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TEMPLARS ThoughtLab

Is Termination of Employment without Reason Still Valid in Nigeria?

Introduction

In just a few years, the position of the law on the termination of employment with or without reason has gone full circle from the common law position to the new legal jurisprudence in labour and back to the common law position, leaving many employers and practitioners confused.

This state of uncertainty is attributable to the desire in recent times, of the National Industrial Court of Nigeria ('NICN') to set new labour standards for employers by restricting the right of an employer previously enjoyed under the common law to terminate an employee for any, or no reason at all.

This article will highlight the evolution of the labour jurisprudence on the subject matter and attempt to shed light on the seemingly conflicting judicial pronouncements.

Termination Under Common Law

Several common law principles run through the fabric of labour law jurisprudence in Nigeria for decades. One such common law principle is that in a master-servant relationship the master ("employer") has a right to terminate the employment of his servant ("employee") for reason (good or bad) or no reason at all and the termination would be valid if it is in line with terms of the contract of employment.

The Supreme Court of Nigeria has over time given judicial backing to this practice in a plethora of cases, including ***Chukwuma v Shell Petroleum Nig. Ltd*** [1]***; Petroleum and Natural Gas Senior Association of Nigeria (PENGASSAN) v. Schlumberger Anadrill Nigeria Limited***[2]. The Court of Appeal in cases like ***Ajuzi v. FBN Plc***[3] ***and Oniga v. Government of Cross River State & anor***[4] and a host of other cases were more than happy to follow the judicial precedent set by decisions of the Supreme Court as it is enjoined to do by the doctrine of *stare decisis*.

[1] *Chukwuma v Shell Petroleum Nig. Ltd* (1993) 4 NWLR (Pt. 269) 512;
[2] (2008) 11 NLLR (Pt. 29) 164
[3] (2016) LPELR-4-459(CA)
[4] (2016) LPELR-40112(CA)

In applying this common law principle, the courts have often held that the motive or intention for exercising the right to terminate an employee's employment does not render the exercise ineffective.[5] In essence, termination need not be linked to incompetence, misconduct, breach of the contract of employment or operational needs of the employer. It is sufficient that the employer no longer requires the services of the employee.[6]

The New Labour Jurisprudence of the NICN

It is beyond cavil that the Third Alteration to the 1999[7] introduced a new labour jurisprudence in Nigeria as it vested the NICN with extensive powers to apply international conventions, international best practices and labour standards and eliminate all forms of unfair labour practices. This ushered in a new era of the application of International Labour Organisation ("**ILO**") Conventions and other international conventions, treaties or protocols ratified by Nigeria, in the determination of employment-related matters.[8]

The Third Alteration also gave the NICN the impetus to depart from application of long-established judicial precedent from the Supreme Court and Court of Appeal on the ground that these decisions did not consider and apply the Third Alteration.

In applying these wide and exclusive constitutional powers bestowed upon it by the Third Alteration Act, the NICN appears to have, in some cases, deviated from the customary view of the master-servant relationship by introducing radical changes to the rules and principles guiding the termination of private employment, in Nigeria.

Against this backdrop, the posture of the NICN was that termination of employment without reason constitutes unfair labour practice which is contrary to international best practices. In ***Ebere Onyekachi Aloysius v Diamond Bank Plc***[9] and ***Duru v Skye Bank Plc***[10] and a plethora of other similar decisions, the NICN relying on the provisions of the Third Alteration[11] held that it is an unfair labour practice for an employer to terminate an employee without stating a reason.[12] Employers were accordingly required to give a valid reason for terminating the employment contract, failing which the termination would be declared wrongful. According to the NICN:

> *"It is now contrary to international labour standards and international best practice and, therefore, unfair for an employer to terminate the employment of its employee without any*

[5] *Oforishe v Nigerian Gas Company Ltd (2017) LPELR-SC.175/2006; Anaja v. U.B.A Plc. (2011) 15 NWLR (Pt. 1270) 377.* See also *Obanye v Union Bank* LPELR44702(SC) (Pp. 24, Paras. F) where the Supreme Court restated the position that *"The law is settled that an employer who has the right to hire also has the right to fire. The employer has an unfettered right to terminate the employee's employment. He may terminate for good or bad reasons or no reason at all. The motive for exercising the right does not render the exercise ineffective…What is essential is that the firing must be done in accordance with the terms and conditions of the employment…."*

