

## Legal Issues Concerning Food Poisoning in Nigeria: The need for Judicial and Statutory Response

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### ABSTRACT

Food is essential to man's existence, giving the popular saying that a healthy feeding often determines a healthy living of an individual. However, it has been observed that given the high rate of food insecurity in Nigeria, it has resulted to a high influx of numerous food producers producing substandard products or food that could cause food poisoning. Given this, the study made use of a doctrinal and non-doctrinal method of research method in examining the causes and dangers of food poisoning in Nigeria, how effective statutory laws are, and judicial attitude towards cases of food poisoning. The study adopted an online survey questionnaire distributed to 347 respondents (randomly selected) living in various states in Nigeria. Analytical and descriptive statistics were used to analyze data generated from the online questionnaire. The study, therefore, found that most Nigerians have suffered from food poisoning arising from poor processing, storage, and preservation of harmful substances. It was therefore concluded and recommended that, there is a need for statutory response and judicial activism in curtailing the sale of food that could cause food poisoning. Furthermore, food inspector agencies should often conduct routine inspections of public and private food processing factories or vendors.

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### 1. Introduction

There is no doubt that food is essential to all living things within the global environment (Ukhurebor & Aidonojie, 2021, p. 3; Setianingrum & Hawin, 2021, p. 197). A nation without an adequate and quality food supply often faces a severe health crisis and a breakdown of law (Eziri, 2018, p. 108). Nigeria, which is regarded as a giant of Africa, was known worldwide in the eighteenth and nineteenth centuries as a country that engages in major agriculture (Azam & Harianto, 2020, p. 234). However, the twenty and twenty-first century has witnessed a drastic reduction and shortage of food production (Anisah, 2020, p. 109). The shortage of production has led to food insecurity, thereby leading to the high demand for foods by its citizens (Ukwueze, 2019, p. 148). In bidding of satisfying the dire need of the citizens of Nigeria in food production has led to an

influx of numerous food manufacturers and vendors involved in unethical production (Ekanem, 2011, p. 36-37), supply, and sale of food that could be poisonous and harmful to the health of man (Oni-Ojo, 2014, p. 38).

Although, it is the position of the law, as recognized by the law of most countries (Nuruddeen, & Abdullah, 2017, p. 83; Santoso, 2020, p. 67-68), that a food manufacturer or a food vendor must exact duty of care in ensuring that his product is safe for consumption and does not cause harm to the consumer. In this regard, the law will hold a food manufacturer or a producer or a food vendor liable if its product causes food poisoning or allergies to a consumer (Ofuani et al., 2015, p. 11-12). However, it suffices to state that although there are statutory provisions of the Nigerian laws that tend to mitigate and prohibit the production, distribution, and sale of products or foods that could cause food poisoning and are harmful to man (Ugbe et al. 2020, p. 18). There are still high incidences of food poisoning arising from poor food processing, adulterated products, and toxic substances in food preservation (Ndu & Asiegbu, 2021, p. 79). Furthermore, an improper and poor storage facility that could contaminate, deteriorates, and leads to the loss of active constituents in most food is also one of the reasons for food poisoning (Onyeaka et al., 2021, p. 78).

Given the above, this study tends to embark on a doctrinal and non-doctrinal examination of the Causes of food poisoning in Nigeria, the relevant and effective statutory response to cases of food poisoning, and Judicial attitude towards cases of food poisoning. The study will also briefly examine judicial attitude towards cases of food poisoning in England and some states in America. Furthermore, the study will also suggest recommendations for ensuring quality food production, distribution, and sales.

## **2. Method**

The study will focus on examining the dangers and causes of food poisoning and the effectiveness of the relevant laws and judicial responses to cases of food poisoning in Nigeria. However, the researchers used a hybrid method of research, which includes doctrinal and non-doctrinal research methods. The essence of adopting the doctrinal strategy is aimed at enabling the researchers to examine primary sources of legal authorities, which include the following; statutory laws as they relate to the regulation of food production and judicial authorities in ascertain how judges react to cases of food poisoning. Also, the study made use of secondary sources of authority such as; articles in a journal, textbooks, and other relevant materials.

