as a legal tool for safeguarding the economic rights of traders and purchasers.

## 2. Rights of the Seller

Traders engage in trade for the purpose of exchanging goods for payment. The act of trading is linked to a wide range of human rights, primarily economic, but also extending to other categories of rights due to the undeniable interdependence of human rights. Economic rights related to trading include, the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts,[1] the right to just and favourable remuneration (or payment) ensuring for himself and his family an existence worthy of human dignity,[2] and the concomitant right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care.[3] Thus, among other factors, the

***Kenekayoro .T. Peter**, Assistant Lecturer, at Faculty of Law, University of Africa. Toru-Orua, Bayelsa State, Nigeria. E-mail: Kenekayoroxoxo@gmail.com, Phone No: 08054813928

[1] Article 6 (1.) of the International Covenant on Economic, Social and Cultural Rights adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966 ; Article 23(1) of Universal Declaration of Human Rights adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948

[2] Article 23 (3) of the UDHR

[3] Article 25 (1) ibid; Article 11 of the ICESCR.

livelihood of the trader depends on the payment of the purchase price, and the failure of the purchaser to do so is bound to have a negative impact on business.[4] Section 48 of the Sale of Goods Law provides for the rights of an unpaid seller, which are right to lien, right to stoppage in transit in the case of buyer's insolvency and a right to resale as permitted by the law.

### 2.1 The Seller's Right to Lien

Section 49 of the Sale of Goods Law, provides that –

> *(1.) Subject to the provisions of this Law, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely- (a) Where the goods have been sold without any stipulation as to credit; (b) Where the goods have been sold on credit, but the term of credit has expired: or (c) Where the buyer becomes insolvent. (2.) The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.*

The provisions of the aforementioned section of the SGL is clear and unambiguous. So the seller's right of lien is an important commercial tool for securing the payment of the purchase price, as common sense also justifies the fact that a buyer would have a greater urge to pay the price when he is denied possession of the goods, due to the exercise of the seller's right to lien.[5] Thus, the common principle of pay before service, can be converted in terms of a sale of goods contract to mean: pay before delivery. However, in-line with section 51 of the Sale of Goods Law, the seller's right of lien is terminated when the following occur:

a. When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of goods;
b. When the buyer or his agent lawfully obtains possession of the goods; and
c. by waiver: A waiver occurs when one party to a contract voluntarily accedes, by himself or at the request of the other party to the contract, to forgo some of his rights under the contract.

### 2.2 Right to Stoppage in Transit

It is important to note that according to section 52 of the Sale of Goods Law, the right to stoppage in transit can only be effected if such a purchaser is insolvent and incapable of paying the purchase price. The seller's right to stoppage in transit is an effective means of protecting the seller from total loss, resulting from the buyer's bankruptcy. In regard to the mode of executing the right to stoppage in transit, section 54 of SGL, provides that –

> (1.) The unpaid seller may exercise his right of stoppage in transit either by taking actual possession of goods, or by giving notice of his claim to the carrier or other bailee in whose possession the goods are. (2.) The notice may be given either to the person in actual possession of the goods or his principal. (3.) If the notice is given to the principal, it is ineffective unless given at such time and under such circumstance that the principal, by the exercise of reasonable diligence, may communicate it to his servant or agent in time to prevent a delivery to the buyer. (4.) When notice of stoppage in transit is given by the seller to the carrier, or other bailee in possession of the goods, he must re-deliver the goods to or according to the direction of the seller and the expenses of such re-delivery must be bore by the seller.

