Employees Contract of Employment and Wrongful Dismissal From Service

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Abstract

Contract of employment was long acknowledged as a subject of genuine and voluntary agreement whose construction or determination should be founded on due notice of the parties thereto. Action for wrongful dismissal would lie if an employment was disturbed, interfered or meddled with, in defiance of the rights of the parties under the contract. The objective of this study was, among others, to determine what constituted a valid contract of employment and remedies for wrongful dismissal. The qualitative and documentary method of data collection was adopted by reference to relevant literature and statutory authorities. From the data gathered, and content analyzed, we found that no law could foreclose an employment from determination, nor could an irregular or wrongful dismissal stand. It was recommended, inter alia, that beside the need to repeal the Public Officers (Protection) Act, both the employer and employee should, in their official dealings, respect the sanctity of their contract, and permit reasonable future modifications thereto as could lawfully enhance the life of the contract and their legitimate desires.

Introduction

Many employees, especially in Nigeria, have waived their right of self- determination and other freedoms just to keep or preserve their job. In the event of dismissal, for the unconfirmed employee, that's the end of the road. But for his confirmed counterpart, the question becomes whether he (the dismissed employee) would not foreclose the leniency, or even pardon, by the almighty employer, if he takes out legal action. Sometimes, where he chooses the latter to challenge his misfortune, he might be statute -barred, via of the praetorian and elitist Public Officers (Protection) Act. But our reference case – *Mr. Ugbele Sunday Vs. Ebonyi State University, Abakaliki (Unreported Suit No. HAB/175/2005)* has emerged one of the cases on the revolutionary path to upturn the conservatism and discomfiture entrenched by the above Act, and

allowed by even the Supreme Court, and has for a long time closed the door against an aggrieved party from accessing his remedy through court. The case adds to the long line of judicial authorities where the courts have jettisoned technicalities and reproved unconscionable dismissal and ordered for reinstatement or re-engagement of the otherwise rattled employee.

This work is relevant and limited to the contract of service since relationships strictly personal are non-litigable. As clearly stated by Jessel MR, in *Higby V. Connol (1880) 14 Ch.D4821 @ 488,* courts "have never dreamt of enforcing agreements strictly personal in nature". Accordingly, courts are not allowed by way of order of specific performance or re-engagement to force a servant on an unwilling master in a relationship purely sentimental and personal, lacking in constitutional or statutory flavour, at least until our legal system changes the status quo. Although we have occasionally used dismissal and termination interchangeably in this work, both have different weights in law which we do not intend to further distinguish herein than that the former (dismissal) has criminal implications.

For precision and flow, this work has been divided into five brief parts. Whereas part one explains contract of employment, part two discusses determination of contract of employment, while part three does a precise or synopsis of our reference case. Part four contains our comment and remedies for wrongful dismissal and, lastly, part five presents the summary, conclusion and recommendations.

Part One: Contract Of Employment

The need for service and survival of the individual, group or organization underscores the employment of one by another, and the interdependence of the human society. But for there to be a valid contract (of employment) there must be voluntary offer (by the employer) and voluntary acceptance (by the employee) and the equality of the two parties who must each have contractual capacity (Colin, FP. 1978; Akaniro, E.G. 1997). This consensus *ad idem* is evidenced in an agreement whether written or oral, but usually the former in the public service because of the impersonal relationship created therein.

The Labour Act, Cap 168 at Section 91 defines contract of employment as:

Any agreement, whether oral or written, express or implied, whereby one person agrees to employ another as a worker and the other person agrees to serve the employer as a worker.

The fallacy or tautologous use of the word "employ" in the above statutory definition can be resolved by its ordinary dictionary or liberal meaning as "the giving of a job to somebody to do for payment". And the word "worker" is also sought to be construed *sui generis* to include all employees, even though our concern here is the public/civil servant.

