

THE LEGAL IMPLICATION OF NON-REGISTRATION OF A TRADE UNION*

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A registered trade union is a legal person and the birth and death of legal persons are determined not by nature but by law. They come into existence at the will of the law, and they endure during its pleasure¹

INTRODUCTION:

Like in many other fields, Nigeria's experience in trade unionism is inextricably linked with its evolution in Britain for reasons of the now over-flogged historical tie with Nigeria². Of a truth, trade unionism had a chequered history in its evolution³. However, the modern unionism in Nigeria never witnessed the difficulties which the workforce in Great Britain had to grapple with in their quest for proper legal status.

With the emergence, since 1912, of the Southern Nigerian Civil Service Union, European Civil Servants Union and the Nigerian Union of Teachers, the Secretary of State for the colonies, in his generosity, advised that workers in the colonies should be spared the hard and long struggle experienced by their British counterparts during the 19th century, in winning certain immunities and protection through legislation. The Nigerian Workers, according to **Adeogun**,⁴ had these statutory privileges and immunities bestowed upon them in 1938 following the passing of the Trade Union Ordinance⁵. Section 13 of the Ordinance specified for compulsory registration of trade unions as the only requirement for attaining proper legal status for their activities⁶.

Although the Trade Union Ordinance has since been repealed, the extant statute⁷ on this score has continued to identify with compulsory registration of trade unions. Undoubtedly many 'organisations' function as trade unions by flagrantly ignoring this golden provisions of the Trade Unions Act especially when they are in a position to arm-twist their employers. It is therefore the promise of this paper to examine the ambit

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¹ Per **Obaseki**, J.S.C., in **Nigeria Nurses Association v. Att. General, Federation**, Unreported suit No. S.C. 69/1980 delivered on 6th Nov. 1981.

² The geographical entity called Nigeria was colonised by Britain even before the unification, in 1914, of the component parts -Southern & Northern Nigeria.

³ The evolutionary history of trade unionism in Nigeria is however not the concern of this paper as it is not in issue.

⁴ **Adeogun A.A.**, 'Legal Framework of Industrial Relations in Nigeria' (1968) 3 *Nigerian Law Journal*. p. 15.

⁵ No. 44 of 1938 as amended by No. 35 of 1939, No. 28 of 1943 & No. 26 of 1945

⁶ The system of compulsory registration was to serve as a way of exercising closer control on the association of workers. This is usually exercised by a certain discretion in allowing or refusing registration. *Supra*, n. 4, *ibid*, at p. 16.

⁷ Cap. 437 Laws of the Federation of Nigeria, 1990 (hereinafter referred to as the "Trade Unions Act").

of trade unions as well as make it less attractive for unregistered trade unions to function as such. *

DEFINITION OF TRADE UNION

Section 1(1) of the Trade Unions Act defines a trade union as:-

any combination of workers or employers whether temporary or permanent, the purpose of which is to regulate the terms and conditions of employment of workers, whether the combination in question would or would not, apart from this Act (i.e if this Act had not been enacted),⁸ be an unlawful combination by reason of any of its purposes being in restraint of trade, and whether its purposes do or do not include the provision of benefits for its member.

Similarly, section 2 of the Trade Unions Act forbids any trade union to function and makes any breach of this all-important section, a criminal offence in the following terms:-

- (1) *A trade union shall not perform any act in furtherance of the purposes for which it has been formed unless it has been registered under this Act:
Provided that nothing in this subsection shall prevent a trade union from taking any steps (including the collection of subscriptions or dues) which may be necessary for the purpose of getting the union registered.*
- (2) *Where a trade union registered under this Act ceases to be so registered, it shall not thereafter perform any act in furtherance of its purposes:
Provided that nothing in this subsection shall prevent a trade union from taking any steps which may be necessary for the purpose of dissolving the union.*
- (3) *If any act which is prohibited by subsection (1) or (2) of this section, is performed by a trade union, then-*
 - (a) *the union and every official thereof; and*
 - (b) *any member thereof who, not being an official thereof, took any active part in the performance of that act, shall be guilty of an offence against this Act.*

In Nigeria every worker is entitled, under section 40 of the 1999 Constitution, to form and belong to a trade union. This also has the statutory support of section 12(1) of the Trade Unions Act which provides that a person who is otherwise eligible for membership of a particular trade union shall not be refused admission to membership of that union by reason only that he is of a particular community, tribe, place of origin, religion or political opinion.

