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Necessity of Disclosing Reasons for Termination of Employment: Dissecting the Radical Departure from the Common Law Principle of Termination at Will

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Abstract

Under Nigeria employment law, an employer could terminate an employee's employment with or without specifying reason. The general rule is that an employer can "hire and fire" at will. Consequently, employers were not under obligation to disclose the reason for termination of employment. But it appears that this position has changed. Employers are now bound to give reason(s) for any form of termination of employment. Failure to disclose the reason for termination could render such termination invalid or null and void. In recent time, the National Industrial Court of Nigeria (NICN) has radically restricted the wide latitude given to employers particularly as it relates to termination of employment without reason. The novel judicial pronouncement in some cases decided by the NICN has now upturned the old common law principle of termination at will. Although some legal commentators have criticized the decision of the NICN on this subject matter yet this innovative decision remains the law. The principal objective of this work is to examine whether the common law principle of termination of employment without reason still subsists under Nigerian labour law. The research methodology adopted is doctrinal. Primary and secondary materials were consulted and this paper finds that this new position posited by the NICN is in tandem with the International Labour Standards as same is enshrined in Article 4 of International Labour Organization Termination of Employment

Convention of 1982, No 158. This work recommends that Nigerian labour law should continue to embrace labour law principle that protects employees from arbitrary dismissal by insisting that valid reason be specified for any termination. Deviation from the old concept of termination at will seems to be a step in the right direction.

Keywords: Employment, Termination, Labour Law, Unfair Dismissal, Common Law,

1. Introduction

Nigerian Labour law is replete with court decisions which state that an employer can "dismiss his servant (workers) from his employment for good or bad reasons or for no reason at all."[1] This position has been applicable in Nigeria until the ground-breaking decisions in the cases of *Duru* v *Skye Bank Plc*,[2]*Aloysius v Diamond Bank Plc*[3] and *Bello Ibrahim v Eco Bank Plc*[4]. Although the novel position advanced in these cases seem commendable, yet many legal writers and

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[1]See *Chukwumah vShell Petroleum Development Co. (Nig) Ltd* (1993 4 NWLR (pt.89) p. 512 at 517.

[2](2015) 59 N.L.L.R (pt. 207) 680.

[3] (2015) 58 N.L.L.R 92.

[4] Unreported Suit No: NICN/ABJ/144/2018.

commentators have condemned the decision in these cases.[5] The judicial pronouncement in *Aloysius*'s case[6] has heralded a new horizon in Nigerian employment law. This appears to be a radical departure from the applicable principle of law in a master-servant employment relationship hitherto developed by the common law which Nigerian courts had applied. The effect of the decision in the cases above is that in the determination of an employment contract, an employee cannot be lightly thrown away for good, bad or no reason at all because employers are now bound to give valid reasons for terminating the employment of their employees. The *Aloysius's* case has also introduced a new dynamic to our labour law jurisprudence.[7] The courts can now deviate from applying the old common law principle of "he who hires, can fire for good reason, bad reason or no reason at all." This decision has a generated a lot of concern among legal minds[8], even though it is in accordance with the ILO Convention on Termination of Employment[9].

This work is divided in five parts. Part 1 is a general introduction of the subject matter. Part II examines the old common law position of termination of employment for good, bad or no reason at all. Part III interrogates the novel position which impeached and upturned the old common law principle of termination at will. This is analyzed by examining the ground-breaking decisions of the National Industrial Court in a few decided cases. Part IV discusses the purport of Article 4 of the ILO Termination of Employment Convention, 1982, No 158 as well as ILO Recommendation 166 and their impact on Nigerian law of Termination at will. Part V is the conclusion and recommendation.

2. Application of Common Law Principle of Termination for Good, Bad or No Reason Under Nigerian Labour Law

At common law the reason or motive for the termination is immaterial. An employer was at liberty to terminate his employee's contract for no reason. Such reason could be out of malice, bad faith or even punitive, yet the courts in Nigeria may not question such unfair dismissal. The motive which led an employer to lawfully terminate the appointment of his servant is irrelevant in the determination of an action by an employee for breach of an employment contract. In the case of *Araromi Rubber Estate Ltd v Orogun*[10], the Court of Appeal held that no servant could be imposed by the court on an unwilling master even where the master's behavior or motive for getting rid of the workers is wrongful, unfounded or unjustifiable. While commenting on the irrelevance of motive in the determination of an employment contract, the Court of Appeal in case *W.R.& P.C Ltd of N.N.P.C. v Onwo*[11] held that a master can terminate the employment of his servant at any time and for any reason of for no reason at all provided the termination is in accordance with the terms of their contract. The right to terminate a contract of employment can be exercised by either

