REVIEW OF SOME SIGNIFICANT LABOUR, EMPLOYMENT CASES IN 2018

By Folabi Kuti

A far-reaching list of noteworthy cases touching on labour and employment issues, all profoundly interesting and offering stimulating new insights, were decided in the year under review.

Raphael Obasogie v Addax Petroleum (Unreported suit No: NICN/LA/257/2013 judgment delivered on December 4, 2018; per Peters J.) presented an opportunity to make a firm pronouncement on a familiar issue; the employment status of a worker who appears 'protected' by a statutory provision mandating employers in the oil and gas sector to 'apply for official approval of the Honourable Minister of Petroleum Resources' before disengaging any Nigerian staff from employment. The National Industrial Court of Nigeria (NICN) held that the statutory provision under reference did not elevate the employment status of such a Nigerian staff into one of statutory flavour. This, whilst noting that failure of the defendant company to so comply before disengaging its Nigerian staff only amounts to a crime within the meaning of Section 60B (1), Petroleum (Drilling and Production) (Amendment) Regulations 1988.

The age-long debate on the reasonability or, otherwise of 'non-compete clauses' in employment contracts again came to the fore in at least two important decisions of the NICN in 2018. In Infinity Tyres Limited v Sanjay Kumar(Unreported suit No: NICN/LA/170/2014 judgment delivered on October 7, 2018; per Kanyip J.), the 'non-compete clause' restricting the 1st defendant from joining 'any other company in Nigeria for one year' upon cessation of work employment with the claimant company was noted to be reasonable with regard to the geographic coverage and the one-year timeline of restraint. However, it was considered too wide and consequently unreasonable and unenforceable when the economic activity sought to be restricted was extended to cover "any other company in Nigeria".

In 7th Heaven Bistro Limited v Amit Desphande (Unreported suit No: NICN/LA/396/2015, judgment delivered on September 27, 2018; per Peters J.) a similar issue arose. Here the court declared as 'inhuman and stifling', and consequently found to constitute an unfair labour practice, the restrictive covenant that 'for whatever reason even if his employment is terminated [the employee] shall not accept employment with any other employer in Nigeria … for a period of (3) years from the date of termination or resignation as the case may be'.

Two cases saw a common enquiry; Raphael Adula Odama v Federal Judicial Service Commission & 3 Ors. (Unreported suit NICN/ABJ/136/2017; judgment delivered on 2018-02-05, per Kanyip J) and Iretiolu Wemimo Dada v Ondo State Judicial Service Commission & Anor (Unreported suit No. NICN/AK/33/2017, judgment delivered 4th October 2018, per Oyewumi J.) even though with seeming divergent opinions. The NICN, inter alia, considered the vexed question whether a dismissed employee whose dismissal is upheld as valid on account of either irregular or void employment status is liable to refund all salaries and remunerations received whilst the purported employment lasted arose.

In Odama's, the court rightly noted that the salaries for which a refund was sought is a specie of special damages which must be specially proven by particulars of same being given. Beyond a bare reference to the period, the very particulars or quantum of salaries received was not given or stated in Dada's even as the court, in holding the appointment of the claimant as Chief Magistrate void, granted the counterclaim asking for a refund of all salaries received within the stated period.

Also, in the year under review, adjudicatory processes involving the enforcement of the principal legislation dealing with arbitration, came to focus in 3 NICN decisions. The pattern of facts in Giuseppe Ravelli v Digitsteel Integrated Services Limited (Unreported suit No: NICN/LA/559/2016, ruling delivered on February 16, 2018; per Kanyip J.), Chandra Prakash vs Orleans Invest Holdings (Unreported suit No: NICN/LA/521/2017, ruling delivered on March 5, 2018; per Bassi J.) and Michael Ajilore v KLM Airlines (Unreported suit No: NICN/LA/617/2017, ruling delivered on May 31, 2018; per Bassi J) are somewhat similar, and the verdict rendered in the preliminary objection raised in all three cases, decidedly parallel. An objection was made to the jurisdiction of the NICN to adjudicate on the legislation under focus; essentially that the NICN is not within the intent of the lawmaker when the Arbitration and Conciliation Act says 'court' shall be the 'High Court' or 'Federal High Court'. One emerging significant point from these decisions is the interrogation of the propriety (or, otherwise) of the insertion of arbitration clauses in employment contracts.

Making a claim of an unlawful invasion of his right to privacy and dignity of his person, the claimant in Andrew E.Okoto v Guinness Nigeria Plc(Unreported suit No: NICN/LA/72/2017; judgment delivered on November 22, 2018, per Oji J.), alleged that his employer 'coerced, arm-twisted and compelled him to release his private medical records'. The court, upon a careful analysis of the acute conflict of evidence before it, found the claim unmeritorious.

The facts pattern in Udenigwe Udogu v Provost, Institute of Ecumenical Education & Anor (Unreported suit NICN/EN/40/2015; judgment delivered November 21, 2018, Essien J.) amongst other things, highlight the possible legal liability that could attend upon a former employer giving a false, malicious and misleading work reference to the prospective employer of a former employee.

