Termination of Employment Contracts in Nigeria: Overcoming Legal and Practical Hurdles

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Employment termination in Nigeria is a complex and sensitive issue, fraught with legal and practical challenges. The process of terminating an employment contract can be daunting for employers, with the risk of costly litigation, reputational damage, and potential harm to employee's morals. This paper examines the legal framework governing employment termination in Nigeria, highlighting the key challenges and hurdles that employers face. It also provides practical guidance on how to navigate these challenges, including the best practice for terminating employment contracts, managing employee's relations, and minimizing the risk of disputes and litigation. It examines further the courts' attitude to termination of employment especially where the misdeed of the employee has criminal elements. By exploring the intersection of law, practice, and policy, this paper aims to provide a comprehensive and insightful analysis of employment termination and make recommendations for a more harmonious relationship between employers and employees in Nigeria.

Key Words: Employer, Employee, Contract, Termination, Dismissal, Employment

1.0 INTRODUCTION

Rendering services for payment of wages has been in existence for long. It could be in form of working in a plantation, gold smith work, fixing a car or keeping a shop. As societies become more complex, other areas of services evolve like developing a software application, managing the image of an organisation or a celebrity, promoting a brand or working for a government establishment. All these bring about a relationship of employer and employee bringing about employment contract that will spell out the terms and condition of the agreement.[1]

The Labour Act[2], defines an employer as any person who has entered into a contract of employment to employ any other person as a worker either for himself or for the service of any other person including the agents, manager or factor of the person and the personal representatives of the deceased employer.[3] Though an employee was not expressly defined in the Act, however, a worker is defined as any person who has entered into or works under a contract with an employer either for manual labour or clerical work, express or implied, oral or written, whether contract of service or a contract to personally execute any work or labour.[4]A contract of employment is any agreement whether oral or written, express or implied where a person agrees to employ another as a worker and the other person agrees to serve the employee as a worker.[5]

Notwithstanding that the Act stated that contract of employment could be express or implied, oral or written, it provided further that an employer should reduce the terms of the agreement into writing and give same to the employee not later than three months after the beginning of the period of the employment with the employer.[6] The written contract should state the name of the employer, the conditions by which the worker is employed, the name and address of the worker, the place

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[1]Kingsley E. Izimah 'What an Employee Must Prove in a Case of Wrongful Dismissal from Employment.' (2019). See also, S. Erogo, *Introduction to the Nigerian Labour Law*: Contract of Employment and Labour Practice (2[nd]Edn, Princeton & Associates Publishing Co, Lagos, 2019) 166-221

[2]Cap. L1. Laws of the Federation of Nigeria, 2004

[3]Ibid; s. 91,

[4]Ibid

[5]Ibid

[6]Ibid; s. 7 (1)

and time of his engagement, date the contract will expire, wages and notice of termination amongst other provisions.[7]

It is clear from the above that the law recognises contract of employment between the employer and the employee in a workplace. The contract can be oral or written, express or implied. It can also be contract of service or contract for services. Since in any human relationship, there can be misunderstanding and for the fact that this relationship is contractual, the misunderstanding can be in breach of contract.

The breach of contract of employment in most cases, especially on the part of the employer usually manifest in termination or dismissal from service. Employment termination is an inevitable aspect of organizational life, whether due to redundancy, misconduct or poor performance. In Nigeria, the termination of employment is a sensitive issue that requires careful navigation of legal and practical considerations. The Nigerian labour market is characterized by a high level of informality, lack of awareness of employee rights and lack of adherence to labour laws. These factors contribute to the challenges associated with employment termination, including wrongful termination claims, industrial disputes, and reputational risks for employers.

There have also been misconceptions on the part of both employers and employees on the proper position of the law on the termination of contract of service and the court had intervened on several occasions to either interpret the law or the contract between the parties in resolving the conflicts.

This paper, therefore, examines the rudiments of contract of employment in Nigeria, rights and duties of employers and employees, classes of contract of employment and distinguishing factors between contract of and for services. It explores the legal framework governing employment termination, especially, of an employee whose misconduct has dints of criminal elements in Nigeria; highlights the practical challenges faced by stakeholders; and provide actionable recommendations for overcoming these hurdles and enhance master and servant relationship in Nigeria. The study is significant because it addresses a critical gap in the literature on labour relations in Nigeria and offers practical insights for employers, employees and policymakers.

2.0 Concept of Employment Contract

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[7]Ibid; s. 7 (1) (a-h)

The court in the case of *Union Bank of Nigeria Ltd v Edet*[8] stated generally that a contract of employment is an agreement between an employer and employee whereby the terms and conditions of employment are stipulated. Also, the Labour Act defines a contract of employment to mean any agreement oral or written, express or implied, in which one person agrees to employ another as a worker and the other person agrees to serve the employer as a worker. The definition of the Labour Act applied to workers strictly defined in exclusion of Management staff.[9]Management staff are believed to have the bargaining power with their employers; hence, their employment is mainly guided by the provisions in their contract of employment or regulations made pursuant to their employment status.

Having said this, it should be noted that the definitions above described generally what contract of employment is and there are two broad categories of contract of employment; they are contract of service and contract for services. While contract of service is generally guided by employment rules and guidelines both statutory and common law, the contract for services, in most cases, is guided by principles of pure contract. We are going to discuss the employment status and how to distinguish between contract of and for services.

2.1 Determining Employment Status

The first step to resolving the conflict between the employer and employee is to determine the status of the employment in terms of whether the employment is of or for services.
Employment status is very critical as employees are entitled to an array of rights which are not available to those that are self-employed. Hence, if one should get the status wrong, it can lead to a whole lot of obligations not anticipated. For instance, only an employee under the contract of service can bring claims for unfair dismissal, or be made redundant. They are the only ones that qualify for employment protection rights, protection of wages, on their employer's insolvency and many more.[10] There are three broad tests generally in use to determine the status of employment: they are, the control test; the integration test and the multiple tests.[11]

[8] (1993) 4 NWLR (pt 287) 288
[9] See paragraph (b) Section 91 under definition of 'Worker' in Labour Act LFN 2004
[10]C.K. Agomo, *Nigerian Employment and Labour Relations Law and Practice* (Concept Publications Limited, Lagos, 2011) p.50
[11]ibid.

2.1.1 Control Test

The control test examines whether the master controls or has right to control the worker in terms of what he is doing, and the manner in which he does it. This was laid down in the case of *Yewens v. Noakes*[12] where the court stated that an employee is a person subject to the command of the employer as to the manner in which he shall do his work. If an employer is able to dictate to an employee not only what to do, but how to do it and when, then this would indicate existence of a contract of service between them. A small degree of control will point towards self-employment. However, at the pace of technological advancement today, it is obviously unrealistic to conceive of the employer having the knowledge to control all his highly skilled employees. For instance, a pilot cannot be said to be fully controlled by the owner of the airline as to how to carry-out his job. Hence, the control test becomes less effective as the all-inconclusive test in the face of advancement.

