JUDICIAL STRIDES TOWARDS FOSTERING SECURITY OF EMPLOYMENT IN NIGERIA

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ABSTRACT

One fact that has gained legal notoriety under Nigerian master-servant employment practice is that the employee is subject to the agreed termination process as stated in the contract. On the other hand, the employer can terminate the contract of employment for no reason at all or for any reason. Thus, it would suffice if the employer was to simply say to the employee, "your services are no longer required" and he will be absolved of the need to disclose the underlying reason for the disengagement. The Courts in Nigeria have usually given judicial endorsement to this fluid state of affairs to which tenure of employment had been subjected as evident in the plethora of cases handed down by them in support of this position. However, with the debut of the Constitution of the Federal Republic of Nigeria, 1999 (Third Alteration) Act, 2010, the National Industrial Court of Nigeria (NICN) became imbued with expanded exclusive original civil jurisdiction over labour and employment matters. This newly invested status of the NICN empowered it to apply international best practices (IBPs) in labour, employment and industrial relations matters which come before the court for adjudication. The NICN has become an agent of change in turning the tide against nonstandard working conditions and unwholesome labour practices by holding that it is no longer fashionable under IBPs not to give valid reason (s) for termination. This paper, through doctrinal method, examines the impact of this new posture on the law of termination of employment in Nigeria vis-à-vis the hitherto common law position. It found that this posture, though plausible, is yet to be ratified by the Court of Appeal (CA) whose decisions are contrary to it. The paper recommends that the CA should align with this NICN's paradigm shift – as a stand-in-the-gap measure in the short run – in order to foster the dire need of security of employment in Nigeria.

1. INTRODUCTION

The employment contract establishes rights and obligations between the parties, regardless of whether it is stated to be for a fixed duration or indefinitely as rightly opined by Eyongndi and

Ilesanmi.[1] So long as the parties abide by the terms and conditions of their employment and barring any interposition of any unfavourable occurrence, the contract continues until the arrival of such a time when the contract may be brought to an end.[2] Thus, both major parties to the contract of employment have inherent in them, the right to bring the contract of employment to an end as to hold otherwise would amount to the substitution of a contract of service for the establishment of a situation of forced labour which both international and domestic laws of nation-states of the world prohibit.[3] Unlike a contract of employment with statutory flavour, where the parties are bound to strictly comply with the termination procedure provided for under the enabling statute, pursuant to which the contract was consummated, and where this was observed in the breach, it will result in a situation of wrongful and invalid termination of the employment of the affected employee necessitating his/her reinstatement.[4] The converse situation holds true in a common law master-servant employment relationship.[5] In this latter situation, the employer reserves the unfettered right at his instance, to end the contract of employment of the servant without more and without adducing any reason subject only to the burden of having to pay to the aggrieved party, damages for wrongful termination.[6] Consequently, it has become a norm which the courts have come to terms with under Nigerian labour law[7] as well as amongst labour law scholars and stakeholders that in a master-servant employment, the employer can terminate the employment of an employee for any reason (good or bad) or no reason at all. This "no reason at all" practice is usually effectuated by simply stating in the termination notice that "the services of the employee are no

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[1] D.T. Eyongndi, & I.S. Ilesanmi, "Employee Suspension and the Contract of Employment under Nigerian Labour Law: Matters Arising" (2019)10 (1) *Ebonyi State University Law Journal* 104-119.
[2] *Evans Bros. v Falaiye* [2005] 4 NLLR (Pt. 9) 108.
[3]See generally section 34(1) (C) 199 Constitution of the Federal Republic of Nigeria Cap. C38 LFN 2005; Section 9(7) Labour Act 1976 Cap. L1 LFN 2004.
[4]Ibid 159.
[5] B. C. Okoro, *Law of Employment in Nigeria*, (Lagos: Concept Publications Limited, 2011) 29.
[6]*Katto v Central Bank of Nigeria* [1999] 6 NWLR (Pt. 607) 390 at 405, Paras. D-F.
[7]A. Esan, "Termination of Contract of Employment in Nigeria" Available online at< **https://www.linkedin.com/pulse/20141019215646-79642839-termination-of-employment-contracts-in-nigeria**> accessed 29 November 2022.

longer required" without more.[8] This position despite its obvious shortcomings, has enjoyed judicial approval by both the Court of Appeal and the Supreme Court of Nigeria.[9]

However, after a lengthy evolutionary journey executed through the vehicle of Constitutional amendment i.e. (the 1999 Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010) – (hereinafter referred to as the Constitution); the National Industrial Court of Nigeria (NICN) emerged as a Superior Court of Record (SCR) on the same pedestal both in status and power at a landmark which signposts a paradigm shift to the hitherto position highlighted above. In exercise of its power to apply international labour best practices, the NICN has held that the practice of terminating the employment of an employee in a master-servant employment without stating a valid reason is no longer fashionable in accordance with international minimum best practices.[10]

This paper, through doctrinal research method, examines the impact of this paradigm shift by the NICN in the light of subsisting decisions of the superior Courts though against the background of the Supreme Court's decision in *Iwu v Skye Bank*[11] wherein the Supreme Court affirmed that the Court of Appeal has the final say on civil appeals from the NICN. The paper prognosticates into the possible attitude of the Court of Appeal on this paradigm shift which is considered as a welcomed development in light of gross unemployment and underemployment necessitating a proactive step towards strengthening security of employment in Nigeria.