NICN also held identical views in both Darlington Eriseye Lawson v Keystone Bank Limited (Unreported suit No. NICN/IB/48/2016; decision made on 2018-10-09, per Kola-Olalere J.) and Jacob Folarin v Union Assurance Co. Ltd (Unreported suit No. LA/08/2016; decision made on October 25, 2018, per Amadi J.). Here it found that the practice of an employer paying ex-gratia to some of its ex-employees whose employments were determined in the same or similar circumstances with that of the claimant (without making same payment to the claimant) was discriminatory and amounted to unfair labour practice.

Still on unfair labour practice, the purported disengagement of an employee not following laid down process, coupled with an unlawful denial of earned promotion was frowned at in Dr. Kayode Afolayan v UNILORIN (Unreported suit No: NICN/IL/16/2017; decision made on November 27, 2018, per Adewemimo J.) In Mrs. Gloria Chukwudi-Nneke v Registered Trustees of Dowen College, Lagos (Unreported suit No: NICN/LA/351/2014, judgment delivered on

2018-05-10, Peters J.) the defendant was asked to pay damages to the claimant 'for the manner in which she was disengaged by the defendant more importantly given her status as a pregnant woman'

Olusanya Adeosun v Stag Engineering Nig. Ltd (Unreported Suit No: NICN/LA/617/2015, judgment delivered on October 30, 2018; per Kanyip J. and Mr Bala M. Yesufu v Nigeria Breweries Plc (Unreported suit No: NICN/LA/172/2015, judgment delivered on 23 November, 2018; per. Ogbuanya J.) bring to sharp focus the need for clarity and precision in HR recruitment and disengagement documentation. The court (in Bala Yesufu's), in determining what ought to be the required notice period to be given by the claimant when opting for early retirement, specifically directed that the defendant company should 'take immediate steps to include and incorporate in the Defendant's HR Policy and Employee Handbook the entitlement conditions and packages for Early Retirement as well as the Exit Notice Period' .

With workplace injuries and accident, Mr Saheed Saula v Atiku Security Company Limited (Unreported Suit No. NICN/LA/258/2013, judgment delivered on October 30, 2018; per Kanyip J.) and Ofou Meshack v Nigerian Breweries Limited(Unreported suit No: NICN/LA/549/2014, judgment delivered on 2018-09-04; per Obaseki-Osaghae J.) re-affirm the position that the injured employee must lead credible evidence to establish that the accident for which he makes a claim for compensatory damages occurred as a result of the negligent act of the employer.

Consistent with the thrust of arguments on a finding of a wrongful dismissal, the NICN in ASP Oloke Richard v Police Service Commission (Unreported suit No: NICN/LA/434/2013, judgment delivered on May 31st, 2018; per Adejumo J. President, NICN) declared that the purported dismissal of the claimant's appointment as a police officer in the service of the defendants was illegal, ineffectual and unconstitutional having been done in the breach of the claimant's rights to fair hearing and Rules and Regulations governing his contract of service. Owing to the nature of the employment status in Mr. Bamikole Jeremiah Lekan v Union Bank Nigeria Plc (Unreported suit No: NICN/LA/158/2016, judgment delivered on October 25, 2018; per Amadi J.) the purported dismissal was converted to early retirement.

It seems fairly clear that the NICN will not allow a former employee, except where the contextual facts avail, to seek to avoid fulfilling contractual obligations; for example, repayment of loans, on the excuse that the loss of employment has made it impossible to repay the loans advanced in the course of the employment relationship. It was the case of a Housing Loan in Mrs Kikelomo Kola-Fasanu V Prestige Assurance Plc (Unreported suit No: NICN/LA/25/2016, judgement delivered April 25, 2018; per Kanyip J.) and Ms. Kate Iyamah v First Bank of Nigeria Plc (Unreported Suit No: NICN/LA/367/2012; decision made on November 24, 2018; Obaseki-Osaghae J.); and a car loan in Mr Adebayo Gbolahan Adepoju v. Coscharis Group (Unreported Suit No. NICN/LA/409/014, judgment delivered on 16th February 2018, per Kanyip J.) . The court in Kola-Fasanu made a beautiful distinction characterizing the contract of employment and the personal loans between the parties as two distinct subject-matters that are not mutually dependent before the right to determine a contractual relationship can be exercised.

The UK Court of Appeal in UBER B.V v Aslam ; noting "the practical reality of the relationships" as favouring 'worker' only recently (judgment delivered on December 19, 2018)

affirmed the U.K. employment tribunal's decision that Uber, the ridesharing app company's drivers are definitely employees and not independent contractors. In Nigeria, a class action was filed on behalf of UBER drivers seeking similar interpretation. Citing lack of proper particulars, the court dismissed the case(Unreported suit No: NICN/LA/546/2017 Oladapo Olatunji & Anor v Uber Technologies System Nig. Ltd; judgment delivered on December 4, 2018, per Kanyip J.) as being 'speculative, academic and hypothetical'. The court, however, did make a glancing reference to the wide amplitude of Section 91 of the Labour Act CAP L1, LFN 2004 whose ingenuity/imprecise ambit, if a similar question is posed in the future, seem to favour the employee classification.

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