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## Research Article

# The Legal Implications of Covid-19 on Revenue Generation in a Depressed Economy: The Nigerian Experience

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**Abstract:** The world economy is driven by trade and commerce, through the movement of goods and services from one location to the other. Trade and commerce can only be achieved by a healthy, productive class or populace to consume the goods produce or enjoy the service. Consequently, the government can generate the desired revenue to provide its citizens with basic infrastructure and also guarantee development. Once the health index of the production class and/ or the general populace is at risk, the chain of production and consumption will be disrupted. There will be a negative impact on the economy, thus affecting the incomes and the general dynamics of businesses. This disruption will put a clog on the expected revenue to be generated and hamper or cripple economic development. This will be worst when such disruption is on a national or global scale that can be considered as a pandemic like SARS or COVID-19. Disruption on a monumental scale like the ongoing disruption caused by COVID-19 has restricted the movement of human beings, goods, and services across the globe. The thrust of this research is to examine the relationship between public health and the economy as a catalyst for revenue generation, with development as a by-product. Doctrinal research was used and based on findings, the paper recommends amongst others, the use of e-governance and digital economy in our daily lives and activities particularly in our economic activities and revenue generations.

**Keywords:** *Virus; Infection; Epidemic; Pandemic; Revenue; Economy and Disruption*

## Introduction

It is a truism that a healthy workforce begets a healthy economy with a direct consequence on high revenue yield. It is also a by-product of infrastructural development. This relationship brings to fore the tiny membrane that divides health, revenue generation and infrastructural development

of a nation or global economy (Bhargava, et.al, 2001; Casasnovas, Rivera, & Currais, 2007). It underscores the importance of governments, especially the Nigerian government, to take public health even more seriously than it does to the *black gold*. China, with all her advancements in technology and medicine, had so much difficulty in containing COVID-19, as it dealt a heavy blow into China's public

health. Currently, its economy has been adversely affected (UNCTAD, 2020). Thus, no meaningful infrastructural development can be contemplated as the COVID-19 pandemic subsists. During the Ebola outbreak, the near absence of both a well-organised public health care system and a coordinated legal framework caused problems in containing its spread, in Nigeria. The same situation appears to reoccur with the current COVID-19 pandemic. By a stroke of luck and a bit of drive, the country overcame the challenges of the Ebola outbreak in 2014 (Out, 2017), while the story continues with COVID-19 with 21 fatalities recorded, 627 infected persons with the virus and 170 people so far have been treated and discharged currently (TVC News, 2020). The present situation calls for an in-depth examination of the state of our public health care system and the country's preparedness for similar or even worse public health care concerns in the future bearing in mind global warming and the attendant challenges that are associated with such environmental and atmospheric changes or technological breakthroughs as the case might be. The problems are also harming the nation's economy (Schaffer, 2008). Against this backdrop, there is the need to look at the legal implication of the pandemic in a holistic manner through a doctrinal research approach.

Some of the effects of the pandemic are the recent pronouncements by governments to quarantine and lockdown<sup>1</sup> Nigerians from exercising their liberty to freedom of movement and association, and in some cases, shut down entire economic

activities.<sup>2</sup> The disruption of business activities globally as businesses have been ordered to close down or run partially in some places<sup>3</sup> in a bid to stop, mitigate or control the spread of the virus. One needs to ask whether contracts entered into by individuals and corporate organisations can remain valid or whether the parties to such contracts are still bound by the terms of the contracts or can this be or should this be a case of *force majeure*. For instance, what is the faith of an event planner who has fixed a date, paid for a venue and possibly sold out tickets to participants or manufacturer who has promised to produce and deliver certain goods to his customers? Indeed some companies have so far invoked the doctrine of force majeure as defence against liability.<sup>4</sup> One other pertinent issue that calls for attention is whether the mere pronouncement of either the President or Governor as the case may be without an extant law or a proclamation order which has been assented and gazetted can derogate from the fundamental rights of Nigerians enshrine in the constitution.<sup>5</sup> The article will proffer some prospects and alternatives going forward.

