

BANK STRIKES AND THE LAW IN NIGERIA*

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Introduction

Strikes have become endemic in the Nigerian economy in recent times.¹ This unfortunate because, by its very nature, a strike action should be the last weapon in the armoury of organized labour to press home the workers' demands. Moreover, a strike represents a major show-down in the voluntary collective bargaining process between labour and management during a trade dispute. Secondly, strike actions always lead to slack in production services and therefore adversely affect not only the employers of labour specifically but the economy as a whole. This is even more devastating when it is a strike emanating from the banking sector of the economy. Indeed, the spate of strikes by bank workers in recent times in Nigeria necessarily calls for a critical re-appraisal of the legal protection afforded the bank, the employee-strikers and the bank customer. This is the rationale for this contribution.

Meaning of Strike

In the broadest sense, a strike is a *deliberate concerted work stoppage*. To constitute a strike in this sense, there must be a common cessation of work and the work stoppage must be deliberate. Thus, a cessation of work by a single worker cannot be a strike, nor does it amount to a strike if a group of employees stopped working due to an external event, such as a bomb scare or apprehension of danger.² A work-to-rule or the so-called "go slow" or "work to contract" will not qualify as a strike generally since it does not amount to work stoppage. But a political protest³ or sympathy strike is nevertheless a strike. In *Tramp Shipping Corporation v. Greenwich Marine Inc.*⁴ Lord Denning, M.R. defined a strike as follows:

"A strike is a concerted stoppage of work by men done with a view to improving their wages or conditions of employment, or giving vent to a grievance or making a protest about something or other, or supporting or sympathizing with other workmen in such endeavour. It is distinct from a stoppage brought about by an external event such as a bomb scare or by apprehension of danger."⁵

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¹ No authority need be cited for this because, strikes have become so common in Nigeria that even our courts would readily take judicial notice of them. For instance, in 1993 alone all the nation's Universities were closed down following a strike by the academic staff that lasted for about six months (May-October); and the annulment of the 'June 12, Presidential Election Results' was greeted by spates of political and protest strikes for months by virtually all the trade unions in the country.

² *Tramp Shipping Corporation v. Greenwich Marine Inc.* (1975) 2 All E.R. 989

³ For example, strike embarked upon by various trade unions against the annulment of the 'June 12 Presidential Election Results' in Nigeria by the Babangide regime.

⁴ (1975) 2 All E.R. 989.

⁵ *Ibid.* at p. 990.

This general definition may be limited or qualified by a specific definition in a statute. For instance, in Nigeria, the Trade Disputes Act⁶ 1976 has modified the above general definition. Under section 47(1) of the Act.

“Strike means the cessation of work by a body of persons employed acting in combination, or a concerted refusal or a refusal under a common understanding of any number of persons employed to continue to work for an employer in consequence of a trade dispute, done as a means of compelling their employer or any person or body of persons employed, or to aid other workers in compelling their employer or any person or body of persons employed to accept or not to accept terms of employment and physical conditions of work, and in this definition-

- (a) “cessation of work” includes deliberately working at less than usual speed or with less than usual efficiency; and
- (b) “refusal to continue to work” includes a refusal to work at usual speed or with usual efficiency.”

Under this statutory definition, any strike which is not in consequence of a trade dispute is not a strike within the meaning of the Act. A “Trade Dispute” means any dispute between employers and workers or between workers and workers, which is connected with the employment or non-employment, or the terms of employment and physical conditions of work of any person.⁷ Therefore, a political strike cannot qualify as a strike under this definition though a sympathy strike by members of one trade union supporting members of another trade union will obviously qualify. Moreover, a work-to-rule action or “go-slow” amounts to a strike under this definition, since it is “deliberately working at less than usual speed or with less than usual efficiency or a refusal to work at usual speed or with usual efficiency.” Thus, the main difference between the two definitions is that in Nigeria, political strike and protest strike would qualify as strike at common law but not under the Act.