However, the non-doctrinal method was also adopted by the researchers to enable us to collate extensive data with the use of online (goggle form due to the Covid19 pandemic social distance) questionnaire surveys. An analytical and descriptive approach was used by the researchers to mathematically, numerically, and statistically analyse the data collected through the online survey questionnaire. The use of the non-doctrinal research method enables researchers to empirically ascertain and examine the level of cases of poisoning in Nigeria, its causes, and if there is a need for government to take a proactive legal step in curbing the constant rate of food poisoning. Furthermore, it will also enable the researchers to arrive at a possible solution from the respondents on what legal tactic government needs to use in curbing the high rate of food poisoning.

### 3. Discussion and Analysis

#### 3.1. Conceptualizing Food Poisoning and its Dangers

Food is a substance made up of protein, carbohydrate, fat, mineral, and waters in varying quantities required to sustain growth and vital metabolic processes (Elechi & Eke, 2021, p. 34). A food product can be sourced from a plant as well as an animal. However, food products from plants and animals could be life-threatening if not properly prepared, processed, and adopt good manufacturing practices (GMP'S) (Ifiora et al., 2020, p. 23). In this regard, an improperly processed and preserved food product could lead to food poisoning (Nwosu et al., 2020, p. 42).

Food poisoning or allergy is an undesirable change in food caused primarily by micro-organisms, the presence of a physical or chemical hazard that poses harm that could cause harm to a consumer (Loir et al., 2003, 65). Food poisoning can be grouped into the following;

- a. Food Infections: This occurs when a disease-causing organism is carried to a host (man) through an infested food (Meng, 2011, p. 28). The organism multiplies in the intestinal tract of the host and therefore causes the host to suffer from several forms of diseases that could deteriorate the health of the host
- b. Food Intoxication: Can occur as a result of prolonged growth of a disease-causing organism in a food that is not adequately processed and preserved, which eventually produces toxic substances or chemical in the food (Jovanovic, 2021, 3720). In this regard, consumption of such food containing toxic chemicals or substances could result in food poisoning.

Concerning the above, food poisoning could occur in an industrialized setting if proper food processing and preservation are given adequate consideration. This is concerning the fact that infested or contaminated raw material use for food products would undoubtedly affect the value of the finished product, which could cause food poisoning to the consumer (Cowden, 2000, p. 329).

Furthermore, it must be noted that the dangers of food poisoning can also be seen from the impact it often has on individual health and wellbeing (Gunawan and Irrynta, 2022, p. 16-17). However, a consumer who consumes food products that could cause food poisoning could suffer from any of the dangerous diseases;

- a. Botulism; b. Cholera; c. Salmonellosis; d. Vibriosis; e. Bacillary Dysentery;
- f. Listeria; g. Norovirus; h. Campylobacter

Given the above diseases an individual could suffer from food poisoning, it suffices to state that the following common health symptoms could arise from conditions suffered from food poisoning, and they include;

- a. Fatigue; b. Abdominal pain; c. Fever; d. Vomiting; e. Diarrhea; f. Extreme physical weakness; g. Diarrhea with bloodstain; h. Dehydration

Given the above conceptualization of food poisoning and identification of some dangers caused by food poisoning, it has necessitated a call for legal concern to curtail the rate of food poisoning.

### 3.2. Judicial Responses to Food Poisoning in England and Some State in America

Over the years, there have been several English legislation that imposes liability for the supply of food or product that can cause allergies or food poisoning. Some of these English Legislations are; The Adulteration of Food and Drugs Act 1872; the Sales of Goods Act 1984; The Food Act 1984; the consumer Arbitration Agreements Act 1988, the Consumer Protection Act 1987, etc.

