Global Journal of Politics and Law Research
Vol.12, No.6, pp.64-78, 2024
ISSN: ISSN 2053-6321(Print),
ISSN: ISSN 2053-6593(Online)
Website: https://www.eajournals.org/
Publication of the European Centre for Research Training and Development –UK

Unlawful Termination of Employment Contracts in Nigeria: Legal Framework, Challenges, and Remedies

Eluma Izuchukwu Okoli. *and* Dr. (Mrs) Emuobo T. Emudainohwo
Faculty of Law, Delta State University, Abraka Nigeria

doi: https://doi.org/10.37745/gjplr.2013/vol12n66478 Published December 02, 2024

Citation: Okoli E.I. and Emudainohwo E.T. (2024) Unlawful Termination of Employment Contracts in Nigeria: Legal Framework, Challenges, and Remedies, *Global Journal of Politics and Law Research*, Vol.12, No.6, pp.64-78

ABSTRACT: *Labour and industrial relations are vital for socio-economic development in Nigeria and globally. Employee working conditions and job security significantly influence productivity and national progress, making their protection essential. To enhance employee safety, the International Labour Organization (ILO) has established standards for terminating employment that protect workers' rights. This study analyzes employment contracts and the termination practices in Nigeria, focusing on wrongful termination as a major issue. The research reviews Nigerian Labour Law to promote job security and reduce wrongful termination instances. Findings highlight the need for improved legislation and institutional effectiveness in handling such cases. The researcher advocates for adopting ILO standards alongside necessary amendments to labour laws. Additionally, addressing obstacles like misinterpretations of the 1999 Constitution and the Third Alteration Act is crucial for successfully implementing these standards, ultimately fostering fair employment relations. The researcher also recommends enacting an Unfair Dismissal Act to further safeguard employees.*

KEYWORDS: unlawful termination, employment contracts, Nigeria, legal framework, challenges, remedies

INTRODUCTION

In Nigeria, it is deemed wrongful termination when either the employer or the employee leaves their position in a manner that differs from the conditions of the contract or agreement. There will always be disputes and problems between employers and workers, just as in any other relationship. Either party might be fired if they are not handled properly. Basic law states that parties must comply by the conditions of the contract they voluntarily entered into. This is a prime example of the contract theory's integrity. The court must thus interpret the contract's terms only in the event that an action is brought about by it. This is because the Court is not allowed to rewrite the parties' contract using

any unrelated papers or facts that they have left out. With specific reference to an employment contract in a standard master-servant relationship, Nigerian law has long held that the terms of the contract form the basis of any lawsuit where the issue of wrongful termination of employment is involved. The terms and conditions of the employment contract are the most crucial element in assessing an employer's right to terminate it, since the Court cannot go elsewhere to decide whether the contract was properly terminated. However, in rare cases, mandatory provisions of legislation may be in contradiction with the agreement of the parties and be legally considered a part of the contract.

Theoretical Framework

The concepts of "freedom of contract" and "sanctity of contract" have been construed as granting the employer unfettered authority to recruit and dismiss workers as they see fit with regard to employment contracts. When using this power, the employer's sole legal responsibility is to provide enough notice in line with the terms of the contract or any relevant legislation, or to compensate employees in place of notice. When it comes to matters pertaining to the employment contract, the employer usually has the upper hand since the two parties do not have equal negotiating power. Because there is a much higher demand of vacant jobs than there are for workers, if the employee disagrees with these requirements, he will either be dismissed or not given consideration for employment. The problem becomes more severe in a growing economy like ours, where the jobless rate is always rising. Thus, a desperate worker would have to put up with such circumstances. In Nigeria, an employer may fire an employee for a good reason, a bad one, or no reason at all under the common law standard, which is very unreasonable and unavailable in most contemporary countries. The majority of unlucky workers decide not to seek legal recourse for unlawful termination of employment contracts, despite the fact that such terminations have a negative effect on society, the country, and the employee's immediate family and dependents. Even worse is the fact that most people who are wrongfully fired are in their prime working years, thus it is simple to see how such a firing may affect the whole economy. This article claims that Nigerian courts often fail to provide adequate redress for wrongful termination of employment. Limiting an employer's ability to fire workers without cause is important for fairness in the workplace. Enforcing current rules about how to end employment contracts can help achieve this goal. By improving the enforcement of these rules, employees can gain more security and protection, which will lead to a fairer work environment.

