

The Right of the Owner to Recover Possession of the Hired Goods from the Hirer under the Hire-Purchase Act, 1965: A Right in Existence or In Extinction

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Introduction

Hire -purchase trading system is one of the commonest methods by which traders, dealers and manufacturers grant extended credit to their customers.¹ While the growth and development of the system has been very rapid in countries like the United Kingdom, it has been rather slow in Nigeria due to several reasons.² This type of financing arrangement is more often treated by the ordinary man as a contract of sale in which the price is paid or payable by installments³. Before 1965, Hire-Purchase transactions in Nigeria were regulated by Common law principles⁴ which were mostly draconian and brutish against the hirer especially in the area of repossession of the hire-Purchase goods by the owner from the hirer⁵.

With the enactment of the Hire- Purchase Act in 1965⁶ however, the hirers now enjoy some respite as the provisions of the Act appear to lean in their favour.⁷ To this end, Section 9 of the Act provides some conditions that must be fulfilled before an owner can repossess the goods. Goods, for this purpose, mean any chattels personal other than things in action and money and also include motor vehicle which means mechanically propelled vehicle intended or adapted for use on roads or for use for agricultural purposes.⁸ The Act does not stop at merely stating conditions for recovery of possession of the goods; it also makes provisions for sanctions upon breach of relevant sections therein. Most of these penal provisions are contained in the Hire-Purchase Regulations of 1968. It is pertinent to note further that owing to the provision of section 1 of the Act dealing with transaction to which the Act applies, it can be said that hire-purchase in Nigeria is primarily governed by the Act and the principles of common law.⁹ . Section 1 of the Act provides as follows:

Subject to the provisions of section 19 of this Act, the provisions of this Act (other than the provisions relating to the control of advertisement) shall apply in relation to:

- (a) All hire-purchase agreements and credit-sale agreements (other than agreements in respect of motor vehicles) under which the hire-purchase price or total purchase price, as the case may be, does not exceed two thousand naira; and
- (b) All such agreements in respect of motor vehicles, irrespective of the hire-purchase price or total purchase price being agreements made after the commencement of this Act; and the expressions “hire-purchase agreement” and “credit-sale agreement” in the following provisions of this Act shall be construed accordingly.

¹ K.1 Igweike, *Hire Purchase*, 2nd ed., Lagos, Malthouse Press, 1999, 1.

² *Ibid.*

³ *Ibid.*

⁴ Modern hire- purchase first received judicial approval in the case of *Helby v. Matthews* [1895] A. C. 471.

⁵ See for instance the following cases: *Atere v. Dada Amao* (1957) WRNLR 1 76; *Animashaun v. CFAO* (1960) LLR 151

⁶ It must be noted that the Act had a prospective effect as it was made to take effect from 1st October, 1968. The Act was amended in 1970 by the Hire-Purchase (Amendment) Act of that year, However, the Act which was earlier contained in cap. 160 of the Laws of the Federation of Nigeria, 1990, is now contained in cap. H4, Laws of the Federation of Nigeria, 2004 although with no amendment other than that done in 1970.

⁷ K.1 Igweike *supra*, 8

⁸ See Section 20 of the Act.

⁹ K. I. Igweike, *supra*, 2.

The point being made here is that transactions which do not fall under the purview of the Act are not void thereby. They are valid and are still governed by common law principles. An owner can regain possession of the goods in two ways: by surrender by the hirer or by personal repossession of the goods by the owner. To the first, there are usually no qualms. The Act does not concern itself with such instances save for the provision in section 8 of the Act.¹⁰ To the second, however, the provisions of the Act are geared towards preventing the difficulties which hirers suffered under the common law arrangement where repossession was left to the whim and caprice of the owners.¹¹ The aim of this work is to analyse the relevant provisions of the Act as it relates to repossession of the hire-purchase goods by the owner and see whether this right of repossession still exists or not. The paper will also examine how far it protects the interest of the hirers if at all. The provisions of the Act relating to the powers of the courts will also be examined in this regard. The penal provisions of the Act as relates to hire- purchase transactions shall also come into focus.

Meaning and Nature of Hire-Purchase

The interpretation section¹² of the Act has defined hire-purchase to mean the bailment of goods in pursuance of an agreement under which the bailee may buy the goods or under which the property in the goods will or may pass to the bailee.

According to Igweike¹³ hire-purchase comprises agreement for the delivery of goods under which the recipient pays a small deposit to the owner of the goods while promising to pay certain sums as instalments, usually each month, in consideration of being granted possession and use of the goods and an option to purchase them after a stipulated period having paid stipulated total sum.