However, it is the law that a manufacturer or producer of a product has the responsibility to make that their goods or product is safe for consumption by the consumer. Where the product is defective and causes food poisoning or allergies to a consumer, it is the law that the manufacturer will be held liable in negligence for breaching his duty of care. This principle of law was laid down in the *locus classicus* case of *Donoghue v. Stevenson (1932) AC 562 at 599*; in this case, the plaintiff became severely sick after drinking a ginger beer his friend bought from a restaurant. Inside the beer decomposed remains of a snail was found, it is in this regard that Lord James Atkin stated that, a person who is regarded as a producer, who produces goods or products with the intention of selling its products to consumer for consumption, owes the consumer a duty of reasonable care preparing and examining such products in preventing any resultant effect that may be injurious or cause allergies to the consumer's life. The court further established the following principles in proving a case of food poisoning which are;

- a. That the onus of proof of food poisoning is on the injured party
- b. The injured party must established by expert laboratory evidence the presence of the defect in the product
- c. That the injured party must prove that the defect which causes the allergies or injury was present in the product when it left the party whom he sues
- d. That the carelessness of the party occasioned the defect in the product

Furthermore, the courts in England, in most instances, also require a producer who intends to disproof a claim of negligence to establish that a reasonable standard of care had been taken in ensuring that his product is safe for consumption. In *Daniels V. White & Sons (1938) 4 All E.R. 258*, manufacturers had to lay laboratory evidence that carbolic acid in their lemonade was not due to a lack of duty of care on the part of the manufacturer, which was accepted by the court. It was the judgment of the court that since the manufacturer was able to lay evidence as to their method of cleaning, washing, and filling bottles. Then the manufacturer had taken reasonable care to ensure that their product is not defective.

There are circumstances where a product had an inherent defect that could cause food poisoning or allergies to some consumers. It is the responsibility of a manufacturer to give sufficient and reasonable warning to the consumer of the inherent defect of the product that could cause allergies to some certain consumer when being consumed. In the case of *Grant v. Australian Knitting Mills (1936) AC 85*, the court held that a manufacturer would be held liable where he fails to give reasonable warning of the inherent defect on the products distributed to the consumer. However, in *Herschtal v Stewart (1940) 1 KB 155*, the English court stated that the test upon which a producer can escape liability on his defective product is when his product had within it a reasonable and sufficient warning that reveals the defect.

However, in the United States of America, the court had also emphasized the fact that when establishing or discrediting a case of food poisoning, evidence of a laboratory expert and layperson evidence is sufficient. In the case of *Marvin McCurley and Ellipse McCurley V. West Quality Food Service d/b/a Kentucky Fried Chicken* (1996) 960 S.W. 2d 585, in this case, the appellant appeal against the dismissal of their case at the trial court and Court of Appeal at Tennessee, a state in the United States. The appellant's case was that he consumed a piece of bacon in the morning and, in the afternoon, bought fried chicken from the Respondent (West Quality Food Services, Kentucky Fried Chicken). After consuming the chicken, he had a stomachache, which cause was a trace of food poisoning. In establishing his case, he called his wife to give evidence. His wife's evidence was further corroborated by Dr. Young's testimony that the Appellant was treated for food poisoning after a laboratory test on the feces of the Appellant reveals food poisoning caused by a bacterial. He further stated that food poisoning could be traced to improperly cooked poultry products that were contaminated by campylobacter.