For the purpose of precision in presentation and clarity in understanding, the paper is divided into four parts. Part one contains the introduction. Part two examines the position of the law on termination of master-servant employment prior to the NICN paradigm shift by reviewing some decisions of the Court of Appeal and Supreme Court of Nigeria on the subject. Part three discusses the enhanced jurisdiction of the NICN under the National Industrial Court Act 2006 and the 1999 Constitution. It reviews some decision of the NICN where the paradigm shift was actualised. Part four contains the conclusion and recommendations based on the findings specifically, the need for the Court of Appeal to give approval to the NICN position by holding that the "any reason (good

[8] *Mr. Ebere Onyekachi Aloysius v Diamond Bank Plc.* [2015] 58 NLLR (Pt. 199) 92.
[9] *Savannah Bank Nig. Plc. v Fakokum* [2002] 1 NWLR (Pt. 749) 544.
[10] G. Oluyemi, "The Decision of the National Industrial Court in Ebere Aloysius v Diamond Bank Plc. on Termination of Employment without Reason: How Reliable as a Good Law" (2017) 11(2) *Nigerian Journal of Labour Law and Industrial Relations,* 9.
[11] *Iwu v Skye Bank* [2017] 6 SC (Pt. 1) 1.

or bad) or no reason at all" position should become confined to the relics of a bygone era. When viewed against the backdrop that work is an integral part of human existence, it becomes imperative to protect man's work.

2. COMMON LAW PRINCIPLE ON THE TERMINATION OF MASTER-SERVANT EMPLOYMENT

It is important to highlight that there are two different forms of employment relationships: master-servant relationships and contracts of employment with statutorily flavoured.[12] The legal components and implications of both types of employment's termination are where the two categories of employment differs. An employment with statutory flavor is one that is regulated by an enabling statute or regulations made thereunder as was in *Olaniyan v University of Lagos (No 2)*[13]. Master-servant employment, on the other hand, is one that is based on a mutual agreement (simple contract) between the parties with regards to its terms and conditions.[14]

Therefore, parties are able to enter into employment contracts under both common law and the statute thanks to the freedom of contract.[15] Hence, so long as the agreement is not invalidated by any vitiating element, it will be enforceable.[16] In accordance with common law, the employer has the right to end the employment contract. Affected employees are therefore entitled to damages for wrongful termination of employment in cases where the contract is ended in a method and manner that is inconsistent with the employment contract. This point was underscored by the Supreme Court in *Chukwuma v Shell Petroleum Development Corporation* [17] when it held that "in an ordinary master and servant relationship such as the one before the court in the present case, and following the common law principle, a termination of a contract of service, even if unlawful, brings to an end the relationship of master and servant."[18] Thus, even where the employee is willing and ready to continue in the service of the employer, the termination is deemed complete because, freedom of contract demands that an unwilling employer cannot be compelled to retain in his

[12] F. Aborisade, *Determination of Contract of Employment in Nigeria, South Africa and Zimbabwe,* (Ibadan, Humanista Consult Ltd. & Centre for Labour Studies, 2015) 127.
[13] *Olaniyan v University of Lagos (No 2)* [1985] 2 NWLR (Pt. 9) 599.
[14] *Momoh v Central Bank of Nigeria* [2012] 1 NILR (Pt. 48) 77.
[15] C. K. Agomo, *Nigerian Employment and Labour Relations Law and Practice,* (Lagos, Concept Publications Ltd., 2011) 157. She opined that "an employment described as permanent or pensionable does not mean what it says; it does not mean that it continues until the employee reaches the retirement age or drops dead on the job."
[16] A. Emiola., *Nigerian Labour Law,* 4th ed., (Lagos, Emiola Publishers, Ogbomoso, 2008) 46.
[17] *Chukwuma v Shell Petroleum Development Corporation* [1993] 4 NWLR (Pt. 289) 512.
[18] See also *Osisanya v Afribank Plc.* (2012) 2 NILR 214.

employment, a willing employee.[19] The corollary of this is that you cannot also cajole/coerce an unwilling employee to remain in the employment of a willing employer, thereby underpinning an employee's unfettered right to resile from the contract of employment entered into between him and the employer as was held by the Supreme Court in *T.O. S. Benson v Onitiri*[20] Thus, the only remedy available to any of the major parties to the contract of employment is to have recourse to award of monetary damages for wrongful termination of the contract[21] and nothing else.[22]