Okagbue, JCA's definition of hire-purchase in *Samuel Aro v. Joe Allen & Co. Ltd.*¹⁴ is also apposite. According to him:

essentially, a hire-purchase is a system whereby the owner of the goods lets them on line for periodic payments by the hirer upon an agreement that when a certain number of payments have been completed, the absolute property in the goods will pass to the hirer, but so however, that the hirer may return the goods at any time without any obligation to pay further balance of rent accruing after return; until the conditions have been fulfilled the property remains in the owner's possession.

In *Kasali A. Raimi v. Moshudi Funso Ogundana & 2 ors*¹⁵ the Supreme Court held that:

*In determining whether an agreement is a contract of hire or a contract of purchase the test is whether the hirer has an option of determining the contract. If he has, he is a hirer, if not, he is a purchaser.*¹⁶

In *Afrotec Technical Services (Nig) Ltd. V. MIA & Sons Ltd & Anor*¹⁷ the Supreme Court stated further that:

*In the hire-purchase transaction, there is no question of a sale coming into being unless and until the hirer exercises at the appropriate time the option to purchase the goods. Mixed in a hire-purchase transaction is a contract of hire and an option to purchase*¹⁸

It appears from the above definitions that for a transaction to qualify as hire-purchase, it must be such that possession of the goods is transferred by the owner to the hirer, with the owner retaining the property in the goods. That is, although the hirer is made to possess the goods, he cannot be regarded as the owner of the goods in law. Further, the hirer is in possession of the goods for the consideration of a price payable by an initial deposit followed by installments (usually monthly) at determined rates, with an option to purchase the goods at the end of the transaction.

¹⁰ Section 8 of the Act makes provisions for the rights of the hirer to determine a hire purchase agreement and the implication of the exercise of such rights.

¹¹ See for instance the case of *Atere v. Dada Amao, supra*.

¹² Section 20 of the Act.

¹³ *Supra*, p.9

¹⁴ [979] 2 FNR 292,295.

¹⁵ 1986) 3 NWLR (part 26) p97

¹⁶ *Ibid* at page 99

¹⁷ (2000) 15 NWLR (Pt 692) p730

¹⁸ *Ibid* at p. 741

It is settled that the definition of hire-purchase is strict. A transaction is not hire-purchase merely because it is so styled by the parties thereto. It must conform to the basic features of hire-purchase as envisaged by the Act and pronounced upon by the courts.¹⁹

It must be noted that it is possible to have two or more separate agreements, none of which constitutes a hire-purchase transaction on its own, between the same parties in respect of a particular goods operating as a single hire-purchase transaction. What is important is that the basic features of a hire-purchase transaction can be established taking the separate agreement as one. This is gleaned from section 20 of the Act which provides that:

where by virtue of two or more agreements, none of which by itself constitutes a hire-purchase agreement, there is a bailment of goods and either the bailee may buy the goods, or the property therein will or may pass to the bailee, the agreement shall be treated for the purpose of this Act as a single agreement made at the time when the last of the agreements was made.

As a commercial transaction, a hire-purchase contract has its distinguishing features which mark it out from other commercial transactions. These features include the following:²⁰

- a. It is a contract between the owner of the goods and the hirer, which by law must be in writing.²¹
- b. There is a bailment relationship between the owner of the goods and the hirer in which the owner is the bailor and the hirer is the bailee.
- c. The object of a hire-purchase is to ensure the property in the goods let on hire remains in the owner even though the owner parts with possession. From the inception of the transaction to the time the hirer exercises his option to purchase, the property in the goods remains in the owner. The hirer only gains property when and if he exercises his option to purchase the goods under the contract.²² Consequently, the hirer will be unable to pass good title to a third party, unless a bona fide purchaser for value without notice, during the continuance of the bailment. The hire purchase agreement confers on the hirer an option to purchase the goods or return same during the continuance of the contract.
- d. The hirer has the inalienable right to determine the agreement and return the goods to the owner. Any provision in the agreement which excludes or restricts this right is void and unenforceable.²³
- e. The hirer may elect to return the goods, or purchase them at the end of the transaction. This is known as the option to purchase which essentially distinguishes hire-purchase transactions from other forms of commercial transactions.²⁴

Repossession of Hire-Purchase Goods by the Owner

One of the basic policies of the Act which protects the hirer is that the Act restricts and regulates the right of the owner to repossess the hired goods from the hirer when he is in default of payment or otherwise in breach of the agreement²⁵. This the Act does in section 9. The Act does not seek to deprive the owner of his right of repossession. It only seeks to ensure that the right is not exercised whimsically and capriciously to the detriment of the hirer. Hitherto, the hirer was totally helpless as regards the owner's exercise of his right to repossess the goods. Under common law the hirer was at the 'crushing mercy' of the owner. Repossession can take two forms. This paper is, however, pre-occupied with repossession by the owner and not the voluntary delivery of possession to the owner by the hirer. The hire-purchase transactions in Nigeria are regulated by the Act and the common law principles. The rationale for this is not far-fetched. The Act makes provisions for transactions to which it applies. This is found in Section 1 as follows:

¹⁹ See *Helby v. Mathews, supra*; *G. B. Olivant & Co. v. Adesanya*, 19 NLR 73 @ 75; *Ameo v. Aiboge /1955-56] WRNLR, 121; J. Allen v. Adewale [192] 9NLR 11.*

²⁰ See generally, Igweike, Hire- Purchase, 10-12; Ofo, "Distinguishing Hire-Purchase" 4-6.

²¹ Section 2(1) of the Act.

²² See *Onofegwono v. Agunbiade* [unreported] High Court, Benin, Suit No. B/5/ 75. Cited in Igweike, Hire Purchase, 11.

²³ See Section 3(b) of the Act.

²⁴ See also Eric Okojie and Desmond O. Oriakhogba, *An Examination of Repossession by Owner and the Implication of Penalties in Hire-Purchase Transactions in Nigeria*. University of Benin Law Journal, (2014) Vol.15, No.1 (January—June) p.114-115.

²⁵ K. I. Igweike, *supra*, 8.

Subject to the provisions of section 19 of this Act, the provisions of this Act (other than the provisions relating to the control of advertisement) shall apply in relation to —

(a) All hire-purchase agreements and credit-sale agreements (other than agreements in respect of motor vehicles) under which the hire-purchase price or total purchase price, as the case may be, does not exceed two thousand naira; and

(b) All such agreements in respect of motor vehicles, irrespective of the hire-purchase price or total purchase price, being agreements made after the commencement of this Act; and the expressions “hire-purchase agreement” and “credit-sale agreement” in the following provisions of this Act shall be construed accordingly.

It is deductible from the foregoing that the Act applies in respect of hire-purchase agreements to: (a) transactions made after commencement of the Act over goods which purchase price does not exceed two thousand naira; transactions made after commencement of the Act in respect of motor vehicles regardless of the purchase price; transactions in respect of goods which, though not covered by section 1 of the Act, were made subject of any regulation made by the Minister pursuant to section 19 of the Act.²⁶ The Act will not be applicable to: (a) transactions made after the commencement of the Act in respect of goods which purchase price exceed two thousand naira other than motor vehicles; and (b) transactions made generally before commencement of the Act. In respect of these transactions, to which the Act does not apply, the common law principles will continue to apply to same. This is so in view of the fact that the Act does not render such transactions illegal or void. It only excludes them from its ambit.

According to Igweike:

The Act is designed to control not only hire-purchase but also credit sale transactions. It is not a codifying statute and does not set out to state substantially the whole of the law of hire-purchase. Although some rules of common law are extensively modified by its provisions, there is still a considerable area in which those rules still remain applicable. First, the Act was given original prospective effect being applicable only to hire-purchase agreements entered into on or after October, 1, 1968, the effective date, of the Act itself. The Act is not therefore exclusive and the common law rules relating to hire-purchase transactions and to contracts generally remain in force so far as they are not affected by the Act in relationship to agreement which fall outside its provisions....

The common law rules therefore still apply to cases falling outside the operation of the Act. These include all agreements which became effective before October 1, 1968 and those in relation to goods other than motor vehicles whose hire-purchase or total purchase price exceeds two thousand naira.

Invariably, all hire-purchase agreements contain express term providing a number of acts or events which if performed or occurred would enable the owner to recover possession of the goods.

Repossession of Hired Goods by the Owner at Common Law

Practically, every hire-purchase agreement contains a clause entitling the owner to repossess the goods on any breach by the hirer to pay an installment or to do so as provided in the agreement. At common law, the owner's right of repossession is absolute for the hirer's right under an agreement is entirely and exclusively dependent upon the terms of his agreement. These terms invariably put him in a very weak and precarious position for in the absence of any stipulation to the contrary, the owner may repossess the goods, without a court order, on any breach whatsoever by the hirer to pay an installment or to do so punctually.

The strict application of this common law often puts the hirer to great hardship and works against him in a number of ways. As made manifest in the case of *Atere v. Dada Amao*²⁷, there is the absence of a right accruing to the hirer to redeem the hired goods after a default in installment payments, even if this is in respect of the last installment and no matter how insignificant the sum involved is in relation to that already paid under the particular agreement. The situation is even worse for the hirer in that he remains also liable to pay the balance that has accrued at the time of repossession and the owner is not obliged to account to him for the excess should the owner decide to resell the repossessed goods.²⁸

²⁶ See, for example, section 13 of the Hire - purchase Regulations, 1968.