## Result and Discussion

### A. The Corona Virus (COVID-19) Pandemic and The Current Status of Nigeria's Economy

The world may never be the same again with the danger posed to public health by the ravaging plague named Corona Virus (COVID-19). As at 3<sup>rd</sup> April, 2020, the total number of Corona virus Cases globally

<sup>1</sup> Other terminologies like 'shutdown' 'restriction' etc are been used in some quarters.

<sup>2</sup> Many people have used several terms to refer to the restriction of movement as the case may be.

<sup>3</sup> The plateau state Governor, Simon Lalong on 25<sup>th</sup> March 2020 in a state wide broadcast ordered that only Food and Cooking Gas outlets should remain open

<sup>4</sup> DHL recently notified its customers that it might be unable to deliver as scheduled and the China National Offshore Oil Corp notified its suppliers Shell and Total that it would not be able to continue buying the agreed quantities of gas.

<sup>5</sup> Chapter 4 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

stands at 1,088,388 people and still counting with 228,005 recoveries (Worldometer, 2020). The virus first originated from the Wuhan City in China in the form of cases of pneumonia and was reported on 31 December 2019 to the WHO China Country Office (WHO, 2020). Since January 2020, there have been many confirmed cases of infections and deaths from the Corona Virus in many countries wherein Nigeria is not an exception. The global economy is already in a recession as the pandemic has become widespread and affected economic activities. On the whole, the impact of the corona virus is having a severe and profound impact on the global economy and has sent policymakers looking for ways to respond. Globally, the corona virus shock is more severe when compared to the Financial Crisis of 2007 and 2008 (Karunakar & Sarkar, 2020).

Nigeria is Sub-Saharan Africa's largest economy and relies heavily on oil as its primary source of foreign exchange earnings and government revenues (CIA World Factbook, 2020). Nigeria was faced with two major global economic events: the first was 2008 to 2009 global financial crises which it was able to overcome, among other things, effectively recapitalising and regulating its banking sector. The other tragic event was the 2015 global recession due to a slump in global oil prices which it has not been able to fully recover from till date (Adeniran & Sidiq, 2018). Since then, Nigeria's economic growth has been driven by agriculture, telecommunications, and services (AFDB, 2020). Nigeria's economy is heavily dependent on oil and is therefore very vulnerable to fluctuations in crude oil prices and production (Nordea, 2020). In 2019, Nigeria achieved a growth of 2.3 percent, according to the I.M.F., the growth is expected to reach 2.5 percent in 2020 and

remain at that level till 2021 (Olawoyin, 2020; IMF, 2019).

The COVID-19 pandemic will not only add to Nigeria's economic problems, but it will make matters worse for the country. There are findings that loss of incomes as a result of the global pandemic are expected to exceed 220 billion dollars in developing countries, including Nigeria (UNDP, 2020), and an estimated 55 percent of the global population will not have access to social protection. These losses will move across societies in developing countries, impacting on education, human rights and, in the most severe cases, basic food security and nutrition. Another lurking problem is the under-resourced hospitals and fragile health systems which are likely to be overwhelmed. This problem may be further exacerbated by a spike in cases of lack of access to essential medicines, as up to 75 percent of people in least developed countries lack access to soap and water. The pandemic may also cause additional problems such as the underregulated informal sector, a change in urban and rural demographics owing to movement of people from one place to another in search of greener pastures, and overpopulation in some cities, poor waste disposal services, and increase in crime like it is witness especially in border communities of Lagos and Ogun states.

## **B. The Impact of The Corona Virus on Revenue Generation in Nigeria**

Revenue generation in Nigeria is constitutional, with the Federal government, states governments and local governments having the powers to generate revenues to

the national treasury and share same for national development.<sup>6</sup>

In essence, States and local governments in Nigeria generally coordinate revenue generation. Typically, tax is a compulsory levy imposed by the government on individuals and companies for the various legitimate functions of the state (Edogbanya & Sule, 2013). Tax is a necessary ingredient for civilization, and no system or rules can be effective, whether foreign or indigenous, unless it enjoys some measure of financial independence (Edogbanya & Sule, 2013). External revenue generation in Nigeria also needs to be mentioned. With the discovery of oil in Nigeria in 1956 at Oloibiri, Bayelsa State in the Niger Delta by Royal Dutch Shell-BP, Nigeria joined the ranks of oil producers in 1958 when her first oil field began producing and exporting oil (Asagunla & Agbede, 2018). Since that period, the petroleum industry in Nigeria has remained the most significant industry for the derivation of external revenues and has majorly contributed to economic development, infrastructural development, and development of other sectors of the country.