Crucially, the issues surrounding this subject may be distilled into series of key questions:

1. Are there enough legal mechanisms in place to successfully enforce the ongoing problem of unlawful termination of employment contracts in order to ensure fair labor practices in Nigeria?
2. What does wrongful termination of contract of employment entails?
3. Is there a legal framework for wrongful termination of employment in Nigeria?

4. What remedies are obtainable in international conventions and best practices other than damages?
5. Do damages constitute an adequate remedy for wrongful termination of contract of employment?

Following this line of questioning, we can see a gap in the structure of our legal system that has truly impeded fairness and have made some employers to become dictators to humble employees

Contract of employment

contract of employment." A contract is any arrangement between two or more parties that creates obligations or rights that are enforceable by law[1]. The connection between an employer and employee is governed by the terms of the employment contract. It may also be defined as a contract in which one party consents to do an act for another in return for rewards[2]. Another way to define employment is as a master-servant relationship. Therefore, an agreement between an employer and an employee that the law acknowledges as creating a legal duty between them is known as a contract of employment. The Labor Act An employment contract is any written, spoken, or unspoken agreement between two people wherein one of them agrees to hire the other as a worker and the other agrees to work for the employer. In the case of Shena Security Co. Limited v. Afropak (Nig.) Limited & ors, the Supreme Court emphasized the previously mentioned interpretation of the Labour Act. The Honorable Apex Court asserts that the term in question solely pertains to employees and does not apply to management professionals under the Labour Act. Like any other contract, an employment contract is created when the basic legal requirements for contracts—offer, acceptance, capacity, consideration, and desire to establish legal relations—are satisfied. If an offer is not made clear and accepted without reservation, it will be seen as a counter offer. To put it another way, the offer should be accepted without hesitation. The terms of the contract must include remuneration in the form of a salary and other fringe benefits in addition to work or services being provided by the employee to the employer.

Employment is defined under employment law as a contractual relationship that is subject to significant change depending on the conditions of the agreement.[3] This form of contractual agreement is distinct from other kinds. The contractual aspects of employment may make it difficult to ascertain a worker's position when a contract does not conform to the traditional paradigm of employee status. Employee status differs from other important status cases, such shareholder or marital status, in this regard. In contrast to marriage, a ceremony, registration, or other final act does not ensure "employee" status. Unlike the stockholders of a firm, the position of an employee is not based on the transfer of property rights.

Meaning of an employer

In order to define an employment contract under the Labour Act, it is necessary to define the term "employer." An employer is defined as any individual who has entered into an employment contract

with the intention of hiring another person as a worker for their own advantage or the benefit of another individual. Both the agent, manager, or factor of the first person listed and the personal representatives of a dead employer are included in this description.[4]

Meaning of an employee

An individual who does work under a contract of employment in return for a pay, salary, or other compensation is referred to as a "employee." A person who does labor for compensation under an employment contract is also considered a worker.[5]

The words employee and worker seem to be interchangeable based on the description of an employee provided above, since an employee is also referred to as a worker or a workman. Workers are defined as manual laborers and secretaries only; those doing executive, technical, administrative, or professional duties are not included. 2011 laws relating to employee compensation. In this research, the phrases employee and worker may be used interchangeably since they have the same meaning.

Meaning of termination of employment

Contract termination is the procedure used to end an employment arrangement. The terms of the employment contract provide that either the employer or the employee may end the relationship.

Various ways a contract can be terminated

The Labour Act specifies three methods for terminating an employment contract. The first, which only applies to contracts having a predetermined length, takes place when the period for which the contract was made expires. The Labour Act's minimum notice obligation of providing notice prior to termination will be applicable in situations where the employment contract is silent on the notice period or the amount of money that must be paid in lieu of notice. Furthermore, the Labour Act requires the employer to provide written notice to the employee of the notice period required to terminate an employment contract when it is about to expire, especially if the notice period is one week or more.[6] It is crucial to remember that, if the terms of the employment contract are followed, any side may terminate it at any time. An employer is not required to provide a reason for termination, especially under employment contracts; the reason is irrelevant.

MODES OF TERMINATION OF CONTRACT

Termination under common law

Under common law, an employee's employment was seen to be subject to the whims of either his employer or the sovereign. Common law permits an employer to terminate an employee for any reason, whether it be good or terrible, or for no reason at all. As long as the employer adheres to the notice period stated in the Act or the employment contract, the cause for the termination is moot. Some countries, however, have deviated from this common law position by passing laws mandating

that employers provide a reason for terminating an employee's employment contract or dismissing them.

