The Extent of the Right to Strike in Nigerian Labour Law

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THE EXTENT OF THE RIGHT TO STRIKE IN NIGERIAN LABOUR LAW

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Abstract

A treatment of the fundamental rights to freedom of expression and of movement and the rights to peaceful assembly and association cannot be exhaustive without a thorough insight into the right of organized labour to picket or mount pressure with a view to currying favours. This is because the right to strike is perhaps next in importance to the right to life. The right to strike has great influence on the balance of relations, not only as between employers and employees and their organizations in the various sectors of the economy but also the capacity of the civil society, which includes trade unions, in acting as a counter power to likely excesses that the state may display in the governance process. Thus, the right to strike determines not just the prospects for enjoying improvements in working and living conditions of employees but it is also a precondition for the sustenance of society on a just and democratic basis and enjoyment of other fundamental socio-economic and political rights. Despite the strategic nexus between the right to strike and the attainment of a just society, the right to strike tends to be restricted in labour laws and practically suppressed in the course of actual strike actions in Nigeria. It is therefore not surprising when some members of labour unions in Nigeria are seen as saboteurs for either abandoning the “struggle” or outrightly pitching tent with the powers that be. This is a clear case in the Rivers State University of Science and Technology, where strike action was called but some ASUU members abandoned the struggle by supporting, as it were, the management of the University. This article examines the right of workers to embark on strike and the place of the law in regulating issues of strike.

1.0 Introduction

Labour movements, the world over, aim at addressing the needs of the working class, while employers of labour are primarily concerned with maximising profits. The existence of these two interest groups in an industrial establishment has often resulted in trade disputes. Quite often, the disputes are resolved on the basis of compromise, while many others end in lockouts, work-to-rule and strikes. The Nigeria Labour Congress (NLC) and the Trade Union Congress (TUC), the two main central labour organisations in the country, had in the past organised and led Nigerian workers on strikes over issues they claimed were of public interest. But recent strikes by workers in some sectors of the economy have raised the question over the rationale of using strike as an instrument for settling industrial dispute.

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On July 29, 2011 teachers under the aegis of the Nigeria Union of Teachers (NUT) called off their six-week nationwide strike.\(^1\) The teachers were protesting the refusal by the Federal authorities to issue a circular to back the implementation of the newly introduced Teachers Salary Scale (TSS). They called off the strike following the intervention of governors of the 36 states of the federation. The implication of the teachers’ action cannot be over-emphasised as it kept children in public schools at home for as long as it lasted. Earlier on July 10, 2011 members of the National Union of Petroleum and Natural Gas Employees (NUPENG) embarked on a strike that was aborted on the third day.\(^2\) The workers were protesting against high cost of automotive gas oil (diesel) which, they claimed, was allegedly being manipulated by some cartel, as well as poor remuneration. Their complaint also centered on the dilapidated state of Nigerian roads which, they said, made haulage of petroleum products difficult for their members.

The Nigerian Medical Association (NMA) had called a warning strike sometime in 2007.\(^3\) This was a follow-up to their seven-day and later 14-day ultimatum to the Federal Government to meet their demands or face a nationwide strike.

Also interesting was the joint action by members of the Radio, Television, Theatre Art Workers Union (RATTAWU), and the Nigeria Union of Journalists (NUJ). The unions had issued a 21-day ultimatum to the Federal Government expressing their intent to go on a nationwide strike if their demand was not met.\(^4\) Their demand was the payment of two-year arrears of monetised fringe benefits to Federal workers in the unions. Workers embark on strike as a means of forcing management to bow to their demands. But strike should be used as a last resort in settling industrial disputes, after all other avenues of negotiation had failed. It has been argued that this seem to be different under the Nigerian situation, as workers embark on strike at the slightest provocation.