The above position is manifest in a surfeit of judicial authorities of Nigeria's appellate courts. The Court of Appeal in *Odeh v Asaba Textile Mills Plc.*[23] in an unrestraint allegiance to this position held that "the employer can fire the employee without assigning any reason for doing so. A master can terminate the employment of his servant at any time and for any reason or for no reason at all provided the termination is in accordance with the terms of their contract." In *Benue Cement Company Plc. v Peter Asom Ager & Anor*[24] the Court of Appeal reiterated the above position, when it opined thus: "an employer has a right of terminating the employment of any of his employee without reason by just paying 1 month or two weeks salary as the case may be in lieu of notice." In *National Electricity Power Authority v Friday Edokpayi Eboigbe*[25]the Court of Appeal took what would look like an innovative position when it deigned to suggest when it will be incumbent on an employer to give reason for terminating the contract of employment of an employee, by opining thus:

> When an employer relies on one of the following reasons that is, ill-health or redundancy or organization or unproductiveness etc. or even upon contractual or regulatory powers conferred on and exercised by the employer to compulsorily retire a public officer, the burden is on the employer to satisfy the court on the burden, and the employer would be expected to have facts or law in support of his action.

However, in a directly opposite decision delivered contrary to its earlier-held position, the Court of Appeal held onto and reiterated the no reason cliché for termination of the contract of employment by stretching it beyond the original boundary of master servant employment

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[19]*Olanrewaju v Afribank Nig. Plc.* [2001] 13 NWLR (Pt. 731) 691 at 705.
[20](1960) 5 FSC 61; *Yesufu v Governor of Edo State & Ors.* (2001) 26 W.R.N. 121
[21] *Iderima v R.S.C.S.C* [2005] 16 NWLR (Pt. 951) 378.
[22]Although the circumstances in the case of *Longe v First Bank of Nigeria Plc.* (2010) 2 CLRN 21 is an exception. See also *Omidiora v FCSC* [2002] 13 NWLR (Pt. 784) 417.
[23]*Odeh v Asaba Textile Mills Plc.* [2004] All FWLR (Pt. 242) 2163.
[24] *Benue Cement Company Plc. v. Peter Asom Ager & Anor* [2010] 21 NLLR (Pt.59) 256 at 273 Paras. B-C.
[25]*National Electricity Power Authority v Friday Edokpayi Eboigbe* [2010] 21 NLLR (Pt. 60) 472 at 484, Paras. E-G.

relationship when it held that "a private limited liability company or any employer of labour is not bound to be saddled with an unwanted staff and may terminate the services of such an employee without any reason for the termination."[26] Nevertheless, the Court underscored the fact that where an employer states a reason for the termination, such reason must be plausible to justify such termination of the appointment of the employee.[27] This position aligns with that taken by the court in *Angel Spinning & Dyeing Ltd. v Ajah*.[28] The position of the Court of Appeal in *Obe v Nigersol Construction Company Ltd*[29]is comparable to that of the English court when it was called upon to consider circumstances of misconduct which can be elevated to the level of a repudiatory breach committed by an employee in order to justify his summary dismissal from employment.

In *London Transway Co. Ltd v Bailey*[30] the court opined that where a contract of employment contains express grounds for summary dismissal or confer on the employer a discretion to determine what amounts to misconduct, it is the duty of the court to construe the contract so as to decide whether the act of misconduct alleged is one of those stipulated acts. However, where, on the other hand, the ground for summary dismissal is subjectively worded so as to reserve to the employer the discretion to determine what amounts to misconduct, the question the court will ask is whether the route of subjectively worded grounds of summary dismissal "is contrary to public policy as ousting the jurisdiction of the court from inquiring into it" The Supreme Court in *Chief Tamunoemi Idoniboye-Obu v Nigerian National Petroleum Corporation*[31] upheld the right of an employer to terminate the employment of an employee in a master-servant employment for any reason or no reason at all. It held that "under the common law, an employer is entitled to bring the appointment of his employee to an end for any reason or no reason at all. So long as he acts within the terms of the employment, his motive for doing so is irrelevant"[32] This position is the same with that in the cases of *Commissioner for Works, Benue State v Devcon Ltd.*[33] and *W. N. D. C. v. Abimbola.*[34]

[26] *Ibid.* at P. 485, Paras. A-D.
[27] *Obe v Nigersol Construction Company Ltd.* [1972] 2 UILR (Pt. II) 121.
[28] *Angel Spinning & Dyeing Ltd.* v *Ajah* [2000] 13 NWLR (Pt. 685) 532.
[29] *Obe v Nigersol Construction Company Ltd* (1972) 2 University of Ife Law Report (pt. 2).
[30] *London Transway Co. Ltd v. Bailey* (1877) 3 Q.B.D. 217.
[31] *Chief Tamunoemi Idoniboye-Obu* v *Nigerian National Petroleum Corporation* [2005] 3 NLLR (Pt. 8) 332.
[32] *Nigerian Produce Marketing Board v Adewunmi* (1972) 11 SC 111.
[33]*Commissioner for Works, Benue State* v *Devcon Ltd.* [1988] 3 NWLR (Pt. 83) 407.
[34] *W. N. D. C. v. Abimbola* (1966) 1 All NLR 159.