Termination under the labour Act

An employment contract may terminate by (a) the end of the period for which it was created or (b) the worker's death before to the end of that period, as stated in Section 9(7) of the Labour Act. In accordance with Section 11 of the Act or in any other way that a contract is lawfully terminable or presumed to be terminated, the party that desires to terminate the employment contract must provide the required amount of notice, according to Section 7 of the Labour Act. Additional termination procedures include performance, frustration, notice, mutual consent, repudiation, suspension, and dismissal.

Termination by frustration

Frustrating circumstances are those that happen for reasons that neither party can influence. The completion of the contract may be practically impossible under certain circumstances, or it may vary from what the parties had previously agreed upon. Frustrating circumstances include a quarrel arising, a subsequent legal change, the death or sickness of a party, the emergence of a disease such as COVID-19, etc. There is a distinction between an illness that is temporary and one that restricts the employee's ability to carry out their contractual duties. Therefore, it is a condition of the contract that a painter who has been engaged to do a painting within a reasonable amount of time will not be held responsible if he gets paralyzed and cannot complete the painting. Thus, an employee in Storey v. Fulham Steel Works Co. was a works manager for five years before becoming ill and missing two of those years of work. His employers fired him after providing him with the appropriate notice. The dismissal was ruled illegal as the illness did not corroborate the employers' suspicion that the worker would not fulfill a substantial amount of the contract. Additionally, it has been suggested that a war breakout might represent a breach of an employment contract.

MEANING OF WRONGFUL TERMINATION OF CONTRACT OF EMPLOYMENT

When an employee, often in the private sector, is abruptly dismissed for reasons that are not justified or is let go with less notice than he is entitled to, it is considered wrongful termination of employment. In this case, the employer has broken the conditions of the contract since there was not "just cause" for the conduct. According to Akintunde Eniola, "the worker so dismissed will have a remedy for wrongful dismissal unless an employment is lawfully terminated on any of the grounds stipulated in Section 9 of the Act of termination for misconduct." Any kind of termination that deviates from the previously outlined processes in this chapter is considered unfair or unreasonable. An employer may, however, terminate an employee for any reason—good, bad, or no reason at all—and the cause is immaterial, according to the common law termination rules and norms in the private sector.

Global Journal of Politics and Law Research
Vol.12, No.6, pp.64-78, 2024
ISSN: ISSN 2053-6321(Print),
ISSN: ISSN 2053-6593(Online)
Website: https://www.eajournals.org/
Publication of the European Centre for Research Training and Development –UK

REGULATORY FRAMEWORK AND REMEDIES FOR WRONGFUL TERMINATION OF EMPLOYMENT

Employment may cease for a number of reasons, including the expiration of the designated duration, performance, agreement, frustration, notification, and the legislatively regulated termination procedure

i. Termination by Notice----- Labour Act and cases
ii. Termination in Employment Regulated by Statute

Termination of Employment in ILO Standards

Section 11 of The Labour Act

11. (1) Either party to a contract of employment may terminate the contract on the expiration of notice given by him to the other party of his intention to do so.
(2) The notice to be given for the purposes of subsection (1) of this section shall be-
(a) one day, where the contract has continued for a period of three months or less;
(b) one week, where the contract has continued for more than three months but less than two years;
(c) two weeks, where the contract has continued for a period of two years but less than five years; and
(d) one month, where the contract has continued for five years or more.
(3) Any notice for a period of one week or more shall be in writing.
(4) The periods of notice specified in subsection (2) of this section exclude the day on which notice is given.
(5) Neither party's capacity to see a contract as terminable without notice because of the other party's acts that would have permitted him to do so before the formation of this Act is affected by this section.
(6) Nothing in this provision will stop either party from taking money in lieu of notice or from ever giving up his right to notice.
(7) All monetary remuneration must be paid on or before the end of any notice period.
(8) In the event that an employer gives notice to terminate the employment contract of an employee who has been employed continuously for three months or longer, the employer is not required by this section to pay the employee for any time that the employee is absent from work due to leave that the employee requests.
(9) Only the portion of a worker's income that is paid in cash, excluding overtime and other benefits, will be considered for determining a payment in lieu of notice.
The Labour Act[7] in Section 11 (1) gives any party to an employment contract the right to end the agreement after giving the other party notice of his intention to do so. But if the employer doesn't, there is no "just cause" for the conduct, hence the employer has broken the terms of the contract. The employee is thus entitled to request that the Honorable Court declare that the termination of his employment contract was illegal and, therefore, void.