[6] Onnoghen J.S.C. restated the position of the law in *Isheno v. Julius Berger (Nig) Plc (2008) 6 NWLR (Part 1084) 582 at 609-610* thus: *"Now, the position of the law, with regard to termination of contracts of employment, has been settled in a long line of cases. These are: 1. The Common Law recognizes and respects the sanctity of contracts. Where parties have reduced the terms and conditions of service into an agreement, the conditions must be observed- Chukwumah v Shell Petroleum Development Company of Nigeria Ltd (1993) 4 NWLR Part 289 Page 512 at 560 Para F Per Karibi-Whyte J.S.C.; Idufueko v Pfizer Products Ltd (2014) 12 NWLR Part 1420 page 96 at 115 Para C-E per Galadima J.S.C. 2. It is a well established principle of the common law and of Nigerian law that a master is entitled to dismiss his servant from his employment for good or for bad reasons or for no reason at all - Chukwumah v Shell Petroleum Development Company of Nigeria Ltd (1993) 4 NWLR Part 289 Page 512 at 560 Para F per Karibi-Whyte J.S.C. 3.An employer who hires an employee has the corresponding right to fire him at any time so far as it is done in accordance with the terms of the contract of service. Where an employer fires an employee in compliance with the terms and conditions of the contract of employment, there is nothing the Courts can do, as such termination is valid in the eyes of the law"*

[7] Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010 Section 254C

[8] Section 254(C) (2) of the 1999 Constitution (as amended)

[9] **(2015) 58 N.L.L.R 92**

[10] (2015) 59 NLLR (Pt. 207) 680

[11] section 254C(1)(f)(h) which sections empower the NICN to deal with matters connected to unfair labour practice or international best practices in labour/employment/industrial matters or connected to the application or interpretation of international labour standards. Also section 254C(2) which section authorises the NICN to deal with matters regarding the application of any international labour, employment or related convention, treaty or protocol which have been ratified by Nigeria. The section is silent on conventions which have not been ratified by Nigeria. Section 7(6) of the National Industrial Court Act, 2006 further empowers the NICN to have due regard to good or international best practice in labour or industrial relations.

[12] See also Suit No. NICN/ABJ/144/2018: *Bello Ibrahim v Eco Bank Plc* Unreported Suit No: NICN/ABJ/144/2018; Judgment delivered 12 December 2019; *Afolayan Aderonke v. Skye Bank* (unreported) judgment of the National Industrial Court in Suit No. NICN/IB/08/2015 delivered on 17th May 2017; *Clement Abayomi Onitiju v Lekki Concession Company Limited* unreported suit No. NICN/LA/130/2011, delivered on 11 December 2018.

> *reason or justifiable reason that is connected with the performance of the employee's work."*

The NICN based its decisions on the provisions of Article 4 of the ILO Termination of Employment Convention, 1982 ('TEC82') (No. 158) and Recommendation 166 which according to the court established international best practices and international labour standards in the termination of employment, which employers are obligated to apply. Notably, article 4 of TEC82, provide that:

> *"The employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service."*

The Pushback from the Court of Appeal

The Court of Appeal has had the opportunity of reviewing decisions from the NICN on the Third Alteration and the court has consistently reiterated the common law position that terminating an employment contract without reason is permissible where the termination is in accordance with the terms of the contract to which parties agreed to be bound. The position of the Court of Appeal is premised on the sanctity of contracts (*expressed in the Latin maxim, pacta sunt servanda),*[13] as the decisions of the NICN completely disregarded the terms of the contract of employment in coming to conclusion that an employer must provide justifiable reason for termination.