Usually, the process of contract of employment starts by an advertisement, or public declaration of vacancy, by the employer looking for workers. But the unabating high level

of unemployment in Nigeria, and the tardiness of employers to make open their need for workers, has made these prospective workers, to *suo motu,* without any public declaration of vacancies, apply for employment. Under such propensity for daily bread, "the employee in fact, in most cases, lacks the freedom and equality which the contract generally requires and presumes in employment relationship" (Engels, 1984). This is notwithstanding the age- long efforts of the International LabourOrganisation (ILO Recommendation No. 119 of 1963, Art. 2(1) and the African Charter on Human and Peoples Rights 1986, Art. 15) to reverse the imbalance by guaranteeing workers rights and security of job.

This tardiness, or hide and seek, by the employer appears to enjoy statutory protection where, for example, the *Public Sennce Rules 2010* (Chapter 2, Rule 020202) provides that only "where posts prove difficult to fill they shall normally be advertised". In either case, that is, whether through advertisement or the prompting of the scavenger, once there is a meeting of the minds between the applicant and the employer, a contract of employment crystallizes. The afterbirth are concomitant obligations and limitations as created by business law and general law of contract (Worugji 1999). Most conspicuous are the respective obligations to work and to pay agreed remuneration called wages on the part of the employee and the employer respectively.

In all circumstances of contract of employment, three principal forms of employment are created, namely:

i. Contract of Service (as in Public/Civil Service);
ii. Contract of Personal Service (between master-servant, casual

worker or domestic servants); and

iii. Contract for service (involving career, independent contractor).

Above categories were established in *Honeywill& Stein Ltd V. Larkin Brothers Ltd (1934) I KB 191@I96* depending, according to Slesser LJ, while positing the "Liability Control Test', on whether the employer was liable for the official wrongs of the worker or had control over the latter in the manner he did his work. Whereas such liability and control accrue to the employer in (i) and (ii) above, they are absent in (iii) since the independent contractor directed/controlled himself, and was strictly liable for his acts therein.

Accordingly, terms of a contract (of employment), except that with constitutional or statutory fla vour, create and qualify the obligations therein. Some terms are *fundamental* whose non-compliance amounts to non-performance of the contract and cannot allow the defendant to rely on any exclusion clause whatsoever. See *Chanter V. Hopkins (1838) 4 M & W 399@404* and *SmcatonHanscomb& Co. Ltd V. SIS Son & Co (No.l) (1953) 1 WLR 1468@ 1470.* In both cases, non-compliance with fundamental terms of the contract was held sufficient to make whatever performance thereof to become totally different from that contemplated therein.

Other lesser terms are *Conditions, Warranties,* and *Innominate or Intermediate* terms. Whereas default of a condition may attract remedies of damages, or at worst a repudiation or discharge of the contract, breach of warranties and innominate terms attract only damages as they are terms "collateral to the main purpose of the contract". See *Poussard V. Spiers& Pond (1876) 1 QBD 410; Bentini V. Gye (1876) 1 QBD 183.* Whatever remedy that may be provided, is, according to Sagay (1977), dependent upon "the effect of the breach".

Part Two: Determination Of Contract Of Employment

There can be no lawful clauses or provisions, or order of court, to preclude the rights of the employer to lawfully terminate the employment before the date of retirement. In fact, in *Fakuade V. Obafemi AwolowoUniversity Teaching Hospital (1993) 4 NWLR (Pt 291) 47@ 58* and *Chukwuma V. Shell Petroleum DC (Nig) Ltd (1993) 4 NWLR (Pt 289)* 572 *@ 560* the Supreme Court gives the employer unlimited right to dismiss the employee as long as that is done in accordance with the agreement between them *[UBN Ltd V. Ogboh (1995) NWLR (Pt. 380) 647)]*. Thus the lav/ looks at the legality of the termination, in terms of the contract itself, rather than the motive, since the latter, under our law, unlike the English Law, creates no liability however ill.