Akintunde Emiola[8] tells us that unless their employment was terminated for misconduct for any of the grounds specified in Section 9 of the Act of termination for misconduct, a worker who has been unlawfully dismissed under Nigerian labor law has recourse. Therefore, in order for an employment contract to be considered a lawful termination, one or more of the following conditions must be satisfied.

a) A contract shall be deemed to have been terminated by the expiry of the period for which it was made
b) At the death of the worker before the expiry of that period or;
c) By notice in accordance with section 11 of the Act or in any other way in which a contract is legally terminable or held to be terminated[9]

The employee is undoubtedly arguing that the employer wrongfully fired him, that there was no good reason for the termination, that the process was incorrect, that the notice requirement was not fulfilled, or that the natural justice principles were violated in every case of wrongful termination of an employment contract. We'll briefly review some of the reasons that an employee may raise in order to seek compensation for an unfair termination of their employment contract:

i. Lack of just cause
ii. Wrong procedure
iii. Lack of proper notice.
iv. Breach of the rules of natural justice.

Lack of Just Cause

In this case, common law is more applicable than legislation. Under common law, an employer has the right to fire an employee for a valid cause. The Honorable Court makes this issue very evident in the Don Edward Adejumo v. UCH Board of Management decision[10] where Aguda J.(as he then was) said:

> **Once it is proven that the procedure followed was specified in the condition of service governing the plaintiff's appointment and that there was a valid reason to fire him, I should state whether the defendant's action in dismissing the plaintiff was motivated by malice against him as perceived by the defendant or any of its officers at the time.[11].**

Employee misconduct, which is defined as any action or omission that may be regarded as a repudiation of the employment contract, is typically the "just cause." As such, it is relevant to both the express or implied requirements of any applicable laws as well as the terms and conditions of a contract. Misconduct is defined as any omission that interferes with an employee's ability to perform the duties for which he was employed. The degree of misconduct that justifies termination is not specified by any legal criterion. The employer is allowed to make his own decisions. When an

employee files a complaint, the court is required to assess how this discretion was used to make sure it wasn't abused and that it was utilized appropriately, that is, for a good or just cause reason. An employee has a duty of loyalty to his boss or employer. Therefore, if he fails to do his obligations, he may be fired. A Timbers and Plywood Ltd. employee was sacked when it was discovered that he had taken the company's oil and fuel. In a case concerning wrongful dismissal, Ekernele J. determined that the plaintiff had the burden of proving that his termination was both justifiable and improper.

Certain employee behaviors may be seen by the law as a breach of the duty of fidelity. If a servant participates in any transaction without his employer's knowledge that conflicts with his personal interests and his duties as a servant in his specialized position, he may be dismissed.
If an employee violates the implicit duty to follow reasonable and lawful instructions, their employment contract may be terminated. However, refusal could not be enough justification for contract repudiation to justify contract termination by dismissal.

The Law v. London Chronicle Ltd. case states that summary dismissal will only be appropriate where the order's noncompliance shows that one of the essential provisions of the contract has not been upheld. Due to her loyalty to her immediate supervisor, a defendant employee followed him out of the managing director's office, despite the managing director's advice to "stay where you are." She and her immediate supervisor departed the Managing Director's office due to the embarrassing and uncomfortable situation. According to M.R. Evershed:

> **To read the Turner v. Mason ruling as stating that the employer has the right to immediately fire a servant for disobeying any valid instruction would be going too far.**

The court ruled that an act of disobedience or misconduct could only be grounds for termination if it made it obvious that the servant was rejecting the conditions of the contract. This forces the disobedience to become more intentional. That is, it must suggest deliberate disregard for the basic contractual obligation. In light of this, we humbly believe that if the employee's disobedience goes beyond their contractual commitments, the termination will be illegal. It was determined that the dismissal was not warranted by the rejection based on the circumstances of the case. The court also determined that "stay where you are" was not a command per se, but rather a recommendation or advice. Lord Evershed's theory of deliberate disobedience is shown in the example of *Pepper v. Webb.*[12]

Wrong Procedure

In *Olaniyan v. University of Lagos,*[13] Among other matters, the Supreme Court decided that "once there are grounds for removing an appointee for misconduct, the university council must follow the statutory procedure for removal." In such instances, the court has unrestricted judicial authority to

grant the aggrieved appointee's request for a declaratory judgment declaring the removal invalid and unlawful as well as an order of injunction.

