Employee Rights: Employers offering Employees the Right to Resign or Be Terminated.

G. ELIAS

Introduction

Recent developments on the application of international best practices to labour and employment disputes by Nigerian courts have raised several issues that require pragmatic solutions from employers. For instance, when an employer decides to terminate an employee's contract of employment without notice, the employer is generally faced with options of whether (A) to adhere to the common law principle of compensating the employee with a salary in lieu of notice, as held in *Dangote v. Ager*[1], or (B) to comply with international best practices by compensating the employee based on the duration of the employment outlined in the contract.

Craftily, employers often tend to avoid both approaches by seeking cost-saving alternatives, since the aim of employers is chiefly to avoid costs. One of such alternative is constructive dismissal as seen in *Adewunmi v. Atlas Copco Nigeria Limited* (*supra*), where the Claimant was notified by his employer of an impending termination with an option to resign instead, thus allowing the employer to avoid complying with the two options and the employee to preserve a favourable employment record.

Reflecting on *Adewunmi v. Atlas Copco*[2], this article considers the changing judicial attitude to employer right of termination currently been shaped by the application of international best practices, and the current legal landscape on remedies in cases of employment termination without notice.

Constructive Dismissal: Adewunmi v. Atlas Copco Nigeria Limited ("Atlas Case'')

Facts

Atlas Copco Nigeria Limited (the "**Defendant**") employed Mr. Olawale Nathaniel Adewunmi (the "**Claimant**"), as an Order Processor in 2017. The Claimant alleges that in 2019, upon returning from a seventeen (17)-day authorized vacation, the Defendant's Country Manager, in the presence of other officials of the Defendant, pressured the Claimant to either resign or face outright termination. The Defendant, however, firmly denies this allegation, asserting that its officials merely informed the Claimant of the Defendant's intent to terminate the Claimant's employment, which the Claimant chose to pre-emptively address by resigning from the employment.

Following the Claimant's resignation, the Claimant initiated legal proceedings, seeking *inter alia* (i) a total of ₦102,437,280.00 (One Hundred and Two Million, Four Hundred and Thirty-seven Thousand, Two Hundred and Eighty Naira), representing the sum of his annual gross salary over the twenty-two (22)-year tenure that he would have spent working for the Defendant; and (ii) ₦100,000,000 (One Hundred Million Naira) exemplary damages for wrongful termination of employment.

Finding

The National Industrial Court of Nigeria (the "**NICN**") found that while the Claimant's resignation letter did not explicitly articulate the circumstances surrounding the resignation, the surrounding context strongly indicated its involuntary nature. Specifically, the presence of multiple superiors and managers of the Defendant in a private meeting, conveying the intent of the Defendant to terminate the Claimant's appointment while offering the Claimant an option to terminate the employment through resignation left the Claimant with scant alternatives. Therefore, the NICN held that that the Claimant was compelled to weigh the ramifications of resigning versus facing termination concerning his career aspirations and current lifestyle. Notably, the NICN observed that the decision to resign, as mandated by the managers of the Defendant, had to be made by the Claimant on the same day of the meeting, thereby constraining the Claimant's autonomy to take decisions while pressured under the duress of managerial team of the Defendant.

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[1] (2024) LPELR-61800(SC).
[2] Suit No: NICN/LA/182/2019, unreported judgment of Hon. Justice M. N. Esowe, delivered on July 16, 2021.

The NICN further articulated that "*...forced resignation, which can be categorized as constructive discharge, occurs when an employee vacates their position due to coercion from managers, supervisors, or board members. In contrast to traditional resignation, where an employee voluntarily relinquishes their role, forced resignation is involuntary*."

Termination of Employment Without Notice

It is well-established that the principles governing the termination of employment in the context of a master-servant relationship dictate that an employer has the discretion to hire and terminate employees at will.[3] This principle was reaffirmed in *Inua v. FBN Plc*[4], where the Court of Appeal stated that an employer possesses the right to terminate employment without the necessity of justifying the decision. This reflects the position under both common law and Nigerian law that a master may dismiss a servant for any reason, whether justified or otherwise. See *Miss Ebere Ukoji v. Standard Alliance Life Assurance Co. Ltd.*[5]; and Mr. Adebayo Adesina v. Veritas Glanvills Pension Limited[6]

In *Skye Bank Plc v. Adegun*[7] where the Respondent's employment was wrongfully terminated by the Appellant, in considering whether the Respondent is only entitled to one month's salary in lieu of notice, the Supreme Court held that "*...the Respondent has made a special case for the grant of special damages in terms of the award of two years' salary and allowances he would have earned. The court has departed from the settled position of the law to enforce the current international best practices and to enthrone justice.*"

However, in Atlas Case the NICN rejected the Claimant's argument that damages for wrongful termination should equate the earnings the employee would have received had they remained employed. Instead, following the precedent set in *Dangote Cement Plc v. Ager* (*supra*)[8], the NICN held that in cases of wrongful termination, the appropriate measure of damages is the salary the employee would have earned during the notice period required to properly conclude the employment. Notably, the court awarded ₦1,000,000.00 (One Million Naira) in exemplary damages for the wrongful termination of the Claimant's employment and ₦300,000.00 (Three Hundred Thousand Naira) to cover litigation costs.

Application of International Best Practices

By the Third Alteration to the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the NICN is vested with the jurisdiction over application of international best practices and labour standards in adjudicating employee- related matters in Nigeria[9]. Based on this provision of the Constitution, the NICN has reformulated the legal landscape surrounding employment rights. This is evident in its significant departure from traditional precedents in adjudicating employment-related rights and obligations which has been further upheld by the appellate courts.

