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BALANCING OWNER'S RIGHT AND HIRER'S PROTECTION: A STUDY OF SECTION 14 OF THE HIRE PURCHASE ACT AND ITS IMPLICATIONS ON HIRE PURCHASE AGREEMENT

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Abstract

The article examines the provisions of section 14(1-3) of the Hire Purchase Act Cap H4 LFN 2004 in Nigeria, highlighting its legal interpretation, and its impact on the right and obligation of parties in Hire-Purchase transactions. Through a critical examination of relevant case law and statutory provisions, this article provides insights into Section 14, stating the requirements for the owner to succeed in a claim for adverse possession which are that: the hirer must be in default of the terms of the agreement, the continual retention and possession of the goods must be against the owner's interest, the right to recover possession of the goods must have accrued, there must be a request for the hirer to surrender the goods and the request must be in writing. However section 9 of the HPA limits the application of section 14 of the Hire Purchase Act as where the hirer has paid a relevant proportion of the hire purchase price, the owner can only recover possession of the goods through an action in court. This could limit the owner's ability to recover possession of the goods especially if the hirer can demonstrate that he has been in possession of the goods. Implication of Section 14 is to the effect that if the hirer refuses to deliver up possession of the goods it is sufficient enough to ground the statutory cause of action in damages for adverse possession. This study underscores the limit of owner's property rights leading to a breach of section 44 of the Constitution[1], it may give the hirer an unintended advantage in disputes over ownership and possession of the hired goods. The study recommends that the right of owner to recover his goods and the right of hirer to protect his interest must be balanced. Specified time frames and mode for written requests should be provided for in the Hire Purchase Act and section 14 of the Hire Purchase Act should be reviewed to ensure it remains effective and fair addressing any unintended consequences that may arise.

Keywords: Adverse possession, owner, hirer, hire purchase agreement, hire purchase Act, conversion

1. Introduction

In the complex world of commercial law, the Hire Purchase Act serves as a vital tool governing the relationships between owners and hirers of goods. This legislation is not only crucial for protecting the rights of the owners but also for elucidating the obligations of hirers in a Hire Purchase agreement. Among the intricate provisions of this Act, Section 14 stands out for its role in facilitating the recovery of goods under hire purchase agreements. This study aims to provide an exposition of Section 14 of the Hire Purchase Act 2010 in Nigeria, elucidating its legal interpretations, implications, and its importance.

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[1]Section 44(1)(b)(2)(c)(e), of the Federal Republic of Nigeria 1999 (as amended). This provides for the right to own property. Where an owner is deprived of repossessing his property in an Hire Purchase transaction because he did not comply with section 14 or section 9 of the Hire Purchase Act Cap H 4 LFN 2004(herein after referred to as HPA 2004) it amounts to a breach of his constitutional right to own property.

2. Literature Review

Monye[2] discusses action for conversion in details in her work, stating that the court[3] will consider whether there was a positive wrongful act of dealing with the goods in a manner inconsistent with the owner's right and an intention in so doing to deny the owner rights to assert a right inconsistent with them. The author stated section 14 of the Hire Purchase Act. This study will state and identify the importance of section 14 of the Hire Purchase Act.

Okanny,[4] discussed adverse possession and conversion while explaining that a hirer in possession of goods under a hire purchase agreement is in adverse possession if the owner in any action to enforce a right of action to recover possession of the hired goods from the hirer proves that after his right to possess the goods accrued and before the commencement of the action he made a request to the hirer in writing to surrender the goods. Stating further that where the hirer defaults and a request for the return of the goods has been made in writing by the owner and the hirer refuses to deliver the goods, the owner will have a cause of action against the hirer for adverse possession. The purpose of this section in his opinion is that the owner will succeed against the hirer in an action for adverse possession and damages awarded against the hirer. This research will explain in details adverse possession and identify its importance in a hire purchase transaction.

Ajobo in his book[5] compared the owner's right to repossession in a hire purchase transaction under common law and under the Hire Purchase Act. Under the common law, the owner's right of repossession in the hire purchase agreement is absolute but the hirer's right is entirely and exclusive dependent upon the terms of his agreement. The writer notes among other observations that the right of repossession under common law is usually abused by the owner as the owner can repossess the goods without a court order, or without any breach by the hirer, even in instance where the hirer has paid a substantial portion of the hire purchase price. The situation is even worse as the hirer is also entitled to pay the balance sum after the goods has being repossessed by the owner. However, under the Hire Purchase Act 2004 the hirer's obligation to return the goods where he defaults in the agreement, is restricted by section 9 and 10 of the Act. This is because the hirer is in lawful custody of the goods. So even when the hirer defaults and the owner intends to recover the goods he must comply strictly with section 9 and 10 of the Hire Purchase Act. In effect, section 9(1) of the HPA provides that where a relevant proportion of the hired purchase price has been paid, the only way the owner can repossess his goods is by an action in court except the hirer has determined the agreement by his right. This research will throw more light on conversion and adverse possession in hire purchase contract.

