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THE LEGAL IMPLICATION OF SUMMARY DISMISSAL OF WORKERS IN NIGERIA: LESSONS FROM THE UNITED STATES OF AMERICA

- **Dr CHINDA Richard Gershon[1] & EGBE Emeng Joseph[2]**

ABSTRACT

This paper examined the legal implications of summary dismissal of workers in Nigeria and drew lessons from the United States of America. The International Labour Organisation (ILO) ILO in its efforts to set global standards and direct labour developments amongst member countries such as Nigeria formulated a set of recommendations, aptly called ILO Recommendation on Termination of Employment or Recommendation 111. Whilst Nigeria has not ratified Convention 158, its provisions are not devoid of some legal effect. However, in the absence of specific statutory protection, employers have been found to subvert the rules on summary dismissal by resorting to the right to terminate with notice or payment in lieu of notice. Section 254 C(1)(f) of the CFRN 1999 (Third Alteration) Act 2010 gives the National Industrial Court exclusive jurisdiction to hear and determine labour disputes, relating to or connected with unfair labour practice, including unfair dismissal. However, there are gaps in the provision above or any other Nigerian statutory provision as it does not stipulate in explicit terms the right of an employee not to be unfairly dismissed or right not to be subjected to unfair labour practice unlike the practice in other countries, including the US. Also, the provision above or any other Nigerian statutory provision does not provide the remedies of compensation, re-instatement and re-employment for unfair labour practice or unfair dismissal. The paper concluded that the position of law still twists the fate of an employee in the hand of a draconian employer who could dismiss his employee at will and without a valid reason for same. It therefore recommended that Nigerian labour laws should be reviewed and redeveloped in the directions indicated by ILO Convention and Recommendations on Termination of Employment.

Keywords: Summary dismissal, ILO, workers' protection, employer-employee relationship

[1] Dip Law, LLB, BL, LLM, PhD (Lecturer 1, Department of Commercial and Industrial Law, Faculty of Law, Rivers State University, 08036759338, richyesq@gmail.com.

[2] LLB, BL, LLM; 07062447749, josephemeng32@gmail.com

INTRODUCTION

It is without argument that in labour and industrial relations, summary dismissal of employees has raised a lot of concerns and appears to be an albatross in modern day employment. It is indeed terrible that employers dismiss their employees without recourse to the contract of employment nor the law. Nigeria as a developing country is sadly plagued with the above practice, and constitutional impediments which hinder her from fully embracing the International Labour Organization standards on summary dismissal. The effect of summary dismissal is alarming and its demanding effect is evident in every sector of the society including the family. The ideal of social values, capability, utilization, effective human resource development, economic and commercial operations, as well as per capital and national gross income, is harmed while little or no attention is paid to it. Employees in the public sector are essentially protected by the Labour Act. Employees in the public sector have the right to receive notice before their employment contract is terminated.

MODES OF TERMINATING A CONTRACT OF EMPLOYMENT

The Labour Act stipulates that a contract may be terminated in one of the following ways: (a) by the expiration of the period for which it was made, (b) by the death of the worker prior to the expiration of that period, (c) by notice in accordance with Section 11 of, or (d) by any other way in which a contract is legally terminable or held to be terminated.

It would appear that both from the Nigerian Labour Act and statutory authorities, employment contracts can be cancelled in the following ways:[3]

1. By Effluxion of time
2. By Agreement
3. By Performance
4. By Frustration
5. By Notice
6. By making a salary payment in lieu of notice
7. By Dismissal

[3] L O Nwauzi, *Elements of Industrial Law in Nigeria* (Port Harcourt: Convince Concept, 2006) 86.

This article focusses on dismissal and summary dismissal as a mode of termination of contract of employment.

TERMINATION OF EMPLOYMENT CONTRACT BY DISMISSAL

A contract of employment can be terminated in several ways, one of which is dismissal. The dismissal can be abrupt, constructive, or unjust. The common law right to summary dismissal is recognized under section 11 (5) of the Labour Act, which states: Nothing in this provision affects a contracting party's right to treat the contract as terminated without notice due to action by the other party that would have entitled him to do so prior to the enactment of this Act."

