THE LEGAL REGULATION OF STRIKES IN NIGERIA: A CRITICAL APPRAISAL

OVUNDA V. C. OKENE, PhD, Rivers State University of Science and Technology, Port Harcourt, Nigeria

Available at: https://works.bepress.com/ovunda_v_c_okene/41/
INTRODUCTION

There is no gain-saying the fact that all workers throughout the world are alike in the sense that they desire recognition, satisfaction, fair wages and salaries, security of job, redress of wrongs and good working conditions. But often the employer and the union (representing workers) find themselves in sharp disagreement. Such frictions or disagreements give rise to trade disputes and strikes. The right to strike is a result of almost two centuries of struggle by the working class. The history of this struggle is one of constant class battles, fierce reprisals by the bosses and the authorities against strikers, blood and suffering of the workers, and heroic self-sacrifice by proletarian fighters.

Although strikes and lock-outs date back to the very earliest stages of capitalism the concept of strike as such i.e. the collectively organised stoppage of work, appeared only at the end of the 18th century. In the Nigerian context, since the civil war, labour-management conflicts have assumed unprecedented proportions. In fact strikes have become so endemic in Nigeria that even our courts would be prepared to take judicial notice of them. The incessant industrial action in the all-important health and education sectors leaves much to be desired. The industrial sector is even worse. We may recall the horrendous experience Nigerians went through in the second half of the last year (2000) as a result of the nationwide strike embarked upon by resident doctors which lasted over four months. A recent account has it that "within the first 6 months of 1999.....the Nigerian Union of Teachers (NUT) called off a nation-wide strike that lasted for over four months only in June 1999. The National Union of Banks, Insurance and other Financial Institutions Employees (NUBIFIE) embarked on a one month nationwide strike which left activities in the banking sector completely paralysed. The Nigerian Labour Congress (NLC), the parent body of over 50 affiliate trade unions only recently called off a two months nation-wide industrial action. The

*O.V.C. OKENE, LL.B (Hons), LL.M. (Life); B.L lecturer and AG Head, Department of Commercial, Private and Property Law, Rivers State University of Science and Technology, Port Harcourt. E-mail: ovcokene@yahoo.com • 1120876@discomping.com

1 See Yuri Ivanov, State Capitalist Monopoly and Labour Law (1985), P. 62
2 Tuyo Fashoyin Industrial Relations in Nigeria, 2nd Ed. (Longman Nig. Ltd) 1992 P. 176
It is instructive, though saddening, to note that there have been more disruptions in the public education, industrial and health sectors arising from industrial disputes in the last decade than in the three decades taken together in the post independence life of the country. This paper seeks to critically consider the recurrent issue of industrial strikes in Nigeria and to examine the adequacy or otherwise of the legal mechanisms put in place for the control of same. In order to do so, the paper starts by examining the true meaning of strike, the vexed issue of whether indeed a right to strike exists, what legal regime exist to control strikes in Nigeria and the protection given to strikers. It will then review attempts made by law to ensure that the menace of strikes are controlled. The paper as a matter of urgency calls for effective legislative reforms and implementation of laws to stem the tide of industrial conflicts to usher in consistent industrial growth and harmony.

What is a Strike?

In a wide sense, a strike is a deliberate stoppage of work by workers or a temporary withdrawal of services by workers. To constitute a real strike, there must be a common cessation of work and the stoppage must be deliberate. Clearly, therefore, a cessation of work by an individual worker cannot be 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. Again a work-to-rule or the so-called “go slow” or "work to contract" or "chessboard" and "hiccup" strikes will not qualify as a strike generally since it does not amount to work stoppage. But a political strike or protest strike" or sympathy strike is nevertheless a strike. In Tramp Shipping Corporation v. Greenwich Marine Inc v Tramp Shipping Corporation V. Greenwich Marine Inc > a strike is defined as "a concerted stoppage of work by men done with a view to improving their wages or conditions of employment, or giving vent to a grievance or making a protest about something or the other, or supporting or sympathising with other workmen in such endeavour. It is distinct from stoppage brought about by an external event such as a bomb scare or by apprehension of danger".