### 2.3 The Right of Resale

Although, section 56 of the Sale of Goods Law recognizes the unpaid seller's right to resale, the caveat provided therein is that the seller must act lawfully. Thus, the right to resell can be executed, except in circumstances prohibited by law. Also, apart from the right of the seller to be paid for the

[4] See Section 1(1.) and 47(1.) of the SGL
[5] TC Thomas, 'Sale of Goods. Seller's Lien. Resale'. *The Cambridge Law Journal* [1960] (18) (1)84.

sold chattel, other rights of the seller can be limited in cases where 'a document of title to goods has been lawfully transferred to any person who takes it in good faith and for valuable consideration.'[6]

## 3. Actions for Breach of Contract

As captured in the principle of ubi jus ibi remedium,[7] when the rights of a contractual party are breached, the law correlatively provides remedies for breach of contract. Remedies provided for by the SGL[8] include –

(i) Instituting an action for the purchase price.
(ii) Damages for non-acceptance of contracted goods.
(iii) Damages for non-delivery.
(iv) Specific performance.
(v) Remedy for breach of warranty.
(vi) Interests and special damages.

### 3.1 Action for Purchase Price

In-line with the definition of a sale of goods contract,[9] payment of the purchase price is an unavoidable condition. Section 36 of the SGL, further provides that payment of the purchase price is the duty of the buyer, and a refusal to do so, being a fundamental breach of contract can lead to an action against the defaulting party. Section 57 of the Sale of Goods Law also states that:

(1.) Where, under a contact of sale, the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may maintain an action against him for the price of the goods. (2.) Where, under a contract of sale, the price is payable on a certain day irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may maintain an action for price, although the property in the goods has not passed, and the goods have not been appropriated to the contract.

### 3.2 Damages for Non-Acceptance of Contracted Goods

As provides for in Section 36 of the SGL, if the purchaser unjustly refuses to accept goods which he willingly contracted for, he would be held liable for committing a breach of contract. Section 58 of the SGL states that in cases where the purchaser wrongfully neglects or refuses to accept and pay for goods, the seller has the right to institute an action for damages for non-acceptance; and the measure of damages will be proportionate to the 'estimated loss directly and natural resulting, in the ordinary course of events, from the buyer's breach of contract', or a calculation based on the difference between the contract price and the current market price of the product, where there is an available market for the goods to be sold. [10]

### 3.3 Damages for Non-Delivery

In-line with section 36 of the SGL, a seller who refuses to deliver contracted goods is liable for a breach of contract. Section 59 of the SGL further provides that in such a case, he has the right to sue for damages for non-delivery, which will be measured in-line with the losses incurred; the difference between the contract price and the current market price of the product; or actual loss of profit.[11]

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[6] Section 55(2) of the Sales of Goods Law (Laws of Bayelsa State [Volume 5] 2006)
[7] Where there is a right, there is a remedy.
[8] Laws of Bayelsa State [Volume 5] 2006
[9] Section 1 of the SGL
[10] Section 58 (1), (2) and (3) of the Sale of Goods Law (Laws of Bayelsa State [Volume 5] 2006)
[11] Section 59 (1), (2) and (3) of the SGL; John Alewo Agbonika and Josephine Aladi Abonika, *Sale of Goods* (Abada Press Ltd, 2011) 130

### 3.4 Specific Performance

Section 60 of the SGL recognizes the right of the purchaser to institute an action for specific performance in cases involving a breach of contract to deliver specific ascertained goods.[12] Thus, based on such an application, the verdict of the court maybe 'unconditional, or upon such terms and conditions as to damages, payment of the price, and otherwise, as seems just to the court.'[13]

### 3.5 Remedy for Breach of Warranty

A warranty is an inferior breach which is relatively less fundamental to the terms of the contract compared to a fundamental condition. A breach of a warranty may lead to liability in terms of damages to be paid by the defaulting party, but cannot lead to the termination of a sale of goods contract. In simple terms a warranty can be referred to as any contractual term which is not a condition. There is relatively no clear cut distinction between conditions and warranties but it is clear that in accordance to section 36 of the SGL, acceptance, payment and delivery of goods are core conditions of every contract of sale and therefore cannot be regarded as warranties. Therefore what is a condition and what is a warranty depends of the terms of the contract of sale and mutual agreement between the parties. Section 61 of the SGL states as follows –