What then are the legal requirements for ensuring industrial harmony? The Trade Dispute Act,\(^5\) acknowledges that trade disputes are inevitable in industrial organisations. It, however, stipulates that the first step in resolving disputes is for both the workers and the management to enter into collective bargaining toward resolving any crisis internally.\(^6\) Where the attempt to settle the dispute provided in subsection (1) of section 4 fails, the parties shall within seven days of the failure meet together or their representatives under the presidency of a mediator mutually agreed upon and appointed by or on behalf of the parties, with a view to the amicable settlement of the dispute.\(^7\) The Act says that if within seven days of the date on which a mediator is appointed the dispute is not settled, the dispute shall be reported to the Minister by or on behalf of either of the parties within three days of the end of the seven days.\(^8\) The Minister is statutorily empowered to give time to the parties to the


\(^2\) O. Nnodim, . “Fuel Scarcity Looms as NUPENG begins strike today” *The Punch*, July 1. 2013. NUPENG going on strike over a longstanding labour dispute between it and some major oil companies in the country. According to the body, Agip Oil company is planning to promote NUPENG contract workers to PENGASSAN (Petroleum and Natural Gas Senior Staff Association of Nigeria) contract workers. This to the body was against the law of the land, where a company would want to promote contract staff to senior staff. That the company was supposed to after six months convert the contract workers to employee and not otherwise.

\(^3\) N. Nwabueze, op cit p.147.

\(^4\) *Ibid*.

\(^5\) Cap T8 Laws of the Federation of Nigeria 2010.

\(^6\) Section 4(1) of the Act.

\(^7\) Subsection (2) of section 4 of the Act.

\(^8\) Section 6(1) of the Act.
dispute within which they to in compliance with the provisions of sections of 4 and 6 take steps to resolve the dispute.\textsuperscript{9} The law states that if the mediation fails, the issue should be taken to a Conciliator appointed by the Minister to resolve the dispute between the parties.\textsuperscript{10} The Act further stipulates that if the dispute is not resolved, the Conciliator shall within seven forward his report to the Minister of the development.\textsuperscript{11} The Minister shall therefore within fourteen days of the receipt of such report refer the dispute for settlement to the Industrial Arbitration Panel (IAP) where an award would be given.\textsuperscript{12} The award, it notes, involves the signing of a communiqué after an agreement that must be binding on the employer and the workers. The Act adds that if an issue arises as to the interpretation of the award, the minister or any party to the award may make an application to the National Industrial Court for a decision.\textsuperscript{13} The Act states that the decision of the Court is final.\textsuperscript{14}

In the UK, When workers go on strike or take other forms of industrial action they will usually, by doing so, be in breach of their contracts of employment or their contracts for services. This means that when trade unions or trade union officials, or others, call for, or otherwise organise, industrial action they are in practice calling for breach, or interference with the performance, of contracts. They may also be interfering with the ability of the employer of those taking the industrial action, and of other employers, to fulfil commercial contracts.

Under the common law, which is basically case-law developed by the courts\textsuperscript{15} as opposed to statute law passed by Parliament,\textsuperscript{16} it is unlawful to induce people to break a contract or to interfere with the performance of a contract, or to threaten to do either of these things. This means, for example, that without some special protection, trade unions or trade union officials would face the possibility of legal action being taken against them for inducing breaches of contract every time they called a strike.

The question as to whether employees have a fundamental right to strike has been the object of considerable academic discourse and is a point on which judicial opinions have continually been expressed. The right to strike is a keystone of modern industrial society. No society which lacks that right can be democratic. Any society which seeks to become democratic must secure that right.\textsuperscript{17} The importance of a dedicated, healthy, knowledgeable and motivated workforce to the development of a nation cannot be overemphasized. Among other things, the quality of a workforce affects the productivity and development indices of the country. This is why in the second half of the 19\textsuperscript{th} century, standards were developed to ensure that ‘people work in dignity and are not unduly exploited in the course of work.'\textsuperscript{18}

\textsuperscript{9} Section 7 of the Act.  
\textsuperscript{10} Section 8 of the Act.  
\textsuperscript{11} Subsection (5) of section 8 of the Act  
\textsuperscript{12} Section 9 of the Act.  
\textsuperscript{13} Section 14 of the Act.  
\textsuperscript{14} Section 15 (2) of the Act.  
\textsuperscript{15} \textit{R v Bunn} (1871-74) 12 Cox CC 316.  
\textsuperscript{16} Conspiracy and Protection of Property Act, 1875, Trade Union Act 1871, Trade Disputes Act 1906.  
Strike as a right is a very important weapon in the armoury of organized labour. The right was acquired as a result of so many years of class struggle by the working class. The origin of this struggle is one of perennial class battles, fierce reprisals by the management and the concerned authorities against those embarking on strike and self-sacrifice by the working class. The right to strike has now been accepted as an indispensable part of a democratic society and a fundamental human right. The world over, strike is a very important tool for the defence and promotion of the rights and interests of Labour and its members and is a necessary counter force to the power of capital. In labour negotiations, strike plays the same role as warfare plays in diplomatic negotiations.