An employee who has committed substantial misbehavior can be terminated summarily under the aforesaid provision. Summary dismissal is an immediate and drastic method of termination of employment. It is sudden and operates with immediate effect, leaving the employee without benefits and without remedy[4]. An employer can terminate an employee for a variety of reasons, including gross misbehavior, willful failure to obey a lawful and reasonable order, excessive neglect, and dishonesty. The facts will determine whether the conduct in question warrants summary dismissal. It would be impossible to define such behaviors, but it should be noted that what constitutes misconduct will vary depending on the nature of the job and the employee's position. In the case of Laws v London Chronicle[5] per Lord Evershed.

> …. If summary dismissal is claimed to be justified, the question is whether the conduct complained of shows the servant has violated the essential terms of the contract of service. It is undeniably true that willful disobedience of a lawful and reasonable order demonstrates a complete disregard for a condition essential to the contract of service, namely, that the servant must obey the master's proper orders, and that unless the servant does so, the relationship is effectively terminated.

As a result, an employee may be fired for a variety of reasons, including sleeping on the job, refusing to heed reasonable orders, intoxication, dereliction of duty, aggression, smoking in a

[4] *Ibid,* 82.
[5] (1959) 1 W.L.R 698 at 700.

banned place, corruption, insubordination, and criminal conviction. The grounds for summary dismissal listed above are not exhaustive or exclusive. The employee is not entitled to any salary in lieu of notice as a result of summary dismissal.[6] An employer can fire an employee at any time and for any reason under common law if notice is given, or if wages are paid in lieu of notice, or if the servant is dismissed summarily. Under Nigeria law, once notice is given to terminate the employment, the employer needs not state the reason why and motive becomes or is totally irrelevant.

Dismissal can also be constructive, when an employee leaves or resigns as a result of the employer's activities, which make it difficult for the employee to continue working, this is referred to as "externalization." The employee has the right to cancel the employment contract without notice in this situation. Constructive dismissal is the term used to describe this coerced resignation.

The reasons for unjust dismissal will be considered in light of the foregoing. If no reason is given, the dismissal will be judged wrongful, unlawful, or unfair, depending on the nature of the employment contract in question. Dismissal will be unfair in countries where the ILO norms on unfair dismissal apply if no reason is used or the reason given is insufficient for an employer to exercise his dismissal rights.

GROUNDS FOR SUMMARY DISMISSAL

Dismissal from work in Nigeria must inevitably be based on legal reasons. When specific grounds are used for an employee's summary dismissal, other legal factors apply. These are the grounds on which an employer must rely before exercising his authority of dismissal; otherwise, the dismissal will be unjust. They shall be taken seriatim.

MISCONDUCT

A neglect of duty; unlawful or improper behavior is characterized as misconduct.[7] It is unethical behavior on the part of a public official or a person involved in the administration of justice. Impropriety is defined as behavior that does not adhere to accepted standards or laws. Dishonesty or poor management, particularly by someone entrusted or employed to work on behalf of

[6] *N.N.B Ltd v Obevudiri* (1986) 3 N.W.L.R (Pt. 29) 387.

[7] B A Garner (ed.), *Black's Law Dictionary* (9th edn, Thomson Reuters) 1019.

another, purposeful wrongdoing, particularly by government officers or military personnel.[8] Sometimes misconduct will depend on what the employer considers as misconduct. It encompasses all violations or activities by an employee of his duty to act in a manner that is inconsistent with the employer-employee relationship[9]. Misconduct in labour and employment relationship may occur prior to the contract of employment. This type of misconduct is referred to as pre-employment misconduct. It can happen at any time during an employee's job. It may also occur after dismissal of an employee which is referred to as condonation.