The trial court and Court of Appeal dismissed the Appellant case on the ground that the Appellant did not lead evidence as to expert laboratory test on the bacon consume by the Appellant and the fried chicken he later ate. The court said that the essence of the specialist laboratory evidence is to reveal whether it was the bacon or the chicken that was affected by the bacteria. Given the trial court and the Court of Appeal decision, the courts were key on the fact that laboratory tests on the bacon and chicken would have ruled out other possible traces of bacteria that causes the Appellant food poisoning. However, the Supreme Court of Tennessee overruled the trial court and the Court of Appeal decision. The Supreme Court held that the causation of food poisoning cases could be substantiated by expert evidence and layperson evidence. The court further stated that the reason for overruling the trial court and the Court of Appeal decision is as a result of the fact that the respondent did not discredit the claim of the Appellant's Doctor evidence by expert laboratory evidence that their chickens are free from bacteria.

### **3.3. Statutory and Judicial Response concerning Food Poisoning in Nigeria**

The above position of the law England has been given judicial notice in several cases and statutory recognition in Nigeria. Some of these statutory laws that prohibit food product that causes food allergies or poisoning are; the Consumer Protection Council Act 1992; the National Agency for Food and Drugs Administration and Control (NAFDAC) Act, 1993; the Counterfeit and Fake Drugs and Unwholesome Processed Foods (Miscellaneous Provisions) Act 1999 and Pre-packaged Food (Labeling) Regulations. The above laws had several statutory provisions that ensure the producer is held liable for producing any defective product that can cause food poisoning.

However, irrespective of the above law that seems to protect the consumer against harmful food or product, cases that often comes before the Nigerian courts often involve food poisoning or allergies as a result of foreign bodies found in drinks. It is required by law that when instituting an action against a producer whose product contains foreign bodies, the negligence of the producer must be established before they can be held liable. In the case of *Osemobor v Niger Biscuit Co. (1973) NCLR 382*, in this case, the plaintiff bought a biscuit produced by Niger Biscuit Company. Upon consumption, he found a human tooth that had decayed. However, the plaintiff was unable to lead evidence that it was due to the defendant's negligence that led to the presence of a human tooth in the

biscuit. The court dismisses the suit as there was no credible evidence that the human tooth found in the biscuit was caused by the defendant's negligence.

Given the above cases, in proving negligence of the producer with regard to food or product that contain foreign bodies that can easily cause allergies, the court often lay emphasis on the degree of possible interference of the product either by the defendant or a third party. In this regard, if a plaintiff is unable to prove that the product that causes him allergy or food poisoning was not interfered with by any party. That the product is in the form in which it left the producer, the court will not hold the defendant liable in negligence. This position of the law was given judicial recognition by Oguntoye in the case of *Soremi V. Nigeria Bottling Co. Ltd.* (1977) 12 CCHCJ 2735; in this case, the plaintiff stock his fridge with a mixed create of minerals he purchased from the defendant. He drank a bottle of Coca cola and took his lunch before he opted for another bottle of drink stock in his fridge, and then before he opened it, he saw a piece of paper floating inside the drink. According to the plaintiff, sighting it made him vomit. The court held the defendant liable that the defendant owes the plaintiff a duty of care to endeavor that their product or goods are safe for consumption. The court further held that the reason for the judgment is a result of the fact that the defendant had not opened the drink contaminated with floating paper. However, the plaintiff had already drunk a bottle of the drink produced by the defendant.

However, for a producer to disproof a claim of negligence, they must establish that a reasonable standard of care had been taken in ensuring that his product is not defective and cannot cause allergies. In *Onyejekwe v. Nigeria Breweries Ltd.* (unreported) Suit No. E/129/72, in this case, the plaintiff brought an action against the defendants on the ground that the beer brewed by the defendant company contained foreign bodies that causes him allergies. However, the defendant gave detailed expert evidence on their production process. Their evidence further revealed the use of the bottles in storing the content of the manufactured drinks undergoes different stages of washing with the use of automatic machines, complete pasteurization, and sterilization before leaving the plant. The decision of the court was held in favour of the defendant on the ground that the plaintiff was unable to lay the evidence before the court that it was the defendant's negligent act that resulted in the brewed beer being contaminated.