It is a criminal offence under section 12(2) of the Act to refuse a person, admission if otherwise eligible under subsection (1), above. Any such refusal will fix the officials

⁸ *Emphasis & underling provided by the authors.*

with guilt of the offence under this Act. What amounts to denial of membership is a matter of fact.

In *Basorun v. Industrial Arbitration Tribunal & Ors*,⁹ It was held that an award of the Tribunal that a certain category of staff of Central Bank of Nigeria “*may not join a trade union of any of the junior staff or participate in the activities of such union*” was a violation of section 26 of the 1963 Constitution. Arising from Basorun’s case, section 3(3) of the Trade Unions Act now provides:

No staff recognised as a projection of management within the management structure of any organisation shall be a member of or hold office in a trade union (whether or not the members of that trade union are workers of a rank junior, equal or higher than his own) if such membership or of the holding of such office in the trade union will lead to a conflict of his loyalty to either the union or the management

It should be noted that this provision is not as depriving as it sounds. A member of staff who is a management staff is only precluded from membership of a trade union if and only if such membership or the holding of an office in the union will lead to a conflict of loyalty.

In *Basorun’s* case the officer was not a management staff of Central Bank of Nigeria when he joined the bank. He came up as a senior staff and did not drop his membership. He later, as a management staff, contested and won, and the Industrial Arbitration Tribunal said he could not. However, at the High Court, it was held that:

An employer cannot by agreement or contract with an employee, prevent an employee from forming or joining the union of his choice

It must further be noted that such absolute right of the worker which the High Court identified in the *Basorun’s* case, cannot now be supported in view of section 45(1) of the 1999 Constitution which has this to say:

Nothing in section 37, 38, 40 and 41 of the Constitution shall invalidate any law that is reasonably justified 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.*

⁹ Unreported suit No. LD/105/71 High Court, Lagos.

Interpreting the freedom to associate and from or belong to a trade union in *O.F. Agoreyo & Ors v. C.A. Olatunji & Ors*¹⁰, the court, speaking through **Adeniji**, J. had opined thus:

The right to assembly freely, to associate with other people and to form political parties or trade unions no doubt exists. But the freedom to exercise that right is entirely different thing. That freedom exists within and not outside all existing and relevant laws. Under section 41 of the same 1979 Constitution, laws can be made curtailing the rights to associate and form trade Unions.... The onus is now on the defendants to show that the Trade Unions Act No. 22 of 1978 is not reasonably justified in a democratic society in the interest of public order, etc; which they have failed to do. The result of my interpretation is that officers on Grade Level 07 and of 1999, which has finally laid to rest the age old jurisdictional dispute between the Nigerian Civil Service Union and the Association of Senior Civil Servants of Nigeria. Despite the interpretation given by Federal Ministry of Labour in its many circulars on the Restructuring of Trade Unions as brought about by Government Legal Notice of February 1978, to the effect that Nigeria Civil Service Union and the then Civil Service Technical Workers Union are junior workers unions empowered only to organise civil servants on salary grade level 01 – 06, the Nigeria Civil Service Union continued to organise senior civil servants. Not even the plethora of Judicial authorities in favour of the Association of Senior Civil Servants of Nigeria had any effect on the Nigeria Civil Service Union on this score.

above are senior staff and therefore belong to the Association of Senior civil servants of Nigeria. That being my view, I hold that 1st – 7th Defendants cannot be members of Nigeria Civil Service Union or Officers of that union and are therefore not competent at law to be officers or hold elective office in the 8th Defendant.

It is submitted that the above position is objectively sound and is consistent with the established tradition that a person is entitled to join or has a right to join that body or association which he is eligible to join. What, for instance, would entitle a person to be a member of Academic Staff Union of Universities when he is not employed a lecturer, or what could make a man eligible to join and be member of Nigerian Medical Association when he is not a registered medical practitioner?

On the other hand, in an establishment where there are different unions – for junior and for senior categories of workers, the junior worker, strictly so called, cannot join the senior workers' union until he is a senior worker and must cease to belong to junior workers' union on becoming senior worker.