[5]E..Etomi and E. Asia, 'The Power of the National Industrial Court- A Review of *Aloysius v Diamond Bank* in THIS DAY Law, p 11 on the 31st day of May 2016 Issue.
[6]*Supra*; *Duru v Skye Bank Plc* (Supra) and *Bello Ibrahim v. Eco Bank* (*Supra*).
[7]E. Etomi and E.Asia (n.5).
[8]O. V. Iweze '*Bello Ibrahim v Eco Bank Plc*, Cause for Concern" Reported on 2nd March 2021 in the Guardian Newspaper Available at<http://mguardian.ng/>features.accessed on 29th May 2021.
[9]See the ILO Termination of Employment Convention, 1982, No 158: Art 4.
[10] (1999)12N.W.L.R. (Pt.630)312; See also *Afri Bank (Nig)Plc v Osisanya* [2000] 1NWLR (Pt.642)598.C.A.
[11] (1999) 12 N.W.L.R (pt.631), See also *Katta v CBN* [1999] 6 NWLR(Pt.607) 390.

party to the contract.[12] When it is exercised, no reason need be given and neither is it the duty of the court to search for the reason for the termination of the contract.[13]Under the common law principle of master and servant, an employer is at liberty to terminate the employment of an employee for good or bad reasons[14] or for no reason at all. The Court of Appeal explicitly reiterated this common law principle in the case of *Chukwu v NITEL*[15] when it stated that:

> *In the ordinary case of a master and servant, the master can terminate the contract with his servant at anytime for good or for bad reason or for none at all. Thus, where in a contract given to either party, the validity of the exercise of that right cannot be vitiated by the existence of motive or improper motive.*

It is a settled principle of law that where there is a legal right to do a thing, the motive for which it is done is generally immaterial to its validity. As such, the motive which impels the master to terminate a contract of employment with his servant is irrelevant.[16] An employer who hires an employee has the corresponding right to fire him at any time, provided this is done within the terms stipulated in the contract of employment. The implication of the foregoing is that the exercise of a right to terminate a contract of service by a master cannot be vitiated by proof of malice or improper motive.[17] But where an employer specifies the reason for the termination, such reason must be justifiable in order to validly terminate the employment of his employee.[18]

The pertinent question at this juncture is whether termination for no reason is still good law under Nigerian Labour Law? Or put differently, can an employer still terminate his employee's appointment for no reason or without giving valid reason? These questions will be thoroughly addressed in Part III of this work.

3. Radical Departure from Common Law Concept of Termination at Will

In the case of *Petroleum and Natural Gas Senior Staff Association of Nigeria v Schlumberger Anadrill Nigeria Limited*,[19]the National Industrial Court of Nigeria (NICN), presided over by the President of the Court Hon. Justice Adejumo (as he then was) keenly observed that:

> *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 relationship without adducing any reason for such a termination .....[20]*

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[12]See *Texaco Nigeria Plc v Kehinde* (2002) (Pt.94) 143.

[13] S. Adegoroye, "The Contractual Freedom to Terminate a Contract of Service: An Analysis of the Nigerian Experience (2004) 1 *Annuals of Nigerian Law*, 121-130.

[14] See *Gateway Bank of Nigeria v Abosede*(2001)FWLR (pt 79)1316.

[15] (1999) 2NWLR (pt430) 290.

[16]*Angel Spinning & Dyeing Limited vAjah* (2000) FWLR (Pt420)322; See also, *Taiwo v. Kingsway Stores* (1950)19 NLR 122.

[17]See J.O. E Abugu "ILO standards and the Nigerian law of Unfair dismissal" (2009) 17(2) *African Journal of International and Comparative Law* 181-212.

[18]*Angel spinning & Dyeing Ltd vAjah* (*Supra*).

[19] Unreported Suit No. NIC/9/2004 decided September 18, 2007.

[20]*Supra*, para 252 at p.11.

From the foregoing, the NICN in one breadth accepted that an employer can determine the employment of his employee for no reason (adopted the common law principle) but in another breadth condemned the continuous application of termination for no reason stating that it is not in accordance with international best practice.