However, in recent times the Nigerian court had been very strict and critical in analyzing evidence in establishing the negligence of a producer producing products that could cause food poisoning or allergies. The courts had held that for a producer to be held negligent, the plaintiff must establish the following;

- a. that the product that causes him food poisoning is defective
- b. That the defect in the product is a result of the negligence of the producer
- c. That the plaintiff must establish a nexus or a causal link of the food poisoning claimed to suffer to the defective product

In the case of *Ebelamu V. Guinness (Nig) Ltd EEFCA/L/101/82*, in this case, the appellant brought a lawsuit against the respondent (Guinness Nig Ltd) for negligence. The case of the Appellant was that he attended a friend's wedding party, and after eating, he drank a bottle of harp produce by the respondent. The Appellant and a few other guests at the party started vomiting and stooling. The Appellant was able to lay evidence that they were diagnosed with gastroenteritis by a doctor who traces the cause of food poisoning. The doctor further gave evidence in favour of the Appellant that he did not attribute the

cause of the food poisoning to the food consumption but the bottle of the harp. In view of the fact that in one of the opened harps, he found a concentration of sediment. The Appellant further called laboratory expert who further gave evidence that though three bottles of Harp was brought for analysis, two was rejected as it was already tempered with (that is already being opened). However, he further stated that the unopened bottle of Harp was analyzed, and his report revealed that the content in the bottle contains poisonous sediment.

In giving its judgment, the Court of Appeal had to consider the following question;

- a. Had the Appellant been able to lay evidence that it was the product of the Respondent that causes him allergies?
- b. That the defect in the product is a result of the negligence of the Respondent?
- c. Has the Appellant been able to establish a nexus or a causal link of the allergies claimed to suffer to the Respondent product as the main cause?

The Court of Appeal held its judgment against the Appellant. The reason for the court judgment is that the Appellant did lay evidence with regard to the opened bottle of harp that caused him food poisoning and the unopened bottle of harp that was sent to laboratory analysis. In view of this, there was no proper nexus between the unopened bottle of harp that contained the poisonous sediment and the opened bottle of harp that the Appellant claimed to cause him food poisoning. The Court further held that the food poisoning suffers by the Appellant may have been caused by another food that may contain sediment of the same nature.

However, in the case of *Nigeria Bottling Co. Ltd V. Okwejiminor (1998) 5 NWLR 295*, the court of Appeal erroneously applied and followed its judgment its learned brother gave Ebelamu's case *supra*. The fact of Okwejiminor's case was that the Respondent ate bread and tea in the morning and went about his business. In the evening, he took a bottle of Fanta and immediately started having stomachaches. The Respondent called a laboratory expert who gave evidence that the said Fanta cause the Respondent allergies, and a sample of the Respondent stool was analyzed. His report revealed that both contain food poison. The Court of Appeal erroneously held that the Respondent admitting that he took bread and tea in the morning is fatal to his case. That it is possible other agents may have caused the Respondent allergies. In view of this, the Appellant was not held negligent.

With due respect, the Court of Appeal erred in its judgment. There was clear evidence that the Respondent had not taken anything that evening except the bottle of Fanta. It was immediately after he took the Fanta that he started having stomachaches. There was expert laboratory evidence that reveals that the alleged Fanta that causes the stomachache and the Respondent stool contain poisonous substances. This evidence is sufficient enough to link the proximate cause of the Respondent's stomachache to the Appellant product. It is wrong for the Court of Appeal to have held that a piece of bread and tea that the Respondent took since in the morning could be the proximate cause of the Respondent's stomachache.