Whether the termination is a disciplinary action or happens in the usual course of business, it is clear from the foregoing that the proper procedure must be followed as a requirement for a valid termination of an employment contract. The employment contract may specify such a strategy, or it may be suggested by the tradition and use of the particular trade. Regardless, it is crucial to emphasize that strict adherence to such a system must always be maintained. This is because failing to employ such a strategy might have several legal ramifications. This procedural requirement has several versions. First, the appropriate individual or entity must use the ability to end the contract that has been given to them by the written law or the agreement. Since the military governor assumed the power formerly had by the civil service commission, the Supreme Court declared the decision in Hart v. Military Governor, Rivers State, to be unconstitutional. This position has been upheld notwithstanding the "unwarranted inter-midlines" between the Decree (Special Provisions Decree) and any laws governing the interaction between a company and its employees. An excellent example of this was given by the case of Ndill v. Okara and Sons. The appellant was appointed Vice Chancellor of the University of Nigeria, Nsukka, in 1950 while serving as a public official. Later, while on a visit to the institution, the Head of the Federal Military Government canceled his appointment. The court determined that the Head of State and Commander-in-Chief of the Armed Forces, when acting as a visitor of the university, is not an appropriate authority in the sense of the aforementioned decree and that the termination procedure specified in the contract agreement must be followed. This decision addressed whether the visitor is an appropriate authority as contemplated by the decree. The officials in the Olaniyan and Others v. University of Lagos case, which was previously cited, committed misconduct when they deemed themselves "unfit for any position of leadership or responsibility in the University of Lagos."

Lack of Proper Notice

When an employment contract is terminated, the employee must be given enough notice. In legal terms, "notice" refers to information that would cause a prudent, reasonable, and knowledgeable individual to take notice; in a business setting, it denotes notice of a contract. When a contract expires on a certain date, one side formally notifies the other of this fact. Therefore, a warning of a possible contract termination is not the kind of notice required to terminate an employment contract, under the decision in Morten Sundour Fabrics Ltd. v. Shaw.[14]

The Act also mandates that any notice must be in writing for a period of one week or more, as was previously noted. The aforementioned rule states that it is illegal for an employer to provide a worker or employee the wrong notice. Regarding this, Lord Denning in the instance of *Hall v. Parson*,[15] stated *inter-alia:*

> The crucial issue then arises: what happens if a notification to terminate is deemed invalid? What if the servant is entitled to six months' notice but the master only gives him

> one? What are the consequences in terms of law? In my opinion, if a master gives his servant notice to leave, and that notice is too brief since it violates the terms of the contract, then the contract cannot legally be terminated until the servant accepts it.[16].

According to this aphorism, it is illegal to provide an incorrect notice to end an employment contract unless the employee accepts it. The sole recourse available to the employee in such a case is to sue the master for violation of the employment contract and demand damages

Breach of the Rules of Natural Justice

Employers are essentially carrying out a quasi-judicial role as mandated by common law when they use their discretion to fire an employee. According to the natural justice principles, he must behave in a fair and just manner. The right to a fair trial is protected under Section 36 (1) of the 1999 Constitution (as amended), which states, among other things:

> **A person has the right to a fair hearing in a reasonable amount of time from a court or other legal tribunal that has been established in a way that ensures its independence and impartiality in determining his civil rights and obligations, including any question or decision made by or against any government or authority.**

The twin foundations of natural justice that support this notion of fair adjudication are the Latin maxims "Nemo Judex in causa sua" (no one should be a judge in his own court) and "Audi alteram partem" (no one should be judged without being heard). These two principles of natural justice must be followed by courts, tribunals, arbitrations, and any other people or institutions charged with carrying out judicial functions. The right to a fair trial is fundamental to natural justice and is protected by the constitution. The notion that no one should be punished without hearing is as old as creation, as stated in Genesis, and as old as the Garden of Eden, as shown in Olatunbosun v. Miser Council, according to Oputa J.S.C. (as he was at the time).**[17]**

In *Konda v. Government of the Federation of Malaya***[18]** where Lord Denning asserted that:

> **The accused individual must have the right to know the evidence against him and be given a fair chance to refute or rectify it if the right to be heard is to be a legitimate right with any real value.[19].**