2.1.2 Integration Test

The integrated test was identified in the case of *Cassidy v Ministry of Health*[13] where the court held that a person is a servant of the defendant if he was chosen by the defendant for the job and he is fully integrated into the defendant's organization. In this case, the doctors who were working within the National Health Scheme chosen by the authority and were fully integrated into the hospital were held to be employees of the Health Authority. Also, in the case of *Stevenson, Jordan and Harrison Ltd v Macdonald and Evans,*[14] it was held that the test of integration is whether the person is employed as part of the business and his work is done as an integral part of the business or whether it is merely an accessory to it.

Therefore, the integrated test propounded a situation where the employee is part of the organisation integrated in a way that the activities of the employee become an integral part of the organisation. In that sense, the employee is a servant on contract of employment as opposed to a mere contractor.[15] This test can also not be a conclusive test of status of employment as some

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[12] (1880) 6 QBD 530
[13] (1952) 2 KB 343
[14] (1952) 1 TLR 101
[15] Jack Enricght 'What are the Different Types of Employment Status and How Should an Employer Use them.' (2018) Retrieved from <https://www.charlierhr.com> on 2701/ 2025.

independent contractors could be so integrated, notwithstanding that they are not employees; this gave way for the third test which is multiple tests.

2.1.3 Multiple Tests

Recognising that no one test can be conclusive when determining employment status, the courts adopted the multiple tests to determine whether a contract is of or for services. The court laid down the factors to be considered under the multiple tests in the case of *Ready Mixed Concrete (SE) Ltd v. Minister of Pension and National Insurance*[16] where the driver who drove Ready Mixed Concrete lorries, who was buying his lorries on hired purchase from the company was found to be employed under a contract for services and not contract of service. In his judgment, MacKenna J. laid down the conditions to be fulfilled for a contract to be a contract of service, that: the servant agrees to provide his services using his skills in consideration of wages and other remunerations; the servant agrees to be subject to the control of the employer to a sufficient degree to recognise the employer as the master; other provisions of the contract are consistent with its being a contract of service.

Considering the above position of the court, before an employment could be of service, there must be a wage which will serve as consideration; the servant must be obliged to provide his own work and skill personally under the control of the master who is the employer. The multiple tests leave some rooms for speculations, especially under the third item as the indices are not prescribed, but individual cases could be considered by the court on its merit.

Generally, where the master is in control of what the employee is doing, how to do it and when, coupled with other factors like payment of wages, ownership of tools, master being vicariously liable to the wrongs of the employee in the course of discharging his duties, they are indications of contract of service. On the other hand, where the employee works as an independent contractor, using his own tools and equipment, liable to his own wrongs, having a less degree of control from the employer, having less risk in case of failure of the business, there is high probability that the employment is for services. The concentration of this paper will, therefore, be on contract of service where the employee is employed under the control of the employer.

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[16] (1968) 2 QB 173

2.2. Rights and Duties of Parties to Contract of Employment

2.2.1 Rights of Employees

a.) Right to Fair Wages and Remuneration

Every employee in Nigeria has the fundamental right to receive fair wages for work performed. The Labour Act mandates that wages must be paid in legal tender and at regular intervals not exceeding one month.[17] The Act further prohibits unauthorized deductions from wages, except for those specifically permitted by law, such as statutory deductions for tax, pension contributions, and other legally sanctioned purposes.[18]In the case of *Spring Bank Plc v Babatunde*,[19] the respondent was an employee of Spring Bank Plc. He was suspended indefinitely without pay on allegations of misconduct. The Court held that suspension without pay amounts to a breach of contract if not stipulated in the employment terms.

b.) Right to Safe Working Conditions

Nigerian labour law places significant emphasis on workplace safety and health. The Factories Act imposes strict obligations on employers to maintain safe working environments, provide necessary safety equipment, and ensure that workplaces meet prescribed health and safety standards.[20] Employees have the right to refuse to work in demonstrably unsafe conditions without facing disciplinary action provided such refusal is reasonable and made in good faith.[21]

In *Iyere v. Bendel Feed and Flour Mill Ltd,*[22] the Supreme Court emphasized that employers owe a duty of care to their employees, which includes providing a safe system of work. However, it also highlighted that employees are expected to perform their duties with reasonable skill and care to prevent accidents. Also, in *Kabo Air Ltd v. Mohammed,*[23] the Court of Appeal held that an employer is obligated to take reasonable care for the safety of its employees. Nonetheless, it was also noted that employees must adhere to safety instructions and utilize provided safety equipment appropriately, demonstrating reasonable care in their roles.

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[17]Labour Act, s. 1.
[18] Ibid, s. 5.
[19] (2012) 5 NWLR (Pt. 1292) 83 (CA)
[20] Factories Act, ss. 7-16.
[21]Labour Act, s. 17.
[22] (2008) 18 NWLR (Pt. 1119) 300
[23] (2014) LPELR-23614(CA)

b.) Right to Rest and Leave

The Labour Act guarantees employees the right to reasonable rest periods, including daily rest, weekly rest, and annual leave. Every employee is entitled to at least twelve working days of annual leave with full pay within twelve months of continuous service.[24]Additionally, female employees are entitled to maternity leave pre and post-natal.[25]

U.T.C. (Nig.) Ltd v. N.P.A.,[26] involved dockworkers who were employed by U.T.C. but worked under the control of the Nigerian Ports Authority (NPA). The workers argued that they were denied sufficient rest periods and proper leave as provided under labour laws and International Labour Organization (ILO) standards. The Supreme Court recognized that rest and leave are essential parts of employment contracts. It held that employers must observe minimum labour standards including leave and rest periods. Failure to do so may amount to unfair labour practice.

d.) Right to Join Trade Unions

The Trade Unions Act guarantees employees the fundamental right to form and join trade unions of their choice without interference from employers.[27] This right extends to participating in union activities, collective bargaining, and engaging in lawful industrial action when necessary to protect their interests.[28]

2.2.2 Duties of Employees

a.) Duty of Faithful Service and Obedience

Employees owe their employers a fundamental duty of faithful and diligent service. This encompasses the obligation to perform assigned duties competently, honestly, and with reasonable care.[29] The duty extends to protecting the employer's legitimate business interests and maintaining confidentiality of proprietary information acquired during the course of employment. Employees are required to obey all lawful and reasonable instructions given by their employers or authorized representatives.[30] This duty is limited to instructions that fall within the scope of the employment contract and do not violate any law or fundamental rights of the employee.

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[24]Labour Act, s. 16

[25] Ibid, s. 54

[26] (1990) 6 NWLR (Pt. 155) 198

[27] Trade Unions Act, s. 3.

[28]Trade Unions Act s. 9.

[29]*Adewunmi v. Nigerian Eagle Flour Mills Ltd_* (1973) 2 SC 897.

