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UNSOLICITED EMAILS COMMUNICATIONS AND THE RIGHT TO PRIVACY IN NIGERIA:

A REVIEW OF THE CASE OF OMOTOLA FATHIAT QUADRI V. ZENITH BANK PLC SUIT NO: HCT/605/2021

LAGOS | ABUJA

BACKGROUND

An unsolicited email is an email communication sent to a recipient who has no prior relationship with the sender, and the recipient has not explicitly consented to receiving the communication. It can also mean that the recipient has previously sought to terminate the relationship, usually by instructing the sender not to send any more communications in the future. While unsolicited email has been a tool utilised by marketing companies for decades to attract more clients, the recent developments in data protection and privacy, coupled with the enactment of data protection laws such as the Nigerian Data Protection Regulation ("NDPR") 2019 may have addressed the concerns of the public with respect to unsolicited email communications.

In the case under review, the court considered whether the sending of unsolicited emails to the Applicant by the Respondent violates the right to privacy of the Applicant as provided for under

Section 37 of the Constitution of the Federal Republic of Nigeria, 1999.

BRIEF FACTS

The Applicant commenced this action by an Originating a Summons against the Respondent. The case was premised on the fact that from 16th February to 26th May 2021, she received over 300 unsolicited emails from the Respondent via her email address. The Applicant had no contractual relationship with the Respondent to warrant the sending of such unsolicited emails. The Applicant was not a customer of the Respondent Bank and never furnished the Respondent with her email address. The Applicant further claimed that she had no direct dealing with the Respondent and that the Respondent did not obtain her consent prior to sending the emails to her. As a result of the unsolicited emails, the Applicant claimed that her right to privacy guaranteed under Section 37 of the Constitution had been violated. Consequently, the Applicant sought the following:

1. **A declaration that the Respondent's unsolicited emails numbering over 300 from February 16, 2021, to May 26, 2021 to the Applicant's email address violated the Applicant's fundamental right to privacy guaranteed under Section 37 of the Constitution of the Federal Republic of Nigeria.**

2. **An injunction restraining the Respondent from further sending such unsolicited emails to the Applicant's**

email in any other manner infringing on the fundamental Rights of the Applicant.

3. **General Damages in the sum of ₦5,000,000.00 (Five Million Naira).**[1]

In response to the Originating Summons, the Respondent contended that the emails the Applicant received were due to the error of a customer who opened an account with the wrong email address. In its defense, the Respondent maintained that after receiving complaints from the Applicant's solicitor, the Respondent stopped sending email transaction alerts to the Applicant and contacted the customer to update her records. However, the Applicant continued receiving promotional advertisement emails because her email address was still registered on the bank's database. The Respondent maintained that the Respondent could not be held liable for breach of privacy for acting on information supplied by its customer. The issue for determination before the court was whether the unsolicited emails to the Applicant email address by the Respondent constitutes a gross violation of the Applicant's fundamental right to privacy as guaranteed under ***Section 37 of the Constitution***. The Court granted the Applicant's claims and also awarded damages in favor of the Applicant in the sum of **₦500,000 (Five Hundred Thousand Naira).**[2]

BASIS OF THE COURT'S DECISION

In arriving at its decision, the court relied on the provisions of ***Section 37 of the Constitution*** which provides that "***The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected***." The court further relied on the case of ***EMTS V. ENEYE***[3] where the Court of Appeal held that:

> ***"It is my view that by giving those unknown persons and organizations access to the respondent's Etisalat GSM phone number to send unsolicited text messages into it, amount to violation of the respondent's right to privacy guaranteed by Section 37 of the Constitution, which includes the right to the privacy of a personal's telephone line."***

Applying this to the facts of the case, the court held that the Respondent sent unsolicited emails to the Applicant without the Applicant's consent and that sending unsolicited emails amounts to a breach of the right to privacy of the Applicant. The court rejected the Respondent's argument that the Respondent was not liable as it was one of its customers who provided the Respondent with a wrong email address at the point of account opening which ultimately led to the unsolicited emails being sent to the Applicant and held that it was liable as it continued to send unsolicited promotional advertisement emails to the Applicant after the Applicant through her

[1] **Circa 10,870 USD**

[2] **Circa 1087 USD**

[3] **(2018) LPELR 46193 (CA)**

solicitors had written to the Respondent to stop sending unsolicited emails to the Applicant.

COMMENTARY

With the developments in the data protection regulations, businesses are advised to be cautious in sending unsolicited promotional emails to individuals. They are also advised to create a data protection compliance team to ensure they meet their obligations under the NDPR. One of the obligations of a data controller or processor under the NDPR as well as the Central Bank of Nigeria Consumer Protection Regulations, 2019 is to ensure that personal data being processed are kept accurate and updated, as the case may be.[4] Apart from complying with their obligations, data controllers and processors must also respect the rights of the data subjects regarding the processing of their personal data.

The rights of data subjects provided under NDPR include:

a. **The data subject has the right to request the controller to delete the data subject's personal data without delay, and the controller shall delete such personal data where: (i) the data subject objects to the processing and there are no overriding legitimate grounds for the processing; and (ii) the personal data have been unlawfully processed.**

b. **The data subject has the right to obtain from the controller restriction of processing where the accuracy of the personal data is contested by the data subject.**

Consequently, it is advised that such promotional emails be sent with caution and be in compliance with the NDPR. Businesses must remain mindful of the rights of data subjects, particularly their right to privacy.

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[4] **Section 2.1 of the NDPR and 5.4.6 of the Central Bank of Nigeria Consumer Protection Regulations, 2019**