Thus, apart from agreement between parties, provision for summary dismissal, operation of law either due to effluxion of time, death, sickness/incapacities of employee, dissolution of partnership or liquidation of company, war, etc, which frustrate the employment, the latter can be lawfully determined by termination, dismissal, or even temporarily by suspension. Space disallowed us from elucidating on these forms, but suffice it to note that they are all administrative disciplinary measures and only the 'person' vested with the authority to enforce them can validly so do. Again, such person cannot be allowed to apply more than one measure simultaneously. See generally, *Warburton V. Taff Vale Railway Co. (1982) 18 TLR 420* and *Hart V. Military Governor of Rivers State (1976) 11 SC211.*

Above all, where there is a specified ground for or method of determination of an employment, it cannot be validly determined on any other ground or method. See *McCelland V. Northern Ireland GHS Board (1967) 1 NLR 594.* Except where there is no such specificity, the courts will decide the issue on principle of natural justice. Similarly, where no due notice has been given, or such notice has no ascertainable, relevant, particular date, such a determination is void and the employment is held as subsisting. See *Morton Sundour Fabric Ltd V. Shaw (1967) 2 ITR 8; Martin V. Braithwaite (Insurance Brokers) & Co. Ltd (1972) CCHCJ/11/7252* and *Ugbele Sunday (supra)* judgment order no. 2.

A notice is said to be due and regular when, in addition to a time certain, it is given according to the terms of the contract or the common law rules of reasonable notice or in accordance with the length of service put in by the employee or nature of his work. And the notice does not become effective until received by the employee, nor does the contract end until the expiration of the date on the notice. See generally, Section 11(2) Labour Act, *Olaja V. Kaduna Textile Ltd (1972) 2 UILR 1; Lillia V. Dresser (Nig) Ltd (1973) CCHCJ/7/72, 57; Adeyemi V. Oyo State Public*

SendeeCommission (1979) 1 OYSHC 83; and *DyekeyaV. GB Ollivant (Nig) Ltd (1979) 1 All NLR 80.'*

Finally, where it is provided that payment can be made in lieu of notice, the employee is relieved upon such payment, which usually exclude overtime and other allowances. In all cases, notice of determination of employment, once lawfully given, is irrevovableand not subject to the consent of the party served. See *Riordan V. War Officer (1959) 2 All ER 552; (1959) 1 WLR 1046.*

2.2 Dismissal from Service and Fair hearing

Rule 030407 of the Public Service Rules 2010 provides that "the ultimate penalty for serious misconduct is dismissal…" Chapter 1.4 (34) of the Ebonyi State University Senior Staff Regulations on Procedure and Conditions of Service defines misconduct so extensively to mean "any conduct which is prejudicial to the good name and reputation of the University, and discipline and the proper administration of the business of the University…" The conducts mentioned therein, albeit inexhausitive, aligns the document to the common law position that dismissal should be treated as summary, handed down without notice once justified on grounds of misconduct, unjustifiable disobedience or incompetence.

Obviously, the infamy and loss of benefits which go with dismissal, unlike termination, is so harrowing that fair hearing is indispensable before it is handed down. The combined effect of Rules 030407 and 030408 is that an officer who is dismissed forfeits all claims to retiring benefits, leave or transport grant and no notice or emolument in lieu shall be given to him/her. Appreciating the stigma and severity of dismissal and the need for fair hearing, Rule 030401 defines serious misconduct as "a specific act of very serious wrong-doing and improper behaviour which is inimical to the image of the service and which can be *investigated and if proven* ***may*** lead to dismissal".

Although fair hearing is essential before dismissal, however, at common law and equity, an employer has no obligation to give reason for lawfully determining a contract of service even where incompetence of the employee is alleged. See *Ogunsanmi V. CF Furniture (WA) Ltd (1961) 1 All NLR 862*. But thank goodness that the Supreme Court in *Falomo V. Lagos State Public Sen-ice (1977) 1 WLR 1578* over ruled the Privy Council position in *Mollock V. Aberdeen Corp* (1971) 1 WLR 1578 that employer-employee relationship gives no room for the application of the principle of *audialter am partem*on dismissal. Thenceforth, where reason is given and the employee wished to challenge same, he could maintain an action for wrongful dismissal. See *UBN V. Ogboh(1995) supra; Ugbele Sunday V. EBSU (2005) supra.*