Nigeria is a federation in which power is shared by the federal, state, and local governments. Each of these units of government has specific powers for revenue generation. Such revenues collected to the national treasury are shared among the three tiers of government. These three levels of government depend to a large extent on this for both recurrent and capital expenditure (Izevbigie & Ebohon, 2019).

A major effect of the COVID-19 pandemic on the nation's economy is the imposition of mandatory lockdowns and quarantines. According to statistics, there

are about 2.6 billion people around the world in some kind of lockdown (Van Hoof, 2020). It is said to be the most massive psychological experiment ever experienced (Van Hoof, 2020: 31). This situation is anticipated to result in a secondary epidemic of burnouts and stress-related absenteeism in the latter half of 2020. A situation where there is a suspension of the freedom of movement and association guaranteed under the constitution is not suitable for the economy and revenue generation as the economy cannot exist without people; people and their activities generally constitute the economy of nations. Therefore, a weak economy caused by low-income generation owing to lack of economic activities is a noticeable effect of the COVID-19 pandemic on the economy of the nation.

One effect on Nigerian government revenues is from the oil market. Nigeria is currently adjusting to taking the big hit from the collapse in oil prices resulting from the end of the OPEC agreement and the COVID-19 pandemic (Olurounbi, 2020). Nigeria's current 2020 budget is based on an anticipated oil price of 57 dollars per barrel. But the decline in the price of the Brent benchmark crude has forced the government to revise this to 30 dollars per barrel while maintaining proposed production volumes at 2.18million barrels per day (Olurounbi, 2020: 34). These unanticipated changes have a profound effect not only on tax revenues but also on oil taxes meant for national development. The current low oil prices are also a problem to the oil sector and other investors in Nigeria, who would ordinarily pay taxes to the government treasury. Low prices of crude oil in the international markets mean a low budget,

<sup>6</sup> Constitution of the Federal Republic of Nigeria, 1999, Second Schedule, Part II, The Concurrent List.

and a low budget would mean poor infrastructure that is intended to create an enabling environment for investments. Despite all of the above, the collapse in oil prices can have a positive effect on the Nigerian economy, as it offers Nigeria the opportunity to end its subsidy regime (Balouga, 2020). This would reduce pressure on the already limited resources which have to be dedicated to funding the subsidy and encourage savings.

Another effect of the COVID-19 pandemic on revenue generation in Nigeria is the restrictions by different countries, especially developed countries, on trade in the vital medical supplies needed by developing countries like Nigeria to fight the virus (Douglas, 2020).<sup>7</sup> From India to the United States, many countries have placed restrictions on the exportation of medical supplies and essential medicines in a bid to meet their domestic demand. This implies that government tariffs and taxes in medical and pharmaceutical products will be affected significantly.

### C. Impact of Covid-19 on Contractual Relationship

The doctrine of *force majeure* originated from the French jurisprudence; with the civil code containing express provisions which halt contracts when events occur which makes it impossible to continue with the normal performance of the contract with the conditions that such events must have been unforeseeable and unavoidable. This is not the same with the English jurisprudence, as it states that anyone who wish to provide for such exceptions must expressly state same

as part of the contract terms. However, in England and Nigeria, force majeure clauses have largely become standard contract terms. The court in the case of *Peter Dixon and Sons Ltd v Henderson Craig and Co. Ltd*,<sup>8</sup> held that the inability of sellers of wood pulp to deliver goods from Canada to England due to the ongoing First World War was squarely within the meaning of force majeure clause in the contract. This shows that the scope of force majeure clause can be construed as necessary by applying the *ejusdem generis* rule to the parties' intentions.