Also relevant is the case of *L.A. Afolabi & Ijeh v. University of Ibadan & Anor.*¹¹ and *Dubre & Kokori v. National Union of Petroleum and Natural Gas Workers (NUPENG) &*

¹⁰ Unreported suit No. M/531/89 High Court, Lagos. See also *Trade Unions (Amendment) Decree No. 1*

¹¹ Unreported suit No. IB/245/79

Uzegbu,¹² which is *impari materia* with the *Ijeh's* case supra, where the Court of Appeal held that NUPENG as junior workers' union, can organise junior workers' in oil-well and natural gas operating industries and nothing else. It must be noted that in oil-well and natural gas operating industries exists a senior staff union called Petroleum and Natural Gas Senior staff Association of Nigeria (PENGASSAN). There is also the incisive and comparatively recent National Industrial Court's decision of June 1995 in *Nigeria Civil Service Union v. Association of Senior Civil Servant of Nigeria*¹³. Note that where the employee is a worker under the Labour Act, a further protection is afforded him by reason of section 9(6) of the said Labour Act¹⁴ which provides that "No contract shall make it a condition of employment that a worker shall or shall not join or shall not relinquish membership of a trade union..."

Similarly, under the **Fair Wage Clause** adopted by all the Governments of the Federation, any contractor or sub-contractor who enters into a contract with government and enjoys government patronage by way of grants, loan, subsidy, licence, guarantee or any other form of assistance, must recognise the freedom of his employees to be members of registered trade unions. An employer who is found to be in breach of this requirement can be struck off from the list of approved government contractors by the Minister of Labour. It is note-worthy that Nigeria has ratified two of the International Labour Organisation (ILO) Conventions on trade unions. These are (a) **Convention 87** of 1948, on freedom of association, and (b) **Convention 98** of 1948, on protection of the right to organise and to collective bargaining.

THE RIGHT TO JOIN A TRADE UNION

Every Nigerian who is up to 16 years of age and who is an employee is entitled to join a trade union relating to his trade or profession. Section 19(1) of the Trade Unions Act stipulates that "A person under the age of 16 shall not be capable of being a member of a trade union and a person under the age of 21 shall not be capable of being an official of a trade union." However, a person of the age of 16 years, which is the recognised beginning of the working age in Nigeria, is entitled to be a member of a trade union. Other persons who may not hold offices are those who have been convicted of offences stipulated under section 13(3) of Trade Unions Act. Note further that those employees covered by the prohibition in section 11 of the Act, are disabled to form and join trade union.

REGISTRATION OF TRADE UNION

As has been identified, a trade union refers to any combination of workers or employers, etc. Section 3(1) (a & b) of the Trade Unions Act provides that at least 50 workers or in the case of Employers Association, at least 2 employers are qualified to apply for registration and no trade union shall be registered save with approval of the minister.

¹² *Suit No. FCA/L/48/84. The court had held further that each of the unions is dominant in its own sphere.*

¹³ *Suit No. NIC/5/93. P. 57 - 59*

¹⁴ *Cap. 198 Laws of the Federation of Nigeria 1990.*

Section 3(6) provides that in an application for registration of a trade union, the application must include two copies of the rule of the union and a list showing (a) the name, address, age and occupation of each of the persons by whom the application is signed; and (b) the official title, name and address, age and occupation of each official of the union.

Section 5(1) is to the effect that where the application is defective, the Registrar of Trade Unions will refer it back to the applicant for amendment. Thereafter, and in compliance with section 5(2), the Registrar shall cause a notice of the application to be published in the Federal Gazette stating that objection to the registration of the union in question may be submitted to him within a period of three months.