[30]Labour Act, s. 7.

In *Nwaka v. Nigerian Bottling Co. Ltd,*[31] the appellant, an employee of Nigerian Bottling Company, was dismissed for refusing to obey a lawful order given by the employer. The Court held that an employee is bound to obey lawful orders from the employer in the course of employment. Refusal to obey a lawful order without good reason amounts to misconduct justifying dismissal.

b.) Duty of Good Faith and Loyalty

The employment relationship imposes a duty of good faith and loyalty on employees, requiring them to act in the best interests of their employers and avoid conflicts of interest. This includes refraining from competing with the employer during the subsistence of the employment relationship and not misusing company resources for personal benefit. Thus, in *Ajayi v. Texaco Nigeria Ltd,*[32] *t*he Supreme Court upheld the dismissal of an employee who was found to have sabotaged the implementation of the employer's policy, thereby breaching the duty of fidelity.

c.) Duty to Maintain Confidentiality

Employees have an implied duty to maintain the confidentiality of their employer's trade secrets, business strategies, and other sensitive information both during and after the termination of employment. Breach of this duty may result in disciplinary action and potential legal liability. In *Olanrewaju v. Afribank (Nig.) Plc*,[33]the employee was dismissed from Afribank for breaching internal policies and leaking confidential information. The Court of Appeal held that employers have a right to terminate the contract of an employee who breaches confidential obligations, especially where the trust in the employment relationship has broken down.

d.) Duty to Exercise Reasonable Skill and Care

Employees must perform duties with competence and level of skill that can be reasonably expected given their qualifications, experience and position. Also, to carry-out their assignments with reasonable diligence avoiding careless negligent. For key professional employees, the standard of

[31] (1987) 2 NWLR (Pt. 57) 639

[32] (1991) 3 NWLR (Pt. 181) 297

[33] (2001) 13 NWLR (Pt. 731) 691

care is measured against what would be expected of a competent person in that particular field or profession

In the case of *Adebayo v. Nigerian Railway Corporation,*[34] the plaintiff, a passenger, was injured due to the negligent handling of railway operations by employees of the NRC. The court held that employees owe a duty of care and reasonable skill in the execution of their duties. Where this is breached and results in harm, the employer may be held vicariously liable. Also, in *Nigeria Airways Ltd. v. Lapite,*[35] passenger suffered damage due to negligence in airline operations. It was held that employees in professional or skilled roles are expected to meet a standard of reasonable competence. Failure to meet this standard can amount to breach of duty.

2.2.3 Rights of Employers

a.) Right to Manage and Direct Work

Employers possess the fundamental right to organize, manage, and direct their business operations, including the right to assign duties, establish work schedules, and implement reasonable workplace policies. This managerial prerogative must be exercised within the bounds of the law and the terms of employment contracts.

In *Shena Security Co. Ltd v. Afropak (Nig.) Ltd*, [36] the Supreme Court held that the employer retains the right not only to employ and terminate the appointment of the employee but also to control the method and manner of the employee's performance of the duties for which he is employed.

b.) Right to Discipline and Terminate Employee's Appointment

Employers have the right to maintain discipline in the workplace through the implementation of reasonable disciplinary measures for employee misconduct or poor performance.[37] However, disciplinary actions must follow due process and be proportionate to the offense committed. In the case of U*niversity of Calabar v Esiaga,*[38] Esiaga, an employee of the University of Calabar, was

[34] (1977) NNLR 89

[35](1990) 7 NWLR (Pt. 163) 392

[36] (2008) 4–5 SC (Pt. II) 117

[37]Labour Act, s. 11

[38] (1997) 4 NWLR (Pt 502) 719

dismissed after a disciplinary proceeding. He claimed that due process and fair hearing were not followed. The Court of Appeal held that the dismissal was valid, as the university had followed the internal procedures for discipline, including giving the employee the opportunity to defend himself. This is also extended to the employer's right to terminate the employee's appointment in a proven case of misconduct.[39]

c.) Right to Protect Business Interests

Employers have the right to protect their legitimate business interests through the implementation of reasonable restrictive covenants, confidentiality agreements, and other protective measures. These measures must be reasonable in scope, duration, and geographical coverage to be enforceable.

2.2.4 Duties of Employers

a.) Duty to Pay Wages

The primary duty of every employer is to pay agreed wages promptly and in accordance with statutory requirements. Wages must be paid in legal tender, and employers are prohibited from making unauthorized deductions except as permitted by law.[40] Failure to pay wages constitutes a criminal offense under the Labour Act.[41]

b.) Duty to Provide Safe Working Conditions

Employers bear an absolute duty to provide and maintain safe working conditions for their employees. This includes providing necessary safety equipment, conducting regular safety training, maintaining workplace facilities in good condition, and complying with occupational health and safety regulations.[42] The Factories Act imposes specific obligations on employers in industrial settings to prevent workplace accidents and occupational diseases. *Iyere v. Bendel Feed*

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[39]See the Labour Act, ss. 11-15 on the required length of notice for termination; See also*, Shena Security Co. Ltd v. Afropak (Nig.) Ltd* (Supra0

[40]Labour Act, s. 1.

[41]Supra

[42] Factories Act, s. 7; Occupational Safety and Health Act 2012

and Flour Mill Ltd,[43] the Supreme Court emphasized that employers owe a duty of care to their employees, which includes providing a safe system of work.

c.) Duty to Respect Employee Rights

Employers must respect and protect the fundamental rights of their employees, including the right to join trade unions, the right to fair treatment, and the right to privacy.[44] Any attempt to interfere with these rights may result in legal sanctions and industrial disputes.

d.) Duty to Provide Written Particulars of Employment

The Labour Act requires employers to provide employees with written particulars of employment within three months of commencement of employment.[45] These particulars must include details of remuneration, hours of work, leave entitlements, and other terms and conditions of service. This also includes the duty of complying with relevant statutory requirements[46]

3.0 Classes of Contract of Employment

Generally, there are three classes of contract of employment. They are: employment at the will or pleasure of the employer; master servant relationship; and employment with statutory flavour.

3.1 Employment at Will or Pleasure of the Employer

This is where the employment covers common law and ordinary master and servant relationship governed by written agreement not subject to any statutory regulation.[47] Lisa describes employment at the will of the employer as a kind of employment where the employee can be fired at any time for any reason and the employee has very limited legal right to fight the termination.[48]Rose opined that hiring at will means employer can fire an employee for any reason (once the reason is not illegal) without warning and without having to disclose the reason for doing so. Also, the employee can quit the job without notice or explanation.[49]

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[43] (2008) 18 NWLR (Pt. 1119) 300

[44] Constitution of the Federal Republic of Nigeria 1999, ss. 40-42

[45]Labour Act, s. 7

[46]See the Labour Act. S. 91

[47] Kingsley E. Izimah 'What an Employee Must Prove in a Case of Wrongful Dismissal from Employment.' (2019)

[48]E.E. Uvieghara, *Labour Law in Nigeria* (Malthouse Press Ltd, Lagos, 2001) pp. 44-66

[49]J.E.O. Abugu, 'ILO Standards and the Nigerian Law of Unfair Dismissal (2009) 17 *African Journal of International and Comparative Law*, 181-212

The employer under employment at the pleasure of the employer does not need any good cause to fire the employee except the employer gives the employee some clear indication that the appointment could only be determined for a good cause. In determining if an employment is held at the pleasure of the employer, recourse should be had to the contents of the letter of appointment of the employee. If the employer states that the employee could be fired at any time or without cause, it is an indication that the employment is at the pleasure of the employer.

