JOB SECURITY AND THE NIGERIAN WORKER

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INTRODUCTION

This article is an attempt to examine the trend of the law towards the issue of security of the Nigerian worker in his employment. It shall look at the categories of employment, examine judicial and statutory aspect of security and offer suggestion for an effective and some more effective security of employment in Nigeria.

By section 91 of the Labour Act a worker is merely defined as

"Any person who has entered into work under a contract with an employer, whether the contract is implied or oral or written, and whether it is a contract of service or a contract personally to execute any work or labour, but does not include:

a. Any person employed otherwise than for the purpose of the employer's business, or
b. Persons exercising administrative, executive, technical or professional functions as public officers or otherwise, or
c. Member of the employer's family, or
d. Representatives, agent and commercial traveler in so far as their work is carried on outside the permanent workplace of the employer's establishment or
e. Any person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, repaired or adopted for sale in his home or on other premises not under the control or management of the person who gave out the articles or the materials, or

By virtue of the concept of "Freedom of Contract" it follows that either the employer or the employee is at liberty to terminate the contract between them for any reason good or bad or for no reason whatever, provided only, that the proper notice is given. Even if the employee is at liberty to terminate the contract, his only remedy lies in damages. Thus is English common law a civil servant can be dismissed at the pleasure of the crown. Most cases show that the contract of service between a crown servant and the crown binds only the civil servant, and that the crown can terminate it whenever it choose. Person employed in the service of the crown, except in cases where the are some statutory provision for a higher tenure office, on the understanding that they hold their employment by the pleasure of the crown. Therefore, one of the controversial issues facing lawyers in the commonwealth countries, including Nigeria, is whether the position of the civil servant is different from that of is counterpart in England, or whether or not the colonial position has been changed by registration regulating the structure and control of the civil servant. The same goes for other categories of workers.

Surely, the present position in Nigeria is fairly different with the development of our labour law. The question has arisen in the Nigerian legal system as to whether the servant or employee has "right to the job".

The right to work is said to include the right to a means of livelihood through employment, that is the right to obtain and retain employment and the right to earn one's living under just and favourable conditions of employment. Coupled with the right to a means of livelihood through employment, is a right to a means of livelihood when no employment is available. The concept of the "right to the job" is said to be one of the best methods of security against loss of employment.

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See Section 58, 64 and 91 of Labour Act Cap 198 Laws of the Federation 1990.

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Any person employed in a vessel or aircraft to which the laws regulating merchant shipping or civil aviation apply.\textsuperscript{32}

By virtue of the concept of "Freedom of Contract" it follows that either the employer or the employee is at liberty to terminate the contract between them for any reason good or bad or for no reason whatever, provided only, that the proper notice is given. Even if the employee is dismissed without due, that is in breach of his contract, his only remedy lies in damages. Thus is English common law, a civil servant can be dismissed at the pleasure of the crown. Most cases\textsuperscript{33} show that the contract of service between a crown servant and the crown binds only the civil servant, and that the crown can terminate it whenever it whose. Person employed in the service of the crown, except in cases where there are some statutory provision for a higher tenure of office are engaged on the understanding that they hold their employment at the pleasure of the crown. Therefore, one of the controversial issues facing lawyers in the commonwealth countries, including Nigerian, is whether the position of the civil servant is different from that of is counterpart in England, or whether or not the colonial position has been changed by registration regulating the structure and control of the civil servant. The same goes for other categories of workers.

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\textsuperscript{32} See Section 58, 64 and 91 of Labour Act Cap 198 \textit{Laws of the Federation} 1990
\textsuperscript{33} See \textit{Tinubu} V. \textit{Hajjiya} (1990) IKB [8, See also Franklin V. \textit{Attorney General} (1973) WLR 236.]
As KariBi Whyte, J.S.C. solemnly declared:

"The law has arrived at the stage where the principle should be adopted that the right to a job is analogous to a right to property."  

Admittedly, his Lordship’s Statement is merely a proposal, but it is submitted that our law should favour this position and adopt it accordingly.