In Nigeria, the term 'frustration' as the equivalent of the French force majeure, can apply irrespective of its express inclusion in a contract. The case of *A.G Cross River State v A.G Federation & Anor*<sup>9</sup> is apt in this regards:

The doctrine of frustration is applicable to all categories of contracts. It is defined as the premature determination of an agreement between parties, lawfully entered into and which is in the course of operation at the time of its premature determination, owing to the occurrence of an intervening event or change of circumstances so fundamental as to be regarded by law both as striking at the root of the agreement and entirely beyond what was contemplated by the parties when they entered into the agreement.<sup>10</sup>

The Court has the duty to state whether and when frustration has occurred; that is to determine the existence of frustration. It does so when without default of either party a contractual obligation has become incapable of being performed. The courts have mentioned certain situations or

<sup>7</sup> In response, the Central bank of Nigeria and the Banker's committee—comprising majorly Chief Executive Officer's (CEOs) of banks in a meeting in March 2020 granted no fewer than 10 pharmaceutical companies both naira and foreign exchange facilities to assist in boosting local production of drugs in the country. See also Micheal Ani, 'CBN Releases FX to 10 Pharmaceuticals to Boost Medical Supplies' *Businessday NG* (Lagos, Nigeria, 21 March 2020)

<<https://businessday.ng/health/article/cbn-release-fx-to-10-pharmaceuticals-to-boost-medical-supplies/>> accessed 18 April 2020.

<sup>8</sup> (1919) 2 KB 778.

<sup>9</sup> (2012) LPER-9335 (SC)

<sup>10</sup> N.B.C.I. v Standard (Nig.) Eng. Co. Ltd (2002) 8NWLR (PPT.768) pg.104. Mazin Eng. Ltd v Tower Aluminium (Nig.) Ltd. (1993) 5NWLR (PT.295) p.526.

events as listed below as constituting frustration<sup>11</sup>:

- 1) Subsequent legal change
- 2) Outbreak of war
- 3) Destruction of the subject matter of contract
- 4) Government requisition of the subject matter of contract
- 5) Cancellation of an expected event

Hence, a court would recognise that a contract is frustrated when the contract is concluded, events occur that made performance of the contract impossible, illegal or something extra ordinarily different from that which was contemplated by the parties at the time they entered into the contract. A contract which is discharged on grounds of frustration is brought to an end automatically by the operation of law, irrespective of the wishes of the parties.

A similar case is the *Globe Spinning Mills Nigeria Plc v Reliance Textile Industries Limited*<sup>12</sup> which appears to place more emphasis on the necessity of having the clause in the contract. The court held whether it was appropriate to invoke the force majeure clause in a contract for a monthly sale of a set minimum amount of fabric on the basis that there was an influx of illegally smuggled fabric into the country as well as the difficulty in acquiring gas (electricity) to run business operations thus:

*Force majeure is a common clause in contracts which provides that one or both parties can cancel a contract or be excused from either part or complete performance of the contract on the occurrence of a certain specified event or events beyond the parties' control. Such event(s) may include: war, strike, riot, crime, or an event described by the legal term act of God (hurricane, flood, earthquake, volcanic eruption, etc.), prevents one or both parties*

from fulfilling their obligations under the contract. Force majeure is generally intended to include occurrences beyond the reasonable control of a party, and therefore would not cover:

1. Any result of the negligence or malfeasance of a party, which has a materially adverse effect on the ability of such party to perform its obligations.
2. Any result of the usual and natural consequences of external forces. To illuminate this distinction, take the example of an outdoor public event abruptly called off. If the cause for cancellation is ordinary predictable rain, this is most probably not force majeure. If the cause is a flash flood that damages the venue or makes the event hazardous to attend, then this almost certainly is force majeure. Some causes might be arguable borderline cases; these must be assessed in light of the circumstances. Any circumstances that are specifically contemplated (included) in the contract – for example, if the contract for the outdoor event specifically permits or requires cancellation in the event of rain.

I will just add that there is no event that has occurred which can be termed as force majeure. The reasons given by the Respondent are the usual vicissitudes of the trade in Nigeria. One cannot be doing business in Nigeria and not put into consideration the endemic issue i.e. epileptic electricity, fluctuation of price of diesel and gas. Moreover diesel and gas may be disrupted by the many occasions of fuel scarcity in the country.