An employer cannot fire an employee because the employee withheld information from the employer that could have influenced the employer's willingness to enter into the contract.[10] Thus, concealment of marriage could not be a ground to dismiss a governess who though married posed as a spinster at the time of her engagement.[11] This common law viewpoint is relevant in Nigeria since the common law of England, equity theories, and other general statutes are received in Nigeria through various reception laws.[12] As a result, Nigerian courts have applied the aforementioned approach to pre-employment wrongdoing as a reason for dismissing an employee. In Sekoni v Shell B-P Petroleum Development Co,[13] while in the United Kingdom, the plaintiff was interviewed and offered an appointment; he agreed, but before he could return to Nigeria to begin work, the employer discovered that his passport included a name other from the one he was using. Because of this, the plaintiff's employment contract with his company was terminated. The court found that the facts did not justify the firing and awarded damages to the employee in a wrongful termination case. This is subject to the exception allowed for bank employees, as banks are required by law to hire people of good character.[14] In Gwawoh v Bendel State Hospital Management Board,[15]Ete J.C.A (as he was then) held that an employee with a criminal record, particularly one involving dishonesty, who did not disclose the fact while employed is entitled to immediate dismissal if the fact is discovered. This decision is highly inconceivable as the fact that a man committed a criminal act involving dishonesty will render him perpetually a dishonest person is questionable. The purport of these judicial authorities is that concealment or failure to

[8] *Ibid,* 1020.
[9] *Ibid,* 104.
[10] *Ibid,*
[11] *Fletcher v Krell* (1872) 42 LJKB 55.
[12] Interpretation Act Cap I23 LFN 2004; High Court (Civil Procedure) Rules of Various States of the Federation.
[13] (1975) ICCHCJ 93.
[14] Banks and other Financial Institutions Act Cap B3 LFN, 2004 S. 19(1); E Chianu, 'A Statutory Duty on Banks to Employ Persons of Character' [2002] (17)(5) *Journal of International Banking Law,* 148.
[15] Suit No. FCA/B/65/79 of 3/7/89.

disclose a fact which does not in any way affect or influence the decision of the employer to employ or not to employ will not ground a dismissal or termination of contract of employment.

However, where the concealment or failure to disclose becomes a fact which if the employer had been aware ab initio, he would not have employed the employee, the employer can on that basis dismiss the employee upon the pre-employment misconduct. Failing to reveal a pre-employment conviction has become statutory in the United Kingdom, and failure to declare a spent conviction must not be a sufficient cause for dismissing a person from employment or prejudicing him in any manner.[16]

An employer is not required by common law to inform an employee of the cause for his dismissal at the time of dismissal. He may show at the time of hearing that circumstances justifying dismissal existed at the time of dismissal. In Nigeria, the common law position has been used in a lengthy line of instances. In the case of the Court of Appeal, African Continental Bank v Nbisike,[17] Per Edozie J.C.A (as he was then), the Court approved of this stance in which a letter of dismissal just cited gross misconduct without specifying what the wrongdoing was, instead relying on the employer's lackadaisical attitude toward work and fraud, which he dug up at the trial. In Walter v Skyll Nig Ltd,[18] Salami J.C.A. (as he was then) declared that if an employer states a reason for dismissing an employee, he is bound by it and cannot look for other reasons if the stated reason proves unviable.

It's worth noting that the common law stance in England has changed. The Act amending this situation in England states that the tribunal will decide whether the dismissal was fair or unfair in light of the reason given by the employer if the employer can convince the tribunal that he acted reasonably in treating it as a sufficient basis for dismissing the employee in the circumstances.

The position that only the conduct listed as a reason for removal of an employee should be relied upon in defending a case for wrongful dismissal under the Labour Act is given credence. Nothing in this provision affects a contracting party's right to treat the contract as terminable without notice due to conduct by the other party that would have enabled him to do so prior to the enactment of this Act.[19]

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[16] Rehabilitation of Offenders Act (UK) 1974.

[17][1995] 8 NWLR (Pt. 416) 725*; Adekunle v Western Region Finance Corp* [1963] WNLR 6-9*; Sule v Nigerian Cotton Board* [1985]2 NWLR (Pt. 5) 17.

[18](2000) 13 WRN 60 at 96.