The above shows that both the Court of Appeal and the Supreme Court have upheld the right of the employer in a master-servant employment relationship to terminate the employment of an employee for any reason or no reason at all. However, the Court of Appeal has acknowledged and approved the fact that where the employer decides to state a reason for the termination, it has to be plausible to justify the termination.[35] We strongly contend in this paper that given the fact that the Court of Appeal is now the *terminus ad quem*[36] on labour matters[37], it therefore follows invariably on account of the above reasoning, that the position of the law that an employer can only terminate the employment of an employee once the employer decides to offer a reason is the current law on termination of employment in Nigeria. It is both an untidy and awful situation to know that the common law position which ought to have been jettisoned still panders to the lamentations by Maitland [38] as constituting "the forms of actions we have buried, but which still rule us from their graves."[39]

3. THE NATIONAL INDUSTRIAL COURT AND THE PARADIGM SHIFT

This section of the paper reviews some decisions of the NICN where the court has introduced a paradigm shift to the position of the law as laid down by the appellate courts discussed in the preceding section. For emphasis, it is pertinent to reiterate the fact that termination is a common law right of every employer, the same way every employee can resign and leave the services of his employer.[40] It should be noted that the NICN is a pioneer in the realm of employees' protection as it keeps evolving an employee protectionist jurisprudence which is *in tandem* with prevailing ILO labour standards and international best practices as well as economic realities.[41] It is apposite to note that the jurisdictional and constitutional debacle that had trailed the NICN from inception by making cacophonous the issue of whether or not it is a constitutional court and if it is a superior court of record on the same footing with the Federal High Court (FHC) and State High Court

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[35] *BCC Plc.* v *Ager & Anor.* [2010] 21 NLLR (Pt.59) 256.

[36] The meaning of *terminus ad quem* is: a final limiting point in time. https://www.merriam-webster.com [Accessed on 22/08/2023].

[37] See generally, sec. 9 NICN Act, 2006.

[38] John Maitland was first Lord Maitland of Thirlestane, of Lethington, Knight, was Lord Chancellor of Scotland. A Scottish statesman, diplomat, lawyer. https://www.britannica.com [Accessed on 22/08/2023].

[39] Forms of action in the law of Torts – the Jet Lawyer – djetLawyer https://sourcebooks.fordham.edu [Accessed on 22/08/2023].

[40] B. Atilola, *Recent Developments in Nigerian Labour and Employment Law,* (Lagos, Hybrid Consult, 2017) 2.

[41] Atilola, B.,"National Industrial Court of Nigeria and Exclusive Jurisdiction on Labour, Trade Union and Employment Related Matters under the Third Alteration Act: A Review of N. U. T, Niger State v. C.O.S.S. T., Niger State" (2012) 6(2) *Nigerian Journal of Labour Law and Industrial Relations,* 1-14.

(SHC) has now been permanently resolved.[42] This was achieved via the enactment of the 1999 Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010 (Hereinafter simply referred to as CFRN, 1999 (Third Alteration) Act, 2010which made the NICN a constitutionally recognised court, clothed it with the status of a Superior Court of Record (SCR), gave it exclusive original civil jurisdiction over labour, employment and ancillary matters and placed the NICN on the same judicial pedestal as the FHC and SHC.

Eyongndi and Onu[43] have opined that from 2010 when the jurisdiction and status of the NICN was enhance by the CFRN, 1999 (Third Alteration) Act, 2010, the court has been trailing the blaze at reinventing the wheels of labour and employment adjudication in Nigeria by displacing anachronistic common law positions of law.[44] One of the areas where this can be seen, is within the sphere of termination of master-servant employment as demonstrated by some decisions of the court hereunder examined.[45]

The NICN in *Petroleum and Natural Gas Staff Association of Nigeria* v *Schlumberger Anadrill Nigeria Ltd.*[46] recently towed this line. In this case, some workers of the Respondent had been moved to its subsidiary, while some were declared redundant and another's employment was terminated. In the dispute which ensued between the parties and the Minister of Labour, Employment and Productivity, the latter exercised his statutory prerogative under the Trade Disputes Act[47] to refer the dispute to the Industrial Arbitration Panel (IAP) for resolution. The IAP rendered an award in favour of the Respondent to which the Appellant objected and the Minister had to refer the parties to the NICN. However, in the meantime, the Respondent went ahead to effectuate the award notwithstanding the pending objection taken by the Appellant and the referral

[42] J.O.A. Akintayo, & D.T. Eyongndi, "The Supreme Court of Nigeria Decision in Skye Bank Ltd. v. Victor Iwu: Matters Arising" (2018) 9(3) *The Gravitas Review of Business and Property Law*, 110.