Lord Wright, stating the importance of the right to embark on strike in industrial relations observed that:

where the rights of labour are concerned, the rights of the employers are conditioned by the rights of men to give or withhold their services. The right of workmen to strike is an essential element in the principle of collective bargaining. It is, in other words an essential element not only of the union’s bargaining process itself, it is also a necessary sanction for enforcing agreed rules.

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Crofter Hand Woven Harris Tweed Co. v. Veiteh (1942) 1 All E.R. 142 at p. 158 -9.
2.0 Strike in the Eyes of the Law

Section 48(1) of the Trade Disputes Act,\(^{23}\) defines a strike as the cessation of work by a body of persons employed acting in combination, or a concerted refusal under a common understanding of any number of persons employed to continue to work for an employer in consequence of a dispute, done as a means of compelling their employer or person or body of persons employed, to accept or not to accept terms of employment and physical conditions of work.

The Act further defines cessation of work as including “deliberately working at less than usual speed or with less than usual efficiency.” While it defines refusal to continue to work as including “refusal to work at usual speed or with usual efficiency.”

This definition presupposes a dispute based on a trade dispute and nothing more. It does not contemplate a social, economic or political disagreement or misgiving of workers. The definition, therefore, is narrower than the one at the common law. In *Tramp Shipping Corporation v. Greenwich Marine Inc.*,\(^{24}\) Lord Denning defined a strike action broadly as:

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

Although this definition is wider than the one given under section 48(1) of the Trade Disputes Act, the first segment of the definition which hinges a strike on a trade dispute and the last segment thereof which exclude external factors like bomb scare, etc agree with the said section 48(1) of the Act.\(^{25}\)

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. It follows that 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.\(^{26}\) 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 stoppage of work. However, a politically induced protest\(^ {27}\) or sympathy strike still qualifies as a strike.

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\(^{23}\) Cap. T8 LFN 2010.

\(^{24}\) (1975) All E.R. 898 at 990.


\(^{27}\) For instance, strike embarked upon by various trade unions against the removal of fuel subsidy in January, 2012 in Nigeria.
Under our statute, any strike which is not a fall-out of a trade dispute may not be called strike within the contemplation of the Act and becomes illegal to that extent within the contemplation 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.\(^{28}\)

Without prejudice to the rights of individuals who are also Nigerian citizens to protest on government policy, the oil subsidy removal is certainly not connected with the terms of workers’ employment.\(^{29}\) No doubt, this same reasoning informed the judgment of the Federal High Court on the 21st September 2004.\(^{30}\) It also played a part for the injunctive order of the Court of Appeal made in *Oshiomole v. F.G.N*\(^{31}\)

It was the same principles that underlined the injunctive order of the National Industrial Court (NIC)\(^{32}\) granted on the 6th of January, 2012.\(^{33}\) In an interesting twist to the issue, Labour in reaction to that order, stated that the dispute between it and the federal government was not that of employee and employer and that the National Industrial Court which is a specialized court handling labour related matters, lacked the jurisdiction to make the order.\(^{34}\) The question that has remained unanswered is that if the dispute was not that of employee and employer why then did labour resort to a purely labour-related line of action, i.e. strike, to press home its demands? Even though the dispute was not a purely labour dispute, it is our considered opinion that since the removal of the fuel subsidy would affect the purchasing power of labour members; Labour was not completely out order to have called for the industrial action. This however would have been completely different if Labour in reaction to the subsidy removal, had gone on to agitate for a corresponding wage increment. In this instance, any strike that would have been called as a result would have been clothed with legality since wage dispute would have qualified as a trade dispute. In this instance, any strike that is within the contemplation of our labour statutes would be deemed legal, while those that are outside the purview of the statutes would be deemed illegal.