Can this therefore be said to be force majeure when these situations are with us always. Force majeure is something that is unexpected and unforeseen happening; making nonsense of the real situation envisaged by parties.<sup>13</sup>

It can be deduced from the above that there is a subtle difference between the doctrine of frustration and that of force majeure. Frustration is a question of fact which is left entirely to the discretion of the court. At the same time, force majeure

<sup>11</sup> Cricklewood Property & Investment Trust Ltd v Leightons Investment Ltd (1945) 1 All ER 252; Knell v Henry (1903) 2KB 740; Obayuwana v The Governor of Bendel State (1982) NWLR

(pt.102) p167; Araka v Monier Construction Company Ltd (1978) 2LME P.60.

<sup>12</sup> (2017) LPELR-41433(CA)

<sup>13</sup> (2017) LPELR-41433(CA)

clauses allow the parties to set a lower bar by setting out specific incidences which would allow them to discharge themselves from the provisions of the contract in situations which might not amount to frustration in the eyes of the court. The doctrine of frustration will operate to discharge the contract completely while a force majeure clause will usually pause it for a period or mandate a renegotiation, although it can have any other effect the parties choose to specify. This increased flexibility has made force majeure contracts much more appealing in commercial contracts, since it allows parties to ensure that they are not compelled to continue with the contract when the performance would prove unprofitable, which is a fact that would certainly not amount to frustration in the eyes of a court<sup>14</sup>. The Supreme Court held as follows:

A contract is not frustrated merely because its execution becomes more difficult or more expensive than either party originally anticipated and has to be carried out in a manner not envisaged at the time of its negotiation. *Davies Contractors Ltd v. Fareham N.D.C* (1956) AC 696, *Tsakineglon & Co. v. Noble Thorh G.M.B.H* (1962) A. C 93." Per ADEKEYE., J.S.C (P. 36, paras. C-E). The Supreme Court also restated that position in the case of *LEWIS v. U.B.A.* (2016) LPELR-40661(S.C.).<sup>15</sup>

The above case explains the imports of when and what should constitute reasons for the application of the doctrine of force majeure in a given situation. Our concern now is, can the powers enshrined in our statutes which are acts of humans, that is constituted authority like President,

governor etc., to proclaim or declare a state of emergency be seen as a reason for invoking the doctrine of force majeure, especially in the current case of lockdown in Nigeria and indeed the globe apply to contractual relationship?<sup>16</sup>

#### **D. Legal Restriction on and Derogation from Rights**

The President may, by notice, declare any place whether within or without Nigeria to be an infected local area and thereupon such place shall be an infected local area within the meaning of this Act<sup>17</sup>. The Governors or Minister of Health are equally empowered to make similar declarations if the President could not, but subject to the same conditions.<sup>18</sup> The President may make regulations for all or any of the following purposes:<sup>19</sup>

- (a) prescribing the steps to be taken within Nigeria upon any place, whether within or without Nigeria, being declared to be an infected local area;
- (b) prescribing the introduction of any dangerous infectious disease into Nigeria or any part thereof from any place without Nigeria, whether such place is an infected local area or not;
- (c) preventing the spread of any dangerous infectious disease from any place within Nigeria, whether an infected local area or not, to any other place within Nigeria;
- (d) preventing the transmission of any dangerous infectious disease from Nigeria or from any place within Nigeria, whether an infected local area or not, to any place without Nigeria;

<sup>14</sup> *Nwaolisah v Nwabufoh* (2011) LPELR-2115(SC).

<sup>15</sup> *Nwaolisah v Nwabufoh* (2011) LPELR-2115(SC).

<sup>16</sup> Ss. 45 and 305 (6) (b) Constitution of the Federal Republic of Nigeria, (CFRN), 1999 (as amended).

<sup>17</sup> S. 3, Quarantine Act 1968 (18 of 1926. 7 of 1929. L.N. 131 of 1954) [27th May,1926]

<sup>18</sup> S. 8 Quarantine Act 1968 (18 of 1926. 7 of 1929. L.N. 131 of 1954) [27th May,1926]

<sup>19</sup> S. 4 Quarantine Act 1968 (18 of 1926. 7 of 1929. L.N. 131 of 1954) [27th May,1926]

- (e) prescribing the powers and duties of such officers as may be charged with carrying out such regulations;
- (f) fixing the fees and charges to be paid for any matter or thing to be done under such regulations, and prescribing the persons by whom such fees and charges shall be paid, and the persons by whom the expenses of carrying out any such regulations shall be borne, and the persons from whom any such expenses incurred by the government may be recovered;
- (g) generally for carrying out the purposes and provisions of this Act.