The duty of the court in this kind of relationship as stated in the case of *NIIA v Ayanfolu*[50] is to apply the terms, conditions and provisions of the contract as they appear without recourse to any provision of statute. In the case of *NEPA v. Ango*[51] the court ruled that employment at will means an employment where the relationship is that of master servant under common law which appointment is terminable with or without reason at the will or pleasure of the master.

However, it appears that the narrative is changing with some novel decisions of the National Industrial Court of Nigeria (NICN). For instance, the NICN condemned the principle of termination at will in the cases of *Bello Ibrahim v EcoBank Plc*[52]and *Afolayan Aderonke v Skye Bank.*[53] The former case is particularly interesting as the NICN order reinstatement of the dismissed employee even though it was a private sector employment.[54]

3.2 Master and Servant Relationship

A master and servant relationship is one in which a contract of service exists between the employer and the employee. This is a kind of employment whereby either of the parties can terminate the contract on giving the appropriate notice or upon payment of salary in lieu of notice.

In the case of *Olanrewaju v Afribank*,[55] the court held that a master and servant employment is the one between an employer and an employee where the service term does not contain a statutory flavour. The master is under no obligation to give reason for terminating the appointment of his

[50] (2007) 2 NWLR (pt 1018) p 246
[51] (2001)15 NWLR (pt. 787) 627
[52] Suit No NICN/ABJ/144/2018delivered on 17th day of December, 2019. Retrieved from https//nicnadr.gov.ng on 10/03/2025
[53] Suit No NICN/IB/08/2015 delivered on 17th May 2017. Retrieved from https//nicn.gov.ng on 10/03/2025
[54] J. O. Akinselure 'Reinstatement in Master Servant Employment: A Detour from Conventional Nigerian Labour Law Rule', 2020 10 (1) University of Ibadan Law Journal,228-242
[55] (2001) 13 NWLR (pt 731) 691

servant. In the case of *Daudu v UBA Plc*,[56] it was held that in master and servant relationship, the master can terminate the contract with the servant at any time and for any reason or for no reason.

3.3 Employment with Statutory Flavour

This is where the procedure for employment, discipline and termination are governed by statute(s) or where the condition of service is enshrined in regulations derived from statutory provisions. Such statutory provisions imbue in the employee a legal status higher than an ordinary master and servant relationship as pronounced in the case of *Shitta-Bey v Federal Public Service Commission.*[57] Where employment has statutory flavour, the employer cannot terminate the appointment of an employee at will because the employee is not holding his employment at the pleasure of the employer. The employer has the duty to comply with the conditions laid down in the terms and conditions of the appointment failing which the termination will be held ineffectual.[58]

The court in the case of *Olaniyan v University of Lagos*[59] laid down the principle that

> "...an employment with a statutory flavour arises when the body employing the man is under some statutory or other restrictions as to the kind of contracts which it makes with its servants or the ground on which it can dismiss them. It is now accepted that where the contract of service is governed by the provision of statute or where the conditions of service are contained in regulation derived from statutory provisions, they invest the employee with a legal status higher than the ordinary one of master and servant. This is what is known as statutory flavour."

Also, in the case of *Raji v University of Ilorin,*[60] the court ruled that, "where the terms of employment are governed by laws, rules and regulations, that is, having statutory flavour, the

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[56] (2004) 9 NWLR (pt 874) 276 at 279
[57] (1981) 1 SC 40
[58] Kingsley E. Izimah 'What an Employee Must Prove in a Case of Wrongful Dismissal from Employment.' (2019); See alsoA.A. Adejugbe, 'From Contract Status: Unfair Dismissal Law' (2021) 8(1) *Journal of Commercial and Property Law,* pp. 39-53
[59] (1985) 2 NWLR (pt 9) 599
[60] (2008) All FWLR (pt 435) p. 1843

employee's employment cannot be terminated except in accordance with such rules and regulations."

It should be noted, however, that the fact that an organisation is a creation of statute or that it is a government establishment does not mean that employment of all the employees of the organisation has statutory flavour. The employee must show that his employment was statutorily protected and an employment is said to be statutorily protected when the appointment and termination is governed by statutory provision. This position was stated in the case of *UBTH Board of Mgt v Oronsaye,*[61] where the court pointed out that, it was merely alleged that the appointment of the Respondent was governed by Sections 9 & 10 of the University of Benin Teaching Hospital Act[62] but nothing has been shown in that statute to protect the class of appointment as contained in Respondent's appointment letter; the Respondent was merely employed as an ordinary servant by the appointment letter and the contractual relationship between the parties was master and servant not having statutory flavour.

The court concluded in the case that, the Appellant had the right to terminate the appointment of the Respondent by giving her a month's notice or one month's salary in lieu of notice which was the entitlement of the Respondent as contained in the contract of employment.

4.0 Termination of Contract of Employment

This is the process of bringing a contract of employment to an end. Depending on the agreement between the parties, there are various ways in which a contract of employment can be determined. For contract of employment to be properly determined, it must be done in compliance with the terms of the agreement. In the case of *UNTHMB v Nnoli,*[63]Ogundare JSC (as he then was) held that:

> "Where a statutory requirement for exercise of a legal authority is laid down, it is expected that the public body invested with the authority would follow the requirement to the details. The non-observant in the process of reaching its decision renders the decision

[61] (2018) LPELR-45655 (CA) pp 22 & 23
[62]Cap 463, LFN 1990 now University of Benin Teaching Hospital Management Board Act 2004
[63] (1994) 8 NWLR (pt 363) p. 376 at 413

> itself a nullity. So it is in the case at hand. Having failed to observe the statutory requirement laid down in Section 9 (1) of the Act, the decision of the 1st Appellant to compulsorily retire the Respondent was taken *ultra vires* and the decision itself is a nullity. The effect is that the respondent remains in the employment of the 2nd Appellant."

Once the determination is done in compliance with the terms of the contract or in tandem with the enabling statute in case of an employment with statutory flavour, the motive behind such determination is not relevant. In the case of *Sogbetun v Sterling Products Ltd,*[64] the plaintiff's appointment was validly terminated with one month's salary in lieu of notice and the plaintiff contended that her termination was wrongful because it was motivated by her refusal to give in to the sexual advancement of her employer. The court ruled that where an employee's employment is lawfully terminated by being given the required notice or payment in lieu of notice of the amount stipulated in the contract of employment, the motive of the employer in terminating the employee's relationship is irrelevant.