> *(1.) Where there is a breach of warranty by the seller or when the buyer elects (or is compelled) to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject goods; but he may- (a) Set up against the seller the breach of warranty in diminution or extinction of price; or (b) Maintain an action against the seller for damages for breach of warranty. (2.) The measure of damages of breach of warranty is the estimated loss directly and naturally resulting in the ordinary course of events, from the breach of warranty. (3.) In the case of breach of warranty of quality such loss is prima facie the difference between the value of goods at the time of delivery to the buyer and the value the goods would have had if they fulfilled the warranty. (4.) The fact that the buyer has set up the breach of warranty in diminutive or extinction of the price does not prevent him from maintaining an action for the same breach of warranty if he has suffered further damages.*

### 3.6 Special Damages

Section 62 of the SGL recognizes the right to recover interest or special damages, in cases where such recoveries are permitted by law. Thus, special damages are recoverable in situations where severe levels of damages or losses occur, due to the special or exceptional circumstances of the case.[14] In the case of *Robinson v Harman*[15], it was held that 'the common law is that where a party sustains a loss by reason of a breach of contract, he is, so far as money can do it, to be placed in the same situation, with respect to damages, as if the contract had been properly performed.'[16]

### Other Noteworthy Provisions of the Sale of Goods Law

(1.) It is also important to note that the Sale of Goods Law does not limit the sale of goods to cash payment, it also creates avenues for protecting the rights of persons who trade by exchanging goods of proportionate value.[17]

(2.) In regard to the ascertainment of the purchase price, the SGL protects the seller by stipulating that 'where the price is not determined' 'the buyer must pay a reasonable price.'[18]

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[12] Section 60(1) of the SGL
[13] Section 60(3) ibid.
[14] Haldley v Baxendale (1954) 9 Ex. 341; [1843-60] All E.R. 461 at p. 465
[15] (1848) 1 Ex. 341; [1843-60] All E.R. 383 at p. 385.
[16] ibid
[17] Section 27 of the Sale of Goods Law (Laws of Bayelsa State [Volume 5] 2006)
[18] Section 7(2) & (3); and Section 17, rule 3 of the SGL

(3.) The law guarantees the right of infants to contract for necessaries.[19]
(4.) The law places an obligation on sellers to ensure that goods sold are in-line with the description stipulated in the contract.[20]
(5.) The law provides for the protection of the rights of bona-fide purchasers for value.[21]
(6.) The law places an obligation on the seller to ensure that goods sold are of merchantable quality, and fit for the purpose of purchase.[22]

### *4.* Cases on the Rights and Obligations of Parties to a Contract of Sale

#### (1) M*IA Sons Ltd. v Afrotec. Serv. Ltd.*[23]

The case of *M.I.A Sons Ltd. v Afrotec. Serv. Ltd.*[24] involves a wide range of legal considerations, which are applicable to sale of goods contracts, viz. specific performance, waiver, transfer/passing of the property of goods to the purchaser, sale without title to the goods, sale of goods on credit, seller's right to repossess, unpaid seller's lien, among other related rights and contractual duties. In consideration of the rights and interests of the purchaser, it was held that –

(1.) The basis of a sale of goods contract is the 'common desire and consensus of the parties' to transfer the property in the goods to the purchaser.[25]
(2.) In the case of an unconditional contract for the sale of specific goods that are in a deliverable state, the property in the goods is transferred to the purchaser, as soon as the contract is made, irrespective of if 'the time of delivery/or payment is postponed.'[26]
(3.) An unconditional transfer of goods is executed when goods are delivered by the purchaser to a carrier or other bailee for the purpose of transporting them to the seller, specifically when the purchaser does not exclusively reserve the 'right to disposal to himself'.[27] Consequently, the property in the goods will be unconditionally transferred to the purchaser.[28]
(4.) An unpaid seller is not entitled to the right to lien, in cases where the goods are in possession of the purchaser.[29]
(5.) In cases where the property in the goods has been transferred to the purchaser, the seller has no legally exercisable right of repossession, regardless of the terms of contract.[30]
(6.) The purchaser has a right to apply for an order of specific performance, when valuable consideration has been given to the seller to execute the sale.[31]
(7.) The seller has no right to exercise a contractual right against the purchaser, when a waiver of such right can be deduced from the circumstances of the case – for example 'when the seller no longer holds the goods in his capacity as a seller, but as the buyer's agent or bailee, may be evidence that he has waived his lien.' [32]