In the 2017 decision of ***Keystone Bank v. Afolabi,***[14] the Court of Appeal held that:

> *"It is not disputed that the relationship between the parties is one of master and servant and as such an employer who hires an employee under the common law has the corresponding right to fire him at any time even without assigning any reasons for so doing. He must, however, fire him within the four walls of the contract between them".*

The Court of Appeal went further in the latter case of ***Oak Pensions Limited & Ors v. Mr. Michael Oladipo Olayinka***,[15] to hold that allegations of unfair labour practices and international best practices cannot operate to dislodge the contractual obligations of parties. In the words of Garba J.C.A.:[16]

> *"The issue of unfair labour practice or international best practice would not arise in the exercise of a right vested in the parties by their own voluntary agreement on how to end or determine the relationship between them."*

The Court of Appeal effectively reversed the decisions of the NICN that an employer is bound to furnish a valid reason for termination of the employee's employment. The reasoning of the Court of Appeal was aptly captured in the following dictum of the court in ***Oak Pensions Limited & Ors v. Mr. Michael Oladipo Olayinka:***

> *"In employment that is purely of a master-servant nature relationship, usually governed and regulated by the terms and conditions agreed to by the parties in a contract, the right and the manner by which the employment is to be brought to an end by way termination, resignation or dismissal, are ordinarily spelt out in the terms and conditions of the contract. The employer and employee are bound by the terms and conditions of the contract in their relationship and each would be liable for any breach thereof as it would be*

[13] *"The legal doctrine expressed in the Latinism pacta sunt servanda is a hornbook principle of law. It simply means that agreements of a party to a contract are meant to be observed. See A.G. NASARAWA STATE vs. A.G. PLATEAU STATE (2012) LPELR (9730) 1 - (SC)."*
[14] (2017) LPELR-42390(CA)
[15] (2017) LPELR-43207(CA)
[16] Ibid at page 41

wrongful to the other party. The claim in such case would be for wrongful termination or dismissal in breach, violation or contravention of the agreed terms and conditions of the employment...."

The NICN Reverses it's Position to Align with the Court of Appeal

In deference to the Court of Appeal the decision in Oak Pensions case has been applied by the NICN in a plethora of other cases.[17] In aligning with the decision of the Court of Appeal in Oak Pension, the NICN in ***Continental Reinsurance Plc v. Mr.Kanma Maduka Okafor***[18] recently held that:

"while I entirely agree with the principle in Afolayan Aderonke v. Skye bank Plc, and the termination of employment Convention, 1982 (No. 158), especially where an employee is dismissed, it will be difficult to accept that where parties agree that either of them can terminate the contract by notice or salary in lieu; and the employer terminates the contract by paying salary in lieu, it is obliged to state a reason for the termination. In my view, this will amount to rewriting the contract for the parties, which a court of law is not empowered to do."

It is noteworthy that by the Supreme Court's decision in ***Skye Bank v. Anamem Iwu***[19], the right to appeals arising from labour and employment issues is limited to the Court of Appeal. The Court held that the Court of Appeal had exclusive appellate jurisdiction to entertain all matters from the NICN. Consequently, it is unlikely that the Supreme Court will be availed of the opportunity to consider the effect of the 3rd Alteration Act on employment.

Similarly, in its recent decisions in ***Attah v. First Bank of Nigeria***[20] and ***Abdulrazaq v. First Bank of Nigeria***,[21] the NICN held that TEC82 which stipulates that an employer furnishes a valid reason for termination is not yet enforceable in Nigeria, having not being ratified.

In ***Raphael Obasogie v. Addax Petroleum,***[22] the NICN went further to hold that where an instrument is not expressly imported into the terms of the parties' agreement, the court should not allow such Convention to negatively influence the parties' binding contract. The court took the view that parties are bound by the terms of their contract, provided that same is valid and entered into voluntarily. The Court further stated that it is not the court's duty to create the terms of a contract but to apply them. The Court must therefore uphold the sanctity of the contract and prevent extraneous terms from being imported into the reading of the contract.