It is our opinion that the Academic Staff Union of Universities (ASUU’s) demands of upward review of retirement age for Professors from 65-70, adequate funding to revitalize the university, progressive increase of budgetary allocations to education by 26 per cent, transfer of Federal Government property to universities, setting up of Research and

\(^{28}\) Section 48(1) Trade Disputes Act Capt T8 LFN 2010.


\(^{30}\) Babalola, *Oil Subsidy Removal Strike; supra note 31*.  

\(^{31}\) (2005) 1 NWLR (pt. 907) 414 at 436.  

\(^{32}\) The NIC has exclusive jurisdiction in civil cases and matters relating to or connected with any labour, employment, trade unions, Industrial relations and matters arising from workplace, the conditions of service.


\(^{34}\) The NIC the claim of the Federal Government who had approached the court for an injunctive order restraining the Nigeria Labour Congress and the Trade Union Congress from interfering with the exercise of the constitutional powers of the Federal Government of Nigeria in the allocation and use of scare resources of the Federal Republic of Nigeria including but not limited to the transfer of scare resources previously allocated to the subsidy of Premium Motor Spirit among others from the medium and long term socio-economic benefits of the present and future generations of Nigerians. The claim was however, struck out by the court on the premise that it was no a labour-related issue but a policy issue, which the court lacks the jurisdiction to entertain.
Development units by companies, payment of earned allowances and re-negotiation of the signed agreement, relate to the terms of employment of its members and therefore not illegal. ASUU, in the circumstance would be justified to embark on an industrial action, if the government fails to meet any or all of its demand. However the right to embark on a strike should only be exercised as a last resort.

Sympathy strike is becoming popular in Nigeria these days. A secondary (or 'sympathy') strike is one in which employees strike to support employees engaged in a different strike. The purpose might be, for instance, to compel employers or to put pressure on the employer of the striking workers to accede to their demands.

A sympathy strike need not be a total refusal to work - there can be a refusal to handle the goods or products of the employer whose workers are on strike. For example, in 1981 workers in the motor trade were asked not to handle tyres of a particular company after that company had dismissed a number of employees for striking. The company eventually came to an agreement with the union and the ban was called off. Even though the strike was illegal at the time, the workers and the union were not charged.

A strike is not classified as a secondary strike if the employees have referred their demand to the relevant authority and they have a material interest in the demand. No person may take part in a secondary strike unless:

- The strike that is to be supported meets the standard procedural requirements;
- The employer of the employees taking part in the secondary strike has received notice of the intention to strike at least seven days before the strike is due to start;
- The nature and extent of the secondary strike is reasonable in relation to the possible direct and indirect effect that it will have on the business of the primary employer to settle the dispute.

It is submitted that the above is obtainable in Nigeria.

If a secondary strike does not comply with these conditions, the secondary employer may apply to the Labour Court for an interdict to stop or limit the strike. This is what is obtainable in the UK.

### 3.0 Right to Embark on a Strike

Organised Labour in Nigeria has right, both at common law and under Nigerian law, to embark on, organize or participate in strike action.

Whilst the Constitution does not expressly provide for the rights of citizens to embark on protests, the right to freedom of expression and right to peaceful assembly and association creates room for the expression of whatever ill-feelings the average citizen may have.

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35 Dayo Adesulu “ASUU begins Strike over MoU with the FG,” Vanguard, July 2, 2013 “ASUU began a nationwide strike over alleged FG’s refusal to implement the agreement between it and the union over unpaid entitlements, its National President, Dr Nasir Fagge, has said .”

36 [http://www.legalcity.net/Index.cfm?fuseaction=RIGHTS.article&ArticleID=3026282](http://www.legalcity.net/Index.cfm?fuseaction=RIGHTS.article&ArticleID=3026282), accessed on 23/10/2013

37 Ibid

38 See the dictum of Lord Wright in *Crofter Harris Tweed & Co. v. Veitch* supra note 23.


40 Section 40 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) guarantees that “everyone shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests.”
have about the administration of the country including his views on government policies such as that by which the federal government removed the subsidy that hitherto existed on petrol.41

Outside the Constitution, there are a number of legal instruments both national and international which grant freedom or right of association to workers or employees. A few of them will be highlighted below. The African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act42 makes provisions for the individual’s right to free association.