²⁷ *Supra*, in that case, the hirer had paid a total sum of E995 out of a total hire-purchase price of E1000 but defaulted in paying the last installment of E5. The owner nevertheless, was held entitled to repossess the goods.

²⁸ *Animashaun v.CFAO*, per Coker J.; *UDC (Nig)Ltd. v. Ladipo* (1971) 1 All NLR, 102.

Furthermore, subject to the terms of the particular agreement, the hirer may pay the agreed installment in advance but never in arrears. It is immaterial whether the particular payment is in respect of the first or the last installment. Failure to pay an installment on the agreed date constitutes a breach which entitles the owner to the exercise of his right of repossession.²⁹ Again, the hirer has no legal interest in the goods repossessed by the owner even when their subsequent sale may yield to the owner substantial surplus over and above the balance outstanding in the agreement.³⁰ The hirer's position is so helpless to the extent that if he defaults by wrongfully returning the goods before the expiration of the hired period, he may still remain liable to pay the rent for the entire hired period unless the owner elects to determine the agreement upon such default. He may also be liable to pay substantial amount as damages for the default.³¹

Repossession of Hired Goods by the Owner under the Act

The transfer of possession of the goods to the hirer is a fundamental feature of a hire-purchase transaction. The hirer must have possession of the goods. This is the reason while the Act defines hire-purchase as "bailment of goods".³² Furthermore, section 9 of the Act lays down very strict procedure to be observed by the owner before he can repossess goods that are subject matter of a hire-purchase agreement. Failure to comply with such procedure has severe consequences as provided for under Section 9 (2) of the Act which provides thus:

If an owner recovers possession of goods in contravention of subsection (1) of this section, the hire-purchase agreement, if not previously determined, shall determine and-

- (a) The hirer shall be released from all liability under the agreement and shall be entitled to recover from the owner in an action for money had and received all sums paid by the hirer under the agreement or under any security given by him in respect of the agreement; and*
- (b) Any guarantor shall be entitled to recover from the owner in an action for money had and received all sums paid by him under the contract of guarantee or under any security given by him in respect of that contract.*

Thus, the owner cannot repossess the goods unless pursuant to a court order.

A breach of the provision of Section 9(1) of the Act by the owner shall determine the agreement, if not previously determined, and (a) the hirer shall be released from all liability under the agreement and shall be entitled to recover from the owner in an action for money had and received all sums paid by the hirer under the agreement or under any security given by him in respect of the agreement; and (b) any guarantor shall be entitled to recover from the owner in an action for money had and received all sums paid by him under the contract of guarantee or under any security given him in respect of that contract.³³ Section 9 of the Hire-purchase Act 1965 seeks to protect the hirer from some of the rigors and hardships or harshness of common law rules without derogating from the legitimate rights of the owner. For some time, the legal position of the hirer in respect of the owner's right of repossession was considerably improved. However in 1970, due to abuses by the hirers and great lobbying by the hire-purchase business representatives the liability placed on the owner under the principal Act was somehow eased. Generally, however, the owner's right of repossession is now restricted. The right of the owner to recover possession of the goods is largely determined by the proportion of the total hire-purchase price paid or tendered by the hirer. Section 9 of the Act prohibits the owner from enforcing a right to repossess the goods otherwise than by action when "relevant proportion" of the hire-purchase price has been paid or tendered unless the hirer has himself terminated the agreement³⁴ Section 9 (1) of the Act provides:

Where goods have been let under a hire-purchase agreement and the relevant proportion of the hire-purchase price has been paid (whether in pursuance of a judgment or otherwise) or tendered by or on behalf of the hirer or any guarantor, the owner shall not enforce any right to recover possession of the goods from the hirer otherwise than by action and except as provided by subsection (5) of this section.

²⁹ Bentworth Finance Nig. Ltd. v. De Bank Transport Ltd [1968] 3 ALR Comm. 52.

³⁰ See D. O. Williams v. UAC Ltd [1937]13 NLR 134

³¹ See for instance, Lawrence v. Bent worth Finance [1966] NMLR 87 and Incar [Nig] Ltd.v. Elias Bus Transport Ltd. [1970] 2 All NLR 74.

³² See section 20 of the Act.

³³ Section 9(2) of the Act. See also Adesanya v. Balogun All ER 370. Note that by virtue of sub-section (3), sub-sections (1) and (2) do not apply in any case in which the hirer has determined the agreement or the bailment by virtue of any right vested in him.

³⁴ See Section 9(1) and (3) of the Hire-Purchase Act, 1965.