[17] *Emana Ibor Edet v Fidelity Bank Plc*, Suit no. NICN/LA/276/2014 (Unreported). Judgment delivered on 17 December 2019; *ThankGod Albert v Leisure Investment Ltd*, Unreported Suit No. NICN/ABJ/382/2017; *Joshua Abiodun Babalola v. State Security Service (unreported) judgment of the National Industrial Court in Suit No. NICN/LA/605/2015, delivered on 10th July 2017; Clement Abayomi Onitiju v. Lekki Concession Company Limited (unreported) judgment of the National Industrial Court in Suit No. NICN/LA/130/2011, delivered on 11th December 2018; Mr. Yerima Isa Hussaini v. Arksego Nigeria Limited (unreported) judgment of the National Industrial Court in Suit No. NICN/ABJ/263/2018, delivered on 27th May 2020; Continental Reinsurance Plc v. Mr.Kanma Maduka Okafor (unreported) judgment of the National Industrial Court in Suit No. NICN/LA/647/2016, delivered on 23rd January 2020.*

[18] *Judgment of the NICN in Suit No. NICN/LA/647/2016 delivered on 06 February 2019 by Hon. Justice Ikechi Gerald Nweneka.*

[19] SC885/2014 (2017) LPELR – 42595 (SC)

[20] Unreported (Suit No: NICN/ABJ/233/2019) delivered on 19 January 2022

[21] Unreported (Suit No: NICN/ABJ/232/2019) delivered on 19 January 2022

[22] *Mr Raphael Obasogie v. Addax Petroleum Development (Nig.) Ltd & anor*, unreported Suit No. NICN/LA/257/2013, the judgment of which was delivered by Hon. Justice J. D. Peters on 12 April 2018

The Position of Divergent Decisions of the NICN Post Oak Pensions

It is noteworthy that there are a few divergent judgments that have been churned out by the NICN which are clearly conflicting with the Court of Appeal's decision in Oak Pensions case and in some instance they have relied on TEC82.

The most recent of such decisions was delivered by the NICN in Godwin Lawrence Biragbara v. Unity Bank Plc.[23] The facts of the case is that the letter of termination of the Claimant's employment titled "Service No Longer Required" stated that *"we regret to convey to you that management has approved the termination of your appointment for services no longer required with immediate effect."* The Claimant challenged his termination and the case revolved around whether the employer was right to terminate the employment *"for services no longer required."* The NICN declared the termination wrongful, and the reasoning of the court are captured in the following excerpts from the judgment:

> *"…it is now a bad Labour practice for an employer to determine the employment of its employee with bad reason or with no reason at all as this is currently offensive to International best Practice and International Labour Standard. This Court is enjoined to look at these practices in deciding on issues of this nature by virtue of the provisions of section 254 C (1) (f) & (h) of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended). The present labour standard globally is to ensure that at least an employment is determined on cogent reason(s) related to the performance of the employee's duties, just like the content of Exhibit C.7 stipulates. See also ILO Convention 158 on Termination of Employment. See again the case of Aloysius v. Diamond Bank Plc [2015] 58 NWLR (Pt. 199) 92 NIC at 134 para D-F. Based on all the reasoning above, I hold that the termination of the claimant's employment by the defendant on the ground that his 'services are no longer required' and nothing more, is wrongful."*

It is key in reviewing the decision in Biagbara's case to note that the court did not consider the Court of Appeal decision in Oak Pensions case and other coordinate decisions of the NICN which relied on Oak Pensions. Viewed in that context, it is easy to confine the NICN decision in Biagbara's case to the bucket of pre – Oak Pensions decisions which no longer represent the current position of the law.

For the avoidance of doubt, Biagbara's case has not changed the position of the law espoused in Oak Pensions that an employer can terminate the employment of an employee for services no longer required without stating a reason, either connected to the employee's capability or the operational needs of the company.

[23] Unreported judgment in Suit No. NICN/PHC/41/2014: Godwin Lawrence Biragbara v. Unity Bank Plc. delivered on 23 November 2022.

Conclusion

The decisions of the NICN which held that by the ILO Termination of Employment Convention 1982 (No 158), it is no longer fashionable to terminate the employment of an employee without stating a reason, does not represent the current position of the law. The position of the law is as espoused by the Court of Appeal in **Oak Pensions Ltd. v. Mr. Michael Olayinka Oladipo** where the court emphasized the sacredness of the sanctity of contract, that whenever a contract of employment is freely entered without coercion, the parties are bound by that contract and the court's only duty is to interpret and enforce the contract.

Despite the NICN's altruism and best intentions toward employees, the position of Nigerian law remains that, if the employment contract provides for termination without cause, the employer can terminate for services no longer required and is not obliged to furnish any reasons.