[19]Labour Act, s 11(5).

According to the researchers, only facts known and relied upon by the employer at the time of dismissal should be used at trial in defense of a wrongful dismissal lawsuit, because the statutory clause anticipates only behaviors which were in existence at the time of dismissal and which would have enabled the employer to treat the contract as terminable as being only the grounds under which a party to the employment contract is considered to have been terminated without cause.

When an employer fails to remove an employee promptly or does anything to show that he is no longer concerned about the employee's misconduct, he is presumed to have relinquished his right to reprimand the employee in the future under the law. The act of condoning wrongdoing is known as this. Condonation is similar to waiver, although it is more closely tied to estoppel.[20] An employer may condone the misconduct of an employee for reasons such as lack of a competent hand to replace the employee, indolence in taking action on the misconduct with immediate effect or cost implication of training a new employee to take over from the employee who committed misconduct. Whatever rationale an employer finds for condoning an employee's misconduct, the law prohibits him from approbating and reprobating the same act of misconduct. Where an employer elects to condone a misconduct, he will be prevented from electing to the contrary in future. To claim condonation, an employee must establish that the employer was aware of the employee's wrongdoing and chose to keep him on the job. In Amadi v African Continental Bank,[21] the law on condonation was found to be that an employer who chooses to keep an employee in his job despite full knowledge of his misconduct could not later fire him for the misconduct he had condoned.

Where an employer gives an employee a warning rather than dismiss him, the employer is taken to have condoned the employee's misconduct. This was in issue in the case of African Continental Bank v Nbisike[22] when the respondent's employee, the appellant, deposited excessive interest in his own account. For this he was given a written warning. Subsequently, he abandoned his duty post to pursue a higher education. The employer dismissed him without any reason adduced. In an action for wrongful dismissal, the Court of Appeal held that having failed to take any disciplinary step against the employee other than the warning and proceeding to award him annual increase in salaries for subsequent years, the respondent could not rely on.

[20] E Chianu, *Employment Law* (Akure: Bemicov Publishers Nigeria Ltd, 2004) 160.
[21] (1967) N.L.R 88.
[22] *Ibid,* 725, 745. *Per* Edozie JCA as he then was.

Finally, condonation works to invalidate a dismissal that was based on misconduct that the employer has previously condoned. Apart from the foregoing, an employer has the power under common law to remove an employee without cause if the individual has engaged in substantial misbehavior.[23] It is impossible to list all of the types of misconduct that can lead to summary dismissal. This point was made by Bramwell B in Horton v McMurtry[24] when he said examples may be identified in which the courts have established certain criteria for when a master is justified in dismissing his servant; nevertheless, a close examination of these decisions reveals that they do not provide an entire set of cases, but rather a limited number. Summary dismissal therefore may be on the following grounds recognized at law:

1. Gross Misconduct
2. Disobedience to reasonable and lawful orders; and
3. Incompetence

DISMISSAL FOR GROSS MISCONDUCT

Acts that may constitute gross misconduct are sometimes included in employment contracts. What constitutes gross misbehavior outside of the scope of the employment contract becomes a question of fact and degree.[25] There is no clear legal standard that defines the level of misbehavior that justifies summary dismissal. It can be a single isolated act of sufficient gravity, rather than a series of misconduct. Gross misconduct requires behaviour that goes to the heart of the employment contract. The behavior of an employee must be inconsistent with the fulfillment of the written or implicit terms of employment in order to warrant dismissal.[26] Where the misconduct is committed outside working hours, it will justify summary dismissal only where it can be shown to be harmful to the employer's business integrity or reflect adversely on the capacity of the employee to perform his duty.[27] The perplexing question that occasionally arises is whether an employer can lawfully terminate an employee for alleged criminal wrongdoing without first enabling the individual to be prosecuted in a court of law. It is important to note that, until now, the courts have held that, where an employer's allegations of gross misconduct border on an allegation of commission of an offense, the employer cannot dismiss the employee until the