In order for the right of the owner to be restricted under Section 9(1) of the Act, the hirer must have paid what the Act calls “relevant proportion of the hire- purchase price”. This phrase is defined by sub-section (4) of the same section as meaning:

- (a) In the case of goods other than motor vehicle, one-half of the hire- purchase price.
- (b) In the case of motor vehicle three- fifths of the Hire -purchase price.³⁵

Once the relevant proportion is paid the owner can only recover possession by action. Failure to do this will lead to the determination of the hire-purchase agreement and the hirer or any guarantor can recover from the owner all sums already paid by them under the agreement without any deduction for any use of the goods they may have had³⁶. It must be noted that section 9 (5) of the Act gives the owner a limited right to repossess the motor vehicle even though the relevant proportion has been paid. This sub-section does not apply to other goods apart from motor vehicles and the sub-section is applicable only when three or more installments are due and unpaid. The question to be answered at this juncture is, is the right accrued to the owner under section 9(5) of the Act exercisable only after the owner has commenced proceedings in court or at any time?

Section 9(5) of the Hire-Purchase Act, 1965 provides:

In the application of the provisions of this section to motor- vehicles, where three or more installments of the hire-purchase price of a motor- vehicle under the agreement are due and unpaid, the owner may remove the motor-vehicle to any premises under his control for the purpose of protecting it from damage or depreciation and retain it there pending the determination of any action, and the owner shall be liable to the hirer for any damage or loss which may be caused by the removal.

It follows from the provision of section 9(5) of the Act that when the hirer has paid the relevant proportion of the hire-purchase price or more the owner, on the occurrence of a default may only recover possession of the goods by legal action. The word “action” is defined in section 20 (1) as including counter-claim and set-off. In *Tabansi Agencies Ltd v. Incan (Nig) Ltd*³⁷, the hirer paid the relevant proportion but fell into arrears with the first installment. On or about the 15th of June 1974 the owner repossessed the vehicle and commenced proceedings on the 27nd of June 1974 for possession and payment of arrears. The court held that the owner had not lawfully removed the vehicle under the sub-section as the proceeding had not actually been commenced at the date of the removal. The fairly recent decision of the Court of Appeal of Nigeria in the case of *Alhaji M. Salaudeen and Anor V. MR. Samuel Oladele*³⁸ on the interpretation of section 9(5) of the Hire-Purchase Act, 1965 has aroused some reactions and comments. In that case, the respondent took a Toyota Lite Ace Bus from the second appellant on hire-purchase in March 1997. He made a down payment of N 140,000 out of the total hire-purchase price of N260, 000. The respondent was to liquidate the balance of N 120, 000 by eight regular and consecutive monthly installments of N15, 000. After paying N195, 000 out of the total hire-purchase price (leaving a balance of 65,000) the respondent stopped payment. On 21/12/97 the agents of the 2nd appellant forcefully took the vehicle from the respondent. Consequent upon this, the respondent sued the appellants, claiming, inter alia, a declaration that the seizure of the vehicle by the agents of the appellants was illegal and wrongful. The trial court entered judgment for the respondent. The appellants not satisfied with this judgment, appealed to the Court of Appeal.

Unanimously allowing the appeal, the Court of Appeal, inter alia, held that:

By virtue of section 9(5) of the Hire-purchase (Amendment) Act, 1970, an owner does not need an order of court to repossess a vehicle when the hirer had paid 60% of the purchase price but only when he is in arrears for three installments. The sub-section was introduced by Decree 23 of 1970 to remedy the hardship on owners of hired vehicles, who, as the law stood, were unable to repossess the same from mischievous hirers who having contrived to pay three fifth of the hire-purchase price albeit with considerable difficulty and by irregular instalments even if in the breach of the provisions of the hire-purchase agreement deliberately embarked upon complete abuse and misuse of the hired vehicle, until he (the owner) could bring an application to court pursuant to the provisions of sub-section (1) of the section. In the instant case therefore, the seizure of the vehicle by the agents of the 2nd appellant was not wrong or illegal even though it was done without an order of court.

³⁵ See Section9(4) of the Act.

³⁶See section 9(2) of the Act

³⁷ C.C.H.C.J./7/74 p.923.