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[19] Section 2 of the SGL
[20] Section 12 of the SGL
[21] Section 27, 11, 13(6), section 22 of the SGL
[22] Section 13 of the SGL
[23] *MIA Sons Ltd. v Afrotec. Serv. Ltd*. (1991) 5 NWLR (Pt. 194) 734.
[24]Ibid.
[25]Ibid*,* 734, para. C
[26] Ibid, 734, para. A
[27] The reservation of the right of disposal may be express or implied and the question whether or not the seller intended to retain the property in the goods, and on what terms, is a question of fact. *M.I.A Sons Ltd. v Afrotec. Serv. Ltd.* (1991) 5 NWLR (Pt. 194) 734, paras. C-D
[28] Ibid, 734, para. C
[29] Ibid, 735, paras. B-C; *Bloxam v Saunders* (1825) 4 B & C, 941; *Bunrey v Polyntz* (1833) 2 L.J.K.B 55.1; *Poulton & Sons v Vnglo American Oil Company Ltd.* (1911) 27 T.L.R. 216
[30] *M.I.A Sons Ltd. v Afrotec. Serv. Ltd*. (1991) 5 NWLR (Pt. 194) 735, para. F; *Yakassai v Incar Motors* (1975) 5 SC 107
[31] Ibid, 736, para. A-G
[32] Ibid, para. B; *Valpy v Gibson* (1847) 136 E.R. 737; *Onyia v Oniah* (1989) 1 NWLR (Pt. 99) 514

In consideration of the rights of the seller, it was held that –

(1.) The seller can reserve the right of disposal, and concomitantly, retain the property in the goods, subject to the performance of the contractual obligations of the purchaser.[33]
(2.) An unpaid seller has the right to lien over goods in his possession, which he holds in his capacity as a seller.[34]
(3.) The remedy open to a seller, in cases when the property in the goods has been transferred to the purchaser, is an 'action for recovery of his unpaid purchase price.'[35]

In regard to third parties, it was held that –

(1.) 'A third party who purports to buy goods from one who has no right to sell acquires no valid title to the goods.'[36]

The case of *M.I.A. & Sons Ltd. v Afrotec Technical Services Ltd., and AFCON Engineering Company Ltd*.,[37] involved the purchase of crushing equipment, worth N702, 600. In-line with the terms of the contract, an initial payment of N281, 160 was made to the seller, under the arrangement that the balance will be paid installmentally. Thus, in view of six monthly instalments of N70, 290 each, six post-dated cheques were issued to settle the purchase price. However, about a week after its installation, the equipment began to malfunction. So, a complaint was made to the seller (Afrotec Technical Services Ltd.), after-which the equipment were uninstalled, in order for them to be moved to Kaduna.

Afrotec Technical Services Ltd. were also contracted with the re-installation contract to be executed in Kaduna. So, the 1st respondent demanded for, and was paid N30, 000 for the transfer of the crushing plant to Kaduna, where there was an available market for the crushed stones. The agreed payment, was made for the purpose of 'servicing and installation' at the site in Kaduna.[38] However, as a result of failure to pay the installments as agreed, the seller (1st Respondent) threatened to sell the equipment to a third party (AFCON Engineering Company Ltd), as a consequence of which, the claimant filed an action against the seller.