The Right to Strike in Nigeria:

The right to strike by workers and their organizations is generally recognized as a legitimate means of defending their occupational interests. This right is an essential element in the principle of collective bargaining. Without it organized labour is powerless to deal with management at arm’s length. According to Lord Simon:

“Where the rights of labour are concerned, the right of the employers are conditioned by the rights of the men to give or withhold their services. The right of the workmen to strike is an essential element in the principle of collective bargaining”⁸

Indeed, it is arguable that the right to strike is an integral part of the right ingrained in the personal status of a citizen to choose for himself whom he will serve which distinguished him from a slave.⁹ This must include the right to withhold service during a strike, for the principle that a man is not to be compelled to serve a master against his will is deep-seated in the common law of this country.¹⁰

⁶ Formerly, the Trade Disputes Decree No. 7 of 1976, (Now Cap. 432, Vol. 23, Laws of the Federation of Nigeria 1990.)

⁷ Section 47(1). *British Broadcasting Corporation v. Hearn* (1978) 1 All E.R. 111; *Conway v. Wade* (1909) A.C. 506.

⁸ *Crofter Hand Woven Harris Tweed Co. Ltd. & Ors v. Veitch & Anor* (1943) 1 All E.R. 142, 158 – 159; (1942 A.C. 435 at 463; *Stratford & Sons Ltd. v. Lindley* (1965) A.C. 269; *Torquay Hotel Co. Ltd. v. Consius* (1969) 2 Ch. 106. See also *K.K.W. Wedderburn* (1962) 25 M.L.R. 513.

⁹ *Nokes v. Doncaster Amalgamated Collieries* (1940) A.C. 1014.

¹⁰ *Ibid.* at p. 1033 (per Lord Atkins).

The right to strike is both generally recognized and protected by law. The rationale for this is given by Professor Wedderburn as follows:

“To protect such a right is not to approve or disapprove of its exercise in any particular withdrawal of labour. It is to recognize the fact that the limits set to the right to strike and to lock-out are one measure of the strength which each party can in the last resort bring to bear at the bargaining table. The strength of a union’s position is bound to be related to its power and its right to call out its members, so long as any semblance of collective bargaining survives.”¹¹

Contrary to the assertion of a learned writer,¹² the right to strike is recognized under the Nigerian Law. An examination of various laws in the country would reveal this fact. First, there is the common law right to strike where adequate notice sufficient to terminate the contract of employment is given.¹³ There is nothing in any law in Nigeria which has taken away this right.¹⁴ To insist otherwise is to take the rather ridiculous position that once a citizen is employed, he cannot resign his employment or withdraw his service giving the mandatory notice, for this would amount to slavery and therefore unconstitutional. A denial of a citizen’s right to withdraw his service during a strike will amount to forced labour and thus offend section 34 of the 1999 Constitution.¹⁵ Moreover, section 40 of the Constitution guarantees a citizen’s right to form a trade union of his choice for the protection of his interest, subject only to derogation by any law that is reasonably justifiable in a democratic society.¹⁶ It is submitted that the right to form trade unions guaranteed in the Constitution implies the right of the trade unions, as part of the collective bargaining process, to call out their members on strike when occasion demands. Indeed, the Trade Unions Act 1973¹⁷ gives credence to this submission. Under the Act, trade unions are required to incorporate in their rules book or constitution a rule forbidding any member of the union from taking part in a strike unless a majority of the members of the union have, in a secret ballot, voted in favour of the strike.¹⁸ This provision is, of course, a clear recognition of the right to strike in Nigeria.

In respect of banks specifically, the Banks and Other Financial Institutions Act¹⁹ 1991 recognises the right of bank employees to strike, but protects the affected bank against civil suit by its customers. Section 42 provides:-

- (1) No bank incur any liability to any of its customers by reason only of failure on the part of the bank to open for business during a strike.

¹¹ K.K.W. Wedderburn, *The Worker and the Law*, (London: Pelican), p. 245.

¹² S.O. Ukhuegbe, “Industrial Conflict and the Law: An Appraisal”, unpublished Seminar Paper, pp. 3-8.

¹³ *Springhead Spinning Co. v. Riley* (1868) L.R. Eq. 55; *Morgan v. Fry* (1968) 2 Q.B. 710; *J.T. Stratford & Sons Ltd. v. Lindley* (Supra.); *Secretary of State for Employment v. Associated Society of Locomotive Engineers and Firemen* (No. 2) (1972) 2 Q.B. 455; *Lewis v. London Chronicle (Indicators Newspapers) Ltd.* (1959) 1 W.L.R. 698.

¹⁴ See Emiola, *Nigerian Labour Law*, Ibadan University Press, 1979, p. 189-199; Wedderburn, (1962) 25 M.L.R. 513 commenting on *Rooks v. Barnard* (1962) 2 All E.R. 579, (1962) 3 W.L.R. 260.