However, where the contract excludes fair hearing, the court would heed strictly even though they seem unfair or absurd, because the employee has waived such right. See *Oliver &Ors V. Obi Ezenwali&Ors (1976) 1 NWLR 44.* On the other hand, where the employer is proved to be aware of the misconduct and condoned same by expressly or impliedly overlooking the employees misconduct, he thus waives the right to dismiss on that ground on a subsequent occasion. See *Electricity Corp. of Nig. V. George Nicol (1969) 1 NMLR 268; Ajayi V. Coop Supply &- Co (Unreported Suit No.LD/62/67(1970); Amadi V. ACS (1967) FNLR 38.*

Part Three: Facts of Mr. Ugbele Sunday's Case

The plaintiff (P) was offered appointment as a Senior Staff, to wit, an Assistant Lecturer with the Defendant (D) in the Department of Accounting on the 13/10/2004, which he accepted via an acceptance letter to the Personnel Department of the D, and assumed duty on 18/10/2004. The P also led evidence to show that he had worked diligently without any query, reprimand or bad record in the capacity he was employed. His trouble started on 17/6/2005 when he was invited to the D's Registrar's office for a chat over alleged extortion of money from a named student with intent to falsify examination results. P's denial yielded no positive result as his salary was stopped same June 2005, notwithstanding his HOD's written explanation exonerating him.

The letter of withdrawal of the service of P which came thereafter was admitted by D, through her counsel, as "mistakenly dated 18/7/2004", a date when P was not yet in the employ of D. Besides, P avers in Parag. 35 of his amended statement of claim that the maintenance and disciplinary measures regulating his contract of service with the D, particularly at Chapter 14, was not complied with. He, pursuant to a pre-action notice (ref no. FEA/Pre/002/2005) served through his counsel on D on 30/9/2005, brought this action in the Abakaliki High Court claiming a declaration that his purported dismissal from the service of D is wrongful, unlawful and violates the rule of natural justice and fair hearing and that the contract of service between him and the D was intact and subsisting.

The D, in her amended statement of defence, denied most of the claims in P's 40 paragraph amended statement, stating particularly that P was a temporary staff and on probationary service at the time of the termination of his appointment and therefore, not entitled to the benefits, privileges or rights of staff within the provisions of the "Regulations Governing the Condition of Service of Senior Staff of the D. D moreover avered that she was never served pre-action notice and that the entire suit as instituted by P is incompetent and that the court lacked the jurisdiction to entertain same, for being statute-barred and for not being initiated in accordance with the statutory requirements and for limitations of S.31 (1) &(2) of the Ebonyi State University Law, No.7 of 1999. The D urged the court to strike out or dismiss the entire suit pursuant to Order 24, Rules (2), (3) & (4) of the High Court Civil Procedure Rules 1988 of Imo State as applicable in Ebonyi State.

After arguments, the court gave a considered ruling and dismissed D's objections as lacking in merit and the matter was set down for hearing. Whereas P called one witness, D called none, nor call any evidence during the trial. In addition to this, two other issues for consideration included the effect of the letter of termination and/or dismissal dated earlier in time than P's employment with D and whether Phad discharged the burden of proof to be entitled to judgment.

Counsel for P submitted in his address, inter alia, that, as held in *Nwabuoku V. Ottih(1961) 2 SCNLR 232; Braimoh V. Bangloze(1989) 6 SC (Pt. 1) 1; (1989) 3 NWLR (Pt. 109) 352,* since D led no evidence, P's evidence suffices his claim for judgment. He qualified the purported withdrawal of service letter which pre-dates P's appointment as anomalous, *void ab initio* and without relevance to P's appointment, as there could not be abortion before pregnancy. Even at that, learned counsel citing *Osagie V. New Nig. Bank Pic (2005) AH FWLR (Pt. 257) 1485,*

ratios 2 & 7, noted that it is trite law that if the gross misconduct is of a criminal nature, P must be tried first and found guilty beyond reasonable doubt before his employment could be determined.

The Honourable Court, per Obande J, in its judgment order of 30/3/2009 granted all the reliefs sought on behalf of P particularly reinstating him into his job, and setting aside the withdrawal of service letter, restoration of his salary from 1/6/2005, and damages as to cost, but dismissed his prayer for perpetual injunction against D or her agents meddling with, interfering and /or disturbing P's contract of service. The refusal by court, of plea for perpetual injunction here is unshakable and astute because no valid order can foreclose the right to freedom of association, or termination of same, under certain circumstances by either party to a contract (of employment).