It is noteworthy to state that the 1st respondent's problem of non-availability of spare-parts for executing the necessary repairs, caused the purchaser to suffer some setbacks in the building project that resulted in the refusal of the Federal Ministry of Defence to pay for the work done, alleging that the appellant (M.I.A. & Sons Ltd.) was inefficient.[39] Thus, the 1st respondent was a contributing factor to the inefficiency of the work of the appellant, and the resulting refusal of the Federal Ministry of Defence to pay the appellant. Consequently, Mohammed J.C.A. ordered –

a. A perpetual injunction restraining the respondents, whether by themselves, their servants, agents, privies, or other representatives from selling, leasing or otherwise disposing of or otherwise creating any encumbrance on the equipment.
b. That the said equipment be delivered to the plaintiff subject to the appellant paying the entire sum outstanding as balance of the total cost of the equipment, taking into account N381, 160.00 the appellant had so far paid to the 1st respondent.[40]

[33] *M.I.A Sons Ltd. v Afrotec. Serv. Ltd*. (1991) 5 NWLR (Pt. 194) 734, para. C-D
[34] Ibid, paras. B-C
[35] Ibid, para. F ; *Yakassai v Incar Motors* (1975) 5 S.C. 107
[36] *M.I.A Sons Ltd. v. Afrotec. Serv. Ltd*. (n 23) paras. F-G; However, Section 22 of the SGL, recognizes the right of a seller in possession after sale, to sell goods to a bona-fide purchaser for value without notice. Worcester Works Finance Ltd v Cooden Engineering Co. Ltd (1972) 1. Q.B 210
[37] *MIA Sons Ltd. v Afrotec. Serv. Ltd*. (n 23).
[38] Ibid, 730 para H
[39] ibid
[40] *M.I.A Sons Ltd. v Afrotec. Serv. Ltd*. (n 23) para H; 738 para A – C

**2. *Bijou (Nig.) Ltd. v Osidarohwo*[41]**

In regard to the rights and obligations of the parties in a sale of goods contract, it was held that in a contract of sale, in which the seller undertakes to supply goods at a stipulated price, the seller is obliged to supply the goods; and the purchaser, is correlatively obliged to pay the purchase price, upon acceptance of delivery.[42] The case involved a claim against the appellant as defendant in the High Court of the former Bendel State Sapele Judicial Division, the sum of N20, 2I5.00 (Twenty thousand two hundred and fifteen naira) being the value of various sizes of sawn timber sold and delivered to the appellant by the respondent at the request of the appellant during the month of December, 1986 which amount the appellant refused to pay despite repeated demands.[43] To prove his case, the seller/respondent furnished the court with evidences, specifically signed invoices, indicating the various sizes of sawn timber that were delivered. Adio, J.C.A. held that although the appellant gave two cheques for the sum of N3,654 and N5,000 to the respondent as part of the sum of N20, 215, they were never withdrawn due to lack of sufficient funds. Consequently, no payment was made. The judgment of the trial court was confirmed on appeal, awarding the respondent N20, 2I5.00, as payment for the goods supplied.[44]

**(3) *M.I.N. Ltd. v. M.F.K.W.A. Ltd*,[45]**

In the case of *M.I.N. Ltd. v M.F.K.W.A. Ltd*,[46] in regard to the rights of the purchaser, it was held that –

(1.) The ownership rights of the purchaser, is confirmed by full payment of the purchase price, and possession of the goods is confirmed when the goods are delivered to the purchaser.[47]

(2.) In cases of part delivery, ownership and possession is also confirmed in relation to delivered goods; while the parts of the goods yet to be delivered are subjected to 'a constructive bailment contract between the parties.'[48] So, the owner of the goods has a right of action if the goods are wrongly converted; and the right to sue for detinue, which is a continuous cause of action applicable to cases when the demand for delivery of the goods is ignored or refused.[49]

Relying on the contract of sale, the appellant sued the respondent at the High Court, inter-alia, claiming –

a. An immediate delivery of the one Doz. 50 KVA generator which is the most important item purchased by the plaintiff from the defendant; and
b. Receipt of payment to the defendant by the plaintiff in the sum of N556.500.00 plus the documents of purchase of the two (2) generators and other goods purchased by the plaintiff from the defendant.[50]