3. The Essence of Hire Purchase Agreements in Nigeria

Before delving into the specifics of Section 14 of the Hire Purchase Act, it is essential to understand the nature of hire purchase agreements. Hire purchase agreement is an agreement between two people called the owner and the hirer, whereby they enter into a contract with certain condition of purchasing good usually called the hired goods, of which the purchase price is paid by installment and the good is passed from the owner to the hirer after the purchase price has been paid in full or the goods is returned. The relationship is however regulated by a hire purchase agreement, which provides terms and conditions for the regulation of the relationship. Typically, hire purchase contracts are arrangements where a person (the hirer) can use goods without immediately paying the full purchase price. Instead, they pay in installments, with the ownership transferring to the hirer upon the final payment. This system can be particularly beneficial for individuals and businesses that may not have the immediate capital to acquire certain goods outrightly. However, it also creates a legal framework wherein disputes could arise regarding ownership and possession.

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[2] F Monye, Commercial *Law in Nigeria Hire Purchase and Equipment Leasing* (Princton and Associate Publishing Company Limited 2003) 85-103.
[3] *Civil Design Construction (Nig) Ltd v. SCOA (Nig) Ltd. (*2007) 6 NWLR Pt 1030 300 SC, (2007) LPELR 870 SC.
[4] M C Okanny, Nigerian *Commercial Law.* (Africana Feb-P Publishers Limited. 2001). 709.
[5] E E Alobo, *Commercial Law and Practice (*Princeton and Associate Publishing Co. Ltd 2021) *300-305.*

At common law hire purchase agreement is an agreement between an owner and a hirer whereby the owner transfers the hired goods to the hirer for an agreed payment usually done periodically with the condition that the hirer may either buy or return the goods at the end of the period.[6]This definition is restrictive when compared to that provided in the Hire Purchase Act[7]. Section 20 of the Hire Purchase Act[8] defines hire purchase as the bailment of goods in pursuance of agreement under which the bailee may buy the goods or under which the property in the goods will or may pass to the bailee. This statutory definition is wider in scope than that defined in common law. Under the Act, there is no option to purchase or return the goods.

Ejabo[9] defines hire purchase contract as an agreement where the possession of goods is delivered by the owner to the hirer who agrees to make payments periodically with an option of buying the goods after the agreed installments have all been paid. He explained further that hire purchase agreement is a consumer credit transaction in which the owner of a moveable goods agrees to handover such goods to another person called the hirer on terms that the hirer will use the goods and make monthly installment payments to the owner at the end, the hirer choose to return the goods to the owner or exercise the option to purchase the goods after paying the last installment or the option fee.

The court[10] have defined hire purchase as a system where the owner of goods lets them on Hire 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 Hire Purchase Agreement, the hirer has the option of purchasing the hired goods after he has completed the installment payments.[11] Title or ownership remains in the owner all through the period of Hire Purchase until the hirer pays the final installment.[12]

4. The Legal Framework of Section 14, the Adverse Possession Principle

Where in any action by an owner of goods which have been let under a hire purchase agreement to enforce a right to recover possession of the goods from the hirer, the owner proves that before the commencement of the action and after the right to recover possession of the goods accrued, the owner made a request in writing to the hirer to surrender the goods, the hirer's possession of the goods shall, for the purposes of the owner's claim to recover possession of them be deemed to be adverse to the owner.[13]

Section 14 of the Hire Purchase Act delineates the conditions under which an owner of goods can reclaim possession of their goods from the hirer in a hire purchase transaction. Specifically, it is to the effect that when an owner takes legal action to retrieve goods, they must demonstrate that they requested the hirer, in writing, to surrender the goods before commencing such action. In essence, the section underscores the importance of communication between the owner and the hirer. Should the owner fail to make a written request for surrender, the legal interpretation is that the hirer's possession of the goods is deemed adverse to the owner's claim. Such a stipulation emphasizes the