³⁸ (2003) 3 NWLR (part 806) p29

With the utmost respect to the learned justices of the Court of Appeal, due consideration has not been given to the clear and unambiguous provision of the latter part of section 9 (5) of the Act which states “Pending the determination of any action...” Section 9 (5) contemplates that a suit is pending before the court before the owner can exercise the right of repossession. The Court of Appeal in Oladele’s case above referred to and quoted copiously and vehemently from the Supreme Court’s case of *Andrew Ebohimi Omoijuanfor v. Nigerian Technical Company Ltd*³⁹ where the Supreme Court held, inter alia:

.....it is undoubtedly the intendment of the legislature by promulgating Decree No23 of the 1970 to remedy this situation and give the owner power to repossess and keep the same in a repair pending the intervention of the court under the provisions of section 9(1) of the principal Act. This we think is the *raison d’etre* of the Principal Act⁴⁰

The Supreme Court seemed to have employed mischief rule in interpreting the provision of section 9(5) of the Act in Ebohimi’s case. With due regard to the learned justices of the Supreme Court, the provision of section 9(5) of the Act is very clear and unambiguous. Similarly, no injustice will be occasioned against the owner if he has to maintain an action against the hirer before exercising the right of repossession. There is the need to further examine critically section 9 (5) of the Act which deals with interim repossession of the hire-purchase goods in case of motor vehicle.

Ordinarily and obviously, this subsection ought to constitute an exception to the general provisions of subsection (1) and it applies only to transactions involving motor-vehicles⁴¹, but some controversies still exist on the subsection. Scholars are not agreed on the issue whether an action need be instituted before the owner can exercise his right herein. According to Achike, pendency of an action in court is mandatory to ground a valid exercise of the owner’s right under section 9(5).⁴² Igweike is of the position, contrary to Achike’s, that the crucial words in the subsection are ‘any action’ and not ‘the action’. These, to him, are not suggestive of any particular action which a pending action presupposes but includes any action which may be instituted subsequently.⁴³ Ofo chose to maintain a middle course. He aligned with Achike but went further to contend that the subsection may be interpreted to include situations where the owner may recover possession but must bring an action within a reasonable time.⁴⁴

Since the judgement of the Supreme Court in Ebohimi’s case and that of the Court of Appeal in Oladele’s case, many scholars have been praying that the Supreme Court be afforded another opportunity to reconsider its previous position in Ebohimi’s case and overrule itself. That opportunity came on Friday, February 23, 2007 when the Court delivered its judgement in the case of *Civil Design Construction Nig. Limited v. SCOA Nigeria Limited*⁴⁵.

In that case, the plaintiff/appellant at first bought one Ingersoll oil well rig No. LA 2632 WD from the respondent under a hire purchase agreement for the sum of N431, 842.00 which he eventually paid for fully. In a second transaction between the parties the appellant bought oil well rigs No. LA 8509 WD under a similar agreement for the sum of N541, 482.00 but owed the respondent the outstanding balance of N100, 000.00 for it at the time a dispute arose.

In a third transaction between the parties, the appellant alleged that it bought two road scrapers and paid cash for them. It contended that the parties later agreed that the sums paid on the two road scrapers be merged and credited to the appellant on account of the purchase by the appellant on Hire Purchase terms of one new rig and two service rigs and that respondent later expressed its inability to implement the said agreement which made the appellant to instruct the respondent to sell the scrapers and make a refund to it of the purchase price for both scrapers.

³⁹ (1978) 1 All NLR (Pt.) 369

⁴⁰ Ibid at pages 372 —373 and 376

⁴¹ See section 20 of the Act for the definition of motor vehicle and the case of *Civil Design Construction Nig. Limited v. SCOA Nigeria Limited*, [2007] 2 S. C. N. J. P.252, where “water rig” was interpreted to mean a motor vehicle.

⁴² O. Achike, “Limits to the Right to Retake Possession of Goods Under hire-Purchase Agreements in Nigeria”, Nigerian Law Journal 13, No. 1(1987): 22

⁴³ Igweike, Hire- Purchase, 81.

⁴⁴ See Ofo, “Distinguishing hire-Purchase” 9-10

⁴⁵ [2007] 2 S. C. N. J. P.252.

The dispute between the parties arose over the seizure of the two rigs which the appellant acquired from the respondent under normal business transactions between the parties. The appellant claimed that the rigs were wrongly seized when they were sent to the respondent for repairs. As the plaintiff, the appellant sued the defendant at the High Court claiming a declaration that the seizure of the plaintiff's rigs was wrongful. It also claimed damages and in the alternative, an order directing an inquiry into the current market value of the seized rigs and an award of the said current value of the rigs.

The respondent counter-claimed against the appellant in a statement of defence in which it admitted that Rig No. LA 2632 WD belonged to the appellant but contended that the appellant sent the rig for repairs and used the same as security for outstanding liability for an alleged credit purchase of two additional scrappers which the appellant allegedly instructed the respondent to deliver in addition to the earlier two scrappers, to the Sokoto Agricultural Development Project. The Respondent also claimed N 100,000.00 outstanding installments. The respondent pleaded in paragraph 5 of its final amended statement of defence that it admitted that the plaintiff sent the rig pleaded in the statement of claim of the appellant to it for repairs. Its counsel nevertheless made submissions that were in conflict with this position and tendered documents aimed at supporting same.