Remedies for Wrongful Termination of Employment

Reinstatement

Regarding the Isievwore v. N.E.P.A. lawsuit. The Supreme Court holds that any statutory termination of employment must follow the procedures outlined in the applicable legislation; any other method is null and unlawful. According to established law, one of the main remedies accessible to a person whose job has been unfairly terminated is reinstatement for work with statutory flavor. In the case of a typical master-servant work contract, things are not always the same. In Gboboh v. British Airways PLC The court came to the conclusion, among other things, that it is well-established law that firing a master-servant employee in a way that deviates from the provisions of the employment contract or agreement only implies unlawful termination or dismissal. The legal remedy for a servant who has been wrongfully discharged is likewise well-established. The Supreme Court's decision in Osisanya vs. Afribank (Nig) PLC was as follows: It is important to emphasize—and has long been understood—that an employer's termination of an employee cannot be seen as unlawful and have no consequences in a master-servant relationship. The usual remedy in cases where the termination or dismissal is deemed unlawful is a damages judgment.[20]

Because the employee-employer relationship is private and confidential, and because a dismissal or termination order marks the end of that relationship, most Nigerian rulings deny private sector workers the benefit of reinstatement. This is because granting a reinstatement order would force an employee to work for an employer they do not want to. Several cases have shown that even in cases where the master has a good reason to fire a servant, the court cannot compel the worker to work for an unwilling master. The court may award appropriate damages if needed. However, as we'll see in a minute, the court has ordered reinstatement in a number of cases under ordinary employment contracts. Only employees who can show that there are extraordinary circumstances justifying the sought relief will be reinstated by private sector companies. Since there is no basis or rationale for treating workers differently in the public and private sectors—particularly with regard to the reinstatement remedy—this point of view must be contested. Fry The locus classicus on the idea that it is improper to force a willing employee on an unwilling employer is L. J.'s ruling in De Francesco v. Barnum. The learned court decided that if an employer was forced to keep an employee he did not want to see, an order of reinstatement would land him in prison. The premises of this 19th-century case are no longer relevant as English courts no longer deny reinstatement to an employee who has been wrongfully or unjustly fired. In McClelland v. Northern Ireland General Health Services Board, for example, the appellant's employment was deemed "permanent and pensionable," and the employment contract included many grounds for her dismissal, such as egregious misconduct and inefficiency. Following her departure, the business implemented a policy requiring female workers to quit when they were married. She was ordered to be reinstated when the House of Lords declared that her alleged removal was unconstitutional. The appellant was likewise successful in obtaining a restoration order in Hill v. C.A. Parson and Co. Ltd. Lord Denning contended that the appellant's position was exceptional as, should his contract be deemed terminated for failing to provide notice of a reasonable period of time, he would be subject to severe hardship. In the Provincial Transport Services v. Indian Supreme Court decision, the remedy of reinstatement

was also accepted. The State Industrial Court stated that, unless there are special circumstances, industrial adjudication would reverse the dismissal order and immediately reinstate the workers in cases where the dismissal was carried out without a fair investigation, even though contract law permits termination of an employee

Therefore, Nigerian courts have been hesitant to allow workers in the private sector to return to their jobs. The appellant in Osisanya v. Afribank (Nigeria) Plc was employed by the respondent bank. Several people accused him of acting dishonestly while doing his responsibilities and filed a petition against him. The respondent dismissed the appellant despite the petition's authors subsequently retracting it. The court did not consider the common law principles that a contract of personal service involving personal pride, personal feeling, personal confidence, and confidentiality is determinable by the master at will without cause when the appellant filed an action for reinstatement due to wrongful dismissal. Because it would be irreconcilable with the intimate nature of the relationship to continue against one of the parties' wishes, courts cannot force a consenting servant to serve an unwilling master. Damages, not reinstatement, will be his remedy

According to his employment contract, the appellant in Abalogu v. Shell Petroleum Development Co. was advised to be ready to retire in two years following 23 years of service. However, he lost his job soon after getting this letter. Neither a charge of misbehavior nor a hearing were conducted. His case for reinstatement said that the letter encouraging him to be ready for retirement was not a guarantee that he would be kept on until then, and even if it were, he couldn't use it to prove his case. In the private sector, Nigerian courts have sometimes shown a predisposition for granting damages rather than restoration. Nigerian judges claim that reinstatement is technically alien to private sector workers. However, it is important to keep in mind that decisions from England and India, two countries with similar legal systems, were based on English legal norms and ideas, which seem to be at odds with what Nigerian judges believe

