

Intellectual Property, SMEs, and Economic Recovery in Nigeria

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1.1 Introduction

In Nigeria, everyday activities like commuting to work and buying basic commodities are enough to reveal, even without numbers, that all is not well economically. However, the numbers add more clarity. According to World Bank, over 40% of Nigeria's population live below a dollar per day. This number is projected to increase to 45.5% by 2022,¹ which means by next year, it is projected that 100.9 million Nigerians will be living in poverty. The employment rate is nothing to write home about either; the National Bureau of Statistics recently announced a 33.3%

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¹ Alexander Irwin, Jonathan Lain, and Tara Vishwanath 'Using data to combat the ongoing crisis, and the next, in Nigeria' (World Bank Blogs, January 28 2021) <<https://blogs.worldbank.org/opendata/using-data-combat-ongoing-crisis-and-next-nigeria>> accessed 27 May 2021.

unemployment rate and 22.8% underemployment.² The inflation rate currently sits at 18.12%.³

Looking at these figures, it is crystal clear that Nigeria needs an economic turnaround.

Several factors can be blamed for the current economic state; generational corruption, inadequate governmental policies, overdependence on petroleum, etc., are just a few. Even the COVID-19 pandemic played a part in worsening the already bad economic situation. But stating the problem is not enough; the real genius lies in identifying solutions.

1.2 Role of Small and Medium Scale Enterprises in Economic Recovery

There is no general agreement on the definition of an SME. In several countries, the definition is based on the number of employees and annual turnover. For instance, the EU defines an SME as a business with a turnover below €50 million and less than 250 employees.⁴ In Nigeria, what qualifies as SMEs also differs from one regulatory body to the other. The Company and Allied Matters Act 2020 defines a small company as a private company with maximum of 120 million Naira in annual turnover.⁵ The Bank of Industry defines it as a business with not more than 500 million Naira in annual turnover and not more than 200 employees⁶ while the National Policy on Micro Small and Medium Enterprises (MSMEs) describes it as a business with less than 200 employees and not more than 500 million Naira in annual turnover.⁷ No matter the definition, it is

² National Bureau of Statistics, *Labor Force Statistics: Unemployment and Underemployment Report (Q4 2020)* <https://www.proshareng.com/admin/upload/report/14502-Q4_2020_Unemployment_Report-proshare.pdf> accessed 27 May 2021.

³ Central Bank of Nigeria, 'Inflation Rates (Percent)' <<https://www.cbn.gov.ng/rates/inflrates.asp>> accessed 27 May 2021.

⁴ European Commission, 'Internal Market, Industry, Entrepreneurship and SMEs' <https://ec.europa.eu/growth/smes/sme-definition_en> accessed 27 May 2021.

⁵ Companies and Allied Matters Act, 2020, s 394(3)(c).

⁶ Bank of Industry, 'MSME's Definition' <<https://www.boi.ng/smedefinition/>> accessed 27 May 2021.

⁷ Small & Medium Scale Enterprises Development Agency of Nigeria, *National Policy on Micro, Small and Medium Enterprises* <<https://www.smedan.gov.ng/images/PDF/MSME-National-Policy.pdf>> accessed 27 May 2021.

clear that SMEs are small scale businesses, and they play a significant role in every country's economy, including that of Nigeria. It is these roles that make them the perfect catalyst for economic growth in the right environment.

One of their fundamental roles is creating jobs and absorbing a large percentage of any country's workforce. Even though SMEs in Nigeria are significantly burdened with multiple challenges, they are still responsible for creating 84% of the country's employment.⁸ This is not any different in other countries of the world. For example, SMEs are responsible for 54% of employment in the United Kingdom⁹ and 48% of jobs in the United States of America.¹⁰ Globally, SMEs are responsible for more than 50% of all employment.¹¹ With the current high level of unemployment in Nigeria, SMEs have a crucial role in creating jobs.

Furthermore, one of the major drivers of innovation in any economy is the SMEs within it. This is especially true of developing economies with a young population like Nigeria. SMEs account for 96%¹² of businesses in the country, which means large scale enterprises only count for 4%. These large companies are mostly focused on maximizing their economies of scale. However, SMEs have risen to the occasion in recent years, creating innovative products and services. For instance, the financial sector in Nigeria has seen significant development in recent years due to SMEs introducing technology to improve the traditional financial practices and provide better services for consumers. Today, there are more than 200 fintech companies in the country.

⁸ PwC Nigeria, *PWC's MSME Survey 2020* <<https://www.pwc.com/ng/en/assets/pdf/pwc-msme-survey-2020-final.pdf>> accessed 27 May 2021.

⁹ Ibid.

¹⁰ Ibid.

¹¹ The World Bank, 'Small and Medium Enterprises (SMEs) Finance' <<https://www.worldbank.org/en/topic/smefinance>> accessed May 27 2021.

¹² IFC Partners with CardinalStone to Support Small and Medium Enterprises in Nigeria and Ghana, (International Financial Corporation, 7 October 2019) <<https://pressroom.ifc.org/all/pages/PressDetail.aspx?ID=18510> > accessed 27 May 2021.