In the case of *Duru v Skye Bank Plc*[21], the court had to determine whether an employer could determine the employment of an employee without a valid reason. Before making a decision on the above issue, the NICN observed that the ILO Termination of Employment Convention 1982 (No. 158 and Recommendation No. 166 regulated termination of employment was the initiative of the employer. The court made particular reference to Article 4 of aforesaid Convention which is to the effect 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*

Accordingly, per Kola Olalere, the learned Judge in the above case, having found out that it was too harsh for the defendant to inflict so much pain and loss on the claimant by dismissing him without any reason, with complete disregard for the current International Labour Standard and International Best Practice which require that a valid reason be provided in termination or dismissing an employee, held that it was wrong for the defendant to dismiss the claimant without any reason. The learned judge based his decision on the ground that by section 245 (1) (f) and (h) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) (CFRN) the NICN, was at liberty to deviate from the harsh and rigid common law principle which allowed an employer to dismiss its employee for bad or no reason at all.[22]

Similarly, in the case of *Aloysius v Diamond bank Plc*[23], the NICN per F.I Kola Olalere held that the practice of terminating employment without stating reasons is contrary, to "International Best Practices and Labour Standards." For clarity, the court in this case held at page 134 and 135 paras, A-B that:

The Termination of Employment Convention, 1982 (No 158 and the 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 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 operation 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 based 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 International Labour Standard and International Best Practice. Although this Convention is not ratified by Nigeria, but since March 4, 2011 when

[21]*Supra.*

[22]*Supra*, at pp 725 – 726, Paras, B-A; See also, the comments of the ILO Committee of Experts which stressed, that the need to base termination of employment on a valid reasons is the cornerstone of the Termination of Employment Convention, 1982.

[23](2015) 58 N.L.L.R. (Pt.99)92 at 134.

the 1999 Constitution of the Federal Republic of Nigeria, (Third Alteration) Act, 2010 came into effect, this court has the power under the Constitution to apply International Best Practice and International Labour Standard to matters like this by virtue of section 254 (1) (f) and (h) of the Constitution (as amended)… I find it now contrary to International Labour Standard and International Best Practice and therefore, unfair for an employer to terminate the employment of its employee without any reason or justifiable reason that is connected with the performance of the employee's work…. I hold that it is no longer conventional in this twenty-first century labour law practice and industrial relations for an employer to terminate the employment of its employee without any reason even in private employment.[24]

The judgment above seems to be a watershed in annals of Nigerian labour law jurisprudence especially as it dealt a fatal blow to the common law principle of termination at will. In my view, the court decision in the said case is highly commendable as it attunes with modern international labour standard as specified in the ILO's Convention. Besides, it is an important innovation to Nigerian outdated labour laws principle. The decision of the learned judge in the case above, effectively nullified the old common law position which allowed an employer to hire and fire at will, for good, bad or no reason at all.[25]

In spite of the innovative pronouncement offered in the case above, yet some legal commentators have criticized the decision in *Aloysius*'s case.[26] Some critics are of the opinion that the decision of the court represents an audacious attempt at providing remedy to the inadequacy of our labour law especially in respect of unfair dismissal.[27] The antagonists to application of international labour standard under Nigerian labour law further posits that the judgment of the NICN in the *Aloysius*'s case poses dangers to the sovereignty of Nigeria and the powers of the National Assembly to make laws.[28] However, I am of the view, that the law should not be static, rather it should be dynamic in aligning to modern trend under international labour law. The Nigerian labour law should not hold on tenaciously to the old common law regime if adherence to it will occasion grave injustice to employees. In the same vein, in the recent case of *Bello Ibrahim v. Eco Bank Plc*[29], the NICN once again deviated from applying the common law principle of "he who hires, can fire, for good reason, bad reason or no reason at all." Instead, the court relied on sections, 254 C(1),(a), (f),(h) & (2) of one Third Alteration of the 1999 CFRN (as amended) and section 7(1), (a) & (b) of the National Industrial Court Act, 2006 and held that the dismissal of Bello Ibrahim by Eco Bank was wrongful as it did not comply with the ILO Termination of Employment Convention, 1982 (No.158)[30] and Recommendation 166.