[23] *Halsbury's Laws of England*, (4th edn; Vol. 16) 436 para 640.
[24] (1860) 5 H & N 667; E E Uvieghara*, Labour Law in Nigeria,* (Ikeja: Malthouse Press Limited, 2001) 63.
[25] A O Elias, 'Summary Dismissal Upon Allegation of Crime-An Overview' [2000] (3)(3) *Modern Practice Journal of Finance and Investment,* 137.
[26] *Uzondu v UBN Plc* (2009) 5 NWLR (Pt 1133*)* 5.
[27] *Under Water Engineering Co. Ltd v Dubefen* [1995] 6 NWLR (400) 156.

employee has been tried for the criminal act in a regular court or tribunal set up for that purpose.[28] Nigerian courts, on the other hand, have held that an employee does not need to go through the rigors of a conventional court or tribunal hearing on an allegation of misconduct verging on crime before the employer can properly fire him.[29] C K, Agomo views the former position as unjust and travesty of justice when she stated that it would be a travesty of justice to hold that an employer who can fire an employee for any act of misconduct if proper procedures are followed loses that right when the person is accused of gross misconduct bordering on criminality. Misconduct is misconduct, whether it is considered major or minor.[30]

This shows that Agomo believes an employer has the authority to fire an employee without first having the employee tried in a regular court. The question then becomes what happens to an employee who is dismissed on an allegation of misconduct bordering on crime but later found not guilty of the offence upon which he was dismissed. If the employee is found not guilty, will he be reinstated in a private sector employment or even in statutory employment? Also, throughout the trial term, will he be entitled to his wages?

In the light of the above, the entire process will be delayed if the court is allowed to instill in the minds of labor and industrial relations experts the obnoxious belief that whenever an allegation bordering on crime is made, the employer can dismiss the employee regardless of whether the allegation is found frivolous by a competent regular court. The practice also violates the Constitution's fair hearing obligations.[31]

The above position shows that it would be against the twin principles of natural justice expressed in Latin maxim *audi alteram partem* and *nemo judex in causa sua* for an employer who accuses an employee of committing criminal misconduct to constitute itself into a prosecutor and a judge in its own case.[32] The employer cannot constitute himself a court and try his employee for criminal offences which are clearly offences against the state. It is a usurpation of the functions of the court and it must not be allowed in a country which vests judicial powers in the courts.[33]

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[28] O K Edu, 'Dismissal upon Allegation of Crime in Nigeria: Need to Comply with Constitutional Provision' [2006] (10) (3-4) *MP JFIL* 339; *Sofekun v Akinyemi* (1980), N.S.C.C. 175; *FCSC v Laoye* (1989) 2 NWLR (106) 652*; Garba v University of Maidaguri* (1986) 1 NWLR (18) 550.

[29] *Yusuf v Union Bank (Nig)* Plc (1996) 6 NWLR (457) 63; *Arinze v First Bank of Nigeria Plc* (2004) ALL FWLR (217) 68; *Olarenwaju v Afribank (Nig.) Plc* (2001) 72 FWLR 2008.

[30] C K Agomo, *Nigeria Employment and Labour Relations, Law and Practice* (Concept Publications, 2011) 176.

[31] Constitution of Federal Republic of Nigeria, 1999 (as amended) s 36(4) and 36(1).

[32] Edu (n 55) 400.

[33] CFRN 1999 s. 6

On the part of an employee, he may be portrayed in the light of the circumstances of the allegation and suffer the infamy which dismissal portends when in the end, he may be found not guilty of the offence. It may also truncate the organization of the employer who may lose money with which he paid a worker that replaced the former employee and he is bound to put the employee back in office and/or pay him all his entitlements without the employee working for the money and other entitlements where the removal is unlawful. This scenario can be avoided by the employer suspending the employee while waiting for the trial of the offence to complete before he can dismiss the employee upon an allegation of misconduct bordering on crime.