---

4 For example, strikes embarked upon by various trade unions against the annulment of the June 12, 1993 Presidential Election Results in Nigeria by the Babangida military junta.
5 (1975) ALL E.R 898
6 Ibid. at p. 990 per Lord Denning M.R.
Under our law, section 47 (1) of the Trade Disputes Act defines a strike thus "strike means cessation of work by a body of persons employed acting in combination, or a concerted refusal or a refusal under a common understanding of any number of persons employed to continue to work for an employer in consequence of a dispute, done as a means of compelling their employer or any person or body of persons employed, or to aid other workers in compelling their employer or any person or body of persons employed, to accept or not to accept terms of employment and physical conditions of work; and in this definition:

a. "cessation of work) includes deliberately working at less than usual speed or with less than usual efficiency; and
b. "refusal to continue to work:" includes a refusal to work at usual speed or with usual efficiency."

The statutory definition of strike excludes any strike which is not in consequence of a trade dispute from being regarded as a strike within the meaning of the Act. A "trade dispute" means any dispute between employers and workers or between workers and workers, which is connected with the employment or non-employment, or the terms of employment and physical conditions of work of any person." Clearly, the statutory definition of strike is wider and more comprehensive than the common law position. Whereas under the common law, a work-to-rule action or "go-slow" is not a strike, it is recognised as a strike under the statute since it is "deliberately working at less than usual speed or with less than usual efficiency". Also, a political strike cannot qualify as a strike under this definition though a sympathy strike by members of one union supporting members of another trade union will obviously qualify. As it is, the main difference between the two definitions is that political strike and protest strike would qualify as strike at common law but not under Nigerian Law.

**Right to Strike in Nigeria**

The right to strike by the workers and their unions is surely recognised as a legitimate means of defending their occupational interests. As a matter of fact, the right to strike is an essential element in the principle of collective bargaining. Without it organised labour will be hamstrung to deal with
management effectively. Lord Wright perhaps put the issue in proper perspective when he declared that:

((Where the rights of labour are concerned) the right of the employers are conditioned by the rights of the men to give or withhold their services. The right of the workman 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".

Commenting on the decision in Rookes V. Barnard. Professor Wedderburn stated that it is:

"a vigorous reaffirmation of the right to strike.... The policy of the judgements may be said to be that which the struggles between courts and unions bequeathed to modern (English) Industrial Law namely, the recognition of the right to strike for collective union interests."

In the recent case of Union Bank of Nigeria Ltd. V. Edet.2 Uwaifo J.e.A. reviewed the situation and said:

"It appears that whenever an employer Ignores or breaches a term of that agreement resort could only be had, if at all, to negotiation between the union and the employer and ultimately to a strike action should the need arise and it be appropriate"

Frankly, it is arguable that the right to strike is an integral part of the right embedded in the personal status of a citizen to choose for himself whom he will serve which distinguishes him from a slave.!' This clearly includes the right of a person to withhold service during a strike) for the principle that a man is not to be compelled to serve a master against his will is ingrained in the common law of this country!"

---

9 Crofter Harris Tweed & Co. V. Veitch (1942) 1 A.L.R. 142 at 158 - 9. see also Kahn Freund's Labour and the Law. London 1972 at p. 234
10 (1962) 2 A.L.R. 579; (1962) 3 W.L.1?260
12 (1993) 4 N.W.L.R (pt 287) 288 at 29/
13 Nokes v. Doncaster Amalgamated Collieries (1940) A.C 1014
14 Ibid at 1 P 1033 per Lord Atkins
Surely, the right to strike is both recognised and protected by law. Professor K.W. Wedderburn gave the rationale for this. According to him:

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

Contrary to the opinion of some learned writers’, it is submitted that the right to strike is recognised under the Nigerian law. A survey of the various laws in the country attests to this fact. In the first place, there is the common law right to strike where adequate notice sufficient to terminate the contract of employment is given.15 There is nothing in any law in Nigeria that affects the right to strike. Any contrary view would lead to the rather ridiculous conclusion that once a citizen is employed he is

16 See The Future of Law and Labour Relations in Nigeria, a paper presented by the Faculty of Law, University of Lagos at the 34th Annual conference of NALT (1998) at Us. T., Fort Harcourt, at p.31, where it was stated that “considering the totality of the provisions of the Trade Unions Acts 1973-1996, Trade Disputes Act, 1976 and the Trade Disputes (Essential Services) Act 1976 as well as the common law positions as it applies to Nigeria, one can safely conclude that the right to strike has been rendered nugatory and fictitious.” See also Sampson I, Erugo, “Exploding the Myth of strike - A Review of the no strike clause” of Decree No 26 of 1996, 1996 Abia State University Law Journal, P.58 where the author concluded on the right to strike w en c stated that “perhaps the so called right or freedom to strike like right to work is a controversial political right yet to be sanctioned by the state”. See also S.O Ukuegbu, “The Right to Strike in Nigeria: A Perspective from International and Comparative Law,” in Select Essays in Law, Faculty of Law, University of Benin 1996 P. 148 where the learned writer posits that the Trade Disputes Act, 1976 as amended in 1990 by its provisions of compulsory settlement of trade disputes and prohibition of strikes shuts out the employees right to strike. See also Akpan, The Right to Strike in Nigeria (1998) 3 lawyers’ Hi Annual (No. 1) p. 62
17 See Spring/lead Spinning Co. V. Riley (1808) L.R. Eq. 551; Morgan V. Fry (1968) 2 Q.B. 710; Secretary of State for Employment V. Associated Society of Locomotive Engineers and Firemen (No.2) (1972) 2 Q.B. 455.; Lewis V. London Chronicle (Indicator Newspapers) Ltd. (1959) IWL 698
18 See A. Emiola, Nigerian Labour Law 2nd Edition (1982) P. 239; see also A Emiola, The Legal Approach to Industrial Relations in Nigeria (1988) Cslsbar Law Journal Vol. 2, 31 at 32 where the learned professor supporting the view that there is a right to strike under Nigerian Law further justifies his belief on the basis of the Trade Unions Act of 1973 as amended in 1990 which gives legal immunity to workers both in their personal capacities and as trade unions for acts done in contemplation of furtherance or trade dispute (section 21 (1) and 46 (1) so far as the acts and disputes are legitimate.
banished to his employer and cannot resign or withdraw his service by giving the mandatory notice. This would amount to forced labour and therefore unconstitutional. In his book *Nigerian Labour and Employment Law in Perspective*, O. Ogunniyi eruditely remarked as follows:

"A situation where there is no freedom to decide whether or not to work and where people can be compelled to work is compatible only with totalitarianism. Therefore the right to go on strike is fundamental to the employment relationship and is compatible with the traditional values of a society which professes democracy."

To deny a citizen's right to withdraw his service during a strike will amount to forced labour and thus offend the sacrosanct provisions of section 34 of the 1999 Constitution?". Infact section 40 of the constitution guarantees a citizen's right to form a trade union and to belong to any trade union of his choice for the protection of his interests, subject only to derogation by any law that is reasonably justifiable in a democratic society.s' It is our respectful view that the right to form trade unions guaranteed in the constitution *ipso facto* implies the right of trade unions to call out their members on strike when the situation warrants that. There is a clear support for this in the *Trade Union Act*22, which requires trade unions to incorporate in their rules book or constitution a rule forbidding any member of the union from taking part in a strike unless a majority of the members of the union have in a secret ballot voted in favour of the strike.23 us provision is definitely a recognition of the right to strike in Nigeria.

Furthermore, *Section 42 of the Banks and other Financial Institutions Decree, 1991*24 specifically recognised the right of bank workers to go on strike, but it protects the banks from incurring liability by reason of their inability to open to customers due to strike action of their employees.