The major challenge to the determination of contract of employment is when the laid down procedure is not followed or alleged not to be followed by an aggrieved party who is usually the employee. In a situation like this, the court need to look at the contract of employment between the parties to determine the appropriateness or otherwise of the action. We are going to briefly look at the ways in which contract of employment can be determined in Nigeria, which mainly are: by effluxion of time, mutual agreement, by notice, by frustration, by termination/dismissal.[65]

4.1 Effluxion of Time

When a contract of employment is made for a definite period, for instance a year or two years, the contract comes to an end by effluxion of time at the end of the agreed period.[66] An employee having a fixed period of time will be terminated automatically at the expiration of such period in

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[64](1973) NCLR 323

[65] Bridget Edokwe. 'The Duties Rights and Termination of Contract of Employment and Labour Law in Nigeria' June 2020.

[66] ibid

the absence of any extension.[67] Such employment needs no notice of termination as effluxion of time automatically discharges the contract.

4.2 Mutual Agreement

Like any other contract, a contract of employment may be terminated by mutual agreement which could be made part of the agreement from the beginning or to be agreed upon later. It can also be as stipulated in the industry or trade.[68] Parties can include mode of determination of the contract as they like, provided that it is voluntary. If the parties mutually agree to a new stipulation, it will terminate the previous agreement.

4.3 Notice

Notice means formal notification by a party to the other of the intention to bring the contract of employment to an end. If the contract of employment contains the periods of notice to be given, parties must adhere to it strictly. In the case of *Adeyemo v Oyo State Public Service Commission,*[69] the court held that a notice of 30 days is not sufficient to terminate the contract of employment of an employee in a situation where the agreement provided for one month's notice. It should be noted that notice of termination which is up to one week should be in writing,[70] while the right to notice can be waived by either of the parties.[71]

In case there is no such provision in the contract, the court may resort to the provision of the Act as provided in section 11 of Labour Act. Where the notice as stated in the contract has been given, the employee remains in the service of the employer until the expiration of the notice. While the employee is entitled to all the benefits which accrue to him during this period, he can equally be disciplined or summarily dismissed during this period. In the case of *Amokeodov IGP,*[72] the plaintiff gave a notice of intention to retire in Nov., 1989; he was dismissed from the service before the notice expired. The court held that he remained in the service until the expiration of his three months' notice and within the period, he was subject to all the benefits an officer of his rank was

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[67]Sect 9 (7) (a) Labour Act.
[68]Bridget Edokwe. 'The Duties Rights and Termination of Contract of Employment and Labour Law in Nigeria' June 2020.
[69] (1979) 1 FNLR 28
[70] Section 11 (3) Labour Act, LFN 2004
[71] Section 11 (6) ibid
[72] (1999) 6 NWLR (pt 607) 467

entitled and any disciplinary measure his employer deemed necessary. Therefore, the dismissal of the officer during the period of his notice was part of exercise of the employer's right over its serving officers.

Right to give notice can be exercised by any of the parties to the contract of employment. Therefore, the contract of employment can be determined by the unilateral act of any of the parties, but it must be in line with the provisions of the contract to avoid a breach. In as much as the employer can terminate the appointment of an employee, the employee also has the absolute right to withdraw his services either through resignation, withdrawal or retirement. In the case of *Nokes v Doncaster Amalgamated Collieries,*[73] Lord Atkin identified the right of an employee to resign from his employment as the difference between a servant and a slave. Also, in the case of *TOS Benson v Onitiri*,[74] the Supreme Court affirmed that an employee has absolute right to resign his appointment and there is no discretion in the employer to refuse or accept the resignation.

4.4 Termination or Dismissal

The employer can terminate or dismiss an employee as a means of bringing the contract of employment to an end. While termination will make the employee entitle to certain benefits, the employee usually forfeits benefits when dismissed. However, the current contributory pension in Nigeria has no provision for forfeiture of benefits even when the employee is dismissed. For termination to be valid, it must be lawful; proper notice must be given; if the contract stipulates reasons for termination, it must be for reasons stated in the contract of employment. The agreed procedure must be followed and the power must be exercised by the appropriate person.

Dismissal is the maximum punishment that can be meted out to any erring employee for such a fundamental breach that will enable the employer to treat the contract as repudiated. It applies to cases where an employee is summarily relieved of his employment due to breach of the terms of the agreement. Summary dismissal is when the employer terminates the contract of employment without notice and it usually takes immediate effect. Dismissal is usually as a result of gross misconduct, some of which may have criminal elements. In a situation where an employee is alleged of misdeed amounting to gross misconduct, the employee should be granted fair hearing

[73] (1940) AC 1014
[74] (1960) 5 FSC 69, 82

by affording him the opportunity to defend himself in line with section 36 (1) of Constitution of Federal Republic of Nigeria (CFRN)1999 (as amended).[75]

The right of dismissal of an employee by the employer for gross misconduct is deemed implied and exercisable whether the contract is for a fixed period or not. In the case of *UBN v Soares*[76] the court re-affirmed that gross misconduct is a conduct of a grave and weighty character as to undermine the confidence which should exist between the employee and his employer. Therefore, conduct prejudicial to the interest of an employer in the establishment of the employer is gross misconduct.

For an employer to dismiss an employee for gross misconduct, the process is to avail the employee the opportunity of being informed of the allegation against him and be allowed to defend himself. In the case of *Yaro v Nigeria Stock Exchange,*[77] the court reiterated the fact that an employer need to properly observe the rules of natural justice in the event that the employer wishes to dismiss an employee. Also, in the case of *Garba and Ors v University of Maiduguri,*[78]the court ruled that, where the principle of fair hearing is breached, the court will set aside the decision of the administrative tribunal. Fair hearing is sacrosanct, especially when the employment is with statutory flavour; if the principles of fair hearing are not followed, the court will not hesitate to set aside the dismissal.

4.5 Dismissal of Employee for Offences having Criminal Elements

The attitude of the court in situation where an employee is involved in misconduct having criminal elements seems initially to be that the employee must first be charged to court and convicted before an administrative tribunal can act on the offences as appropriate.

In the case of *Denloye v Medical and Dental Practitioners Disciplinary Committee,*[79] the court stated that:

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[75] Bridget Edokwe. 'The Duties Rights and Termination of Contract of Employment and Labour Law in Nigeria' June 2020.
[76](2012) 11 NWLR (pt 1312) 550
[77] (2014) 14 NLLR pt 149
[78] (1986) 1 NWLR (pt 18) 550
[79] (1968) 1 All NLR 306 at 312

> "In effect where the unprofessional conduct of a practitioner amounts to a crime it is a matter for the court to deal with and once the court has found a practitioner guilty of an offence, if it comes within the type of cases referred to in Section 3 (1) (b), then the tribunal may proceed to deal with him under the Act... in view of all these we have come to the conclusion that the tribunal was wrong to have proceeded to try offences punishable under the criminal code and the proceedings in this respect are null and void."

