

UNLAWFUL TERMINATION OF EMPLOYMENT:

**A REVIEW OF THE NATIONAL
INDUSTRIAL COURT' S DECISION IN
Mr. ABDUL-HAKEEM A. OLASEWERE
V AIRTEL NETWORKS LIMITED**



INTRODUCTION

The common law principle in employment law that the master has the unhindered right to hire and to fire for good, for bad, or no reason at all, is gradually being eroded. Globally, termination of employment at will and without reason is no longer fashionable and or acceptable as international best practice now requires that the employment of a worker should not be terminated without any justifiable reason which is not connected with capacity, conduct or operational requirement of the organization. The case under review examines recent developments in Nigerian law on unlawful termination

BACKGROUND

The Claimant had his employment terminated after being in the employment of the Defendant for a period of 6 years and alleged that he was a victim of the Defendant's Chief Executive Officer's malicious and threatening behaviour based on events leading up to his disengagement. The Claimant also alleged that his responsibilities were reduced and he was transferred to another position until his employment was terminated based on alleged petitions received against him none of which, were investigated or brought to his attention for a response. He further claimed that he was dismissed in violation of the Defendant's existing disciplinary policy and procedure, and that no reason was proffered by the Defendant for his dismissal.



The Defendant in response, claimed that the Claimant's employment was terminated in accordance with the terms and conditions of his engagement and that staff movement within the establishment is routine and normal practice. The Defendant further contended that it is not required by law to provide any reason for the claimant's dismissal.

The key issue presented for determination before the Court was whether considering the circumstances of the case, the termination of employment of the Claimant by the Defendant was wrongful. The Court held that the termination of the employment of the Claimant by the Defendant was indeed wrongful and without any justifiable basis.

BASIS OF THE COURT'S DECISION

In arriving at its decision, the National Industrial Court adduced several reasons to declare the termination of Claimant's employment as wrongful, the Court divided these reasons into three.

Firstly, the Court noted that no reason was given for the termination of the Claimant's employment. While the court acknowledged the common law position of the master having an unhindered right to hire and to fire for good, bad, or for no reason at all, it stated that this position has been eroded by both statute and judicial precedence.



The court relied on the provisions of **section 254C (1) of Constitution of the Federal Republic of Nigeria, 1999 (Third Alteration) Act, 2010** (the Constitution), which empowers the National Industrial Court of Nigeria to exercise jurisdiction to the exclusion of any other Court in civil causes and matters connected with unfair labour practices or international best practice or standard. Particularly paragraphs (f) and (h) of the said section 254C (1) which provides as follows:

“254C (1) Notwithstanding the provisions of sections 251,257,272 and anything contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters-

(f) relating to or connected with unfair labour practice or international best practice in labour, employment and industrial relation matters;

(h) relating to, connected with or pertaining to the application or interpretation of international labour standards.”

The Court further stated that in exercise of the powers conferred on it by the Constitution and in order to ensure that Nigerian labour jurisprudence is in tandem with international norms, it shall rely on section 7(6) of the **National Industrial Court Act, 2006** which provides ***that the National Industrial Court of Nigeria shall, in exercising its jurisdiction or any of the powers conferred upon it by this Act or any other law, have due regard to good or international best practice in labour or industrial relations***. The Court stated that what amounts to good or international best practice in labour or industrial relations shall be a question of fact and that one method of determining international labour standards would be to examine the Conventions of the International Labour Organisation. The Court cited the **Termination of Employment Convention, 1982 (No. 158) (Convention) and Recommendation No. 166 (Recommendation). Article 4** of the Convention provides that;

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

The court further cited and relied on the decision of the National Industrial Court in ***Ebere Onyekachi Aloysuis v. Diamond Bank Plc (2015) 58 N.L.L.R (Pt. 199) 92*** wherein the Court placed heavy reliance on ***Termination of Employment Convention, 1982 (No. 158) and Recommendation No. 166***. The Court held that the provision of section 254c (1) (of the Constitution which provides that; ***“Notwithstanding the provision of Sections 251, 257, 272 and anything contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly”*** empowers the Court to rely on Conventions or International Treaties.



On the second reason, the Court held that while there was abundance of evidence pointing to the satisfactory discharge of the Claimant’s assigned duties, there was no evidence provided by the Defendant pointing to incompetence or dereliction of duty against the Claimant and no query was issued to him questioning the discharge of his duty.. *The Court held that it is trite that where an employer has a disciplinary process or procedure in place, the least it could and should do is to comply with the same in dealing with its workforce and there was no evidence before the court to attest to the fact that the procedure set out in the *Disciplinary Policy* of the Defendant were followed in respect of the allegations against the Claimant. The Court held that the letter of termination should have been issued only after due disciplinary process had been followed and as such the termination of the employment of the Claimant was wrongful.*

On the third and final reason, Court noted that the Claimant had alleged malice and abuse of office against the Chief Executive Officer/Managing Director (CEO) of the Defendant. The Court held that for the Defendant to rebut the direct evidence adduced by the Claimant on this issue it also must adduce direct evidence. That ***section 126, Evidence Act, 2011*** provides that oral evidence shall in all cases be direct as to what a person saw, heard, perceived and where it is as to an opinion, then it must be the evidence of the person who holds that opinion. The Court referred to the decision of the Court of Appeal in ***Mohammed Waziri "M" v. The Commissioner of Police, Plateau State Command (2020) LPELR-51951(CA)*** and further held that the fact that evidence of *DW1* did not provide a rebuttal to the weighty allegations against the CEO means that for all intents and purposes the evidence of the Claimant remained unchallenged. The Defendant had the opportunity of calling the CEO as a witness to rebut the allegations against him but for reasons best known to the Defendant it did not call the CEO as a witness.

In the circumstance, the Court found the termination of the employment wrongful, and awarded the Claimant exemplary damages of **One Hundred Million Naira (N100, 000,000.00) (\$166,666.67 US dollars)** and **Sixty Million Naira (N60,000,000.00) (\$100,000 US dollars)** as general damages against the Defendant.

COMMENTARY

The principle that he who hires can also fire at will seems to be eroding rapidly under Nigerian law as the courts are now insistent on upholding the principles of good or international best practice in labour and industrial provisions. In addition, the submission that the Court cannot award damages in excess of what a Claimant would have earned in the event of a finding that the termination of his employment was wrongful no longer reflects the current state of labour and employment jurisprudence in Nigeria.

Employers of labour are advised to be guided by existing jurisprudence on employment matters and take greater care in the drafting and enforcement of employment contracts.

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