The section clearly reads:

"No bank shall incur any liability to any of its customers by reason only of failure of the part of the bank to open for business during a strike"

---

21 Section 45 provides that "nothing in section 40 shall invalidate any law that is reasonably justifiable in a democratic society ...." It is submitted that any law against strike cannot be said to be a law that is reasonably justifiable in a democratic society.
22 Cap 473 Laws of the Federation of Nigeria, 1990
23 See section 4 and clause 14, schedule 1 of the Act.
24 Decree No. 25 of 1991
On a final note, it is our submission that the right to strike certainly exists in Nigeria, even though strike action is seen as an 'enemy to industrial development as it causes industrial stoppages resulting in economic losses and hardships. According to Professor Otto Kahn Freund:

"Everyone, except those on lunatic fringe] wants to reduce their number and magnitude. But people do not go on strike without a grievance] real or imaginary sometimes they have ample justification " sometimes they do it wantonly..."25

As Learned Professor concluded:

"No country / know ot, suppresses the freedom to strike in peace time except dictatorship. "26

Workers will go on strike) whatever the law may have to say about it"27

Legal Control of Strikes

Having agreed that the right to strike exists in Nigeria, the next and apparently most important issue is to examine the various attempts which have been at different times to curtail the excessive use of strike actions in the collective bargaining process in Nigeria. Sometimes an outright ban is imposed. Sometimes it is a subtle circumscription. As far back as 1968 the government placed an outright ban on strikers by promulgating the Trade Disputes (Emergency Provisions) Decree 29. The following year the government reinforced the earlier Decree by promulgating the Trade Disputes (Emergency Provisions) (Amendment) (No.2) Decree 196930 because of the unbridled wave of strikes after the first Decree. Subsequently the Trade Disputes Act of 197631 recognized the right to strike but introduced both voluntary and compulsory settlement of disputes without resort to strike. The Act laid down the procedures to be followed and exhausted before any strike action 32. These provisions of the Act aimed at amicable and peaceful settlement of trade disputes and envisaged that a strike action should be the last resort in the collective bargaining process. Section F (I) (a) of the Decree made it an offence for an employer to take

26 Ibid. 1" 234
29 Decree No. 21 of 1968. This was during the civil war. It was done apparently to sustain production of goods and services and to ensure industrial peace to reinforce the war effort.
30 Decree No. 53 of 1969
31 Cap. 432, Laws of Federation of Nigeria, 1990
32 Sec Section 1-18 of the Act.
part in a lock-out or for a worker to take part in a strike action or do any act preparatory to organizing a strike. The Act prescribed mandatory or voluntary settlement of industrial disputes. If that fails, the parties may have to go through Conciliation, Arbitration and eventually to the National Industrial Court.

The aforementioned procedure for settlement of disputes under the Act must be criticized for being too bureaucratic and cumbersome. No wonder it soon fell into disuse and could no longer effectively prevent strike actions.

As strikes continued by unions in all corners with its devastating effect on the economy inspite of the latter Act, the government again enacted the Trade Disputes (Essential Services) Act, 1976, which inter alia, empowered the President of Nigeria to proscribe any Trade Union whose workers are employed in essential services, if the President is satisfied that the union: (a) is or has been engaged in acts calculated to disrupt the economy or acts calculated to obstruct or disrupt the smooth running of any essential service; or (b) has, where applicable, wilfully failed to comply with the procedure specified in the Trade Dispute Act in relation to the reporting and settlement of trade disputes.

Clearly, it is only those workers who are engaged in services classified as 'essential services' that are affected by this Act.