The reason why courts in Nigeria are critical on the evidence of a part who claimed to be affected by food poisoning contained in a product is to prevent and avoid the incident of incessant fraud that may be perpetrated by a consumer to get unjustifiable damages against a producer whose product may not be defective. This was aptly captured in the

case of *Okonkwo v Guinness Nig Ltd. (1980) 1 PLR 583*, Obi-Okoye J aptly stated that the case of *Donoghue V. Stevenson* did provide for a means or create magic for the ultimate consumer to use in recovering damages against producers. The burden of establishing evidence in proving a case of food poisoning is on the consumer, and all ingredients of the negligence of a producer must be proved by substantial and credible evidence. The case of *Boardman v. Guinness (Nig) Ltd. (1980), 1 PLR 58*, is one of the renowned cases where laboratory expert was called upon. The case of the defendant was that he consumed beer that was brewed by the defendant company that made him feel sick. According to him, after he bought the beer, he opened it in a room that was not properly lit, and he drank from the beer, which tasted sour. His friend, who was also there, further testifies that immediately he examines the beer, it was cloudy, and there was some concentration on sediment in the beer. However, expert laboratory evidence found that the beer was contaminated with bacteria, but there was evidence establishing the fact that it was as a result of the bacteria that led to the sickness of the plaintiff. The court dismissed the plaintiff's suit and further held that the plaintiff was unable to establish evidence that it was the defendant's product that made him ill. Furthermore, it was also the decision of the court that assuming the defendant was able to lead evidence that it the contaminated beer produce by the defendant that made him ill, the defendant will still not be held liable. This is in regard to the fact that the bottle of the beer was already tempered, which may be the probable cause of the beer being contaminated by bacteria. The court further recounted that the defendant's liability of ensuring that their product is safe for consumption ended when they ceased to have effective control of their product.

From the above cases, it is very apt to state that cases of food poisoning have always been in favour of the manufacturer or vendor. This is concerning the fact that in most of the above-stated cases of food poisoning, the Nigeria court always has a plaintiff to strict and substantially lays credible evidence in establishing a case of food poisoning. However, there are instances where a plaintiff was able to prove their case, but the court was still not satisfied with the evidence of the plaintiff. Given this stiff approach often used by courts in determining cases of food poisoning, it has led many victims who had suffered from food poisoning to forgone their rights, hence the continuous act of having food or product that could cause allergies or food poisoning.

### **3.4. Sample Size and Technique**

Concerning the sample size and techniques used by the researchers, we design an online questionnaire survey and disseminate the same to respondents residing in the various states in Nigeria. The researchers selected respondents through a simple random sampling technique. According to Aidonojie *et al.* (2022, p. 72; 2022, p. 132; 2021, p. 168), they stated in their study, that the use of a simple random sampling technique is known to be very effective. Furthermore, it is considered best for selecting respondents from countries that have various states with different ethnic groups and cultural backgrounds like Nigeria. Furthermore, the simple random sampling techniques possess the following qualities and advantages (Majekudunmi *et al.*, 2022, p. 17; Oladele, *et al.* 2022, p. 27), and they are as follows:

- a. It is a hassle-free method of sampling the population.
- b. There is no chance of a personal bias of the researcher to influence the sample.



Given the above, the study used a sample size of 347 respondents from the various states in Nigeria. The respondents were randomly selected to respond to predetermined options of questions and a free opinionated cluster of questions. This is to enable the researchers to arrive at an unbiased general conclusion successfully.

**3.5. Data Presentation/Analysis**

The researchers, through a questionnaire survey, obtain the following data from respondents residing in the various states in Nigeria.