**SATUTORY PROVISIONS**

There are several statutes on labour and Industrial Law in Nigeria. These essentially include the Labour Act Cap 198, 1990, Trade Disputes Act, Cap 432.1 990, Trade Union Act Cap 437, 1990 and Constitution of the Federal Republic of Nigeria 1999 and several subsidiary and ancillary legislation and regulations.

These and other shall form the basis of our consideration on the statutory security of employment in Nigeria. While it is true that the Nigerian constitution of 1999 does not directly protect the right to work, it would appear that there are some provisions of the constitution which lend support to the existence of such right.

For instance, section 16(2)(d) provides:

> The state shall direct its policy towards ensuring that suitable and adequate shelter, clothing, food, reasonable medical care and pensions, and unemployment and sick benefits are provided for all citizens”

Section 17(3) of the 1999 Constitution went further to fine-tune the concept of the right to work. It states “The state shall direct its policy towards ensuring that:-

(a) all citizens with out discrimination on any ground whatsoever have the opportunity for securing adequate means of livelihood as well as adequate opportunities to secure suitable employment;

(b) conditions of work are just and humane, and that there are adequate facilities for leisure and for social, religious and cultural life;

(c) provision is made for public assistance in deserving cases or after conditions of need”

The afore-quoted section 16 and 17 of the 1999 Constitution from part of chapter 11 which deals with the fundamental objectives and directives of state policy.

Apparently the provision of chapter 11 of the 1999 Constitution are not justifiable, nevertheless, they articulate fundamental principles and ideals by which the Government may be guided in the performance of its functions. Section 13 of the same Constitution also provides:

> "It shall be the duty and responsibility of all organs of government ... to conform to observe and apply the provisions of this chapter (11) of this Constitution”

As Professor Odumosu rightly observed!

> "If all the democratic institutions of government operate as expected of them, the provision of chapter 11 should be effective even in the absence of any legal sanctions”

Section 37(1) of the 1999 Constitution guarantees the right to assemble freely and associate with other person, and in particular to form or belong to any political party, Trade Union or any other association.

The Trade Union Act in section 24(1) makes it obligatory for an employer, private or public, to recognize the trade union to which his employees may belong, and by section 12(1) of the same Act, no potential worker may be denied membership of trade union on discriminatory grounds.

Under the Trade Disputes Act both labour and management have the primary mandatory duty to iron out their differences either by themselves or by the aid of a third party.” Section 42(1)(b) of the Disputes Act also protects a worker who has been locked out by his employer and require the payment of the workers remuneration for the period...

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See Professor O. I. Odumosu (supra) footnote 4.
See section 3, 3A, 6, 7, 10 and 12 of the Trade Dispute Act. See also Akintunde Emiola - TLC Legal Approach to Industrial Relations in Nigeria (1988) Law Journal vol. 2PP. 31-42.
of the lockout. The section also secures the continuity of the worker's employment during the period of the lockout by his employer.

Finally, for the purpose of referring disputes to arbitration and appointment of assessors, Section 43 of the Act request panels of workers representatives to be drawn up by the Minister in a bid to also protect the interest of the worker.

The labour Act also boasts of some provisions relative to the security of Employment in Nigeria. Section 7, of the Act requires an employer, punishable upon default, to give a worker, not later than three months from the commencement of his employment, a written statement specifying the essential terms and conditions of the employment. This is in contradistinction to the common law position where a contract of employment need not be in any particular form.

"The important of section 7 lies in the fact that a worker is given the right to know what terms and conditions govern his relationship with his employer. By section 1-6, the Labour Act prescribes an elaborate provision to protect a worker's right to his wages in cash, in full and promptly. This is an area left to the individual themselves or to 'collectives bargaining, in the case of employees other than workers. In this respect, the Wages Boards and Industrial Councils Act and the Productivity Prices and Incomes Act must be mentioned as Acts promulgated to strengthen the employee's right to his wages. The wages Board and Industrial Councils Act provides for the setting up of industrial wages Board to recommend wages in those industries where workers were too weak to bargain effectively.