¹⁵ Constitution of the Federal Republic of Nigeria, 1999

¹⁶ Under Section 45, nothing in section 40 shall invalidate any law that is reasonably justifiable in a democratic society -

(a) in the interest of defence, public safety, public order, public morality or public health; or

(b) for the purpose of protecting the rights and freedom of other persons. It is submitted that any law prohibiting strikes does not satisfy the underlined test to be valid.

¹⁷ Formerly the Trade Unions Decree No. 31 of 1973. (Now Cap. 437, Vol. 23, Laws of the Federation of Nigeria (1990.))

¹⁸ See Section 4 and item 14, Schedule I of the Act.

¹⁹ Formerly Banks and Other Financial Institutions Decree No.25, 1991 as amended by the Banks and Other Financial Institutions (Amendment Act), 1997.

Attempts at Legal Control of Strikes

Various attempts have been made at different times to curb excessive use of strike actions in the collective bargaining process in Nigeria. The methods employed include outright ban on strikes and subtle circumscription. A ban on strikes was imposed during the civil war with the attendant need to sustain production and industrial stability to strengthen the war effort.²⁰ In 1976, the Trade Disputes Act, while recognizing the right to strike, introduced both voluntary and compulsory settlement of trade disputes. Apparently recognizing the futility of a total ban on strikes, the Act only laid down the processes to be exhausted before a strike.²¹ The provisions aimed at amicable settlement of trade disputes, are to the effect that a strike action should be the very last in the collective bargaining process.²² As strikes continued in spite of the latter Act, the Trade Disputes (Essential Services) Act,²³ 1976 amongst others, empowered the Head of State to proscribe any Trade Union whose workers are employed in essential services, if the Head of State was satisfied that such union –

- (a) is or has been engaged in acts calculated to disrupt the economy or acts calculated to obstruct or disrupt the smooth running of any essential service; or
- (b) has, where applicable, wilfully failed to comply with the procedure specified in the Trade Disputes Act, 1976 in relation to the reporting and settlement of trade disputes²⁴.

It is obvious that only those workers engaged in services classified as essential services are affected by this Act. Even then, the act done must be sufficiently grave as to be calculated to disrupt the economy or the smooth running of the essential service. Moreover, there is no mention of “strike” specifically in the Act to justify its application to all forms of industrial action which amount to strike within the meaning of the Trade Disputes Act of 1976.²⁵ In summary, the attempted curb of strikes by these pieces of legislation was a colossal failure as the following assessment would show.

Assessment of the Legal Control of Strikes:

The question may be addressed how effectively these statutes have been able to prevent strikes. It is common knowledge that these laws have been honoured in their breaches than in their observance. Despite these laws, strikes have continued unabated among all categories of employees both in the public and private sectors of the economy.²⁶ This ought to remind government that workers will go on strike whatever the law may have to say about it,²⁷ and to enact laws that will be difficult to

²⁰ The Trade Disputes (Emergency Provisions) Decree, 1968 banning strikes and lock-outs was reinforced by the Trade Disputes (Emergency Provisions) (Amendment) (No.2) Decree, 1969 following unabated wave of strikes after the first Decree. Under the Decree any breach of the provisions was punishable on conviction, by imprisonment for a period of five years.

²¹ Section 1 – 18.

²² The procedure for settlement under the Trade Disputes Act 1976 was too dilatory and time-consuming hence it failed to stop strike actions. See also Section 13 and Note 47 *unfra*.

²³ Formerly, the Trade Disputes (Essential Services) Decree, No. 23, of 1976. (Now Cap. 433, Vol.23, Law of the Federation of Nigeria 1990).

²⁴ Section 1.

²⁵ Will a “work-to-rule” action amount to this under the Act?

²⁶ E.E. Uvieghara, Nigerian Labour Laws: The Past, Present and the Future. Unilag. Press 1987, pp. 36 and 43.