Also, in *Dr Sokefun v Akinyemi & 3 Ors*,[80] the claim was for a declaration that the purported dismissal of the plaintiff as a Senior Consultant (Ophthalmology) from the service of the Western State is invalid, illegal, *ultra vires,* null and void and of no effect. Fatayi Williams, CJN (as he then was) delivering the lead judgment which was affirmed by other Justices, said:

> "The jurisdiction and authority of the courts of this country cannot be usurped by either the Executive or the Legislative Branch of the Federal or State Government under any guise or pretext whatsoever. That being the case, the amendment made to the Regulations in 1972, the effect of which is to make it unnecessary to take public officer in the State's public service who has been accused of a criminal offence to a court of law is clearly *ultra vires* the provision of Section 22 (2) of the 1963 Constitution and therefore invalid. So also the trial of the Plaintiff/Appellant held there under the Investigative Panel and his consequential dismissal."

The court took the same position in the case of *Garba & Ors v University of Maiduguri*[81]. It is trite to state here that the case was not in respect of employment matter but a case of students' unrest where about 500 students allegedly participated in actions that amounted to wilful destruction, arson, looting and assault. The Vice Chancellor, with the approval of the Senate, appointed an investigation panel that investigated the matter and the students were eventually expelled from the

[80](1980) 5-7 SC 1 at 19

[81] *(supra)*

University. The students denied their involvement and contended that they were not given fair hearing before they were expelled. The Supreme Court in its ruling observed that:

> "Looking at Section 17 (1) (a) and (d) of the University of Maiduguri Act, the Disciplinary Board has to satisfy itself that the appellants were guilty of the offences charged as misconduct before proceeding to impose the punishment. There is, under our law no sliding scale of elements of satisfaction as to the guilt of a person of an offence. The appearance of guilt is not a delusory appearance of guilt. The appearance of guilt which can satisfy this section is measured by the quantum of proof as laid down by law. It is the reason that guilt in criminal matters is left for the ascertainment of courts of law or other tribunals before it is accepted and acted upon by Administrative Tribunals."

The Supreme Court in the matter strictly construed the use of the term culprit to imply a finding of guilt and emphasized that any finding of guilt without a trial is a breach of all the rules of natural justice. The Investigating Panel in this case was therefore turned into prosecutor, witness and judge.

The cases above tend to establish the principle of law to the effect that administrative tribunals lack the jurisdiction to enforce discipline where such an act of misconduct has criminal element in it. This means where the commission of criminal offence is alleged against an employee, the commission of the offence must be proved beyond reasonable doubt. This must be done before a court of competent jurisdiction established by law. Notwithstanding the fairness of the findings of a tribunal of inquiry, an administrative body cannot usurp the constitutional functions of the court by making findings of guilt in such cases.

The decisions above were followed in some later cases, for instance the case of *FCSC v Laoye*[82] and *UNTHMB v Nnoli*.[83] However, it seems the position has changed in the face of the decision of the same Supreme Court in later cases or probably the ratios of the Supreme Court in the earlier

[82] (1989) 2 NWLR (pt 106) 652
[83] 1994) 8 NWLR (pt 363) 376

cases were being misinterpreted. To bring this argument home, we would like to consider the position of the Supreme Court in the case of *Mike Eze v Spring Bank*.[84]In that case, allegations of forgery and foreign exchange malpractices were made against the appellant. The Respondent queried the Appellant on the breaches; the reply not being satisfactory, the appellant was suspended and eventually dismissed. The Appellant challenged the dismissal; the trial court dismissed the appellant's claims and the Court of Appeal also dismissed his subsequent appeal. On appeal to the Supreme Court, the Appellant contended that what the court below termed as breaches committed by the Appellant were in fact criminal allegations of forgery and foreign exchange malpractice for which the Appellant ought to have been charged to court and prosecuted before proceeding with his dismissal.

The Supreme Court in its lead judgement delivered by Mahmud Mohammed JSC (as he then was) stated that "unfortunately for the Appellant, this is not the present position of the law governing disputes between master and servant in the interpretation of contracts of employment." The court stated further that the correct position is as stated by Belgore JSC (later CJN) in the case of *Francis C. Aringe v First Bank of Nigeria Ltd,*[85] where the Hon Justice stated as follows:

> "This is a simple case of employee and employer not covered by statutory rules as in *Federal Civil Service Commission & Others v. J. O. Laoye* (1989) 2 NWLR (pt. 106) 652 or *Garba v. University of Maiduguri* (1986) 1 NWLR (pt. 18) 550. The latter case has had many irrelevant references as holding that once a crime is detected the employer cannot dismiss an employee unless he is tried and convicted first. This is unfortunately an erroneous interpretation of that judgement. In statutory employment as in private employment, the employer can dismiss in all cases of gross misconduct. In this case, the Appellant was found guilty of insubordination and fraudulent claim of money; he claimed overtime allowance when he in fact was never on duty to work during the normal office hours. He claimed refund for a treatment in hospital which never took place; he

[84] (2011) JELR 53633 (SC)
[85] (2004) 12 NWLR (pt 888) 663 at 673

> in this instance forged a doctor's certificate. I find no merit in this appeal."

In applying the provisions of the above judgment to the current case, the court held that, it was not necessary for the Respondent to wait for the prosecution of the appellant for the criminal offences disclosed before taking steps to deal with him by appropriate dismissal. The court in this case reiterated that:

> "...it is no longer the law that where an employee commits acts of gross-misconduct against his employer which acts also disclose criminal offences under the law, the employee has to wait for the outcome of the prosecution of the employee for such criminal offences before proceeding to discipline the employee under the contract of service or employment... the Appellant was guilty of gross-misconduct in the discharge of his duties as employee of the Respondent in consequence of which he was dismissed, such dismissal is clearly justified in law in spite of the fact that the acts of gross-misconduct committed by the Appellant also disclosed criminal offences for which the Appellant was not tried and convicted before his dismissal."

The notion that employees whose act of misconduct or gross misconduct has a dint of criminal elements must first be prosecuted and found guilty by a competent court of law before an administrative tribunal can act on it was held by Belgore JSC (as he then was) as unfortunately an erroneous interpretation of the judgments in *FCSC & others v. Laoye*[86]and *Garba v. University of Maiduguri.*[87] Also, the Supreme Court in *Mike Eze v. Spring Bank (supra)* stated that it was no longer the law for an employee having an issue of gross-misconduct with elements of criminal offence to be prosecuted first by the court before an administrative tribunal can act on it. This means organisations are free to enforce their disciplinary actions notwithstanding that the

[86] (1989) 2 NWLR (pt. 106) 652
[87] (1986) 1 NWLR (pt. 18) 550

misconduct alleged has criminal elements provided that the employee is given fair hearing and the procedure laid down by the organisation is duly followed.