We may also mention the security afforded for certain categories of employees under the Labour Act. In part 111 of the Act, extensive provisions for the regulation of employment of apprentices, women and young persons were made. These classes of employees usually belong to working groups whose bargaining strength is too weak to make any impact on the employer."  

The introduction of these statutory provisions constitutes legislative recognition that a job, a man or woman does is sufficiently important to the individual as well as to his or her family, that a decision to end that job should not be entirely left to the discretion of an employing organization or individual employer. The statutory enactment represents a rejection, albeit somewhat belatedly, of certain nineteenth century values of common law in particular, its application of the commercial concept of freedom of contract to employment to give employers an excessive freedom of termination of employment to give employers an excessive freedom of termination of employment contract. The statutory security undoubtedly constitute an improvement upon the previous position of most employees at common Law.'

THE PRIVATIZATION AND COMMERCIALIZATION ACT, CAP 369, 1990

The commercialization of public enterprises in Nigeria has generated much legal and economic debates by legal and economic experts and even ordinary Nigerians, especially as it affects security of employment. Privatization is the relinquishment of part or all of the equity and other interests held by the Federal Military Government, or its agency in enterprises wholly or partly owned by the Federal Government, it involves the sale of the property of all Nigerian as represented by the Federal Government ownership or part-ownership of business enterprises, to some Nigerian and foreign companies, individuals and association; while commercialization involves the re-organization of enterprises wholly or partly owned by the Federal Military Governments in which such commercialized enterprises shall operate as profit making commercial ventures and without subvention from the Federal Government. Clearly while commercialization has not provoked much debates, privatization has raised several economic and legal questions among which is the issue of what extent the existing labour laws act as counter veiling force to mitigate the disequilibrium inherent in the employment relation in the face of the consequence of the privatization policy, for the employee.

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SECTION 9(6) of the Labour Act forbids any contract of employment that will restrict a worker from joining a trade union or relinquish his membership of a trade union while section 21 creates offences for any employer who contravenes some provisions of the Act.


See section 48:52 of Labour Act, Cap 178.
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The Senior Staff Association of Statutory Corporations and Government-owned companies in rejecting the idea of privatization issued the following press statement:

'The risk of the firming all be a social all economic debasement of the masses of the country It is ill advised to alienate the classes from the public wealth of the country while concentrating it in the hands of ill capitalists who do not care if the rest of us and our children remain ill fed perpetually...'

The Nigerian Labour Congress had this to say:

'...the sale of public companies and corporations would inevitably lead to economic slavery and exploitation of the...to fall to the mercies of the private sector. In this will lead to unprecedented hardships to the working people of this country.'

It is clear therefore that privatization is viewed with express disfavour by labour. As a matter of fact, our company laws give the right to these public enterprises to privatize, but the proposed scheme of privatization would subordinate the interest of the employees to those of the controlling shareholders, directors and creditors of the company.

Thus, in the absence of well entrenched clauses securing the interests of the employees in the event of corporate reconstructions, mergers and takeovers in the memorandum of association, it seems the interest and security of the employees would be extinguished or highly marginalised.

By law, the effect of privatization is that existing contract of employment will be deemed to be determined, in the absence of any express stipulations to the contrary in the particular contracts of employment, collective agreements and the sales agreement with the purchasing third party.

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THE PUBLIC OFFICERS (SPECIAL PROVISIONS) ACT, 1990

The Public Officers (Special Provisions) Act 381 of the laws of the federation 1990 codifies the Public Officers (Special Provisions) Decree No. 17 of 1984. The security of public officers has been eroded down and if not obliterated by the Act. The Act is a draconian one in the field of labour law and industrial relations. The Act applies to 'Public Officers' within the meaning of section 277 (1) of the 1979 State Constitution as provided under the 1999 Constitution (as amended). See the schedule and the part of the 1999 Constitution for the meaning of 'Public Officers'. The basis of the Act is to provide for the dismissal, removal or compulsory retirement of certain public officers for diverse reasons: and prevent any civil proceedings being instituted against such officers. In line with section 1 (1) of the Act, the appropriate authority is empowered to enforce the provisions of the notwithstanding 'anything to the contrary in any law' governing the contractual relationship between a public officer and his employer. Th Act has by its
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15 Dr. Okorodudu - Fubara op. Cit (1993) 143.
provisions rendered redundant the disciplinary powers of such public bodies (or employers) as the Federal Civil Service Commission, Police Service Commission, State Civil Service Commission which under the constitution or statutes establishing them are empowered to exercise disciplinary control. These public bodies have rules and regulations, which are geared towards protecting public officers from arbitrary, capricious, whimsical or unreasonable termination of appointment or dismissal from service.