In consideration of the contract of sale a cash price of N256, 500.00 was paid to the respondent at its office, and the balance of N300.000.00 was, on the direction of the respondent, paid into the respondents bank account No. 274732 at the Credit Lyonnais Nigeria Ltd., 8, Lagos Street, Kano. Thereafter, the appellant took delivery and carted away all the items of the goods except the Doz

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[41] (1992) 6 NWLR (Pt. 249) 643

[42] *Bijou (Nig.) Ltd. v Osidarohwo* (1992) 6 NWLR (Pt. 249) (p.649, paras. E-F); *Clement Horst Co. v Bendel Bros*., (1912) AC 18.

[43] Ibid.

[44] *Bijou (Nig.) Ltd. v Osidarohwo* (1992) 6 NWLR (Pt. 249) 647 para. D & H; 652 para D – F

[45] *MIN Ltd. v MFKWA. Ltd* (2005) 10 NWLR (Pt. 934) 645

[46] Ibid.

[47]Ibid.

[48] Ibid

[49] In the case of detinue it is a requirement that the defendant is either in actual possession of the chattel, or estopped from denying the he is still in possession. However, 'a plaintiff claiming in detinue must establish his title to the chattel claimed or right to immediate possession thereof; *MIN Ltd. v MFKWA. Ltd* (n 44) 667-668, paras. G-D; 668, paras. D-G; *Sodimu v NPA* (1975) All NLR 151

[50] Ibid.

50 KVA generator, the most valuable of the items which the respondent retained for its use pending a replacement. The appellant made several attempts to take the generator to no avail, hence the appellant's action.[51] Consequently, Oguntade, J.S.C confirming the judgment of the high court, ruled in favour of the claims of the appellant (the purchaser).[52]

**(4).*EFL Pet. (Nig.) Ltd. v Onyekwelu*,[53]**

In the case of *EFL Pet. (Nig.) Ltd. v Onyekwelu*,[54] in regard to the rights of the purchaser it was held that –

(1.) As a precondition, acceptance is subject to the purchaser's right to examine the goods, so he must be afforded 'a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.'[55]

(2.) The purchaser has the right to reject goods that are inconsistent with the terms or requirements of the contract of sale.[56]

(3.) In order to guarantee the rights of the parties, it was held that the terms of the contract need to be construed conjunctively (red together), and interpreted in-line with practicality.[57]

In regard to the rights of the seller it was held that –

(1.) In cases where the purchaser retains the goods for an unreasonable period of time, without intimating the seller that he has rejected them; when the purchaser performs any act that is inconsistent with the ownership of the seller; or when the purchaser expressly accepts them the contract of sale is executed. Consequently, in such a case the purchaser is obliged to pay the stipulated price of the goods.[58] The seller has a right to be informed, if the chattel is not accepted by the purchaser.[59]

The case of *EFL Pet. (Nig.) Ltd. v Onyekwelu*,[60] involved an appellant who issued a local purchase order (L.P.O) to the respondent for the supply of certain items, meant for the repair and servicing of pumps and other equipment. Various conditions were also attached to order, inter-alia, concerning a rigid stipulation of the date of delivery; documentation requirements; and a right to reject if the products are unfit for purpose. However, the goods were supplied almost one month out of time. Nonetheless, delivery was accepted by the receiving clerk. Notwithstanding the late delivery, the crux of the complaint was that upon inspection after delivery, it was found the goods supplied by the respondent, were not new as requested in the L.P.O., but ones which had been refurbished and repainted. So the goods were rejected, and a 'Rejected/ Returned Freight' waybill was prepared.[61] Consequently, a letter was written, confirming the cancellation of the L.P.O. With due consideration of the facts and the circumstances of the case, Ikongbeh, J.C.A. held that the rejection of the goods, and the concomitant vitiation of the contract of sale was valid, due to the delivery of substandard products.[62]