4.6 Wrongful Termination/Dismissal under a Contract of Employment

This is a situation where an employer terminates or dismisses an employee without adherence to the terms of the contract or in contravention of the provisions of the statute guiding the relationship. This means bringing the contract of employment to an end in breach of the terms of the agreement. The case of *Akinyele v UBA Plc*[88] aptly illustrated this, where the Supreme Court held that, he who hires can fire, but an employer must observe and adhere to the conditions under which an employee is hired before such employee can be properly fired or else, the employer could be held liable for wrongful termination of the employee.

The onus is on the employee to show to the court that his employment was not properly terminated. The employee must be able to set out and prove by material fact the content of the contract of employment and how it was not properly followed. The employee must be able to prove amongst other things, that he is an employee of the employer; he must show the terms and conditions of his employment and elucidate on the way and manner the employment can be terminated. In the case of *Okomu Oil Palm Co v O. S. Iserhienrhien,*[89] the court ruled that when an employee complains of wrongful termination of employment, he must be able to place before the court the terms of the contract of employment and prove in what manner the said terms were breached by the employer.

Once a claimant succeeds in the claim for wrongful termination, the court usually awards damages, especially in master servant relationship. Where the contract of employment is with statutory flavour, the court may order the re-instatement of the claimant. Re-instatement is basically returning the claimant to his *status quo ante bellum.*

4.6 Remedies for Wrongful Termination of Employment

Remedies could be awarded in case of wrongful disengagement; such remedies could be stipulated in the contract of employment. Where there is a breach, the court will enforce the remedies agreed upon by parties or as specified in the contract of employment once they are not illegal. There are other common law remedies which include; declaration of rights, rescission, injunction, damages,

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[88] (2007) 10 NWLR (pt 1031) 565

[89] (2001) 5 NSCOR 802, (2001) 6 NWLR (Pt. 710) 660

and specific performance which is rarely granted by the court except where damages may not be adequate.

The courts award damages in most cases as a remedy for wrongful termination, especially where the relationship is that of master and servant. Damages are monetary compensation for the wrongful termination. They are not expected to be a gold mine for the injured party, but rather intended to provide reasonable compensation for the loss. It could be assessed based on the amount to be earned during the period of notice as in the case of *Gabriel Ativie v Kabel Metal (Nig) Ltd,*[90] where the court held that once the contract provides for a specific period of notice before termination or salary in lieu in the case of ordinary master and servant relationship, the remedy is the award of the salary for the period of notice.

It could also be assessed based on the amount the worker would have earned had the contract lasted its full length, including benefits and entitlements; it could even take into consideration the age of the employee and the opportunity of getting another job. In the cases of *Ifeta v SPDC of Nig Ltd*[91] and *Osisanya v Afribank*,[92] the Supreme Court held that in a claim for wrongful dismissal, the measure of damages *prima facie* is the amount which the employee would have earned had the employment continued according to the contract of employment.

The measure of damages, therefore, where the employer has the right to terminate the contract on giving the prescribed notice is the amount the employee would have earned over the period of the notice. However, where the employee by the terms of the contract could not be terminated by notice, the measure of damages may be calculated on the amount the employee would have earned had the employment been allowed to take its full length.

4.6.2 Implementation of Global Best Practices in Labour Matters by the National Industrial Court

It is evident that the Nigerian Labour Act still holds on to the common law principle of termination at will, but the National Industrial Court of Nigeria (NICN) is gradually departing from this principle as it has now embraced international best practices in respect of employment. While

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[90] (2008) 10 NWLR (pt 1095) 399 at 415
[91](2006) All FWLR (pt 314) 305
[92] (2007) 6 NWLR (pt. 1031) 565

unfair dismissal law is not expressly recognised in Nigeria legislation, it is impliedly recognised under Nigerian laws. Importantly, the Third Alteration to the 1999 Constitution (as amended) and the National Industrial Court Act, 2006, in particular, section 7 have brought some novel modifications in respect of the laws relating to unfair dismissal in Nigeria. It is imperative at this juncture to state that the Constitution of the Federal Republic of Nigeria, 1999[93] provides NICN with the jurisdiction to hear cases relating to unfair labour practice or international best practices or pertaining to application or interpretation of international labour standards. It further endue the NICN with the power to deal with any matter pertaining to the application of any international convention, treaty or protocol of which Nigeria has ratified relating to labour, employment, workplace, industrial relations or matters connected therewith.

> The NICN now condemns termination by the employer without providing valid reason for such disengagement. This presupposes that unfair dismissal is a violation of the right to work and constitutes an unfair labour practice. In the case of *Petroleum and Natural Gas Senior Staff Association of Nigeria v. Schlumberger Anadrill Nigeria Limited*[94] the NICN while condemning the common law termination at will principle and leaning towards the tenets of unfair dismissal stated thus:"The respondent also argued that it has the right terminate the employment of any of its employees (sic) for reason or no reason at all. While we do not have any problem with this at all, the point may be made that globally it is no longer fashionable in industrial relationship without adducing any reason for such a termination….."

From the foregoing, the NICN on the one hand acknowledged that termination at will was still entrenched in the Nigerian employment law, but on the other hand, it clearly recognised that termination at will did not accord with international best practice in labour matters as some countries have departed from it.[95] In the case of *Aloysius v. Diamond Bank Plc*[96]the NICN stated that the practice of terminating employment without stating reasons was declared contrary to

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[93]section 254C (1), (f) and (2) of (Third Alteration Act, 2010)
[94] Unreported Suit No; NIC/9/2004 decided on 18th September, 2007
[95]J.R. Bellace, 'A Right of Fair Dismissal: Enforcing A Statutory Guarantee' at 218-20 for a brief historical overview of the progression of English laws on the above subject matter.
[96](2015) 58 N.L.L.R. (Pt.99) at 134

'International Best Practices and Labour Standards.' Furthermore, in the case of *Duru v. Skye Bank Plc*,[97] the learned Judge of the NICN found that it was too harsh for the employer (defendant) to inflict so much pain and loss on the employee (claimant) by dismissing him without specifying any reason as it amounted to a total disregard of international labour standard and international best practice which demands that a valid reason be stated in termination or dismissing an employee. Accordingly, the court held that it was wrong for the defendant to dismiss the claimant without specifying any reason.

4.6.3 Legal and Practical Hurdles to Termination of Employment in Nigeria

Termination of contract of employment in Nigeria is governed by a combination of contractual agreements, statutory provisions and common law principles. Employers face myriad of legal and practical challenges when terminating an employee's appointment. This is more serious, especially when due process is not followed. The legal framework for employment termination in Nigeria is primarily derived from the Constitution of the Federal Republic of Nigeria 1999, (as amended), the Labour Act[98], employment contracts, and case laws amongst others.