The trial court found that the parties intended that the agreement between them should be governed by the Hire Purchase Act 1965 and that the second rig in question, that is, Rig No. LA 8509 WD is a motor vehicle and so could not be recovered or repossessed by the respondent without a court order when the appellant had paid 60% of the purchase price. The trial court found in favour of the appellant except for the claim of N 100,000.00 outstanding two installments on the second transaction which it awarded to the respondent. At the end, the trial court awarded ownership of rig No. LD 2632 WD to the cross appellant even though cross appellant never claimed such a relief in its counter-claim neither did it plead such a fact of ownership.

The respondent appealed to the Court of Appeal while the appellant cross appealed against the said decision of the trial court. The Court of Appeal made awards to both parties as follows:

1. "The plaintiff's claim in respect of rig No. LA 2632 WD succeeds and the plaintiff is awarded:
 - (a) The sum of N3, 300,000.00 as the market value of the rig at the date of judgment of the lower court.
 - (b) N560, 000.00 as damages for loss of income on the rig for 260 days at the rate of N 2,000.00 per day.
2. The claims of the plaintiff on rig no. LA 8509 WD are refused as the plaintiff did not show that a Rig is a motor vehicle within the meaning of section 1 of the Hire Purchase Act, Cap. 169.
3. The award of the sum of N319, 806.00 on the scrappers is affirmed; and this court sees no reason to award more than that amount.
4. On the counter claim by the defendant, judgment is given in favour of the defendant for the sum of N108, 324, 16 the breakdown of which is as follows:
 - a. N100, 000.00 being the unpaid balance of the purchase price due on the rig No. LA 8509 WD.
 - b. N8, 324.16 being cost of repairs and spare parts on the plaintiff's rig."

Both the High Court and the Court of Appeal found as a fact that the appellant's two road scrappers were delivered and sold by the respondent to SADP without the authority of the appellant and as such wrongful, and that the appellant's claim in respect of the scrappers succeeded. There was no appeal against this finding to the Supreme Court.

The appellant appealed to the Supreme Court and the respondent cross-appealed against the decision of the Court of Appeal. The Supreme Court allowed the appeal and dismissed the cross-appeal. The Court held, inter alia, that the owner cannot repossess the hired goods without an order of court. It declared, per W.S.N. Onnoghen, J.S.C.:

In the instant case it is not disputed that the respondent never obtained the leave of the court before seizing the rig in issue. In short, in either way, the respondent's seizure of the rig in question was in breach of contract and therefore condemnable. It is therefore clear, and I hereby hold that the respondent having seized rig No. LA 8509 WD in violation of the provisions of the Hire Purchase Act cannot recover the outstanding installment of N100, 000.00 and that the Court of Appeal erred in holding otherwise⁴⁶.

⁴⁶ See page 278 of the judgement.

This judgement of the Supreme Court has now laid to rest the above controversies among scholars on the interpretation of Section 9(5) of the Hire-Purchase Act. It is mandatory for the owner to institute an action against the hirer before he can exercise his right of repossession.

It must be noted, however, that although section 9 was enacted to afford hirers the protection from heartless owners which they had not at common law, subsection (2) thereof has been described by some scholars as an over-kill.⁴⁷ Ofo rightly argued that the subsection completely ignores the essence and structure of a hire-purchase agreement.⁴⁸ Making the owner liable to refund to the hirer previous installments paid in respect of the goods is to unduly confer some undeserved financial advantage on the hirer. Ofo submitted further that:

*The installments paid by the hirer were for the periods in which he had possession and use of the goods. That being the case, he had received value for the payment of the installments. Compelling the owner to refund the installments paid on account of a wrongful repossession of goods, the subject-matter of a hire-purchase agreement, cannot be said to meet the justice of the matter. It is exceedingly harsh, unduly disadvantageous and most certainly unsupportable. It may be argued that the essence of the provision is to compel owners to desist from such wrongful repossession of goods. Even then, it does seem to have gone too far. The hirer could be compensated by way of damages for wrongful repossession. The exact amount is subject to the circumstances of the case and the discretion of the court.*⁴⁹

Powers of the Court in Action for Recovery of Possession

Where a matter has come properly before a court pursuant to section 9(1) of the Act, section 10 thereof grants specific powers to the court which can be exercised before, during or after the hearing of the case.⁵⁰ Before the hearing of the suit, in addition to other powers, and upon the application of the owner, the court has the powers to make interim orders for the protection of the goods from damage or depreciation, restricting or prohibiting the use of the goods or giving directions as to the custody of the goods pending the final determination of the suit.⁵¹