According to a McKinsey report titled "*Harnessing Nigeria's Fintech Potential*", these companies have raised over \$600 million between 2014 and 2019.¹³

Beyond this, SMEs are also opening up new sectors of the economy that has so far been untapped. SMEs dominate entertainment, leisure, agro-processing, clothing and footwear production, and many other sectors. Little wonder there are over 41 million SMEs in Nigeria.¹⁴ With the right policies and support, these SMEs will grow efficiently, playing their part in poverty reduction, equal distribution of income, diversification of the economy and overall economic growth.

However, despite the apparent benefits of SMEs, they face several challenges. Failure to deal with these problems will affect their ability to aid economic recovery. Issues such as regulatory burdens, inadequate credit facilities and financial support, infrastructural deficiency, among others, need to be solved for the SMEs to play their all-important role in economic recovery. These problems demand practical solutions from all stakeholders. One of those practical solutions that can help the growth of SMEs in Nigeria is Intellectual Property.

1.3 The Role of Intellectual Property in Fostering the Growth of SMEs

When most people hear the term intellectual property (IP), they begin to think in terms of groundbreaking inventions and ideas that can disrupt an industry. But, in reality, IP is much more;

¹³ Eyitope (Topsy) Kola-Oyeneyin, Mayowa Kuyoro, and Tunde Olanrewaju, *Harnessing Nigeria's Fintech Potential* (McKinsey & Company 2020) <<https://www.mckinsey.com/~media/mckinsey/featured%20insights/middle%20east%20and%20africa/harnessing%20nigerias%20fintech%20potential/harnessing-nigerias-fintech-potential-vf.pdf?shouldIndex=false>> accessed 27 May 2021.

¹⁴ '41.5m MSMEs Registered in 2017 NBS/SMEDAN National Survey' (Small & Medium Scale Enterprises Development Agency of Nigeria, 22 July 2019) <<https://smedan.gov.ng/41-5m-msmes-registered-in-2017-nbs-smedan-national-survey/>> accessed 27 May 2021.

it is everywhere and in everything, from the colours and fonts used in creating a logo to the innovative processes used in making a product. The essential denominator is all intangible creations of human minds for commercial purpose. Now more than ever, these intangible creations are very significant to the success of any business.

IP constitutes a major part of every SME operation, starting with simple things such as business name, logo, website to more complex aspects such as product designs, inventions, business models, etc. But, unfortunately, most SMEs in Nigeria do not bother about their intellectual property at the early stages of their operations. This is primarily because of ignorance as to the value of these assets or considering the process involved in protecting IP rights to be too complex or costly.

However, acquiring IP protection is relatively easy, and the benefits of adequate protection for IP rights far outweigh the costs involved. For example, with IP rights such as patents, a business acquires exclusive rights to prevent other businesses from using a registered service, process, or product for a specific period. This can help such SMEs gain a competitive advantage against their rivals and emerge as leaders within their industry.

It can also solve the problem of funding for SMEs. IP protection converts intangible creations into exclusive property rights of the SME. Just like an owner of a house may choose to sell or lease it to make money, owners of IP rights may choose to assign or license these rights to others, thereby generating capital for their business without incurring any debt. Even when an SME chooses to use debt or equity financing to raise funds, having IP rights gives such a business better bargaining power during negotiations. They can use it as collateral for credit facilities or to attract investors.

Furthermore, IP encourages innovation within the industry as innovators are rewarded for the effort put into making their products better. Without IP protection, anyone can copy another business's invention, trademark, design, etc., making the inventor run at a loss. IP ensures that this does not happen, thereby encouraging fair competition and collaboration within the industry and stimulating the growth needed for long term economic recovery.

1.4 How to Improve the IP Culture of SMEs in Nigeria

Given the several benefits of SMEs, it is high time SMEs took IP rights and protection seriously. The first step to achieving this is through sensitization by relevant government agencies and industry stakeholders. It is always easier to convince people to do what they will benefit from. If SMEs can see that protecting their IP rights could increase their business value and generate more income, they will embrace IP protection.

It is also necessary for SMEs to be familiar with the fundamental laws on IP in Nigeria, such as The Trade Marks Act 2019, The Patents and Designs Act, The Copyright Act, the Cybercrimes (Prohibition, Prevention, etc.) Act 2015, etc. They can do this by seeking counsel from IP law experts before making a business decision. Then, with the right information, SMEs can have their own IP strategies, which will help them protect, exploit and enforce these rights.

Government can also make IP rights more significant by making it compulsory for SMEs to register their relevant IP rights for their businesses. Just as the Company and Allied Matters Act 2020 makes certain registration compulsory for businesses to operate in Nigeria. Doing this will improve the overall IP culture of SMEs and allow them to fully benefit from intellectual property. But for this to work, there is a need for legal reforms in the intellectual property field.

1.5 Conclusion

Economic recovery is a process that requires making the right decisions over a long period of time to achieve the desired goals. For Nigeria to return its economy to its glory days and make it better than ever, SMEs and Intellectual Property can play significantly positive roles. But these goals will only be achieved when every stakeholder – government, businesses, and IP experts – work together and do the needful.