Section 5(3) makes provisions for the steps to be taken by the Registrar with regards to the registration where, within 3 months, after the notice, there is no objection to the content of the constitution and the various information required to be supplied under section 3 and 4 have been supplied; the Registrar shall issue a certificate within three months thereafter. However, the Registrar is empowered under section 5(4) to refuse registration “*if it appears to him that any existing trade union is sufficiently representative of the interest of the class of persons whose interest the union is intending to represent.*” There is the case of *Nigerian Nurses Association & Ors v. Att. Gen. Fed.*¹⁵ where the Supreme Court of Nigeria, in a unanimous decision, held that registration and recognition of National Association of Nigerian Nurses and Midwives by the Trade Union (Amendment) Act of 1978 had extinguished the Nigeria Nurses Association as both bodies cover the same interest. There is also the case of *Erasmus Osawe & Ors v. the Registrar of Trade Union*¹⁶. In that case the Supreme Court held that the procedural requirement for commencement of application and objection under section 5(2) of the Trade Unions Act is inapplicable to an application precluded by section 3(2) because of the existence of another union catering for the same class of interest. The subsection provides, *inter alia*, that “**...but no trade union shall be registered to represent workers or employers in a place where there already exists a trade union.**”

Registration is secured by an application in a prescribed form accompanied by 2 copies of the constitution as identified earlier. Where registration is not entertained, the aggrieved applicants may apply to the High Court and have the issue determined. See also the case of *Re Union of Ifelodun Timber Dealers & Allied Workmen*.¹⁷ In that case an application to register a combination of persons calling themselves union of **Ifelodun**, etc, as a trade union was refused by the Registrar of Trade Unions on the ground that it is a combination of traders not registrable under the Trade Unions Act – Ifelodun being open to all persons engaged in business of timber services and sawmills including employers, employees and self-employed persons. The Applicants applied to the High Court where it was held that the constitution of the ‘Combination’ must be examined to discover whether it was a trade union or not and that:-

- (a) *A trade union is determined by its principle purposes which must come within the definition of the trade union as provided in the Act,*

¹⁵ Supra, n. 1.

¹⁶ (1985) 5. S.C. p. 343.

¹⁷ (1964) 2 All N.L.R., 63.

- (b) *In this case it was not a trade union since the main object was the protection of timber trading and members' welfare.*

A certificate issued by the Registrar of Trade Unions as evidence of registration of trade union will be cancelled on any of the grounds in section 6 and 7 of the Act apart from voluntary dissolution of the union by its members under section 10 of the Act. Circumstance under which a union's certificate will be cancelled in section 7 includes a situation where the registration of the trade union was obtained by fraud or as a result of a mistake or where there had been a violation of the provisions of the statute. A certificate may also be cancelled where the objects of the union are illegal or where the union itself ceases to exist. Note further that by reason of Decree No. 1 of 1999 and its amendment of Decree No 26 of 1996 as it affects the Principal Act, the Registrar of Trade Unions may revoke the certificate of registration of any trade union.

It must be noted however that before the Registrar exercises its powers of cancellation the union must be give at least 2 months of his intention to do so and requesting a satisfactory explanation as to why the union will remain on the register. Note further that the union may start to function before the registration. What the law requires is that it must apply for registration within the first 3 months of its formation otherwise it stands dissolved. This type of dissolution would normally follow a notification that their application is refused, and 3 months period of grace allowed the union to tidy up its affairs.

The Registrar has powers over the union funds and may at any time call on the union members or treasurers, to prepare and submit to him within 30 days, detailed account of the Trade Union. It therefore stands to reason that an unregistered trade union is incapable of been controlled by the Registrar of Trade Unions. All one can imagine is the extent of uncontrolled and misguided use to which the officials of unregistered trade unions can put the funds collected from unsuspecting workers/subscribers.

THE RULE BOOK (CONSTITUTION)

Like any other organisation, whether incorporated or not, the members of a trade union are bound by the union's constitution which is usually referred to as the rule book. This is because a trade union is based on the agreement of the parties and the rights and obligations of the parties as members are determined by the rule book. Accordingly, therefore, in *Alhaji Imman N. Abubakri & Ors v. Abudu Smith*¹⁸ the Supreme Court held that a member's right is dependent on the constitution of the organisation and that the organisation was entitled to alter its rules and determine who its officers would be. **Ellias, C.J.N.**, noted that "*The rule in Foss v. Harbottle applied to an unincorporated association possessing a constitution or set of rules and regulations entitling it to sue and be sued as a legal entity... in the same way and to the same extent as it does to a limited liability company or a trade union*". It follows that all the exceptions in *Foss v. Harbottle* will apply.