The Quarantine Act<sup>20</sup> provisions lay emphasis on Ships, Ports, and Harbours etc., but the current happening is on the hither land. This notwithstanding the relevant provisions of the Act can be applied to the prevailing situation.

The Constitution of the Federal Republic of Nigeria, (CFRN)<sup>21</sup> provides for the 'restriction on and derogation from fundamental rights of persons living in the country in the interest of defence, public safety, public order, public morality or public health; or for the purpose of protecting the rights and freedom of other persons'<sup>22</sup>. This provision especially section 45(a) of the constitution<sup>23</sup> can be invoked with respect to the current happenings in Nigeria, although some public analyst have tried to argue that the President has erred by not making reference to the relevant section (s) of the constitution or sighting the quarantine proclamation order and have same gazetted. We think that it is an academic exercise as no law says that laws should be referred to in the pronouncement of any leader while acting in line with such

laws. The concern should be our safety or existence as a people or nation as section 105 (3)(e)(f) of the constitution<sup>24</sup> envisaged. Having established the bounds of the doctrines of force majeure and frustration in Nigerian as per contractual relationships. The pertinent question is whether the current crisis will be sufficient grounds to invoke the doctrine of necessity to avert a public health calamity and in some instances invoke the principle of frustration as the case demand. Certain matters or cases pending in law courts are time-bound, what is the faith of such litigants looking at the Limitation Act,<sup>25</sup> or can we assume that time stops running by the proclamation of the relevant authorities as is currently done because of the coronavirus pandemic?

For force majeure clauses to apply in contract, the determining factor will be based on the specific phraseology of the contract. The effects of the COVID-19 outbreak has included government intervention to limit local and international travel, lockdowns in which public and private employees are ordered not to go to work, market failures (drastic, historic drops in the prices of financial instruments such as shares, options, futures, bonds, etc.), among others.

In contracts where the force majeure clause specifies "*disease*", "*outbreak of illness*", "*epidemic*" or some other similar term, it is the writers' opinion that the current outbreak would likely qualify by virtue of its scale and disruptive effects. In contracts where no specific term relating to disease is used, it might still be a valid ground if there is an omnibus term such as "act of God" included. The constitution of Nigeria<sup>26</sup> talks of public health, and in our opinion that is

<sup>20</sup> Quarantine Act, 1968.

<sup>21</sup> Constitution of the Federal Republic of Nigeria, (CFRN), 1999 (as amended).

<sup>22</sup> S. 45 (1) (a) (b) CFRN, 1999.

<sup>23</sup> S. 45 (1) (a) (b) CFRN, 1999.

<sup>24</sup> CFRN, 1999.

<sup>25</sup> See generally the provisions of the Limitation of Actions Act, 1980.

<sup>26</sup> S. 45 (1) (a) (b) CFRN, 1999.



sufficient to include the current pandemic as force majeure or frustration as the case may be.<sup>27</sup>

The fundamental requirements of invoking a force majeure would still have to be satisfied by showing that:

1. The incident (outbreak of COVID-19) has occurred out of the control of the parties.
2. It has made it impossible to continue the performance of the contract as usual. (stay at home orders)
3. The party invoking the clause has taken all reasonable steps to avoid or mitigate the effect of the consequences of the incident. E.g. In a contract for sale of goods, could the goods have been obtained and delivered via another supplier in the buyer's location, thus avoiding the transit restrictions? All options must be considered in light of the terms (express and implied) of the contracts, however, because in certain cases, the goods in question must be of a specific type and from a specific origin.<sup>28</sup>