At the hearing, without prejudice to any other powers conferred on the court by its rules, the court may make an order for the specific delivery of all the goods comprised in the agreement to the owner.⁵² Such an order would usually give no option to the hirer to pay the value of the goods.⁵³ The court may also make an order for the specific delivery of all goods to the owner but postpone⁵⁴ the operation of such order on the condition that the hirer or guarantor pays the unpaid balance of the hire purchase price in such installments as it thinks fit, provided the goods are in the hirer's possession or control at the time.⁵⁵

Another order the court may make at the hearing is an order for specific delivery of part of the goods to the owner and for the remainder to become the hire's property provided the hirer has paid the relevant proportion of the hire purchase price at the time. The court is precluded from making such an order unless it is satisfied that the amount which the hirer has paid in respect of the hire purchase price exceeds the price of that part of the goods by at least the relevant proportion of the unpaid balance of the hire purchase price.⁵⁶ By virtue of section 10(7), in making any of the foregoing orders, the court may also take into consideration any damages awarded to the owner for the purpose of computing the total amount paid by the hirer in respect of the hire purchase price.

⁴⁷ See, for example, N. Ofo, "Hire-Purchase Legislation in Nigeria: Making a Case for Reform", 3 available at <http://ssrn.com/abstract=1267665> (accessed on 25th September, 2015). For a comprehensive study of the nature of hire-purchase see N. Ofo, "Distinguishing Hire-Purchase Transactions From Other Commercial Transactions: The ten Ps' Test" in <http://ssrn.com/abstract=1267665> (accessed on 25th September, 2015).

⁴⁸ Ibid

⁴⁹ Ibid

⁵⁰ Ibid at 87; M. C. Okany, Nigerian Commercial Law, Onitsha, Africana-Fep, 1992, 540

⁵¹ Section 10 (3) of the Act.

⁵² Section 10(4) (a)

⁵³ Igweike, Hire Purchase, 47.

⁵⁴ See section 12 of the Act for the powers of the court to postpone the execution of an order for specific delivery. See also Okany, Nigerian Commercial Law, 542, where he said that "postponed order affords the court the opportunity of giving the hirer who has defaulted in making payments after he has paid the relevant proportion a second chance to make good the default"

⁵⁵ Section 10 (4) (b) and 10 (5)

⁵⁶ Section 10 (4) (c) and 10 (6)

Under section 13(1) of the Act, the court is given further powers in respect of payments arising on the termination of hire purchase contracts. Where the relevant proportion of the price has been paid or tendered, and the owner takes an action for recovery of the goods and at the same time makes a money claim under any minimum payment clause contained in the contract, the money claim shall not be entertained: (a) if the court orders specific delivery of a part of the goods to the owner and the transfer to the hirer of the owner's title to the remainder of the goods or (b) if the court postpones the operation of an order for specific delivery of the goods to the owner, unless and until the postponement is revoked. Finally, where the hirer has paid any money under the minimum payment clause and the owner subsequently takes action for the recovery of the goods, the owner may treat such payment as a payment towards the hire purchase price.⁵⁷

Recommendations and Conclusion

This paper has examined how and to what extent the Hire-Purchase Act of 1965, as amended, has waded in to protect the interest of the hirer in hire—purchase transactions in Nigeria particularly with regard to repossession of hired goods by the owner. The hirer, under common law, did not enjoy any protection on this score except as provided in the agreement. There is no doubt, however, that the provisions of the Act seem to be over protective of the hirers, The consequences of non compliance with the general provisions of section 9(1) by the owners tend to create an imbalance in the scale of justice in hire-purchase agreements. These are provided for in section 9(2) of the Act. Thus, it is hereby recommended that the said subsection (2) should be amended to remove the provision that makes it possible for the hirer to be entitled to all sums paid to the owner in the event of wrongful repossession.

Similarly, the monetary limit for goods, other than motor vehicles, the subject-matter of hire-purchase should be removed. There should be no limit for any goods let out on hire-purchase because this will constitute an impediment to commercial growth. Again, once the monetary limit for other goods has been done away with, section 9(5) of Act should be extended to other goods other than motor vehicles since the subsection is of great value in balancing the interests of the parties under the agreement. If the limit is removed, the owner will be able to undertake interim-repossession of other goods in particular hire-purchase transactions. This may, probably, change the opinion of some scholars who had dubbed the Hire-Purchase Act as the hirers' Act and unduly protective of the hirers.

⁵⁷ Section 13(2).