Article 10 (1) provides:
Every individual shall have the right to free association provided that he abides by the law.

Article 15 provides:
Every individual shall have the right to work under equitable and satisfactory conditions and shall receive equal pay for work.

Further, is the provisions of Article 8 (1) (d) of the International Covenant on Economic, Social and Cultural Rights to which States parties to the Covenant undertake to ensure the recognition of the right of trade union to embark on strike.43

The combined effect of section 40 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), the provisions of Articles 10(1) and Article 15 of the African Charter on Human and Peoples’ Right and Article 8 (1) (d) of the International Covenant on Economic, Social and Cultural Rights can by necessary implication be said to be a legal framework upon which workers or employees derive the right to embark on strike. This has been further enhanced by the Trade Unions Act. Section 43 (1) of the Act provides:

It shall be lawful for one or more persons; acting on their own behalf or on behalf of a trade union or registered Federation of Trade Unions or of an individual employer or firm in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information or of peacefully persuading any person to work or abstain from working.

In Nigeria, while section 3444 of the 1999 Constitution frowns at forced labour (thereby invariably guaranteeing right to withhold services as a result of a strike), section 40 thereof gives room for the formation of trade unions for the protection of members’ interests. However, the right to strike must be exercised within the confines of the law which make the right possible in the first place. It is therefore imperative that in going about protests/strike, the citizen must be wary of trampling upon the rights of persons who may not share his view or opposition to the position of government or where they do, who may not agree with him as to how best to make their displeasure known to government45.

41 The Federal Government of Nigeria officially removed the country’s subsidy on fuel on 1st January, 2012. The announcement was made by the Petroleum Products Pricing Regulatory Agency (PPPRA).
42 Cap A9 LFN 2010
43 www.ohchr.org/EN/Professionalinterest/Pages/CESCR.aspx accessed on 13th September 2013
44 Section 34 of the 1999 Constitution (as amended) guarantees the right to dignity of human person
The right to strike in Nigeria\(^{46}\) as in the UK\(^{47}\) stems from the immunities granted to workers and trade unions against civil and criminal liabilities for engaging in industrial action. Although there was no express provision on the matter, before 1968\(^{48}\) the British engineered amalgam of common law and legislation which immune’s trade unions and workers from criminal and civil liabilities attendant upon strike actions had become part of our legal system.

4. **Liability of Persons Engaged in a Strike**

When a strike is called, unionists engage in picketing, barricading of entrance that may prevent other lawful activities. Questions have arisen as to whether there is liability to such actions. Unionists may justify their actions on the basis that there course is a legitimate one.

4.1 **Criminal Liability:**

Undoubtedly, no sane society will permit organized labour or any group of persons, masquerading under the guise of exerting group pressure, to press home some point or gain advantage, to infringe on its criminal or penal laws without the necessary sanctions. In *Mogul Steamship Co. Ltd. v. McGregor, Gow & Company*,\(^{49}\) Lord Halsbury aptly summed up the position thus:

> Intimidation, violence, molestation, or the procurement of people to break their contracts, are all of them unlawful acts; and I entertain no doubt that a combination to procure people to do such acts is a conspiracy and unlawful.

In Nigeria, the statutes governing the subject matter include: the Criminal Code,\(^{50}\) Penal Code,\(^{51}\) the Trade Unions Act,\(^{52}\) the Trade Dispute Act\(^{53}\) and the Public Order Act.\(^{54}\) It is apposite to reproduce section 43 of the Trade Unions Act. It is to the effect that:

43(1) It shall be lawful for one or more persons, acting on their own behalf or on behalf of a trade union or of an individual employer or firm in contemplation or furtherance of a trade dispute, to attend at or near a...
house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information or of peacefully persuading any person to work or abstain from working.

(2) Accordingly, the doing of anything declared by subsection (1) of this section to be lawful shall not constitute an offence under any law in force in Nigeria or any part thereof and in particular shall not constitute an offence under section 366 of the Criminal Code or any corresponding enactment in force in any part of Nigeria.

From the above, the two conditions that must be satisfied to make picketing lawful are that it must be done: (1) in contemplation or furtherance of a trade dispute (2) merely for the purpose of peacefully obtaining information or peacefully persuading any person to work or abstain from work. It is submitted that subsection (2) is therefore, only designed to amplify the operative words in subsection (1). It is imperative to state that under section 43(1) of the Trade Unions Act, the right to picket must be based on a trade dispute and must be peaceful.