[6] See O Yerokun, O. *Nigerian Revenue Project Publication. (*Princeton & Associates Publishing Lagos 2015) 694.
[7] Cap H4 LFN 2004
[8] Section 20 HPA 2004.
[9] E E Alobo, *Bussiness Law and Practice (*Princeton and Associate Publishing Co. Ltd 2022).724
[10] *Samuel Aro v. Joe Allen and Co Ltd* (1979) 2 FNR 292 295.
[11] *Afrotec Technical Services (Nig) Ltd v. MIA&Sons Ltd & Anor*. (2002) 15 NWLR (Pt 692)730.
[12] *Arab v. J Allen Ltd* (1996) 2 ALR COMM. 73.
[13] Section 14(1) HPA 2004.

necessity for owners to exercise their rights judiciously and transparently, ensuring that they cannot simply repossess goods without due process.

In the context of Hire Purchase Agreement, this section concerns the owner's right to recover possession of the hired goods from the hirer and the refusal of the hirer to return the goods and which can be deemed adverse to the owner's right. This section can be summarized as follows:
A hirer who is in default of payment of the installment sum or in breach of the terms of the agreement in the contract is required to return the goods to the owner, after the owner must have requested the goods from the hirer.

1. The hirer must be in default of the terms of the agreement.
2. The continuous retention and possession of the goods by the hirer is against the owner's interest.
3. The right to recover possession of the goods must have accrued.
4. There must be a request for the hirer to surrender the goods.
5. The request must be in writing.
6. The request must be before the commencement of an action.

Thus a hirer in possession of goods under a hire purchase contract is deemed to be in adverse possession if the owner can show that he demanded for the goods from the hirer after his right to possession has accrued and the demand for the goods was made before an action in court was commenced.

Under a Hire purchase agreement, the hirer takes possession of the goods, ownership of the goods lies with the owner. It is not until the hirer fulfills his obligation of the agreement and pays in full the installment payment that the ownership of the goods passes to the hirer. Although the hirer may be in lawful possession of the goods, his possession of the goods is not adverse to the owner; this is because the contract between the hirer and the owner is regulated by a hire purchase agreement. However, where the hirer defaults in his installments payment even though he is in lawful possession, the owner of the hired goods has a right to repossess the goods. Thus, the hirer may be protected by the law but the owner can still possess the hired goods even when the hirer defaults in payment, or any breach occurs on the part of the hirer. Section 14(2) of the HPA 2004 gives the owner the right to claim for damages for conversion. Subsection (3) has however restricted the owner's right to sue for conversion as the mere refusal of the hirer to return the goods does not make him liable to conversion. There must be an act on the part of the hirer which must be inconsistent with the title of the owner.

4.1 The Owner's Right to Recover Possession and the Hirer's Liability for Conversion

Section 9 of the Act[14] serves as a shield to the hirer in lawful possession of the goods as he would not be liable in conversion if an action be brought by the owner against the hirer. Where the hirer has paid a relevant proportion of the hire purchase price the owner can only recover possession of the goods through an action in court. This places restriction on the recovery of the goods by the owner. The implication of this is that the Hire Purchase Act provides protection for hirers by limiting the owner's ability to recover possession of the goods without a court order. Section 9 restricts the owner to the extent that where the relevant proportion has been paid or tendered by the hirer or any guarantor, the owner shall not be entitled to recover the goods from the hirer except by an action and also except as provided in subsection (5). It follows from the foregoing provisions that if a hirer has paid the relevant proportion of the hire purchase price, the owner cannot retake possession of the goods without recourse to the court. This contrast the common law position which entitles the owner to retake possession upon breach by the hirer irrespective of the amount of the hire purchase price outstanding. This position was upheld in *Onoinjuanfo* v *Nigerian Technical Co*.

[14] Section 9 of the HPA 2004.

Ltd,[15] where the court held that notwithstanding the payment of the three-fifths of the purchase price the owner of a vehicle has the authority to repossess the vehicle if there is default in payment of three installments. In *Atere v Amao,*[16] a motor lorry which was on hire purchase contract for a price of J1000 was entered into. The hirer had paid the sum of L995 and defaulted in paying the final sum of J5. The court held that the repossession of the lorry by the owner was lawful.

Under the hire purchase Act, the only option open to the owner to repossess his goods where there is an outstanding, and a relevant proportion of the hire purchase price has been paid is to institute an action in court against the hirer for repossession of the goods.[17] In the case of *CDC v (Nig) Ltdv. SCOA (Nig) Ltd.*[18]where the respondents seized the rig under a hire purchase contract from the appellants after they had paid a relevant proportion of the hire purchase price, the Supreme Court noted that the appellants had paid 3/5 of the hire purchase price as required by section 9(1) consequently the respondents were not entitled to recover possession except by an action in court.