¹⁸ (1973) 6 S.C. 31

The rule in *Foss v. Harbottle* can be stated generally as follows: If an act is **intra vires** the corporation, and therefore one which can be sanctioned by the majority of the corporations properly assembled in general meeting, the court will not entertain any proceeding to restrain the doing of the act resolved upon unless such proceedings are brought by the majority of the corporation in the name of the corporation itself. This means that no individual member or minority of members of a trade union may be allowed to maintain an action in respect of an irregular **intra vires** matter. *Jenkins, L.J. in Edwards v. Halliwell infra*, explained the reason as follows:

*If a mere majority of the members of the company or association is in favour of what has been done, then **caditquaestio**. No wrong had been done to the company or association and there is nothing in respect of which anyone can sue. If, on the other hand, a simple majority of members of the company or association is against what has been done, then there is no valid reasons why the company or association itself shall not sue.*

The above rule is subject to four exceptions (a) where the act complained of is **ultra vires** the union, (b) where what has been done amounts to a fraud on the minority and the persons against whom the action may be brought are in control of the union and refuse to allow an action be brought in the name of the union in which case a member or members may be allowed to bring an action in their own names; (c) where the matter complained of is one which cannot be sanctioned or validated by a simple majority of union members at a general meeting but by a special majority, and (d) where what has been done irregularly invades the personal or individual right of a member, that member has a right to sue. See the case of *Edokpolo v. Sem Edo Wire Industry*,¹⁹ It also follows that anything done outside the constitution or rule book will be **ultra vires** the union. Even where the act is **intra vires** the union, it may still be set aside if it is **ultra vires** to the particular organ of the union which purports to do it. An examples is where a wrong body does a right thing.

Predictably, where the right of a member is affected he can bring an action against the union. Even where his interest but the interest of the union is involved any member can bring an action to restrain the union. For instance a member can bring an action under section 18 of the Trade Unions Act to restrain the union. Similarly where the special procedure or majority is provided in the constitution for doing some act, the court will declare it a nullity if it was done in breach of the procedure or majority. See *Edwards v. Halliwell*²⁰ where the rules of the union provided that in order to increase the subscription of members, the approval of a $\frac{2}{3}$ majority was required. The executive of the union raised the subscription after a motion for the increase was passed/approved by a simple majority. This decision was set aside by the Court of Appeal on the action initiated by a member of the union.

The biggest area of conflict however between a trade union and its members is with respect to discipline leading to expulsion. As has been noted, the rights and obligation of members arise from union rule book. That is why section 21 of the Trade Unions Act

¹⁹ [1989] 4 NWLR (PT) 116 p.473

²⁰ [1950] 2 All. ER 104

makes it obligatory on the union to deliver to its members a copy of the constitution on a moderate charge.

Note further that a union rule book is regarded as a contract document binding on all its members and that is why the interpretation of the rule book is a matter for the court. This is particularly important when the interest of the members is affected by reason of expulsion. There is the case of *Lee v. Showmen's Guild of Great Britain*²¹. In that case the Court of Appeal held that where there is disagreement as to the true construction of a trade union's constitution, the interpretation is a matter for the court. The decision shows that the findings of an internal tribunal (domestic tribunal) would be final only if the determination of the tribunal is right (i.e within the rule book), otherwise the court will intervene at the instance of the party damnified. The law was stated succinctly by Lord Denning who observed that the parties may make a domestic tribunal "*the final arbiter on questions of fact but they cannot make it the final arbiter on questions of Law. They cannot prevent its decision being examined by the court*".

The problem which had cropped up continually has been on the wordings of the provisions of the constitution. **Lord Wedderburn** classified the rules of expulsion usually found in trade union constitution into two - the specific and the blanked rules of expulsion.

RULES OF EXPULSION:

(a) THE SPECIFIC RULES OF EXPULSION

The specific rules of expulsion is one which defines the scope of its application e.g any member who fails to pay his dues for twelve months shall be liable to expulsion or deemed to have ceased to be a member. In *Faramus v. Film Artists*²² the constitution of the union was that a member who "had been convicted in a court of law of a criminal offence shall not be eligible for, or retain membership of the association." The plaintiff was convicted as a juvenile. Eight years after joining the union, the fact became known and his membership was immediately terminated. He went to court which expressed considerable sympathy for him but said that the rules of the union were quite clear and specific on admission.