From the above, it is safe to generally conclude that organized labour has no right to picket on an organization if its demands are not based on a trade dispute. Secondly, the activities of the picketers must be within the confines of the law. In *Piddington v. Bates* member of a particular union had gathered in a place for a peaceful picket over a trade dispute. The respondent, a police officer, directed that only two picketers should picket per each door of the premises picketed. The appellant, who disagreed, gently pushed aside the policeman and went about his picketing activities. On a charge of obstructing a police officer in the lawful discharge of his duties, court convicted the appellant, saying that what he did came under the contemplation of the definition of ‘obstructing’ a police officer. On appeal, the appellate court held that the respondent police officer was perfectly doing his lawful duties when he directed that only two persons should picket per door, because the officer had suspected a likely breach of the peace if many persons were allowed to picket per door.

In Nigeria, *Garba & ors. v University of Maiduguri* is an authority that students should not come together under the cover of unionism to engage in criminal acts of arson, looting and assault. The Supreme Court allowed the appeal of the students on the ground that the disciplinary board that “tried” and “convicted” them was incompetent in law to do so, since those acts committed by the students were criminal in nature, hence ought to have been tried by a regular court or tribunal established by law.

In Zimbabwe the current provisions relating to damage caused to property through an “illegal strike” imposes criminal sanctions on workers’ representatives who would have facilitated the strike. There is no immunity for workers’ representatives. The labour system in that country separates workers in the private sector, public sector, health services, police and the army. “Essential” employees are prohibited by law from striking, and the government defines all public sector workers as essential. Managers also are prohibited from striking. The government also considers some private sector workers, such as those in the health sector, as essential workers. For the remaining non-essential employees to conduct a strike legally, more than 50 percent of the company’s employees must vote in favour of the action. Many employees are afraid to do so, for fear of management reprisals. However, if

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55 (1960) 3 All E. R. 60.
56 (1986) 1 NSCC 245.
58 ibid
a majority vote is obtained, the dispute is referred to the concerned government agency for resolution. Only if the government-appointed arbitrator determines that a resolution is not possible is the right to strike granted. These government-imposed delays prevent most employees and their unions from ever declaring legal strikes. However, illegal strikes or work stoppages have occurred within individual companies and occasionally, in entire industries.

Similarly, in Nigeria there is no immunity for unionists who embark on a strike and thereby threaten the peace of the society by that action. Workers in essential duties are not expected to embark on a strike in Nigeria but this is is no longer the case as the said workers now embark on strike at the slightest provocation.59

4.2 Civil Liability:

In addition apart from government control through the use of the instrumentality of penal laws, government also has the right to use the civil law to control excesses in this regard. Comparatively, civil law is more lenient with picketers than criminal or penal law. Section 44(1) of the Trade Unions Act provides:

44(1) 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 other person to dispose of 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.

(2) 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 subsection.”

Further section 24 of the Trade Unions Act provides thus:
(1) An Action against a trade union (whether of workers or employers) in respect of any tortuous act alleged to have been committed by or on behalf of the trade union in contemplation of or in furtherance of a trade union dispute shall not be entertained in any court in Nigeria.
(2) Subsection (1) of this section applies both to an action against a trade union in its registered name and to an action against one or more person as representatives of a trade union.

What is clear from the provisions are: first the word “peacefully” used in subsection (1) of section 44. This means that no action will accrue to an aggrieved person in the instances cited in paragraph (a) – (d) of that subsection even if the picketing acts consist of the use of force. Secondly, only those acts mentioned in paragraphs (a) – (d) are not actionable; any other unlawful act is actionable against the picketers. Flowing from this, if the acts are not

done “in contemplation or furtherance of a trade dispute”, then the exclusionary provisions of paragraphs (a) – (d) of section 44(1) would be inapplicable.