It is pertinent to note that if movements of all sorts are restricted or stopped, several goods and services must be put on hold. Although essential services are allowed to run, but if the contract or services being sought do not fall in line or in the group of such services then the doctrine will affect same. The determination of whether the prevailing circumstances are sufficiently disruptive as to warrant the frustration of any particular contract is entirely at the discretion of the court and will be made on the basis of facts presented by either side. There are certain examples such as war, destruction of the res, subsequent legislation, etc. which have been cited by the courts as generally valid grounds for

frustration, but disease is not one of them. However, since an outbreak of this scale has not occurred in a long time, it is the writers' opinion that courts would be minded to consider this as exceptional circumstance which may warrant the invocation of the doctrine of frustration provided that the party invoking the doctrine can specifically establish via evidence how the consequences of the outbreak made it impossible to continue the contract and that they took reasonable steps in trying to avoid or mitigate the effects on the contract. Let it be stated that the situation at hand can be likened to war, particularly that modern wars might not be fought with live ammunitions rather by digital weapons such as viruses and robotics. Several heads of courts have issued circulars to the effect that court sittings have been suspended due to government directives to stay at home, so one wonders what a litigant can do to continue his suit in such instances. Even when the directive is to work from home, processes need to be filed and not all courts are prepared or equipped for such procedures except the National Industrial Court of Nigeria.<sup>29</sup> Even though heads of courts may have issued circular or directives suspending courts' sitting, they may allow the hearing of certain cases which are considered sensitive and or urgent and maintaining the social distance policy consequent upon which the supreme court in the month of March, 2020, while the directive was still operational sat and delivered judgment in the Zamfara case. It is our opinion that, counsel can take advantage of such window to apply either to the Chief Justice of the Federation (CJN), the President of the Court of Appeal (PJCA), The Chief Judge of a State High Court or

<sup>27</sup> <http://www.legalservicesindia.com/article/1211/Force-Majeure-Clauses-&-Doctrine-of-Frustration-Of-Contract.html>. Accessed on 1<sup>st</sup> April 2020.

<sup>28</sup> Edmund Bendit and Anor.v Edgar Raphael Prudhomme ((1925)48MLJ374),<https://www.legalcrystal.com/case/797680/edmund-bendit-vs-raphael-prudhomme>, accessed 1<sup>st</sup>, April 2020.

<sup>29</sup> Order 6A National Industrial Court Civil Procedure Rules, 2017.

Federal High Court (CJ), and or the President of Industrial Court as the case might be. In such a situation the head of court upon reviewing the merit of the application may direct the court to sit, hear and determine the case.

It is our candid opinion that once a law like section S. 45 (1) (a) (b), 105<sup>30</sup> and section 3<sup>31</sup> makes a clear and unambiguous provision empowering the doing of a thing, the enforcing authority need not state its source of authority before carrying such an action, worst still in a time of national emergency like this. But where conflict arose then the authority may be required to justify its action else such action becomes ultra-vires. It is more instructive that the constitution clearly set out ways or conditions upon which the rights of the citizens might be limited, hence the rights are not absolute in themselves. It is our view that the situation at hand is one in which the authorities can leverage on such limitation to inhibit such rights based on the overall interest and wellbeing of the citizens.

### **E. The Challenges of Post Covid-19 Emerging Economy**

Some challenges in the economic sectors, that have been highlighted, as follows:

- 1) Indeed, labour or industrial law crisis while the covid-19 pandemic subsist and in the post covid-19 era, will lead to so many jobs losses. As most economic activities will have shrink or disappear thus the need to reinvent the wheel on how such businesses would be conducted going forward particularly that businesses are now ran virtually with few people doing the job that many people would have done with same result and less cost;
- 2) By the end of the pandemic there will be lots of post covid-19 multi billion naira's commercial legal tussles which will shape both the future of business activities and alter the commercial legal jurisprudence in the country and the globe as a whole;
- 3) By no little means this experience will reshape the health economy of both consumables and hardware's as well as countries preparedness/responses for such health challenges of monumental status, as a corollary create new billionaires dealing in health wares, cosumables or it may also leads to the fall of other billionaires;
- 4) The surge in the use and applications of digital economy in most sphares of economic, social and public lives, such as online retail and wholesale outlets or stores. There will also be an upsurge or high interest in the use of digital businesses and government i.e virtual meetings, e-conferences, as well as emails, WhatsApp's<sup>32</sup> while covi-19 last and even beyond given its cost implication and other advantages;
- 5) The rise in the use of tele-medicine, like digital surgical screens, lasers, robotics such as drones for deliveries and communications particularly at times like this when both local and international borders are locked down from the movement of both human, goods and services except essential service;
- 6) It will see the use of digital or virtual learning eg. eLearning at homes while covid-19 subsist and in schools in the aftermath of covid-19 such as uLessons, use of Kindle etc like what Canada is presently doing. This will indeed