However, despite the fact that the rule might be specific, there might be some argument on the phraseology or on who exercises the power of discipline or expulsion. Where the rules of the union are specific on which organ of the union to exercise disciplinary powers, the court will set an expulsion order aside if a wrong organ exercised the order. There is the case of *Bonsor v. Musicians Association*.²³ In that case a member was expelled for failure to pay his union dues. The rule was specific that the power to try and expel was vested in the branch committee of the union. The secretary of the union exercised the power instead of the branch committee as a body and expelled the member who now brought an action to set the expulsion aside. The House of Lords held that the secretary's conduct was a breach of the specific rules of procedure laid down for expelling members.

²¹ [1962] 1 Q.B. 329

²² [1963] All ER 639

²³ [1950] A.C. 104

Where the rule of expulsion though specific, is subject to conflicting interpretation the courts have tended to give a liberal interpretation to such rules. There is the case of *Amalgamated Society of Carpenters v. Braithwaite*²⁴ In that case members were expelled from the carpenter's union for taking part in a co-partnership scheme which was said to have been forbidden by union rule. In actual fact all that the unions did was to take part in a profit-sharing scheme. The court declared that expulsion invalid.

(b) **THE BLANKET RULE OF EXPULSION**

Where the rules of expulsion are couched in varies subject term or language then it is the court which may have to give guidance as to the interpretation.

Some rules use such words as "*conduct likely to*" or "*conduct detrimental to the interest of the union.*" The first question which arises in such circumstances is who decides what yardstick is it to be measured. In *Evans v. National Union of Printing, Bookbinding Workers*,²⁵ the union was given power, under a Collective Agreement, to appoint employees of the company on the understanding that the union would take care of the discipline of its members. Consequently, the union wrote into its rule book – "an offence" of "knowingly acting to the detriment of the union" shall attract expulsion. The plaintiff in breach of the rule, persisted in insubordination to his employers and in defiance of repeated warning from the union. The union expelled him from membership and the Court of Appeal upheld the expulsion as justified. The court observed that not only was the plaintiff's conduct capable of weakening the union's bargaining position with management but might also undermine collective bargaining in the plant generally.

Where subjective words are used as "*in the opinion of...*" or "*if it appears to the executive council.*" The court has always held that it is for the union to determine where "*in its opinion*" or whether "*it appears to it*" that a rule of the union has been breached. There is the case of *Taylor v. National Union of Seamen*.²⁶ In that case the plaintiff was both a member and employee of the defendant's union. The union's rule book contained a rule permitting the expulsion of a member for activities which "*in the opinion of the executive council are detrimental to the interest of the union.*" The plaintiff was accused of a breach of this rule and the General Secretary who was the accuser (the chief accuser), was on the disciplinary committee set up to "try" the plaintiff. Moreover, the committee brought a new charge but the 'accused' had no notice of the additional charge. He was found guilty and expelled. On the principle of natural justice the court had to set aside the expulsion order. It seems therefore that the only limit on the application of such blanket rules are the rule of natural justice.

OBSERVATION

It has been identified²⁷ that the system of compulsory registration of trade unions serve as a way of exercising closer control of the association of workers. Equally, it has been established that the Registrar of Trade Unions has power over the trade union funds and may at any time call on the union members or treasures to prepare and submit a detailed account of the trade union. All this and more, the Registrar can achieve because of the power of control it can legally exercise in determining the continued

²⁴ [1922] A.C. p. 440

²⁵ (1938)3 All. E.R. 52

²⁶ [1967] All. E.R. 767

²⁷ *Supra*, n. 6 *Ibid*.

existence, cancellation or revocation of the certification of registration of a registered trade union. It also means that the Registrar of Trade Unions, having not registered a trade union, has no control of such unregistered union and cannot call on the officials or members of the unregistered organisation to account for the check-off dues collected by the unregistered organisation and its officials.