The peculiar nature of the provisions of sections 24 and 44 of the Trade Unions Act has rendered most English decisions and obiter dicta on tortuous liability inapplicable to Nigeria. Decisions that tortuous and/or contractual liabilities accompany unguarded labour activities and picketing such as Rokes v. Bernard, Tarquay Hotel Ltd v. Cousins and Daily Mirror Newspapers Ltd. v. Gardner etc become less important guides. However, in Strafford v. Lindley, it was held that acts of picketing that are permitted by statutes, even if they are manifestly unlawful, are not tortuous or actionable. Also in Hubbard v. Pitt it was held that:

the word “picket” is used, no doubt, because of the example shown by workers who, in a trade dispute, picket in support of their demands…picketing a person’s premises (even if done with a view to compel or persuade) is not unlawful unless it is associated with other conduct (of) a nuisance in itself. Nor is it a nuisance for people to obtain or to communicate information…… it does not become a nuisance unless, it is associated with obstruction, violence, intimidation, molestation or threats.

The above situation is not too different in the United States of America and other civil jurisdiction. Thus in Thomas v. Collins, the U.S. Supreme Court held that the right to gather together, discuss and inform people concerning the merits and de-merits of labour unions and the need to join them is protected, not only as a part of free speech, but also as a part of free assembly.

5.0 State Control/Regulation of Strike

The 1999 Constitution provides that the government can through a law, impugn on the rights to privacy, freedom of association/assembly and freedom of movement:

in the interest of defence, public safety, public order, public morality or public health” or “for the purpose of protecting the rights and freedom of other persons.”

This constitutional provision, in our view, accords with all democratic ideals all over the world.67

60 (1964) A.C. 129.
61 (1969) 2 Ch. 106.
62 (1968) Q. B 768.
63 (1965) A. C 304.
65 323 U.S. 516, 65 S. Ct. 315
66 Section 45 (1) (a) and (b) of the 1999 Constitution (as amended);
In a bid to regulate strike in Nigeria, the Nigerian Senate has before it a Bill to make it unlawful for the trade unions in Nigeria to embark on any strike without obtaining the permission of the different organs of the union through a ballot. Reacting to this development, the Nigeria Labour Congress (NLC) and the Trade Union Congress (TUC) stated:

\[\text{The arguments canvassed in support of the proposed amendments to the Act are not only laughable but shows serious lack of understanding of not only the relevant laws of the country but also the operations of the Trade Unions in Nigeria. Presently, the labour movement in the U.K as represented by the TUC is a major partner in the Labour Party while the AFICIO in the US is a major stakeholder in the Democratic Party where they freely contribute both financially and technically but the labour movement in Nigeria is yet to rise to the 1940s and 1960s level in Nigeria.....we call on Senator Heineken to quickly withdraw that Bill...}\]

It is submitted that such a Bill if passed to law would only succeed in emasculating labour unionism in Nigeria. The position of the NLC and TUC in this regard is supported. Is sack or dismissal a way to regulate a strike action? Loss of job is the most serious sanctions in industry; it is the capital punishment of industry, upon which fringe benefits of considerable social importance, such as seniority, depend. Whereas loss of wages is universally accepted as the price the striker must pay in the economic battle, it is not universally accepted that he be penalized by losing his job.

In the case of Anene v J Allen & Co. Ltd, the appellant who participated in a two-week strike lost his right of employment in the company as it was held that the appellant had terminated his employment by his own action when he participated in the strike action, and that the company was right when it refused to re-employ him based on the mediation term brokered at the end of the strike, by the Federal Ministry of Labour.

It is apt to examine the Indian case of Postal Seals Industry Co-operative Society v Labour Court II, Lucknow in that case the service of two employees of a co-operative society was terminated with one month’s notice. It was in evidence that the termination was tainted with unfair labour practice of suppressing a worker’s union. The Allahabad High Court upheld the decision of the Labour Court which declared the termination illegal, reinstated the employees and awarded them full back wages. The court said that in such a case the award of full back wages served two purposes: (a) it was the normal remedy where,

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68 The Bill is sponsored by Mr. Heineken Lokpobiri representing Bayelsa West in the Nigerian Senate.


because of illegal dismissal, the employee was deemed to have continued in service; (b) it created a climate in which employees might be free from fear that union activities would lead to reprisals against them.