²⁷ Kahn-Freund & Hepple, *Laws Against Strikes* (Fabian Research Series) (305). P.5

enforce is to encourage mass disobedience to the law thus subjecting the law to mockery.²⁸

The only way out of strikes is to enact realistic laws which should place emphasis on amicable settlement of trade disputes. Such laws should be completely bereft of cumbersome processes for settlement with their attendant long delays with which workers have no patience.²⁹ Where the right to strike is restricted, there should be adequate guarantees to safeguard the interests of workers who are thus deprived of an essential means of defending their occupational interests. Therefore, there must be guaranteed adequate, impartial and speedy conciliation and arbitration proceedings involving all the parties concerned and in which the awards are binding in all cases on both parties.³⁰ These awards should be fully and promptly implemented. Unfortunately, this is not our experience yet in Nigeria, hence strikes continue.

Protection During Bank Strike

The three essential parties directly concerned in a bank strike are the bank, the employees represented by their trade union and the bank customers. We now consider the legal protection of each of these parties during a strike.

(i) The Bank:

Section 42 of the Bank and Other Financial Institutions Act 1991 affords the bank some qualified legal protection from civil liability to any of its customers for the inevitable failure to honour their cheques where the bank is unable to open for business as a result of a strike by its employees, provided that the affected bank has notified the Central Bank of Nigeria within twenty-four hours of the beginning of the strike. This is a substantial qualification of the common law duty of the banker to honour its customers' cheques if the credit in the customers' account is sufficient to cover the amount on the cheque.³¹ The section provides:

- (1) No bank shall incur any liability to any of its customers by reason only of failure on the part of the bank to open for business during a strike.
- (2) If as a result of a strike, a bank fails to open for business, the bank shall, within 24 hours of the beginning of the closure, obtain the approval of the Bank (Central Bank) for continued closure of the bank

It is submitted that subsection 2 is too sweeping, because it seems that once notice is given to the Central Bank within twenty-four hours of the commencement of

²⁸ A clear example is the strike by the Academic Staff Union of Nigerian University (ASUU) which lasted about six months. The Teaching Etc. (Essential Services) Decree No. 30 as amended by No.44 of 1993 was quickly enacted to stop the strike action but when it failed abysmally, Decree No. 56 of 1993 of the same name was enacted repealing the first in favour of the academic staff.

²⁹ The procedure for settlement under the Trade Disputes Act 1976 is too cumbersome hence it has fallen into disuse in favour of strike actions, in most cases. It takes at least 21 days for a dispute which cannot be settled by the voluntary procedure to get to the Minister; another 14 days at the conciliation stage before the Minister may refer to the Industrial Arbitration Panel within another 14 days. The Industrial Arbitration Panel has 42 days within another 14 days. The Industrial Arbitration Panel has 42 days within which to make its award, and any aggrieved party may object to this award within another 21 days before the dispute goes to the National Industrial Court for final decision.

³⁰ A curious interpretation of the September 1992 Agreement between the ASUU and the Federal Government by the former Minister (Secretary) for Education led to the second strike by ASUU in 1993. The Secretary insisted that the Agreement was only valid but not binding on the Government.

³¹ *Balogun v. National Bank of Nigeria Ltd.* (1978) 3 S.C. 155; *Oyewole v. Standard Bank of West Africa* (1968) 2 All N.L.R. 32.

the strike the bank is protected for as long as the employees remain on strike. This simply ignores the right of the bank customers to their services from the bank. The only way an aggrieved customer may be able to maintain an action for breach of the banker-customer contract in case of a strike in a bank in which he keeps an account, is where the affected bank has either delayed for more than twenty-four hours or failed to obtain the requisite approval of the Central Bank. At best, such occurrence may be very rare, so that the protection afforded the affected bank in this regard, is, indeed, formidable.

(ii) The Trade Union/Workers:

Under section 23 of the Trade Disputes Act, 1976 the trade union which is involved in a strike is immune from liability in respect of any tortious act alleged to have been committed by or on its behalf in contemplation of or in furtherance of a trade dispute.³² The employee-strikers enjoy similar immunity under section 43(1) of the Act the provision of which is as follows:-

“An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable in tort on any one or more of the following grounds only, that is to say

- (a) that it induces some other person to break a contract of employment; or
- (b) that it is an interference with the trade, business or employment of some other person or with the right of some person to dispose of his capital or his labour as he wishes; or
- (c) that it consists in his threatening that a contract of employment (whether one to which he is a party or (not) will be broken; or
- (d) that it consists in his threatening that he will induce some other person to break a contract of employment to which that other person is a party”.