[43] D.T. Eyongndi, & K.O.N. Onu, "The National Industrial Court Jurisdiction over Tortious Liability under Section 254C (1) (A) of the 1999 Constitution: Sieving Blood from Water" (2019)10 *Babcock University Socio-Legal Journal* 243-270.

[44] B. Atilola, M. Adetunji, and M. Dugeri, "Powers and Jurisdiction of the National Industrial Court of Nigeria under the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010: A Case for its Retention" (2012) 6(3) *Nigerian Journal of Labour Law and Industrial Relations*, 30-34.

[45] Otuturu, G. G., "Powers and Jurisdiction of the National Industrial Court in the Resolution of Labour Disputes in Nigeria" (2015) 9(1) *Nigerian Journal of Labour Law and Industrial Relations*, 35

[46] *Petroleum and Natural Gas Staff Association of Nigeria* v *Schlumberger Anadrill Nigeria Ltd* [2008] 11 NLLR (Pt. 29) 164.

[47] See CAP T8 Laws of the Federation of Nigeria, 2004.

by the Minister to the NICN. The Respondent contended that being a master-servant employment relationship, it reserves the right to terminate the employment of any of its employees for any reason or no reason at all. The NCIN, in evaluating this assertion, held *per coram* Adejumo, President of the NICN as follows:

> The respondent also argued that it has the right to terminate the employment of any of its employee (sic) for reason or no reason at all. While we do not have any problem with this at all, the point may be made that globally it is no longer fashionable in industrial relations law and practice to terminate an employment relationship without adducing any reason for such a termination. The problem we however have here is, when a reason is given for the termination, whether the affected staff cannot contest the reason. It is our opinion that when an employer terminates an employment and gives a reason for such termination, the employee has a right to contest the reason.

Agomo[48] in agreement with this innovative and plausible posture of the NICN opined that "the NIC is beginning to do for the private sector what the Supreme Court did in the 1980s for the public sector, which changed the face of individual employment back to the 1981 and 1985. The two landmark years in the development of individual employment law jurisprudence."[49] Going by this timely and correct assertion by Prof. Agomo, we wish to adopt the learned author's position and further state that 2007 became a landmark year in the development of master-servant employment jurisprudence.

It is hoped that with the enhance jurisdiction and powers of the NICN under the CFRN, 1999, the court will further entrench democratic governance in the sphere of master-servant employment by further striking down the unreasonable and unjustifiable common law strongholds that have held-sway in regulating private employment in Nigeria for longer than necessary to the chagrin of the employees. Giving the prevailing socio-economic realities explicated by high rate of unemployment, poverty, hunger and lack of social security system in Nigeria, allowing employers to terminate the employment of an employee for any reason (good or bad) or no reason at all, to say the least, is bizarre and would spring forth undesirable outcomes.

Following the proactive direction taken by the president of the NIC Adejumo JNIC, other judges of the court became encouraged to tow the progressive of the president. For instance, Kola-Olalere J, held in *Ebere Onyekachi Aloysius* v *Diamond Bank Plc.*[50] that an employer has the right

[48] Agomo, op. cit. (note 15) 178.
[49] Agomo (note 15) 170.
[50] *Ebere Onyekachi Aloysius* v *Diamond Bank Plc.* [2015] 58 NLLR (Pt. 199) 92.

to terminate the employment of his employee but not at his whim and caprices. The facts of the case revealed that the Claimant who was employed by the Defendant sometimes in 2007 at the Defendant's Lagos office, was promoted to the position of a Banking Executive in remuneration 'F' with a monthly salary of ₦ 105, 000, 00, guaranteed quarterly ₦105, 000, 00, upfront payments with some other monetised allowances including housing. He was subsequently transferred to Port-Harcourt. In 2009, the Supervisor to the Claimant asked him, as a routine to "call up his pay and to sign"[51] to enable the bank process same which he had to do with another staff in the Lagos branch. After some hit-ups, the call up process was done. However, the Claimant realised that even after the exercise, his account was in deficit and he operated same beyond the stipulated period by the Defendant's staff policy. On a certain day, he reported for duty and realised that he could not gain access into his computer system and was subsequently informed that the decision to deny him access was from their Lagos office. The Claimant was later queried by his supervisor on allegations of fraud on account of the transaction on a call up. It was alleged that the Claimant had colluded with another staff to transfer an amount of money which required the permission of his supervisor to an unknown account under the guise of the call up. He faced the disciplinary panel and the matter was reported to the Economic and Financial Crimes Commission (EFCC) for investigation. The proceedings of the panel were not given to the Claimant. However, his employment was terminated in 2010 without informing him of any reason. Consequently, he sued the Defendant alleging lack of fair hearing, loss of income, as well as general and specific damages. The Defendant contended that, it has no duty to state a reason for terminating the employment and can terminate the employment for any reason or no reason at all. The court rejected the argument by the defendant and delivered a verdict which on account of its germane nature, we take the liberty to reproduce *Verbatim ad literatim* as follows:

> The termination of Employment Convention, 1982 (No. 158) and Recommendation No.166 regulate termination of employment at the initiative of the employer. Article 4 of this Convention requires that the employment of an employee shall not be terminated unless there is a valid reason for such termination connected with his capacity or conduct or based on the operational requirements of the undertaking, establishment or service. The Committee of Experts has frequently recalled in its comments that; the need to base termination of employment on a valid reason is the cornerstone of the Convention's provisions. This is the global position on employment relationship now. It is the current

[51] This is a banking terminology which refers to a situation whereby an employee who has already left the premises of the Company after completion of his scheduled shift, and who is recalled for work, shall be paid double his regular straight time hourly rate for all hours worked on recall up to the starting time of his scheduled shift but, in any event, he shall be paid for not less than two (2) hours at double his regular straight time hourly rate. https://www.lawinsider.com [Accessed on 26/08/2023].

> International Labour Standard and International Best Practice. Although this Convention is not yet ratified by Nigeria, but since March 4, 2011 when the Constitution of the Federal Republic of Nigeria, 1999 (Third Alteration) Act, 2010 came into effect, the National Industrial Court has power under the Constitution to apply International Best Practice and International Labour Standard to matters like this by virtue of Section 254C (1) (f) and (h) of the Constitution as amended. In other words, by the Constitution as amended, National Industrial Court can now move away from the harsh and rigid Common Law posture of allowing an employer to terminate its employee for bad or no reason at all. It is now contrary to international labour standard and international best practice and, therefore, unfair for an employer to terminate without a reason or justifiable reason that is connected with the performance of the employee's work. I further hold that the reason given by the defendant for the determination of the claimant's employment in the instant case, which is that his "service was no longer required is not a valid one connected with the capacity or conduct of the claimant's duties in the defendant's bank. In addition, I hold that it is no longer conventional in this twenty-first century labour law practice and in industrial relations for an employer to terminate the employment of its employee without any reason even in private employment.

This dictum of the court deserves some magnification. Thus, while the NICN here reiterated unequivocally, its position in *Petroleum and Natural Gas Staff Association of Nigeria* v *Schlumberger Anadrill Nigeria Ltd*,[52] to insist on some justifying reason to be adduced by the employer for terminating the services of the employee, the court went further to deal a final blow to the convenient phrase of "your services are no longer required" usually adopted by employers as the "reason" for getting rid of an employee particularly, in the situations like in the case under review. Also, except with reference to the capacity or conduct of an employee with regards to his duties to his employer can an employer be justified to terminate the employment of an employee for any reason apart from those statutorily provided for contrary to the harsh position of the common law? This proactive rationale for imposing this restriction on the free rein of the common law position is justified by the salutary guarantee of prospects of security of employment in Nigeria and to ensure that only when it has become necessary can an employer relieve his employee from his/her employment and not at every and any flimsy excuse.[53] The level of unemployment in Nigeria is alarming, and this in itself without more, places the employer in a superior position where his power to fire is exercised with many options when compared to that of the employee.

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[52] *Petroleum and Natural Gas Staff Association of Nigeria* v *Schlumberger Anadrill Nigeria Ltd* [2008] 11 NLLR (Pt. 29) 164.

[53] Worugji, I.N.E. "The Challenges of Economic Termination of Contract of Employment in Nigeria" (2011) (5)2 *Nigerian Journal of Labour Law and Industrial Relations,* 67.

The possibility of an inquisitive mind arguing the validity of the NICN decision in the case above is not hidden. This argument is most likely hinged on the provisions of section 12(1) of the 1999 Constitution. The section requires that for any treaty to become enforceable in Nigeria, it has to be domesticated as was held in *General Sani Abacha* v *Gani Fawehinmi*[54] Thus, the Court of Appeal in *M. H. W. N.* v *Minister of Health & Productivity*[55] where it was held that in so far as the International Labour Organisation Convention has not been enacted into law in Nigeria is not enforceable. In fact, the Court of Appeal per Muntaka-Coomassie JCA (as he then was) held that:

> … there is no evidence before the Court that the ILO Convention, even though signed by the Nigerian Government, has been enacted into law by the National Assembly… in so far as the ILO Convention has not been enacted into law by the National Assembly, it has no force of law in Nigeria and cannot possibly apply… where, however, the treaty is enacted into law by the National Assembly as was the case with the African Charter which is incorporated into our municipal (i.e. domestic) law by the African Charter on Human and People's Right (Ratification and Enforcement) Act, Cap. 10 Laws of the Federation of Nigeria, 1990… it becomes binding and our Courts must give effect to it like all other laws falling within the judicial powers of the Courts.