**Table 1.**

Valid respondents’ responses identifying the states they reside in Nigeria

S/N	Various States in Nigeria	Respondent’s Response	Percent	S/N	Various States in Nigeria	Respondent’s Response	Percent
1	Abia	4	1.2%	20	Kano	5	1.4%
2	Adamawa	7	2%	21	Katsina	13	3.7%
3	Akwa Ibom	12	3.5%	22	Kebbi	0	0%
4	Anambra	20	5.8%	23	Kogi	6	1.7%
5	Bauchi	7	2%	24	Kwara	15	4.3%
6	Bayelsa	19	5.5%	25	Lagos	14	5.2%
7	Benue	12	3.5%	26	Nassarawa	0	0%
8	Borno	0	0%	27	Niger	5	1.4%
9	Cross River	22	6.3%	28	Ogun	7	2%
10	Delta	24	6.9%	29	Ondo	5	1.4%
11	Ebonyi	10	2.9%	30	Osun	6	1.7%
12	Edo	34	9.8%	31	Oyo	6	1.7%
13	Ekiti	8	2.3%	32	Plateau	5	1.4%
14	Enugu	13	3.7%	33	Rivers	4	1.2%
15	(FCT) Abuja	19	5.5%	34	Sokoto	3	0.9%
16	Gombe	0	0%	35	Taraba	7	2%
17	Imo	11	3.2%	36	Yobe	0	0%
18	Jigawa	0	0%	37	Zamfara	7	2%
19	Kaduna	12	3.5%				

Source: Primary data, 2021 (Edited)

**Table 2.**

Valid respondents’ responses identifying whether they have been a victim of food poisoning

Answer	Response	Percent
Valid Yes	92	73.1%
Valid No	250	26.9%
<b>Total</b>	<b>342</b>	<b>100%</b>

Source: Primary data, 2021 (edited)

**Table 3.**

Valid clusters of responses of respondents identifying the possible cause of food poisoning

Possible causes of food poisoning	Cluster of Response	Percentage
Poor food processing	196	56.6%
Adulterated products	117	33.8%
Using of harmful substances in the preservation of food	305	88.2%
Poor hygiene	122	35.3%
An improper and inadequate storage facility that could contaminate, deteriorates, and leads to loss of active constituents in most food	270	78%

Source: Primary data, 2021 (Edited)

**Table 4.**

Are valid responses of respondents signifying the need for government to intervene to curb food poisoning legally

Answer	Response	Percent
Valid Yes	297	86.1%
Valid No	48	13.9%
<b>Total</b>	<b>345</b>	<b>100%</b>

Source: Primary data, 2021 (Edited)

**Table 5.**

Valid cluster of respondents' responses identifying some possible legal solution in curtailing food poisoning

Possible legal solution in curtailing food poisoning	Cluster of Responses	Percentage
Sensitization of the general public on the dangers of food poisoning and the need for proper food processing and storage	165	51.4%
Enactment and implementation of effective law that will prohibit the sale of food that could cause food poisoning	175	54.5%
Swift prosecution suspect in possession of food poisoning	217	67.6%
Judicial activism in administering strict punishment on an offender found in possession of food that could cause food poisoning	212	66%
Setting up of food scientist and food inspector agency to embark on routine inspection on public and private food processing factories and food vendor	193	60.1%

Source: Primary data, 2021 (Edited)

#### 4. Discussion of Findings

Concerning the above data presentation and analysis, table 1 is a representation of the fact that virtually all the respondents to the questionnaire are residing in the various states that form the country Nigeria. In essence, it gives credibility and credence to the scope and focus of the study, which is meant to investigate the causes and dangers of food poisoning in Nigeria and how effective is the statutory law and judicial response to cases of food poisoning in Nigeria. Furthermore, research question two was meant to ascertain if the respondents had been a victim of food poisoning in Nigeria. The respondents' responses, as represented in table 2, reflect the fact that the majority of the respondents (73.1% respondents) identify the fact that they have been a victim of food poison. This finding to an extent confirms the findings of Onyeaka *et al* (2021) in their study which revealed that the rate of food poisoning is becoming very alarming, giving rate of insecurity, the quest of unregistered food producer and food vendors to produce (whether standard or substandard product), distribute and sell to a consumer.