5. The Implication of Section 14(1-3)

1. This section emphasizes the need for the hirer and the owner to understand their obligations in the High Purchase Agreement.
2. It creates potential route for the owner to gain ownership of his property having fulfilled the legal criteria.
3. By this provision owners shall be required to provide timely and accurate disclosure of their intentions and concerns with the purpose of promoting fairness and mitigating the risk of disputes.
4. The statutory notice of writing and requesting for the return of the goods is necessary for the purpose of circumventing the difficulty posed by the earlier lawful holding.[19]
5. If the hirer refuses to deliver up possession of the goods his possession will be regarded as adverse sufficient enough to ground the statutory cause of action in damages for adverse possession.
6. It serves to protect the hirer from arbitrary repossession, which could lead to significant financial harm or loss of business operations.
7. Failing to provide a written request for surrender could mean that their claim to the goods is unenforceable in court. This situation may lead to frustration, especially in instances where the hirer is in default of payment or has otherwise breached the hire purchase agreement.
8. On the other hand, hirers benefit from this stipulation as it grants them a semblance of security regarding their possession of the goods. Should a dispute arise, they can point to the absence of a written request from the owner to bolster their position in negotiations or legal proceedings.

6. Observations.

Section 14 creates a presumption of adverse possession against the hirer once the owner has made a written request to the owner. This could limit the owner's ability to recover possession of the goods especially if the hirer can demonstrate that he has been in possession of the goods.

i. it may give hirer an unintended advantage in disputes over possession in effect hirer can exploit this provision to retain possession of the hired goods even if they are in default. This can result in the owner facing financial losses and difficulty in enforcing their right to recover possession.

[15]*Onoinjuanfo v. Nigerian Technical Co. Ltd* (1976) 4 SC53.
[16] This common law position caused hardship and were injustice on the hirer. See Alobo *Commercial Law and Practice* 301-302.
[17] F Monye, Commercial *Law in Nigeria- Hire Purchase and Equipment Leasing. (Princeton & Associates Publishing Co Ltd.* 2023*)91.*
[18] [2007] 6NWLR (Pt 1030) 300 SC (2007) LPELR-870 (SC).
[19] M C Okanny, *Nigerian Commercial Law (*Africana-Fep Publishers Limited 2001) 709.

ii. This section limits owner's property rights breaching section 38 of the Constitution, as it implies that the hirer's possession even after default is legitimate, especially where a request for surrender of the goods has been made. Thus, it restricts the owner's ability to recover the hired goods even where the hirer is in default.
iii. This section leads to disputes over the ownership and control of the hired goods creating conflicts between the owner and the hirer.
iv. This section limits the owner's ability to recover the goods even when the hirer is in default.

8. Conclusion

Section 14 of the Hire Purchase Act in Nigeria plays an instrumental role in defining the interactions between owners and hirers of goods. By mandating a written request for surrender before owners can reclaim possession, the Act ensures that hirers are afforded a layer of protection against arbitrary repossession. This provision not only facilitates transparent communication but also instills a sense of fairness within commercial transactions.

As the complexities surrounding hire purchase agreements evolve, it remains vital for both owners and hirers to fully understand their rights and obligations under the law. Legal guidance may be necessary to navigate these relationships effectively, particularly in instances of dispute. Ultimately, a balanced interpretation of Section 14, coupled with ongoing discussions around potential reforms, will ensure that the objectives of the Hire Purchase Act are met, fostering trust and equity within the Nigerian commercial landscape.

7. Recommendations

i. The right of owners to recover their goods and the right of hirers to protect their interest must be balanced.
ii. Specify time frames and mode for written requests. The stipulation for a written request raises questions about what constitutes adequate communication. It is essential for such requests to be unambiguous and explicitly state that the owner seeks the surrender of the goods. More so, the time frame for a written request must be included in section 14 of the Act and ensuring that owners act and comply strictly with it and hirers are aware of their Obligations.
iii. A review of section 14 to ensure it remains effective and fair addressing any unintended consequences that may arise.

Moreover, the verification of whether such a request was received can also be contentious. Should a hirer claim they did not receive the request; the burden may fall on the owner to prove that the written communication was sent and received properly. This aspect underlines the importance of maintaining records and employing reliable communication methods.