The above judicial precedent notwithstanding, it is of utmost importance to note that the decisions above were rendered before 2010 when the jurisdiction and status of the NICN was still in the valley of uncertainty and a quandary of confusion as its constitutionality was being seriously contested. However, from the 7th day of March, 2011 when the Constitution of the Federal Republic of Nigeria, 1999 (Third Alteration) Act, 2010 came into force, things changed for the best. Section 254C (1) (f) and (h) thereof, empowers the NICN to apply International Best Practice and International Labour Standard[56] as well as treaties which Nigeria has signed by virtue of section 254C (2). Atilola and Morocco-Clark[57] are of the opinion that the purport of section 254C (2) of the 1999 Constitution is to render inoperative and impotent, as far as International Labour Convention is concerned, the mandatory requirement of domestication required under section 12(1) of the CFRN, 1999.. This position in our opinion is the true position of the law. Eyongndi

[54] *General Sani Abacha* v *Gani Fawehinmi* [2006] 6 NWLR (Pt. 660) 288.
[55] *M. H. W. N.* v *Minister of Health & Productivity* [2005] 17 NWLR (Pt. 953) 120.
[56] E. A. Oji, and O. D. Amucheazi, *Employment and Labour Law in Nigeria*, (Lagos, Mbeyi & Associates Nig. Ltd., 2015) 334.
[57] Atilola B & Morocco-Clarke, A. (2011) "National Industrial Court and Jurisdiction over International Labour Treaties under the Third Alteration Act" 5(4) *NJLL & IR*, 1-6.

and Imosemi[58] have supported the above trite position by contending that section 254C (2) of the Constitution of the Federal Republic of Nigeria, 1999 (Third Alteration) Act, 2010 is regarded as a repeal of section 12 as far as ILO treaties, standards and international labour best practices are concerned hence, the clog has been removed empowering the NICN to bring Nigeria's labour jurisprudence up to speed with global best practices and realities. Thus, agreeing with this, Agomo posits that "from now on the law will be as pronounced by the NIC."[59] Learned author concludes by stating that the Constitution is indeed a comprehensive piece of legislation which has not only repositioned the National Industrial Court but has, in effect, established an industrial court system for the country. It is a good and welcome development.[60]

The odd culture of terminating the employment of an employee in a master-servant employment for any reason (good or bad) or no reason at all, to say the least, is an entrenched form of unfair labour practice. Unfair labour practice is generally any labour practices that do not conform with best global practices in labour circles as enjoined by local and international experience. Unfair labour practice is wide and encapsulate several things including but not limited to any practice that prejudices any party to an employment contract such as termination without not just a reason, but a good and justified one. Any employment practice that detract from decent and humane practice, that exposes one to avoidable burdens or hardship no matter how insignificant qualifies as an unfair labour practice which must not be permitted by the court This position is in accordance with the decision of the NICN in *Mix & Bake Flour Mill Industries Ltd.* v *National Union of Food, Beverage and Tobacco Employees.*[61]

The point should be made that at present, Nigeria is submerged in an endemic and unprecedented high level of unemployment. The army of graduates churned out with geometric progression from various tertiary institutions across the nation keep increasing and thus swelling the unemployment market on account of lack of provision of gainful employment opportunities for them formally or informally. Most Nigerians that are employed are grossly underemployed and

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[58] D.T. Eyongndi and A. Imosemi, "Aloysius v. Diamond Bank Plc: Opening a New Vista on Security of Employment through the Application of International Labour Organisation Conventions" (2023) 31(1) *African Journal of International and Comparative Law* 356-376

[59] K. C. Agomo, (note 15) 345.

[60] *Ibid.*

[61] *Mix & Bake Flour Mill Industries Ltd.* v *National Union of Food, Beverage and Tobacco Employees* [2004] 1 NLLR (Pt. 2) 247 at Pp. 282- 283, Paras. D-A.

this clan has somewhat appropriated the fatalist aphorism that "half bread is better than none" or "when the preferable is not available, the available becomes preferable" as a coping strategy with their unenviable situation. The high rate of inflation and general economic instability coupled with an ever-increasing poverty level, requires deliberate actions towards protection of employment for several reasons. The right to gainful employment is and where not, should be elevated to the status of a fundamental right. Once a person is employed, the immediate and incidental benefits of his or her employment transcends him or her as it engenders extended socio-economic interests.

Unfortunately, this situation is exacerbated by the lack of governmental blueprint towards creation of gainful employment opportunities in Nigeria for Nigerians coupled with weak and obsolete regulatory framework and non-performing institutional apparatuses. While it may be argued that Nigerian law does not explicitly recognise work as a human right, there are international legal frameworks which Nigeria is a party to that recognise work as a right. The right to employment is likewise protected by international legal framework. Article 15 of the African Charter on Human and Peoples Rights[62] (ACHPR) protects the right to work in Nigeria as this charter has been domesticated in Nigeria in compliance with section 12 of the 1999 CFRN. The right to favorable and just working circumstances is recognized in Articles 6 and 7 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR).[63] The Universal Declaration of Human Rights[64] Articles 23 and 25(1) recognise the right to work. Thus, Nigeria cannot shy away from its obligation under these international legal instruments. It is unfortunate that Nigerian government-owned and controlled tertiary institutions are engaged in prolonged strike action due to non-implementation of collective agreement between the Academic Staff Union of Universities (ASUU) and the Federal Government of Nigeria at a time when nations are moving towards enhancement and fortification of knowledge economy through research.[65] In 2021, all government universities in Nigeria were on strike for eight months with pockets of warning strikes in 2022.[66] The impact of these incessant strike actions (as it has become near