The 1999 Constitution (as amended) provides protection against unfair dismissal through the right to fair hearing enshrined in section 36 (1) of the said Constitution. In cases of wrongful dismissal, employees often invoke this provision, arguing that they were not given an opportunity to be heard before the termination. A notable case here is the case of *Garba v. University of Maiduguri*[99]where the Supreme Court emphasized that administrative actions affecting employment must comply with the principles of natural justice.

The Nigerian Labour Act also provides minimum standards for termination. In particular, Section 7(6) of the Act requires an employer to provide a contract of employment stating termination procedures, while Section 11 (1) stipulates that notice must be given before termination unless payment is made in lieu of such notice. The Act applies primarily to workers in manual and clerical roles, leaving senior employees to be governed by their contracts. Employers must ensure that termination follows due process as outlined in the relevant laws. The challenge here is that disputes often arise over whether statutory protections extend to the senior employees. Also, many

[97](2015) 59 N.L.L.R. (Pt.207) 680
[98]Cap.L1,Laws of the Federation of Nigeria, 2004
[99](1986) 1 NWLR (Pt. 18) 550

employers, particularly in the informal sector, fail to comply with statutory requirements for termination, such as providing notice or paying terminal benefits.

Nigerian courts have established that termination of employment, especially in public service, or statutory employment must follow due process. In *Ogunniyi v. Hon. Minister of Federal Capital Territory*[100] the court ruled that where an employment has statutory flavor, failure to comply with the procedure for dismissal renders such termination void.

Employers in the private sector are, however, governed by the contractual provisions. In *Afribank (Nig.) Plc v. Osisanya*[101], the Supreme Court held that in private employment, an employer may terminate an employee at will, but contractual notice or payment in lieu must be given. Notwithstanding the position of the court, employees still contest terminations or dismissals on grounds of unfair treatment, discrimination, or non-compliance with procedures, which often leads to prolong litigations.

4.6.4 Practical Hurdles in Employment Termination

In addition to legal challenges, employers and employees face practical hurdles in the termination process. One of such is the lack of proper documentation. Many employment relationships in Nigeria are not formalized in written contracts, making it difficult to prove the terms of employment or grounds for termination.[102] Cultural factors are some of the practical hurdles experienced in employment relationship. In Nigeria, personal relationships and cultural norms often influence employment decisions, including termination. This can lead to bias or unfair outcomes.[103]

Another factor is Unionization and Industrial Action. Trade unions play a significant role in labour relations in Nigeria. Termination of unionized employees can trigger industrial action, such as

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[100](2014) LPELR-23164 (CA)
[101] (2000) 1 NWLR (Pt 642) 592
[102]Ojukwu, E. *Labour Law and Industrial Relations in Nigeria*. Lagos: Malthouse Press, (2018). p. 67
[103]Adeogun, A. "Challenges of Employment Termination in Nigeria: A Legal Perspective." Nigerian Journal of Labour Law and Industrial Relations, 5(2), (2017). 45-60.

strikes or protests. The Trade Unions Act[104] empowers unions to negotiate collective agreements which may include termination procedures. Any termination which violates collective agreement may lead to industrial action. In the case of *National Union of Electricity Employees v. Bureau of Public Enterprises*[105], the union successfully challenged the mass retrenchment of workers by the Bureau.

There is also the Risk factor, employers risk damaging their reputation if termination processes are perceived as unfair or discriminatory.[106] Unfair termination claims, especially those involving discrimination or harassment allegations can damage the reputation of an organization and lead to regulatory scrutiny.

5.0 Conclusion

Employment termination in Nigeria is a complex process that requires careful navigation of legal and practical challenges. While the legal framework provides a foundation for fair and transparent termination processes, gaps in implementation and enforcement often lead to disputes and litigation.

A good understanding of the various kinds of employment and their implications especially in the face of wrongful termination is required by both the employer and employee in order to make an informed decision whenever the need arises. It has been shown that there are three kinds of contract of employment, which are: master servant relationship; employment at the pleasure of the employer; and employment with statutory flavour.

There are laid down rules or guiding principles in terminating the contract of employment under each category of employment. The understanding of the procedure for appointment and disengagement of an employee could be gleaned from the statutory provision dictating the employment or the appointment letter of the employee. For this reason, it is imperative that contract of employment should be in writing.

Though the Labour Act stipulated that contract of employment can be express or implied, oral or written, it equally provides that employer should reduce the terms and conditions of employment

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[104]Cap T. 14 LFN 2004
[105](2010) 7 NWLR (Pt. 1194) 538
[106]Okene, O. "Alternative Dispute Resolution in Labour Relations: The Nigerian Experience." Journal of African Law, 63(1) (2019). 123-140.

into writing and give the employee not later than three months after the commencement of the employment. Reducing the contract of employment into writing will properly guide both the employer and employee. Labour relation will hence be carried out under a fair legal framework that protects the interest of both parties and reduce crises due to arbitrariness and sometimes ignorance.

The later approach of the court on the dismissal of employee for gross-misconduct even when the breaches disclose some criminal element is a welcome idea as the initial approach unnecessarily encumbered the employer in taking disciplinary action on its employee even when it is glaring that the employee has committed a grievous breach against the terms of his employment. However, it seems the court will still construe the use of some legal terms like 'guilty', 'culprit' and the likes strictly as to require the pronouncement of the court if used in the final determination of the matter by an administrative tribunal.

Generally, by adopting best practices such as clear employment contracts, compliance with labour laws, and alternative dispute resolution, stakeholders can overcome these hurdles and promote harmonious labour relations.

6.0 Recommendations

The following recommendations are proposed. They are briefly discussed seriatim**:**

First, employees should have a clear and proper understanding of their contract of employment from the onset because their rights, duties and obligations lie in the type of contract of employment they have.

Secondly, as a result of the high rate of unemployment in Nigeria, employers should not be allowed to fire employees at will or for no just cause. The tenets of job security as well as the law of unfair dismissal should be embraced by employers in Nigeria. All disengagement at will or for no just cause should be declared void, especially for being at variance with international best practices regarding international labour standards.

In addition, where a termination is declared ineffectual for not giving proper notice, the damages should be calculated on what the employee is expected to earn for the period he has been wrongfully removed from office, instead of the period of the expected notice.

Furthermore, Organisations and employers should learn to deploy proper administrative language in their regulations and when acting on disciplinary matter, they should try as much as possible to avoid forage into sacred areas reserved only for courts of law.

It should be mandatory for employers to issue employment letters to their employees in all cases of employment. More importantly, the need to clearly stipulate the terms and conditions of such employment should not be undermined in order to give room for easy resolution of any conflict in relation to the provisions of the contract of employment.

Employers must adhere to statutory requirements for termination, such as providing notice, paying terminal benefits, and following due process. This will reduce litigation, unnecessary expenses and reputation risk on the part of the employer.