[51] Ibid
[52] *MIN Ltd. v MFKWA Ltd* (2005) 10 NWLR (Pt. 934) 669 para A-C
[53] (2002) 17 NWLR (Pt. 797)
[54] (2002) 17 NWLR (Pt. 797) 479
[55]Ibid, 477, paras. D-G; 486 paras.C-D
[56] Ibid, 477-478, paras. H-E
[57] Ibid.
[58] EFL Pet. (Nig.) Ltd. v. Onyekwelu (n 53).
[59] Ibid, paras. F
[60] Ibid.
[61] Ibid, 464
[62] Ibid, 487 para. E-F

## 5. Conclusion and Recommendations

The law plays a very crucial role in protecting the parties to a contract of sale. Hence, Gower points out the fact that a sale of goods contract possesses a statutory flavour especially in instances where the methods or patterns of trade executed therein are statutorily provided for, and recognized as legitimate, therefore making the contract of sale enforceable,[63] by providing the statutory backing for legal remedies, were the terms and conditions of sale are breached. The legislative jurisprudence of sale of goods law, also appears to be progressing positively, in ways that guarantee better protection of the contractual rights of parties engaged in sale of goods contracts. A welcomed improvement to the jurisprudential quality of the sale of goods law, is the introduction of the principle of 'utmost good faith', recognized by section 68 of the SGL, which emphasizes on acting 'honestly.' That is a condition that can be further incorporated into other sections of the law, via future amendments, in order to ensure that parties act in good faith, in the execution of the contract of sale. That is an initiative that has already been adopted judicially, when trading parties have been held liable, in instances where certain 'knowledge' of facts, and 'breach of duties' have prevented parties from successfully raising a plea of estoppel.[64]

The law is also equipped to ensure adherence to terms and condition of sale of goods contracts – for instance by recognizing the purchaser's right to reject goods that are not consistent with specified descriptions, or 'on the ground that it was not in accordance with the sample.'[65] Thus, the purchaser's right to reject goods is guaranteed, so long as he has not done 'any act in relation to them which is inconsistent with the ownership of the seller.'[66] The law has also taken further steps to protect the rights of purchasers in various problematic scenarios, for example the case of *Ruben, Ltd. v. Faire Bros*,[67] which, 'emphasizes the danger to a wholesaler of indulging in the common practice of sending on to a retailer goods supplied by a manufacturer without prior inspection.'[68] That is a problem that has relatively been settled by the provisions of section 44 of the SGL, which is an improvement in comparison to the SGA, in the sense that it makes the purchaser's right to examine goods, as an indispensable precondition for acceptance.

In regard to recommended amendments of the SGL, as aforementioned the principle of utmost good faith should be made as a requirement for trading fairly. Nonetheless, it is also recommended that the definition provided in section 68 of the SGL that 'a thing is deemed to be done "in good faith" within the meaning of this law when it is done honestly, whether it is done negligently or not' – should be amended to eliminate the exception of negligence.[69] Thus, it is submitted that the foundational purpose of Sale of Goods Law, is to ensure that trading parties act in good faith; and in-line with the terms and conditions of the contract of sale, for the protection of the economic rights of all trading parties.

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[63] LC Gower, 'Sale of Goods. Right of Rejection'. *The Modern Law Review* [1949] (12) (3)368; *Morgan v Ashcroft* (1938) | K.B. 49, 74.

[64] *Weld-Blundell v Synott* [1940] 2 K.B. at p. 116

[65] LC Gower, 'Sale of Goods. Right of Rejection'. *The Modern Law Review* [1949] (12) (3)369; *Ruben, Ltd. v Faire Bros*. [1949] 1 K.B. 254

[66] 'It would appear therefore that the mere sub-sale, even though accompanied by transfer of the documents of title, will not take away the buyers right to rejection; there must be a dealing with the goods themselves and perhaps, as we have seen, this must take place not merely after delivery to the buyer in the normal sense but after delivery to the place contemplated for examination; Gower (n 62) 369.

[67] [1949] 1 K.B. 254

[68] Gower (n 63) 369.

[69] In order to discourage negligent actions of parties to a contract of sale.