Part Four: Comment

The judgment in *Ugbele's case* is as erudite as it is eminent, courageously showing that any official act, however astute, in breach of its prescribed procedure must be struck down. In a number of cases on all fours with the instant one, for eg, in *UBN Ltd V. Ogboh (1995) supra,* the Supreme Court has held that "employment with statutory backing must be terminated in the way and manner prescribed by that statute and any other manner of termination inconsistent with the relevant statute is null and void, and of no effect". The timeous institution of the present action not only dissipated the intrigue contemplated in "mistakenly" dating the withdrawal of service letter to cast a bar of limitation on the fate of the plaintiff, but also equally importantly made his action escape the noose of Section 2(a) of the Public Officers (Protection) Act (Cap 379 LFN, 1990). This Act, as held in *AlhajiAliyu Ibrahim V. Judicial Sen'ice Commission, Kaduna State & AG, Kaduna State (1998) 12 KLR 2489,* bars proceedings against such purported official acts "…unless it is commenced within three months next after the act, neglect, or default complained of…" occurred.

Rather than giving a dog a bad name to hang him, as common place among employers, it is sufficient to concentrate on the obligation to terminate by notice in accordance with the terms of the contract because the law, as it is today, looks at the legality, rather than the motive, of the dismissal. See *Fakuade V. OAUTH (1993) 4 NWLR (Pt. 291) 47 @ 58; Chukwuma V. SPDC (Nig) Ltd (1993) 4 NWLR (Pt. 289) 512 @ 560,* and also *UBN Ltd V. Ogboh, supra.*

Unequivocally, this attachment to legality or the sacrifice of motive on the altar of legality erodes the rights of the employee to disobey orders illegal or outside the scope of his employment, as the employer could summarily dismiss him for such refusal. Nevertheless, this super employer has been famished by the ILO Recommendations (Art. 2(1) and the English Law under the Unfair Dismissal Law, both of which void dismissal tainted with ill motive and unreas onable consideration. They thus emphasize reasonableness of the notice, ie, the employer's good faith in giving the notice, as opposed to just its technical correctness even in the face of bad motive (Anderman 1978). The non-address of these areas by the Labour Act leaves it in the dungeon of conservatism notwithstanding its prohibition of dismissal on Trade Union grounds at Section 9 (6) (b) and provision for termination by notice and period of notices at Sections 9 (7) and 11 (2) respectively.

This status of the Labour Act reinforces and complicates the elitist and praetorian Public Officers (Protection) Act which shields an otherwise culpable public officer notwithstandi ng the circumstances of his victim. For eg, in *Adi gun V. Ayinde (1993) 8 NWLR (Pt. 313) 516* the appellant, as a result of the negligent driving of a public servant during an official duty sustained an injury that paralysedhim from the waist down. He spent so long a time in the hospital that he went to court belatedly and even the Supreme Court held his action statute-barred. Notwithstanding the heart felt sympathy of the justices of the apex court, they could not but denied the appellant any remedy. This sympathy imputes a recognition of the injustice of the Act in this respect as "it serves no useful purpose but rather perpetrates injustice on victims of harm caused by public servants" (Okonkwo, 1998 – 1999).

As shown in *Ugbele Sunday (supra); UBN V. Ogboh (supra); Olaniyan V. UNILAG (1985) 2 NWLR (Pt. 1) 599; FSCS V. Laoye(1989) 2 NWLR (Pt. 106) 652; Akintemi V. Onwtimechili (1985) 1 NWLR (Pt. 1) 68; Eperokun V. UNILAG (1986) NWLR (Pt. 34) 162; Aiyetan V. Nifor (1987) 3 NWLR (Pt. 59) 48; Garba V. FCSC (1988) 1 NWLR (Pt. 71) 449; Sapara V. UCH Management Board (1988) 4 NWLR (Pt. 86) 581,* and a long line of other authorities, the courts can, in restricted cases where the administrative law remedies could be invoked, award not only damages but also declare a wrongful dismissal null and void, and order for reinstatement or re-engagement. Other remedies for wrongful dismissal include declaration, injunction and specific performance. Because common law does not recognize these remedies, they are difficult to grant in the private sector, unless they are accompanied by other remedies. They are however, awarded under special circumstances. Thus, the court has discretion to grant declaration that the relationship still subsists, or the injunction (though not perpetual) to stop the determination. See Lord Denning MR in *Hill V. CA. Parson &Co. Ltd (1972) Ch. 305 @ 314; Shitta-Bay V. Federal Public Service Commission (1981) 1 SC 40,* and *Ugbele Sunday (supra).*