<sup>30</sup> CFRN, (n 50)

<sup>31</sup> Quarantine Act (n 46)

<sup>32</sup> The National Judicial Council had e-virtual meeting on 22<sup>nd</sup> April, 2020, Nigeian Television Authority International News at 1600hours . 22/04/2020.

fastrack the revolution of making the digital economy a reality;

- 7) The cashless policy of the central bank of Nigeria, if implemented shall lead to reduction on cash transactions. This reduction on physical contact with cash (currency notes) will help to reduce not only the Covid-19 but any other diseases that may be or likely to be transmitted by body contact in future.

## F. Prospects or Alternative Steps

Individuals or organisations affected by Covid-19 outbreak in the performance of their services or contracts would be prioritising a quick resumption of normal business activities, and the actions they have taken now, which could either make that possible or impossible. If handled improperly, invocation of force majeure or the doctrine of frustration can lead to a breakdown in relationships and drawn-out litigation. One need to keep in mind the followings to make the best of the situation:

1. Careful review of the contract by legal practitioners – This is crucial for getting preliminary guidance as to whether the current circumstances are covered by the force majeure clause or if the Covid-19 outbreak has substantially impacted the performance of the services or contract.<sup>33</sup>
2. Compliance with notice requirements – Many force majeure clauses include stipulations as to the period during which the party invoking it must give notice (beginning from when they first became aware of the circumstances) and the particular mode (and evidence to be attached) of communicating the notice. It is crucial to comply with those

- provisions because failure could mean that the force majeure clause would be held not to have been properly invoked.
3. Steps to mitigate consequences – When it becomes clear that business activities will be impacted by the disruptions following the Covid-19 outbreak, it is imperative to explore alternative means of meeting contractual obligations. Taking these steps is a key consideration when courts are considering if a contract has truly been frustrated.
4. Evaluate the effects of the invocation (whether as the party invoking or receiving) on other contracts – Establishing how the halting of one contract will affect others is crucial for taking the appropriate remedial steps and pre-empting liability from any source. Businesses might also be able to obtain relief via insurance plans, so it is important to evaluate those options and comply with the claim requirements on time.<sup>34</sup>
5. Need to amend the constitution to provide clearly and unambiguously that the President and Governors can in situations like the current pandemic place restrictions on such fundamental human rights for a period at the first instance, after which to be reviewed by the Senate before it can be prolonged or extended to such further period. And in a Federation where the federating units are independent, the law should make appropriate provision to suit same.
6. The need to put to use e-governance and ensure digital economy in our daily lives or activities particularly in our economic activities and revenue generation.

<sup>33</sup> See S. 45 CFRN,1999

<sup>34</sup><https://www.nortonrosefulbright.com/en/knowledge/publications/b54cf723/force-majeure-hardship-clauses-and-frustration-in-english-law-contracts-amid-covid-19>.

## Conclusion

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The doctrines of frustration and force majeure enjoy judicial recognition in Nigeria, and in the light of the current circumstances, albeit to different degrees and with different requirements for proper application. The current global circumstances resulting from the outbreak of the novel coronavirus are likely to occasion breaches of contract across various industries, making the doctrines viable tools for businesses to consider in attempting mitigating business liabilities. Business must continue and at the end of the crisis, the businesses which will be in a stronger position will be those that took swift legal action to secure their interests. The lockdowns of human and business activities equally have a telling effect on the revenue fortunes of economies, consequently will affect development as well as impact on the quality of lives of Nigerians. Worst still that the people are grounded at home without food and or money, as an idle mind they say is the devil's workshop, this might increase the high wave of crime and again it is tempting to think whether such lock down isn't the best decision or should the government have done more in terms of providing palliatives to her citizens. Nigeria should learn from Rwanda and Canada whom have made a success in this regard.

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## QUOTE

The secret of change is to focus  
all of your energy, not on  
fighting the old, but on building  
the new.

**Socrates**