The "No strike" Clause of Decree No. 26 of 1996

The recent requirement of the insertion of a "No Strike" clause in collective agreements between workers and their employers by the Trade Unions (Amendment No. 2). Decree No. 26 of 1996 is a further ample demonstration of the space of strike (es) in Nigeria Section 5 of the Trade Unions (Amendment) (No.2) Decree provides for a proviso to Section 16A of the Principal Act. Section 16A of the Act Itself was inserted by the Trade Unions (Amendment) Decree also of 1996, so that the new section 16A now

---

33 See Sections 3, 7, 8 and 13 of the Act.
34 Cap 433, Laws of the Federation of Nigeria, 1990
35 See Section 1 of the Act. Section 9 of the Act defines "essential service" to include public service of the Federation or State, civilians employed in industrial or undertakings whose services are consumed by the Armed Forces, enterprises that supply electricity, power, water, fuel of any kind, workers in sound broadcasting or postal services, telegraphic, cable or telephonic communications, ports and harbour dockworkers, the Central Bank of Nigeria, the security printing and minting company and anybody licensed to carry out bunking business under the Banking Act.
36 Decree No. 26 of 1996
37 Decree No. 4 of 1996
reads: "Upon the registration and recognition of any of the Trade Unions specified in the Third Schedule of this Act, the employer shall -

(a) make deduction from the wages of every worker who is eligible to be a member of any of the Trade Unions for the purposes of paying contributions to the Trade Unions so registered, and

(b) pay any such sum so deducted directly to the registered office of the Trade Unions after deducting what is due and payable to the Central Labour Organization", provided that compliance with the provision of this section of this Decree shall be subject to the insertion of a "no strike" clause in the relevant collective bargaining agreements between the workers and their employers"

The effect of this provision is that any union which fails to insert the "no strike" clause in its collective agreement with the employer will be starved of funds deducted by the employer on its behalf until it succumbs to the insertion. The deduction and disbursement is mandatory only if a "no strike" clause has been inserted in the agreement between the parties.

Clearly, where the collective agreement is incorporated as part of the contract of service, it binds both the workers union and the individual employee. Perhaps the attitude of the law here is that with the poor or no dues coming into the purse of the unions, the unions will almost invariably succumb to the statutory backing provided by the state for the collection of their monthly dues, thereby selling their birth right and freedom to bargain for better conditions of service in preference for the check off dues, instead of going on strike as a last resort when negotiations fail. As one writer 38 rightly observed:

"... for this unsolicited generosity with legal backing unions are expected and lured to pay the heavy price of expressly selling their .. all important right or freedom without which they remain powerless and lacking in credibility."

It is submitted that the law is clearly intended as a further control measure against strikes.

Protection of Trade Unions/Workers During Strikes.

By section 43 of the Trade Unions Act, the trade union and individual workers who go on strike are immuned from liability in respect of any tortious act alleged to have been committed by or on its behalf in

---

38 Sampson Erugo, op. cit. P. 60
39 Cap 437, Laws of the Federation of Nigeria, 1990
contemplation of or in furtherance of a trade dispute? Section 43 provides as follows:

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

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

It is worthy of note that the immunities afforded both the union and the workers are strictly limited to acts done in contemplation or furtherance of a trade dispute, as acts outside this will not be covered. Again, the workers' immunities are limited to the specific grounds enumerated in section 43 (1).

This is because section 43 (2) states that "nothing in subsection (1) of this section shall prevent an act done in contemplation or furtherance of a trade dispute from being actionable in tort on any ground not mentioned in that section"

The Penal Nature of Strikes

Section 17(1) of the Trade Disputes Act⁴¹ prevents workers from going on strike, and employers from imposing a lock-out, while negotiations or arbitral proceedings are in progress; nor could any industrial action be taken or initiated after the tribunal ⁴² might have finally determined the issue in controversy. It is a criminal offence to embark on a strike or lock-

---

⁴⁰ See Conway V. Wade (1909) A.C. 506 where Lorebun L.J. held that to amount to an act done in contemplation or furtherance of a trade dispute either a dispute is imminent and the act is done in expectation of or with a view to it, or that the dispute is already existing and the act is done in support of one side to it.
⁴² This refers to the Industrial Arbitration Panel and the National Industrial Court which are set up under the Act.
out in contravention of the aforesaid section. A worker who goes on strike is liable on conviction to a fine of N100.00 or six months imprisonment, whereas for a corporate body a fine of N1,000.00 is imposed on conviction. The penal sanctions attached to strikes and lock-outs was apparently introduced by government to deter workers and employers from embarking on strikes and lock-outs. However, this seems not to have succeeded and has highly been criticized. According to Tayo Fashoyin 43

"... the first year of the operation of the Act has shown the contemptuous attitude of trade unions to the provision..."