On the other hand, a trade union²⁸ possesses legal status entitling it to sue and be sued *eo nomine*.²⁹ This does not avail an unregistered trade union. Equally, the statutory immunity³⁰ which avails a trade union in tortious act does not extend to an unregistered trade union. The combined effect of sections 23 and 43 of the Trade Unions Act operate to absorb a trade union from any tort committed in contemplation of or in furtherance of a trade dispute³¹. In contract as it is in crime, a registered trade union also enjoys immunities which do not avail an unregistered trade union³²

CONCLUDING REMARKS

With every new day the society continues to be inundated with the claim of the existence of 'trade unions' in some establishments where the university as citadel of learning, has become an embarrassing example. Legally, there exist three trade unions³³ in the universities. These three unions have their Certificates of Registration intact, neither cancelled nor revoked. Unfortunately however, two new organisations, within the last seven years, have emerged in the university institutions to function as 'trade union'. Section 3(2) as identify supra, provides *inter alia*, that “**...but no trade union shall be registered to represent workers or employers in a place where there already exists a trade union.**” Similarly, section 5(4) of the Trade Unions Act also provides that “**The Registrar shall not register the trade union if it appears to him that any existing trade union is sufficiently representative of the interest of the class of persons whose interests the union is intended to represent**”.

From the foregoing, it is submitted that Academic Staff Union of Universities (**ASUU**), and Senior Staff Association of Universities, Teaching Hospitals, Research Institutes

²⁸ Which automatically refers to a registered trade union in contradistinction to an unregistered 'trade union'. See section 1 of the Trade Union Act.

²⁹ See *Taff Vale Railway Coy. v. Amalgamated Society of Railway Servants* [1901] A.C. 426.

³⁰ See section 23 of the Trade Unions Act which says: An action against a trade union (whether of workers or employees) in respect of any tortious act alleged to have been committed by or on behalf of the trade union in contemplation of or in furtherance of a trade dispute, shall not be entertained by any court in Nigeria. See further section 43 of the Trade Unions Act.

³¹ See section 52 of the Trade Unions Act for the definition of "trade dispute" which 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 or conditions of work of any person.

³² It is to be emphasised that a trade union refers to any organisation whether of workers' union (as contained in Part 'A' of the third Schedule to the Trade Unions Act), or of Senior Staff Union, and Employers Association (as contained in Part 'C' of the third Schedule to the Trade Unions Act). This emphasis is timely if the erroneous presumption that "Senior Staff Associations", "Association of Senior Staff", etc., are not trade unions, is to be laid to rest and consigned to the vehicle of historical oblivion.

³³ (i) Non-Academic Staff Union of Educational & Associated Institutions (NASU) as No. 27 on the list of Registered and Recognised unions in Part 'A' of the third schedule to the Trade Unions Act, (ii) Academic Staff Union of Universities (ASUU), and Senior Staff Association of Universities, Teaching Hospitals, Research Institutes and Associated Institutions (**SSAUTHRIAI**), as no 4 and no 17 respectively, in Part 'C' of the third schedule to the Trade Unions Act.

and Associated Institutions (**SSAUTHRIAI**), are sufficiently representative of the interest of the class of persons whose interests the two nascent 'trade unions', struggling fruitlessly for registration, are intended to represent. The fact that they currently receive recognition during negotiation with their employer, does not confer legal validity on the said 'trade unions'. Governments, as employers, for reasons believed to be a **divide and rule** tactics in the administration of industrial relations matters, have so far found it convenient to relate with those unregistered, illegal 'trade unions'³⁴. Against the background of overwhelming authorities so far cited, there is absence of any legal justification for government to encourage the breach of its laws. There is also no basis for the two illegal unions already identified, and some other illegal combination by whatever name styled in the primary and secondary institutions, to continue to operate and collect trade union dues from unsuspecting "members".

It is further submitted that whatever preserves in existence the illegality of the said 'unions' would continue to drag the laws of the land into disrepute and cause damage to the image of the universities and other institutions of learning. It is a fraud on the finances of the 'members' of the said nascent 'trade unions'. Urgent steps ought, therefore, to be taken to disband the illegal organisations or combination of workers operating as trade unions, by the enabling authorities.

³⁴ *In the Universities, the two illegal organisations go by the name (a) Senior Staff Association of Nigerian Universities (**SSANU**) and (b) Association of University Technologists of Nigeria (**ASUTON**). The illegal trade union activities are also evident from the many mushroom organisations battling to oust the Nigerian Union of Teachers or vie with it for supremacy in the teaching industry which it is legally registered to control totally.*