A REVIEW OF BELLO IBRAHIM V ECO BANK

The case of *Bello Ibrahim V Eco Bank*[21] is a recent NIC ruling that concluded that an employer's freedom to recruit and dismiss employees at whim without providing a good cause is no longer popular. The National Industrial Court used international standards and best practices to reach its decision. Before joining Eco Bank after its merger, Mr. Bello (the Claimant) was employed by the now-defunct Oceanic Bank International Plc in 2006. The defendant often complimented him on his diligent and well-executed work. During his employment, he never committed any kind of money theft or disciplinary misconduct. He was then appointed Head of Segment and Analysis for the whole country. However, when he returned, he raised ethical questions about dishonest report-generating techniques. He was so shocked to receive written notice on January 31, 2018, that his employment had been terminated without cause. Since he would not have been subject to the disciplinary action that resulted in a query being sent to him and a one-month salary suspension had he not brought up the misconduct and fraudulent activities of some of the people in his department after returning to work, the claimant filed a lawsuit, arguing that the termination was unfair and

meant to victimize him. After that, the defendant fired him without giving a reason. The claimant contended that the firing was not only incorrect but also malicious and meant to destroy his career. He thus asked for an order of reinstatement, damages, and compensation for the wrong judgment. The defendant said in its defense that the terms and conditions of the employment contract were followed in deciding the claimant's contract. During the bank's January 2018 rightsizing operation, the claimant departed the defendant's employment, and N14,494,546.97 in benefits and entitlements were duly paid to him. According to the court, these conditions specifically violate the requirements of the employment contract without offering a valid justification. "A worker's employment 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," according to Article 4 of the international labor organization's 1982 Termination of Employment Convention No. 158. Since the common law standard that allows employers to terminate workers for any reason—good, bad, or no reason at all—is no longer consistent with modern international legal best practices, the court later found that any termination based on this antiquated position is illegal and unfair.[22]

Damages

This is the primary common law remedy—and perhaps the only one—for wrongful termination. Common law holds that a master and servant had a relationship of personal service, therefore the courts were hesitant to force those who did not wish to keep up ongoing personal ties to do so.The Court of Appeal ruled in Araromi Rubber Estates Ltd. v. Orogun that a court cannot force a servant to work for a reluctant master, even if the owner had a terrible, spiteful, or even illogical reason for firing the employee. The court would only award just damages in such a case. The damages are equal to the amount that the employee would have received in the time frame needed to properly cancel the contract. W.N.D.C. v. Abimbola states that a worker's contract may be terminated with one month's notice. The Supreme Court gave the worker £60.10, which is equivalent to one month's salary. Following the precedent established in G.B. Ollivant (Nigeria) Ltd. v. I.B. Agbabiaka, the Supreme Court lowered the £3000 the trial court had awarded the employee as damages to one month's wage. Additionally, the parties may agree on the damages to be paid in the case of a breach. If a certain amount is required to be paid in the case of a breach of the employment contract, then this amount must be paid regardless of the actual damage that was caused. This amount is referred to as "liquidated damages," as opposed to "un-liquidated damages," which are the damages that the court decides must be paid at the end of a successful lawsuit. "There is nothing unlawful or unreasonable for parties by their mutual agreement to settle the amount of damages at any sum on which they may agree," the judge said in Kemble v. Farren. It is important to highlight that no compensation will be given to make up for any hurt emotions or trouble finding work elsewhere. Given that not all employment contracts can be terminated with notice, the notice period limitation of damages does not apply in every case of wrongful termination. For example, if an employment contract with a set term is wrongly terminated, the mitigation rule will apply and the measure of

damages will be the salary for the remaining unexpired period. As a result, although damages may be deemed sufficient in a wrongful termination lawsuit, they are unquestionably insufficient.

other remedies, such as reinstatement, an injunction, or a declaration, if it finds that providing the desired remedy would be just and reasonable. It is important to emphasize that the court cannot discuss matters that a party did not assert

Termination of an Employment Contract [23].