The court expressly observed that the provision of section 7 (1) of the National Industrial Court Act, 2006 empowers it to shift or deviate from the old common law position of employer's right

[24]See Termination of Employment Convention, 1982 (No 158); Art.4.
[25]*Ajuzi v FBN Plc* (2016) LPELR -40459 (CA); See also, *Oniga v Government of Cross River State &Anor* (2016) LPELR – 40112.
[26]E. Etomi and E.E. Asia "The Power of the national Industrial Court- A Review of Aloysius" reported in THIS DAY Newspaper of 31st May, 2016.
[27]*Ibid.*
[28]See 1999 CFRN (as amended); s. 4.
[29] Unreported suit No NICN /AB/144/2018.
[30] See Article 4 of the Termination of Employment Convention 1982 (No 158).

to terminate with reasons or no reasons. The legal implication of the foregoing is that there is now a paradigm shift in the law of termination. This is to the effect that employers must now justify every termination as it is no longer the law that employers can terminate for good or bad reasons or no reason at all. This obviously indicates that the current labour regime in Nigeria empowers the NICN to deal with issues of international best practices.[31] It also shows the resolve of the legislature to alter the traditional common law doctrine which gave employers power to perpetrate unfair termination.[32] Thus, the general common law rule of not ordering specific performance in master and servant relationship has been impeached.[33] The court in *Ibrahim Bello*'s case clearly stated that to terminate or dismiss employee without giving justifiable would be tantamount to unfair termination.[34]

Although employers have the right to discipline and terminate their employee's appointment, but employers may not always be right.[35] Occasionally some employers can act unreasonably toward their workers for personal reasons not pertaining to performance, operation and conduct.[36] In such cases, they can act and take awkward decisions of dismissing employees without stating valid reason or considering the required procedural fairness and policies.[37] Therefore, the requirement of specifying valid justifiable reason for termination is aimed at guaranteeing procedural fairness and guard against abrupt termination of employment for no justifiable reason.

The decision to deviate from the old common law regime is an innovative development in our labour law jurisprudence. This radical departure from established common law principles was recognized in the case of *Sahara Energy Resources Limited v Mrs. Olawunmi Oyebola.*[38] In spite of the foregoing, the judgment in *Bello's* case has been subjected to a number of criticisms.[39] While admitting out the decision in *Bello v Eco Bank* would curb the arbitrariness of employers, yet a learned writer[40], observes that this novel judgment could give a leeway for courts to rely on Conventions, laws treaties outside Nigeria as a basis for international best practice and disregard the law which requires that such international best practice must itself be a question of fact. It was opined that adherence to the position in *Bello*'s case could subvert the 1999 CFRN (as amended) and also undermine the sovereignty of Nigeria. But I am of the view that the application of *Bello*'s decision will bring about social justice and some form of job security for employees in the private sector.

[31] National Industrial Court Act, 2006; s 7 (6).
[32]*Bello Ibrahim v Eco Bank* (*Supra*).
[33]*Supra*; See also, *Hill v C.A. & Co Ltd* (1971) ALL E.R.1345.
[34]See A.A. Adejugbe "A Comparison between Unfair Dismissal Law in Nigeria and the International Labour Organisation's Legal Regime 1 (2020) *Uniport Journal of International and Comparative Law*, 96-116
[35]*Aloysius v Diamond Bank Plc* (*Supra*).
[36]See the case of *Olu Ibrahim v The Council, the Federal Polytechnic Yola*[2015] 63 N.L.L.R.
[37]*Olaniyan v University of Lagos*[1985] 2NWLR 599.
[38] Unreported Suit Appeal No. CA/L/1091/2016 delivered on December 3 2020.
[39] O.V. Iweze, "*Bello Ibrahim v Eco Bank Plc* Cause for Concern" reported in the Guardian Newspaper on March 2, 2021.
[40]*Ibid.*

4. Examining the Purport of ILO's Termination of Employment Convention 1982 (No 158) and Recommendation 166 on Nigerian Labour law

The Governing Body of the International Labour Organization (ILO) met for the 68th time in Geneva and adopted ILO Termination of Employment Convention, 1982 (No 198) and Termination of Employment Recommendation, 1982 (No 166). The scope of the Convention covers individual dismissal as well as permanent layoffs affecting group workers.[41] Part II of the Convention is on standards of general application. Certain fundamental principles are discernable from the ILO's Convention. They include; the requirement of a valid reason and notice before terminating an employee's appointment, the need to guarantee the right of fair hearing in *termination* cases and provision of the right to appeal for dissatisfied employees whose employment are wrongfully terminated.

In respect of the requirement to provide valid reason, the Convention states that the contract of a worker shall not be terminated unless there is valid reason for such termination. For it to be valid, it must be connected to any of the following:

i. the capacity of the worker, which relates to lack of necessary skills or qualities which may lead to poor or unsatisfactory performance; or

ii. conduct of the worker, which relates to improper behaviour or misconduct negatively affecting the contract of employment or

iii. based on the operational requirement of the undertaking establishment or service, which relates to downsizing for reasons of an economic, technological or structural nature[42].