For instance, the NICN has repudiated the antiquated doctrine granting employers the unfettered right to hire and fire without justification as seen in *Inua v. FBN (supra*), asserting that such practices contravene international best practices. The NICN ruled that employers must provide reasons for terminating an employee's contract[10]. The NICN has also extended protections to outsourced personnel by recognizing an implied employment contract between such staff and the end-user, thus

[3] Dada v. Adeyeye (2005) 6 NWLR (Pt. 920) 1; Nwaubani v. Golden Guinea Breweries Plc (1995) 6 NWLR (Pt. 400) 184.
[4] (2016) 2 NWLR (Pt. 1495) 89 CA.
[5] (2014) 47 NLR 531
[6] Suit No: NICN/LA/41/2019, unreported judgment of Hon. Justice S.H Danjidda, delivered on March 3, 2023
[7] Unreported Suit No. SC/406/2018, delivered on February 27, 2024.
[8] Delivered few days by the Supreme Court after the decision of Skye Bank Plc v. Adegun.
[9] Section 254C (1) (f) and (h) of the 1999 Constitution (as amended).
[10] *Aloysius v. Diamond Bank Plc* (2015) 58 N.L.L.R (Pt.199) 92; *Afolayan Aderonke v. Skye Bank*, unreported Suit No. NICN/IB/08/2015, delivered on May 17, 2017.

treating both the outsourcing agency and the end-user as co-employers.[11] These shifts, amongst others by the NICN and appellate courts, represents a landmark change in the adjudication of employment and labour disputes in Nigeria.

In Atlas Case, the NICN addressed the claimant's reliance on international best practices to prove a claim of annual gross salary for a period of twenty-two (22) years, a tenure that he would otherwise have been willing to dedicate to the Defendant's employment. The NICN discountenanced this claim and upheld the common law principle that such an employee is entitled to only a salary in lieu of notice. The NICN emphasized that the application of international best labour practices must not be executed in a manner that arbitrarily hampers business operations. Thus, while aspirations for longevity and the success of business operations are commendable, life is inherently unpredictable; there can be no assurance that the Claimant would survive for twenty-two (22) years following his forced resignation, nor that the Defendant's business would thrive over such a duration.

Conclusion

The variance in judgments from the NICN has raised significant concerns, as employers are left uncertain about which judicial precedents the courts will follow in termination of employment. It appears the Supreme Court's later decision in *Dangote Cement Plc v. Agers (supra)* is the major position of the law applied by our courts. However, the NICN's award exemplary damages as done in *Adewunmi v. Atlas Copco Nigeria Limited* (*supra*) complicates further the issues. As seen in *Emeghara v. Sterling Bank*[12], the Court of Appeal ruled that exemplary and punitive damages are not typically awarded in breach of contract cases. This sentiment had been earlier posited in *Allied Bank Nig Ltd v. Akubueze*[13] wherein the Supreme Court stated that, aside from marriage promises, exemplary damages are not recoverable in breach of contract cases.

Further, as held *Skye Bank Plc v. Adegun* (supra), the position of law now pursuant to international best practices is that an employee is entitled to compensation equal to the earnings the employee would have received had the employee remained employed, provided a special case is made for the grant of such relief. Notably, the key distinction between Atlas Case and *Skye Bank Plc v. Adegun* is that, unlike the Skye Bank's case the Claimant in Atlas Case did not make any special case on how he arrived at the twenty-two (22)-year salary he would have earned if his employment was not terminated by the Defendant.

It is perplexing to observe the diverse decisions emerging from courts, seemingly influenced by varying interpretations of international best practices principles. It is hoped that the appellate courts will provide clarity and consistency to these seemingly conflicting principles.

[11]Anthony Agum v. United Cement Company Ltd. (UNICEM) Anor, Suit No: NICN/CA/71/2013, unreported judgment by Hon. Justice E. N. Agbakoba, delivered March 3, 2017; and Morrison Owupele Inimgba v. Integrated Corporate Services Ltd & Anor. [2015] 57 NLLR (Part 195) 268.
[12] (2018) LPELR-45147(CA).
[13] (1997) 6 NWLR (Pt. 509) 374.

Authors

Abdurrahman Salis
Associate
abdurrahman.salis@gelias.com

Abdurrahman Salis is an Associate in the firm. He is a member of the Nigerian Bar Association and holds an LL.B. from Bayero University. His practice focuses on Projects, Energy, Capital Markets and Disputes.

Iyanuoluwa Adeyemo
Associate
iyanuoluwa.adeyemo@gelias.com

Iyanuoluwa Adeyemo is an Associate in the firm. She is a member of the Nigerian Bar Association and holds an LL.B. from Obafemi Awolowo University. Her practice focuses on Oil and Gas, Infrastructure and Banking.

Sulaimon Badmus
Associate
sulaimon.badmus@gelias.com

Sulaimon Badmus is an Associate in the firm. He is a member of the Nigerian Bar Association and holds a Bachelor of Laws degree from Lagos State University. His practice focuses on Disputes, Energy, Tax and Banking & Finance.

G. Elias

Lagos Office: 6 Broad Street, Lagos, Nigeria
Abuja Office: 2nd Floor, Abia House, Plot 979, First Avenue, Off Ahmadu Bello Way, Central Business District, Abuja.

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