As it were, these remedies are awarded in compelling circumstances, or there's a prayer for declaration that a dismissal is ultra vires the employer, null and void, and a breach of the rules of natural justice *(Olaniyan V. UNILAG. (supra); Ojo V. Lister Motors (Nig) Ltd (supra).* Declarations, unless specific remedies are requested, stop at a court's categorical pronouncement on the defendant's act(s) complained of as wrongful. See *Ilodibia V. Okafor & Anor (Unreported Suit No. AB/23/36 of 18/4/84, HC, Enugu).* As earlier noted, the nature or extent of remedy awarded depended upon the effect of the breach either arising naturally, or the probable result of the breach. See the hackneyed case of *Hadley V. Baxcndale(1854) 9, Exch. 34 @ 354.* But where damages, as the most important remedy both at common law and equity, is awarded, it is intended to protect the job security of the worker and to restore or indemnify the innocent party as much as money can do, to carter for losses either of reputation, earnings, or other benefits, measured in no more than the contract price. See the two Supreme Court cases of *Nigerian Produce Marketing Board V. Adewunmi (1972) All NLR (Pt. 2) 433 @ 436; (1972) 11 SC 111* and *Okongwu V. NNPC (1989) SC TWLR (Pt. 2) 249 @ 263*

As a general principle in law, in an action for wrongful dismissal, the normal measure of damages is the amount the employee would have earned under the contract for the period until the employer would lawfully have terminated it. See these Supreme Court cases of *NBC V. Adeyemi (1971) 1 WILR 337; NPMB V. Adewunmi (supra); NIA V. Banjo (1973) 3 WILR 313*

(1972) 3 SC 175; Okongwu V. NNPC (supra). Again, in all claims for damages, it is the plaintiff that calculates, in mathematical form, the total amount claimed, otherwise the claim would fail "as the court could not take a calculator and work out…" the plaintiffsentitlements. See *Owo V. Nig. Ainvays Ltd (1980) (Unreported Suit No. FCA/L/47/80.*

Part Five: Conclusion And Recommendations

5.1 Conclusion

The present status quo which gives the employer an open-ended power to bring the contract of employment to an end without the need for substantive justification does not only rape the contract of its sanctity, and the employee of his rights and freedoms thereunder, but also denies our Law that spirit of compliance with international standard.

The special statutory treatment of a public servant requires that he is entitled to be informed of the reason(s) for his dismissal, his personal knowledge of his offence notwithstanding, and be given the opportunity to defend himself. *Ridge V. Baldwin (1964) AC 40 @ 65 – 66; Adedeji V. Police Service Commission (1968) NWLR 102 and Ogunche V. Kano Public Service Commission (1974) 1 NMLR 126, among others.* Thus, a contract of employment determined by persons/authorities or on grounds and manners other than those specified in the regulation, is void ab initio. See *Akpan V. Minister of Local Government (1959) 3 ENLR 34; Hart V. Military Governor Rivers State (supra); Mclcllend V. Northern Ireland GHS Board (supra).* Nor could any determination in violation of the principles of natural justice worth more than mere repudiation, and not an end to the contract, unless the victim *acqmesces (Bankole V. University of Ibadan (1978)2 OYSHC 248).*

5.2 Recommendations

In view of the fact that systems, like individuals, are interdependent, a relationship which has been seen to found employment of one by another, the following recommendations, though quite inexhaustive, are germane. Firstly, the sanctity of contract, as it were, should emphasize and regulate employer-employee relationship that would guarantee the freedom, voluntariness, equality and satisfaction of the parties thereto. It should, above all, ensure security of the job of the worker whose uncertainty has been a powerful threat to the employee and reduced him to a mere tool of trade that could be dispensed with at will. Accordingly, there is need for a statutory intervention to limit the endless power of the employer to bring the contract of employment to an end. The need for substantive justification and standards of procedural fairness in accordance with the African Charter on Human and People's Rights 1986 (Art. 15), and Resolution 119 of 1964 International Labour Organization (Art. 2(1)), among other extant statutes, should be implemented on dismissal procedure.