One of the primary differences between employees in the public and private sectors is the grounds for termination. Public sector employees usually have the constitutional right to a fair hearing process and the application of natural justice principles prior to termination since their contracts are often for a certain amount of time and do not expire until the term is over. They have the right to know why their contract is being terminated and to be given the chance to make their case before it expires. Employers in the private sector often hire people at random. This implies that any factor (apart from race, gender, or ethnicity) might lead to someone being dismissed. It is undeniable that an employee's gender, race, or color may be the catalyst for an employer's hostility or malice. However, as our legal system does not recognize the grounds for termination, this may not be known. Employees in the public sector are better protected against unjust termination than those in the private sector, according to the aforementioned. This may be primarily because private sector termination policies are subject to the whims and wishes of their employers and are only regulated by private contracts without legal backing

An analysis of Nigeria's legislation and procedures pertaining to termination of employment and dismissal reveals that, until recently, the nation was still operating under the outdated common law system. The ILO's criteria on unfair dismissal, codified in ILO Termination of Employment Convention 158 of 1982, require that all terminations of employment contracts be justified. This is the case even though almost 55 countries have renounced this unfavorable tendency. Because of the NICN's judicial activity, the terms of the ILO Termination of Employment Convention 158 of 1982 have been invoked in recent verdicts, notwithstanding the controversy surrounding its domestication.

CONCLUSION

If the following findings and suggestions are considered and put into practice, we think Nigeria should effectively implement the ILO Termination of Employment Convention, which includes ILO regulations on unfair dismissal, and build a fair dismissal policy This researcher argues that the NIC should adopt the requirements of the ILO conventions without domestication, as the NIC did in Bello v. Eco Bank, because of the constitutional clause that gives the NIC authority over labor concerns and allows them to adopt international best practices. A liberal approach would enable courts to mandate the reinstatement of workers as a remedy.

As a result, the Nigerian Industrial Relations System has long needed a major revamp. The system should be set up such that a worker becomes a life employee after successfully completing a probationary period and may only be dismissed for cause or in accordance with established protocols. It is intolerable that this power to hire and fire is being used so freely, but the option to terminate someone for misbehavior will still be available. Notwithstanding these complaints, the NIC's decision in Bello v. Eco Bank is commendable since such authority shouldn't be fully unrestricted and left up to the whims and fancies of the employers who have misused it over the years. It is past time for a reform in the law. According to Roscoe Pounds, the law is a social engineering instrument. The time has arrived for the law to do its function.

Endnotes

[1] Garner B.A, and others Eds., *Blacks Law Dictionary* (9th ed.) (West Publishing. Co. 2004).
[2] C.E. Ibe and M.N Umenweke, et al, *The Law of contract:Commercial Law and Practice in Nigeria*. (Nolix Educational Publication, 2009)
[3] Richard R. Carlson, *Employment by Design: Employees, Independent Contractors and the Theory of the Firm*", Arkansas Law Review (2018) 71 (1) 127-214(uark.edu) accessed on 15 February, 2023
[4]See also Section 91 of the Labour Act; *Onumalobi v NNPC & Anor.* (2004) 1 NLLR (Pt.2) 304.; ***Patrick Joseph Akpan v Federal Road Safety Commission & Another,*** SUIT No. NICN/CA/14/2021, judgment delivered by Honourable Justice Sanusi Kado on the 5th Day of December,2022, https://nicnadr.go v.ng /judgement (National industrial Court of Nigeria)
[5] Chioma kanu Agomo, *Nigerian Employment and Labour Relations Law and Practice* (CP Concept Law Series, 2012)
[6]See Section 11(3) of the Act
[7]Cap L1 LFN 2004.
[8] Emiola Akintunde: *Nigerian Labour Law.* Ibadan University Press, (1979).
[9]See section 9(7) of the Labour Act
[10] (1972) 2 UILR 145.
[11]Ibid, at 146.
[12] (1959) 2 E.R. 285.
[13] (1969) 2 All E.R. 216.
[14] (1966) 2 KLRI 25.
[15] (1978) 1 CH 14, 69.
[16]Ibid, at 70.
[17] (1988) 3 NMLR pt. 80 at pg. 49.
[18] (1962) A.C. 322
[19]Id, at 323.
[20]Also see *Osakwe v Nigerian Paper Mill Ltd* (1998) 7 SCNJ 222 and *Katto v. Central Bank of Nigeria* (1999) 6 NWLR (pt. 607) 390
[21]Suit No. NICN/ABJ/144/2018 Electronic copy available at: https://ssrn.com/abstract=4228254. Accessed on the 26th day of February, 2023.
[22]Mofoluwawo Oluwapelumi Mojolaoluwa: *Bello V Ecobank:* A New Sheriff Is In Town, retrieved from;
[23]*Gboboh vs. British Airways PLC.* supra