However, research question three was further meant to ascertain if the respondents are aware of the potential cause of food poisoning. Table 3 represent the respondents' responses in identifying the following as most of the causes of food poisoning; 88.2% and 56.6% identified the use of harmful substances in food preservation and poor food processing, respectively, as significant causes of food poisoning. Furthermore, 33.8% and 78% also identify adulterated products and improper storage facilities that could contaminate the product or food as also a cause of food poisoning. These findings are in accordance with the results of Al-Mamun *et al* (2018). However, it suffices to state that section 21 of Pre-Packaged Food (Labelling) Regulations a Subsidiary Legislation of the National Agency for Food and Drug Administration and Control Act aptly frown at any manufacturer or food vendor involved in producing and selling food that could cause food poisoning.

In ascertaining from the respondents if there is a need for government to take proactive and adequate legal precautions in curbing the constant rate of food poisoning, table 4 that 88.1% representing a majority of the respondents responded in the affirmative that government should take a responsive approach towards curbing and curtailing incidence of food poisoning in Nigeria. However, in table 5, the respondents further identify possible ways the governments can legally ensure the production, distribution, and sale of food conform to a quality standard. In this regard, 66% and 67% of the respondents identified the need for judicial activism in adjudicating in cases of food poisoning and swift prosecution suspect in possession of food poisoning. These possible solutions identified by the respondents are a major problem confronting the curbing of food poisoning in Nigeria. This is concerning the fact that the Nigerian judiciary has been too firm, technical in handling cases of food poisoning. Furthermore, they require or place a higher burden of prove by a victim who suffered from food poisoning. In the case of *Okonkwo v. Guinness Nig Ltd* (1980) 1 PLR 583, *Obi-Okoye J* (as he then was) was of the view that the case of *Donoghue V. Stevenson* did provide a means or created magic for ultimate consumer to use in recovering damages against producers. He further stated that a consumer must prove substantial and credible evidence in establishing a case of food poisoning against the producer. In this regard, in a situation where an individual is very much aware of the high possibility of losing in court in cases concerning food poisoning, such an individual may be reluctant in approaching the court, hence the need for judicial activism. Furthermore, 51.4% and 60.1% identify

setting up of food inspector agency and sensitization of the public proper food and storage respectively, as a major solution the government can adopt in curtailing the rate of food poisoning in Nigeria.

Given the above findings, it suffices to state that food is essential to man's healthy living. The government of Nigeria must ensure that food produced, distributed, and sold to the general public is of high quality and standard. In this regard, the recommendation base on the findings of this study could aid the government in curtailing and curbing the incidence of food poisoning in Nigeria.

## **5. Conclusion**

The study has been able to identify the fact that food is very important for healthy living. However, given the rate of food insecurity in Nigeria, it has degenerated to having several food product manufacturers and food vendors producing, distributing, and sales of food products that are not well processed and preserved. Furthermore, there are also instances where some food producers or food vendors engage in using harmful substances in producing, preserving food, and even sales of adulterated food products that could cause food poison. The study further reveals that most of the respondents who responded to the questionnaire survey had been a victim of food poisoning arising from poor processing and preservation of food. Also, it was identified by these studies that despite the challenge posed by food poisoning in Nigeria and relevant statutory laws that prohibit the production, distribution, and sale of food that are harmful. However, the food producer and vendor whose food had caused food poisoning to some individuals have always scaled through prosecution. This concerning the fact that the courts in Nigeria had made it very difficult (by requiring strict and substantial proof of negligence) for a victim of food poisoning to get justice. In this regard, a victim of food poisoning, been aware of the stringent process required to get justice may forgo their rights, hence the continuous production, distribution, and sales of a product that could cause food poisoning.

Concerning the above, it must be noted that healthy feeding often determines a healthy living of an individual, and what an individual eats is what they are likely to become. In this regard, a nation that is full of sick people will definitely affect socially, psychologically and become redundant in the aspect of development in virtually all sectors. Concerning this, there is a need for the Nigerian court to always ensure that justice is not sacrificed on the altar of technicalities. Furthermore, the Nigeria government must ensure due to implementation of laws that prohibit the production, distribution, and sale of harmful food products that could cause food poisoning

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