Furthermore, the scope of remedies available to a dismissed employee should be expanded and to avail even pure master-servant cases. In cases where reinstatement or re-engagement are not genuinely possible, more liberal and realistic monetary compensation by way of exemplary damages should be adopted. Similarly, the scope of what constitutes dismissal in law should be

expanded to cover cases where the employer, by ill motive, terminates the contract of employment by notice or refuses to renew a fixed term contract which has expired without any substantive justification other than the expiration of the original contract, and such vacancy still exists.

Finally, there should be added impetus to the call for the repeal of the Public Officers (Protection) Act which has outlived its elitist, imperialistic, dictatorial and undemocratic purpose. As Ezike, cited in Okonkwo (1998 -99), solicited, "the courts can toe the line of judicial activism… and declare the Act discriminatory, and not reasonably justifiable in a democratic society". This call is most exigent now it is realized, as shown in *African Re-Insurance Corporation V. Abate Fantaye(1986) 2 NSCC 884; (1986) 3 NWLR (Pt. 32) 811 SC,* that in Nigeria employment contracts can be covered by immunity (Shasore, O; 2007).

References

Akaniro, E.G. (1997). Basic Business Law. Ikeja: Oak Publishers Ltd.

Amadi, G.O.S, Mimeograph on Business Industrial Law. Faculty of Law, University of Nigeria Enugu Campus.

Anderman, S.D. (1978). The Law of Unfair Dismissal. London: Butterworths. Bryan, A.G. (ed) (1998). Black's Law Dictionary (8th Ed). West, USA: Thomson. Constitution of the Federal Republic of Nigeria, 1999 (as amended)

Engels, F. (1981). The Labour Standard. *In:* Engels (1984). The Wages System. Moscow: Progress Publishers.

Ewelukwa, D.I.O (1977). "Public Officers Protection Act: Who is A Public Officer Under the Statute — *MouiohOkewale V. LCC", The Nigerian Judicial Review* 2:91.

Ezike, O. (1994 – 97). "The Application of the Public Officers Protection Act", *The Nigerian Judicial Review* 6:100 – 130.

Iluyomade, B.O. and Eka, B.U. (1980). Cases and Materials on Administrative Law in Nigeria. (2nd ed.). Ile-Ife: Obafemi Awolowo University Press Ltd.

Jemibewon, D.M. (1998). The Military, Law and Society: Reflections of a General. Ibadan: Spectrum Books Ltd.

Labour Act Cap 198.

McColgan, A. (1992). "Remedies for Breach of Employment Contracts", *International Law Journal*

21:58-72.

Okany, M.C. (2007). Nigerian Administrative Law. Onitsha: AFP Ltd.

Okonkwo, C.O. (1998 – 99). "The Last Word on the Public Officers Protection Act, S.2(a): *Ibrahim V. Judicial Sen>ice Commission, Kadnna& AG, Kaduna State", The Nigerian Judicial Review 1:219-291.*

Oluyede, P.A. (2007). Nigerian Law of Contract. Ibadan: Spectrum Law Publishing. Public Service Rules, 2010.

Rutherford, L. & Sheila, B. (eds) (1993). Osborn's Concise Law Dictionary (8th Ed). London: Sweet and Maxwell.

Sagay, I.E. (1997). Nigerian Law of Contract. Ibadan: Spectrum Law Publishing.

Smith, I.T. & Wood, J.C. (1980). Industrial Law. London: Butterworth.

Worugji, I.N.E. (1999). "The Concept of Termination of Employment by Notice under the Nigerian Labour Law", *The Calabar Law Journal,*