Since the right of employees to form unions is guaranteed by the Constitution,\(^{73}\) social interest in this right, vital for industrial democracy, should prevail over social interest in the employer’s right to fire.\(^{74}\) Lagos State made history on 7\(^{th}\) May, 2012 by becoming the first state in Nigeria to fire 788 doctors in a swoop.\(^{75}\) The state government made good its promise to disengage the doctors for failing to respond to queries issued to them and for failing to face a disciplinary panel after participating in a three-day warning strike from the 11\(^{th}\) to 13\(^{th}\) April 2012.

This is a new and dangerous dimension to handling labour crisis especially in Nigeria. While countries like Kenya\(^{76}\) and Zimbabwe\(^{77}\) have dismissed doctors, Lagos government’s action remains novel in Nigeria. Government at both state and federal levels had in the past, threatened either to suspend salaries of striking workers or lay them off completely, none had ever been bold enough to mete out these punishments for the sake of industrial harmony. The truth remains that sacking a doctor because he embarked on a strike to prove a point, is not the best thing to do. Lagos State Government must be commended though for recalling the sacked doctors.

6.0 Conclusion

Nigeria continues to breach trade union rights, contrary to both its own constitution and international standards. A few of the violations have been discussed here, but we must add that this account is far from exhaustive, for breaches of workers and trade union rights are mostly unreported.

The concerned authorities must provide an enabling environment for freedom of association, in which trade unions can operate. The status quo, with union leaders and other unionists hounded and arrested with no regard for due process, is unacceptable. Like other liberal democracies, the government of Nigeria must respect the rights that trade unions derive from the freedom of association\(^{78}\). Indeed, it should encourage and empower unions to help with the task of economic development.

\(^{73}\) Section 40 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

\(^{74}\) Chianu, note 18 above, p. 270.

\(^{75}\) The sacked 788 doctors have since been recalled. They were recalled on 4\(^{th}\) June, 2012 and have started collecting their individual official letters of reinstatement from the Health Service Commission; “Lagos doctors collect recall letters”, [http://www.vanguardngr.com/2012/06/lagos-doctors-collect-recall-letters](http://www.vanguardngr.com/2012/06/lagos-doctors-collect-recall-letters). Retrieved on June 6, 2012.

\(^{76}\) Kenya fired 25,000 health care workers in March 2012.


The observation of Harold Laski that "Without freedom of mind and of association a man has no means to self-protection in our social order"\(^79\) is apt. One must hope that Nigeria will unleash its trade unions and restore its posture as a liberal democratic nation that respects the rule of law.

The right to strike is a very important weapon in the armoury of any organized labour in any democratic society. The function of a right to strike, \textit{inter alia}, is to enhance justice in the workplace and society.

The International Labour Organisation (ILO) attaches great premium to the need to secure and protect the right to strike throughout the world and has repeatedly demonstrated its unflinching commitment to all workers by insisting that this right must be protected at all times and can only be denied in exceptional circumstances in the interest of the society as a whole.

Strife and strike are ill winds which blow neither the employers nor workers any good. Strikes disrupt not only the business of the employers and cause the workers loss of wages but also invariably disorganize the economy of the state and social order in some cases. In our humble view, the only way to achieve industrial peace in Nigeria is for the employers to always promptly review, negotiate and implement collective agreements entered with workers concerning improvements in wages and general working conditions.

The sacking of forty-nine University of Ilorin lecturers in 2001 for taking part in strike activities was the height of victimization in labour struggle. Although the lecturers have since been reinstated\(^{80}\), the fact remains that in spite of the many strikes that take place in Nigeria; only a few victimization reports are made. This is rather unfortunate.

It remains to be seen whether industrial actions can totally be eradicated in Nigeria. As a bold step towards stemming the ugly trend of strikes in Nigeria, employers of labour must ensure that a favourable and conducive working environment is created for their employees. Whatever agreement entered into between employers and employees must be respected. Breach of agreement is a major cause of strike action in Nigeria. To avoid this, both employers and employee must act in good faith whenever they enter into an agreement. On the part of the employees, they must explore other alternatives to strike. Strike should only be used sparingly. The power of negotiation in settling industrial disputes must be generously utilized by both employer and employees.


\(^{80}\) \url{http://www.vanguardngr.com/2009/06/scourt-orders-immediate-reinstatement-of-sacked-unilorin-lecturers/}, accessed on 23/10/2013