Form the foregoing provision, it may be difficult for an employer to terminate an employment relationship of indefinite period without giving a valid reason. In the case of *Aloysius v Diamond Bank*[43], the court among other things held that in exceptional cases where the facts and circumstances dictate, employer of labour must give reasons for termination, failing which such termination would be declared wrongful in law.[44] The court also observed that the position of the common law rule on termination is not in tune with modern day global labour law best practices. This requirement that valid reason be proffered before the termination of a worker's employment has been a fundamental innovation which has indeed, revolutionized the industrial relations law in Nigeria.

The Convention also provides diverse unexhausted reasons that are automatically, invalid reasons for termination.[45] These reasons are:

a. union membership or participation in union activities outside working hours or with the consent of the employer within working hours;

[41]A.A. Adejugbe (n.34).
[42] See Article 4 of the ILO Convention No. 158 (1982).
[43]*Supra*.
[44]See *Bello Ibrahim v Eco Bank* (supra), See also *Duruv Skye Bank Plc* (*supra*).
[45]Article 3 of the ILO Convention 158; See also J.A Bellace, "Right of Fair Dismissal: Enforcing A Statutory Guarantee" (1983) 16 (2) *University of Michigan Journal of Law Reform*, 207-247.

b. seeking office as, or acting or, having acted in the capacity of a worker representative,
c. the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations, or recourse to competent administrative authorities
d. race, colour, sex, marital status, family responsibilities or pregnancy, religion, political pion ion, national extraction or social origin
e. absence from work during maternity leave

In respect of fair hearing, an employer is required to give an employee the reason for discharge and be afforded an opportunity to defend himself at the work place against the allegations made by the employer.[46] For workers who believe they have been unfairly dismissed, they are given the opportunity to challenge their dismissal before an impartial body such as a court tribunal or arbitrator[47]. Thus, the right to appeal is protected in the Convention. The ILO Recommendation 166 was to appease countries which thought that some provisions of the Convention were too restrictive and radical.

Both the Convention and Recommendation provide for some essential notions of justice to safeguard workers against arbitrary dismissal premised on unjustifiable reason. In fact, the Committee of Experts had stated that adopting the principle enshrined in Article 4 of the Convention removed the possibility of the employer to unilaterally end an employment relationship of indeterminate duration by means of a period of notice or compensation in lieu thereof[48]. Therefore, this Convention has now brought about limitation on the employer's right to terminate employment at will without stating valid reason or such. The implication of ILO's Convention No. 158 on Nigerian labour law is that termination of employment without specifying reason(s), is now untenable under the current labour regime in Nigeria. The NICN has now discarded the old common law principle of termination at will which hitherto had led to grave injustice for employees under the old common law legal regime.

5. Conclusion and Recommendation

The current position under the law as it relates to termination of employment in Nigeria is that employers are now bound to give valid reasons for termination of their employees. This position is novel under Nigerian labour law but it is highly salutary. The position is also a radical departure from the common law principle of termination at will. The decisions in *Bello Ibrahim v Eco Bank*, *Duru v Skye Bank and Aloyisus v Diamond Bank* have fundamentally revolutionized Nigerian labour law and this has ultimately put an end to termination for no reasons. The decisions are quite commendable and it is submitted that it will lead to substantive justice for employee who could have suffered from rigid adherence to the old common law regime.

It must however be pointed out that his novel position of the National Industrial court, does not take away the employer's right to dismissal or termination. It is only an admonition to employers

[46] See Article 7 of the ILO Convention 158.
[47] See Article 8 of the ILO Convention 158.
[48] ILO 1995 Committee of Experts on the Application of Conventions and Recommendations (CEACR) General Survey Protection against Unjustified Dismissal, para 76.

that termination should not be arbitrarily done without proffering valid reasons to substantiate same. The current position guarantees procedural fairness at work. It is now settled law that termination will be ineffective if valid reason is not given by the employer to justify wrongful termination.

It is recommended that section 11(5) of the Labour Act which still retains the old common law concept of termination at will, should be amended so as to enthrone modern international labour standards to our labour jurisprudence.

Again, employers of labour in Nigeria should be enlightened about the provisions enshrined in the ILO's Termination of Employment Convention so they will not violate the provisions therein. In this respect, the Nigerian Labour Congress (NLC) and the some other labour organisations can champion the sensitization of employers of labour.