Indeed, the statutes had not stopped strikes and lock-outs; rather there is an upward surge in the number of strikes". In his own contribution Professor Emiola: "has argued that:

"attaching criminal sanctions to a lawful withdraw of labour ... does not help the development of healthy industrial relations, on the contrary) it will embitter workers the more."

It seems clear, therefore, that sanctions cannot solve the magic of foreclosing strikes by workers when they are determined to do so at all cost. Professor Adeogun" well known for his strong views on industrial law was very correct when he declared that:

"Our experience has shown that criminal sanctions do not have any appreciable or substantial effect on an existing strike nor do they have much effect as a deterrent from strike. It must be realized that at this level of human relations, criminal sanctions derive most of their effect not from the degree of penalty but from the social stigma attaching to them. And surely, if instead, the effect is to produce acclamation of the criminal, then, their value not only is lost but is reversed".

Definitely criminal sanctions have not helped to stop the menace of strikes.

---

43 Tayo Fashoyin, op. cit. P. 83
44 Tayo Fashoyin, op. cit. P. 77, Table 6.1
45 A. Emiola, Nigerian Labour Law, op. cit. P.273..
Conclusion

There is no doubt that under our Labour Jurisprudence several legislations have been made to prevent the incessant and menacing situation of strikes in Nigeria. Unfortunately, it seems that these laws have never worked effectively as they have been honoured more in their breaches than in their observance. Inspire of these laws, it is common knowledge that strikes have continued unabated among all categories of workers both in the public and private sectors of the economy-". This ought to remind us and the government that workers are bound to go on strike whatever the law may have to say about it. But strike and strife are ill winds which blow neither the employers nor the workers any good. Strikes disrupt not only the business of the employers and cause the workers loss of wages but also invariably disorganizes the economy of the state?" "In the education sector, school time lost during the period of an industrial action could never be effectively regained, even as life lost during industrial dispute in the health sector could never be revived after the cessation of the strike.

Most of the time, however, an industrial dispute over conditions of service arise and had been taken through the due process and laid down procedures to the point of negotiated settlement of the dispute only for the government or other employer to breach the contract by failing to implement the terms of settlement?".

In our view, the panacea for strikes is to enact pragmatic and realistic laws for the amicable settlement of trade disputes. It is submitted that the extant legislation on settlement of trade disputes i.e., the Trade Disputes Act should be reviewed. First, the procedure for the settlement of trade disputes under the Act as earlier observed is too dilatory and cumbersome. It causes a lot of delays. It seems to have fallen into disuse and thus failed to stop strike actions. Therefore, there must be guaranteed, adequate, impartial and speedy conciliation and arbitration proceedings involving all the parties concerned. In the second place, section 47(2) of the Trade Disputes Act merely provides that any failure to give effect to the award of contract or terms of settlement of an industrial dispute shall constitute a breach of contract, but does not go further to prescribe any sanction for

---

50 For instance, a surprising interpretation of the September 1992 Agreement between ASUU and the Federal Government by the Former Ministry for Education, Professor B.O. Nwahuezc, SAN, led to the second strike by ASUU in 1993. The Minister insisted that the Agreement was only valid but not binding on the Government?
such breach of contract. It is submitted that the law should be amended to prescribe appropriate and enforceable sanction or deterrence which as such would go a long way to check employers propensity for failure to implement bilaterally agreed terms of settlement of industrial disputes and thus prevent industrial actions. That is the only way we can effectively regulate disruptions in the industrial environment and move forward.