

LUMP SUM WITHDRAWAL FROM RETIREMENT SAVING ACCOUNTS:

**A REVIEW OF THE DECISION OF THE
NATIONAL INDUSTRIAL COURT IN GIREI V
SIGMA PENSION LIMITED, NATIONAL
PENSION COMMISSION AND ATTORNEY
GENERAL OF THE FEDERATION**



INTRODUCTION

The Pension Reform Act (PRA 2014) introduced the contributory pension scheme, which made it mandatory for employers and employees in both the public and private sectors of the economy to contribute towards employee retirement benefits. The contributory pension scheme was introduced to ensure that Nigerian workers on retirement have a steady source of income when they can no longer work and earn a living.

Employers of labour are under obligation to deduct a percentage of the employee's salary and contribute same into the employee's Retirement Savings Account (RSA). The employee can only withdraw the sum paid into the RSA after his retirement. The implementation of this pension regime has presented numerous challenges, one of which is whether an employee who has retired can make a lump sum withdrawal from his RSA.

This Litigation Update analyses the recent decision of the National Industrial Court of Nigeria on whether and to what extent a retiree can make a lump sum withdrawal his RSA.

BRIEF FACTS

The Claimant retired from the civil service at the age of sixty (60) years after thirty-five (35) years of service. Upon her retirement in the year 2019, her RSA maintained with Sigma Pension Limited (the 1st Defendant) stood at N20,236,312.00 (Twenty Million, Two Hundred and Thirty-Six Thousand, Three Hundred and Twelve Naira). Following her retirement, she officially demanded for the withdrawal of 50% of the amount in her RSA. The 1st and 2nd Defendants, however, rejected her demand. Hence, she filed this suit challenging the Defendants over the willful and deliberate refusal to allow her access the lump sum of N10,236,312. (Ten Million, Two Hundred and Thirty-Six Thousand, Three Hundred and Twelve Naira) being 50% of her RSA with the 1st Defendant. The Defendants contended that the Claimant is not entitled, under the PRA 2014, to withdraw up to 50% of the amount standing to the credit of the Claimant in the Claimant's RSA. The Defendant argued that the Claimant is only entitled to:

- a. the payment of 31.3% of her RSA balance as lump sum and N113,586.17 as monthly pension;
- b. payment of 25% lump sum and the sum of N124,019.20 as monthly pension; or
- c. zero lump sum and payment of N165,358.94 as monthly pension.

The key issue for determination presented for the consideration of the Court is whether the Claimant is entitled to withdraw 50% of the money in her RSA without let or hindrance. The Court held that by refusing the Claimant to withdraw 50% of the amount in her RSA, the Defendants violated the Claimant's right as guaranteed under the Constitution of the Federal Republic of Nigeria 1999 (as amended) and the PRA 2014.



BASIS OF THE COURT'S DECISION

In arriving at its decision, the National Industrial Court relied on the provisions of section 173 of the Constitution as well as section 7 of the PRA 2014.

Section 173 of the 1999 Constitution provides that:

1. ***Subject to the provisions of this Constitution, the right of a person in the public service of the Federation to receive pension or gratuity shall be regulated by law.***
2. ***Any benefit to which a person is entitled in accordance with or under such law as is referred to in subsection (1) of this section shall not be withheld or altered to his disadvantage except to such extent as is permissible under any law, including the Code of Conduct.***

Section 173(1) of the 1999 Constitution provides for the right to pension or gratuity to be regulated by law whilst by virtue of **section 173(2) of the 1999 Constitution**, the said pension or gratuity shall not be withheld or altered to the disadvantage of the recipient except to such extent as is permissible under any law. According to the Court, the PRA 2014 meets the tenor of **section 173 of the 1999 Constitution**. **Section 7 of the PRA 2014** provides that:

1. ***A holder of a retirement savings account shall, upon retirement or attaining the age of 50 years, whichever is later, utilize the amount credited to his retirement savings account for the following benefits:***
 - a. ***withdrawal of a lump sum from the total amount credited to his retirement savings account provided that the amount left after the lump sum withdrawal shall be sufficient to procure a programmed fund withdrawals or annuity for life in accordance with extant guidelines issued by the Commission, from time to time.***
2. ***Where an employee voluntarily retires, disengages or is disengaged from employment as provided for under section 16(2) and (5) of this Act, the employee may with the approval of the Commission, withdraw an amount of money not exceeding 25 per cent of the total amount credited to his retirement savings account, provided that such withdrawals shall only be made after four' months of such retirement or cessation of employment and the employee does not secure another employment.***

The Court held that there is nothing in section 7 of the PRA 2014 that restricts the ability of a retiree to withdraw a lump sum from the RSA. The only limitation is that proviso in **section 7(1)(a) of the PRA 2014** to the effect that ***“the amount left after the lump sum withdrawal shall be sufficient to procure a programmed fund withdrawals or annuity for life.”*** The Court clarified that an employee who retires



from service after attaining the mandatory retirement age can make a lump sum withdrawal from the RSA provided the retiree leaves an amount in the RSA and the amount should be sufficient to ensure that the retiree receives a periodic payment throughout his life. This is different from the case of an employee who voluntarily retires or resigns from employment or is dismissed from employment. Such retiree can only make a lump sum withdrawal of 25% of the RSA.

However, the Claimant in the instant case did not retire voluntarily. She retired compulsorily having attained the retirement age of sixty (60) years. So, a decision that treats her as a voluntary retiree violates section 173(2) of the 1999 Constitution which guarantees that pension shall not be withheld or altered to the disadvantage of the retiree. Accordingly, the Court held that the failure and refusal of the 1st and 2nd Defendants to yield to the legitimate request of the Claimant (who compulsorily retired at the biological age of 60 years) for the withdrawal of 50% of her RSA is a violation and negation of **section 173(1) and (2) of the Constitution.**

COMMENTARY

This case clarifies the position of the law as it relates to lump sum withdrawal from the RSA. An employee who compulsorily retires is entitled to a lump sum payment without restriction provided that an amount that ensures the payment of annuity to the retiree is left in the account. With respect to the employee who voluntarily retires, resigns or is dismissed from employment, such a person can only make a lump sum withdrawal of 25% of the amount in the RSA.

All Pension Fund Administrators, Custodians and the National Pension Commission are to take note of this decision.

For further enquiries, please contact:



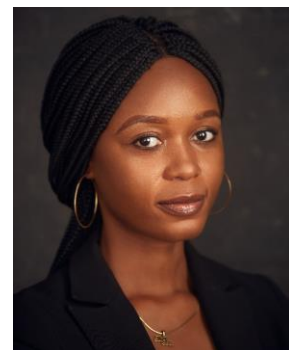
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