The security of employment of a public officer rests on the fact that before he is divested of his employment he must be given an opportunity to state his case. The Act seems to have no regard for the natural justice principle of audi alteram partem. Total discretion is given to the appropriate authority of the extent that if the appropriate authority is satisfied that the provisions of the Act should be applied to all public officers, then that is the end of the question.

We however find solace in the fact that the courts have always frowned at type legislative arrogance. 16

THE INTERNATIONAL LABOUR ORGANIZATION (I.L.O.)

There is no doubt that the International Labour Organization (I.L.O.) has immensely contributed to the security of the Nigerian Worker. Even as a colonial territory, it was not exempted from the decrees of the International Labour Organization, I.L.O. Conventions ratified by Britain such as those on the freedom of association and freedom to organize and to bargain collectively were extended by Britain to her Overseas territories. Such Conventions and Recommendations, as well as the activities of the I.L.O. in general, have had considerable influence on the system of Industrial Relations in Nigeria. It was a measure of the wholesome nature of the influence that, since the attainment of Independence in 1960, Nigeria has continued to espouse the tenets and policies of the I.L.O.17


Evaluation of the Legal Basis for Labour Relations: The Case of Nigeria

The Minimum Wage sn motu, fixed at NS.500 throughout the country and the National Assembly has recently passed the Bill from the president into Law-the Minimum Wage Act. This is to be applauded.

CONCLUDING REMARKS

In conclusion, attention ought to be focussed on the many statutes made available by Government for the betterment of a healthy climate amongst the parties to labour relations. It is however felt that the value of the many statutes on this score may be marginal. For one thing, the Law given appears to be oblivious of its inability to readily provide the said statute at the disposal of the workforce or, in some cases, the employers. Even when feeble attempts are made, are the vast majority of the leaders of the workers in a position to sufficiently read the content? Of a truth, trade unionism in Nigeria started with a very mature, knowledgeable and reasonable Nigerian trade union officials. But when trade unions later mushroomed and proliferated into small ill-organised and almost ineffective unions, majority of the unions were led by a crop of officials who took to trade unionism mostly because they could not make it in other calling apparently due to poor educational background. The ill-equipped characteristics of most trade union officials have, it must be admitted, been largely responsible for the insufficient attention devoted to the thorough knowledge of the legal framework within which labour/management relations is operated.

On stronger reason, and this is painfully unhelpful, is the fact that the trade union officials are not in a position to keep pace with ever changing laws on labour relations by reason of the regular amendment. This has resulted in serious lack of understanding of the laws relevant to the stabilization of healthy industrial relations atmosphere. It is hereby suggested and recommended that trade union officials be exposed to regular and more purposeful trade union education so as to be at home with statutory provisions that impact on labour relations. It is also necessary that the said overwhelming number of statutes be made available, gratis, to trade union officials directly from the source or through Federal Ministry of Labour which is expected to be acquainted with the amendments and review of labour laws. Any positive step in this regard would therefore be in the best interest of the society.


30. Although in 1990 came the revised Laws of Federation of Nigeria, it is however certain that since then there have been very many amendment to the labour laws such as would make even many labour officials be in confusion let alone ill-equipped trade unionists.
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29. Utieghara, E.E. "Trade Union Law in Nigeria" (Benin: Publishing House, 1976) p.30. summed up the history of trade union movement in Nigeria as "the history of a working people who have found in difficult to fashion for themselves a working man's creed". It must be admitted however that the restructuring of trade union in 1978 brought into light a few committed and well educated union functionaries.

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