It must be pointed out that the immunities of both the union and the workers are strictly limited to acts done in contemplation or furtherance of a trade dispute; any acts outside this will not be covered. Secondly, the workers' immunities are limited to the specific grounds enumerated in section 43(1), for it is expressly provided by section 43(2) that “nothing in subsection (1) of this section shall prevent an act done in contemplation or furtherance of a trade dispute from being actionable in tort on any ground not mentioned in that section.”³³

The Customer:

From commercial practice, the customer ought to be regarded as the most important of the three parties directly concerned in a bank strike. In many ways the strike may result in damages to the customer's or reputation. For instance, such a strike may induce a breach of contract and its attendant civil liability on the part of a customer; it may result in huge loss to him in terms of missing a good quick business opportunity; it may lead to loss such as demurrage and it may even take the form of loss of asset due to a default by the customer in instalmental repayment of his loan

³² To amount to an act done in contemplation or furtherance of a trade dispute, either a dispute is imminent and the act is done in expectation of or with a view to it, or that the dispute is already existing and the act is done in support of one side to it: **Conway v. Wade** (1909) A.C. 506 at 512 (Loreburn L.J.)

³³ Thus, the “expressio unius rule applies – The express mention of a thing necessarily excludes that which is not mentioned.

with the consequent sale of his property offered as security for the loan.³⁴ The instances can, indeed, be multiplied. Unfortunately, a survey of the laws and statutes would reveal a lack of provision for the customer's protection or remedy against the bank during a strike. In making provision for the protection of the bank and the employees the law appears to have forgotten the customers and this is most inequitable; thus revealing an unfortunate gap in the law and the urgent need for reform.

Suggested Reforms

The following statutory reforms would be suggested in order to create some form of protection or remedy for the customer.

First, there is the need to restrict the scope of protection afforded the bank during a strike. Section 42 of the Banks and Other Financial Institutions Act 1991 should be amended to limit the statutory protection of the bank to three days during a strike by its employees. It should be provided that after three days from the commencement of a strike a customer who suffers actual damage to his business as a result of the strike occasioning inability to release his funds by the bank shall be entitled to damages for breach of contract. One is not unmindful of the fact that there may be fear in some quarters that such a provision will result in a floodgate of litigation leading to a tearing apart of the bank. Nonetheless, it seems to us that there need not be a floodgate, for this very fear of a floodgate by the bank will lead to a quick resolution of the dispute with its employees to the advantage of the customer and the economy as a whole. Secondly, proof of actual damage to the customer's business before recovery, will obviously prevent frivolous suits by customers. Customers who have not suffered actual damages or who have suffered little damage will not bother to sue and this necessarily limits litigation.

As an alternative protection for the customer, it is suggested that there should be a provision in the Decree making it mandatory for any bank which has received notice of a threat of strike from its employees to inform its customers within three days of the beginning of the strike, by notice to this effect on the notice boards of all its branches. This would put the customers on alert to arrange their affairs in anticipation of the strike. Again, a possible argument against such provision may be that it may lead to capital flight if a notice to this effect is given by the bank. But only three days notice is suggested and this necessarily limits the number of customers who may receive such notice. Moreover, three days withdrawal for customers' immediate upkeep during the strike cannot involve such huge amount as to adversely affect the bank. Indeed, most customers who are not involved in big business concerns will not take the risk of withdrawing large sums to keep at home. Of course, the fear of capital flight has the positive effect of getting the affected bank to settle with its employees amicably with minimum delay.

In all, these suggestions are motivated by the need for equilibrium in the legal protection for the bank, employees and the customers and the need to foster industrial peace and harmony in the economy. It has been asserted that the intransigence of banks in not meeting their workers' humble demands often results in strike actions. On the other hand, the banks assert that workers demands are often selfish. However, it seems to us that workers' demands for higher salaries and wages and better conditions of service or better working conditions, if properly examined and placed in the proper perspective, need not be regarded as selfishness. Such demand

³⁴ For instance, a mortgagee exercising his statutory power of sale over the customer's asset given as security for the loan

may well be an index of economic growth (for instance, during oil boom in Nigeria) whereby workers demand a fair share of the improved economy. Secondly, it may be as a result of a biting inflation whereby workers' demands are merely aimed at meeting the high cost of living – a sort of economic survival. In either situation, the banks ought to consider their demands without bias and quickly too. For a bank which has made millions of naira as profit to react negatively to workers demands which represent merely a very little proportion of that profit, by simply singing the slogan of selfishness, seems to us to be unconscionable.