[62]African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap. A10, LFN 2004.
[63]International Covenant on Economic, Social and Cultural Rights, 1966.
[64]Article 25 Universal Declaration of Human Rights, 1948.
[65] L Tunde, "Solving the issue of ASUU strikes permanently" <https://www.thecable.ng/solving-the-issue-of-asuu-strikes-permanently >accessed 26 August, 2023.
[66] D Erezi, "ASUU suspends eight-month strike" https://guardian.ng/news/asuu-suspends-eight-month-strike/ accessed 26 August, 2023.

impossible for any Nigerian government not to experience it), on Nigeria knowledge economy cannot be overemphasized.

At present, there an unprecedented increase in nonstandard forms of employment including but not limited to casualisation of employment, outsourcing, triangular or disguised employment, etc. The unjustifiable reason for taking a recourse to these irregular or non-orthodox forms of employment, apart from the employers' inordinate desire to cut down cost, attain flexibility in operation, is to put the employee in a more precarious unstable employment situation. Unfortunately, despite their untoward and anachronistic nature, these unhealthy forms of employment models, are becoming generally acceptable owing to the high rate of unemployment that is prevalent in Nigeria. Thus, the issue of security of employment becomes threatened, requiring urgent and fierce protection. Labour is not only a factor of production but a very important one. Despite this, there are deliberate systematic efforts to cheapen it by employers and happily however, the NICN is at the vanguard of aggressively and impressively pushing back these negative narratives in the employment environment in Nigeria.

4. CONCLUSION AND RECOMMENDATIONS

From the discussions above, it is clear that there are two major types of employment contract in Nigeria, contract of employment that has statutory flavour and the master-servant employment contract. However, there is a third which is an admixture of these two as typified in *Longe* v *First Bank Plc.*[67] which is a hybrid of master-servant cum statutory-flavoured employment contract that is, the employment contract has both master-servant and statutory flavor elements. Where an employment is described as permanent or pensionable it does not mean that same cannot be brought to an abrupt end contrary to the description. Both parties, reserve the right subject to the enabling statute or regulation made thereunder or their agreement, to bring the contract to an end. While there are various ways through which the employment contract could be brought to an end, the posture of the law with regards to master-servant employment is that an employer can terminate the employment of his employee for any reason, good or bad or no reason at all. In order to continue to both perpetrate and perpetuate this crime against humanity, the employers have shrewdly

[67] *Longe v. First Bank Plc.* (2010) 2 CLRN 21.

evolved the imprecise cliché of "your services are no longer required" as a reason but one which is actually confusing as it is dreadful.

However, since 2010 pursuant to its constitutional fortified jurisdiction which primed it for robust dispensation of justice by enabling it to apply international best labour practices, the NICN has taken a novel and plausible "higher ground position" from the hitherto the "no duty to give a reason for termination." The court has held in a surfeit of cases, that, all over the world, it is no longer fashionable to terminate the employment of an employee for no reason but justified reason (s) and the employee is given the opportunity to contest such a reason. This position remains contrary to that taken by courts in Nigeria, superior to the NICN. Even though it is doubtful currently, if the NICN is bound by the decisions of the Supreme Court since the same court has held that appeals from the NICN stop at the Court of Appeal, one would wonder the rationale for invoking the subject of *stare decisis* principle operated under the judicial hierarchy of courts in Nigeria to impose on the NICN – and *a fortiori* the Court of Appeal - the necessity to apply willy-nilly, decisions of a court that does not exercise appellate jurisdiction over it. Thus, in Nigeria, unemployment and underemployment keeps growing in an unprecedented scale making it a dire need to guarantee security of employment by ensuring that, an employer is discouraged from terminating the employment of his employees without being compelled to adduce reasons therefor. Apart from this, awarding damages for wrongful termination would rather serve as an impetus for the encouragement of wrongful termination rather than its operating to dissuade employers from continuing with the odious practice, thereby placing the employee in a very precarious position.

Given the findings above, it is recommended that due to its plausibility, the innovative posture of the NICN with regards to its current position that an employer given not just a reason (s) but justified reason should also receive favourable consideration and judicial approval by the Court of Appeal. This would ensure that employers do not exercise their right of termination indiscriminately not just to the disadvantage of the directly affected employee but the economy in the long run. It is the hope further canvassed in this paper, that this innovative position will- in addition to the responsibility placed on the employers only – also serve to ensure that the sanctity of employment contract is respected by all and sundry and that it is only on compelling and justifiable reasons can same be permitted to be discounted. This is to engender security of employment and stability of enterprises. It is further recommended that trade unions and other employees' rights activists and advocates should embark on the enlightenment of their members

and the general public of this innovative stance in order to create public awareness as most employers and employees are ignorant of this position of the law.