DISMISSAL ON GROUNDS OF DISOBEDIENCE TO LAWFUL AND REASONABLE ORDERS

An employee has a legal and reasonable duty to obey his employer's commands while on the job. Turner v Mason, a common law case, established this premise.[34] Unjustified refusal to obey a reasonable request is a breach of duty that could result in the contract being rejected by the employer. In a contractual partnership, obedience is crucial. The importance of obedience was emphasized by the Court in Sule v Nigerian Cotton Board[35] wherein the court stated thus:

> When a servant becomes too large to obey his master, the honorable alternative is for him to resign in order to prevent unpleasant repercussions if an occasion that requires obedience is served with disobedience. No servant, high or low, big or small, is allowed to disobey a valid order under common law or statutory law. Such behavior is frequently met with a summary dismissal punishment. Disobedience is one of the most serious forms of wrongdoing in any organization… Any action or wrongdoing that jeopardizes the Board's discipline and effective administration can only be addressed by removal—either summary dismissal or compassionate retirement.

This demonstrates that intentional disobedience to any legitimate and reasonable command is sufficient grounds for summary dismissal. In Turner v Mason[36] a domestic servant who absented

[34] (1945) 1 M & W, 112.
[35] *Olatunbosun v NISER* [1988] 3 NWLR (80) 25.
[36] (1945) 1 M&W 112.

herself from a night work to visit her mother who was sick and in danger of death in disobedience of her employers' orders was dismissed.

The researcher argues that it is a question of fact whether a single act of disobedience will justify dismissal, and that the degree of disobedience and the act of disobedience must affect the contractual relationship between the parties' substratum. One act of disobedience may go to the heart of the contract and jeopardize the parties' relationship confidence; in such cases, a single act of disobedience may justify dismissal over a series of acts of disobedience that do not go to the heart of the relationship between the parties in an employment contract.

The disobedience that may justify dismissal must be a disobedience to a lawful and reasonable order. A lawful order is an order which is not contrary to law; or an order which is permitted by law.[37] A reasonable order, on the other hand, is one that is fair, suitable, or moderate in the circumstances.[38] As a result of the preceding, the employer must guarantee that the order provided to the employee, whose disobedience may result in dismissal, is not only legal but also reasonable.[39] One recurrent issue that arises from lawfulness and reasonableness of orders is the act of superiors ordering their junior officers to carry out menial jobs that are outside their contract of employment. A refusal to obey such order should not attract dismissal and there is no lawfulness or reasonableness in commanding a worker to carry out jobs which are not necessarily incidental to his contract of employment.

Under the Philippine labour law, employees are required to follow their employers' reasonable and legitimate commands related to their employment; refusal to do so may result in dismissal or other disciplinary proceedings.[40] According to the Philippines Labour Code, An employee's action must have been willful and intentional, with the willfulness defined by a wicked and twisted attitude, for an employer to dismiss them for disobedience to legitimate and reasonable command ii) The command that was disobeyed had to be reasonable, with reasonableness defined as a wrongful and perverse attitude, legal and communicated to the employee, and relevant to the duties that the employee was employed to execute.[41]

[37] (1945) 1 M&W 902.
[38] *Ibid,* 1293.
[39] *University of Calabar v Essien* (1996)10 NWLR (Pt. 477) 225.
[40] Labour Law, (Philippine) Article 282, <http://www.labour.USC.Law.Org/Wilfuldis obedience_to_Lawfulorder> accessed 25 September 2021.
[41] *Ibid.*

Where an employee is faced with two contradicting orders, one in writing and the order orally, the employee is entitled to follow the first in time or the one in writing.[42] In Strabag Nig Ltd v Adeyefa[43] the project manager instructed the respondent orally to pay a third-party contrary to the companies' guidelines on disbursement of funds. He was compulsorily retired and his claim for wrongful retirement failed. The above authority shows that an employee who is faced with an order in writing and one orally from two of his superiors should follow the one in writing and when the orders are all orally made the latter in time should prevail. In a master and servant relationship, usually the last order is required to be obeyed. However, where the first order is in writing, it cannot be varied by a subsequent order made orally. In other words, an employee who faced two orders the first in writing and the latter orally is bound to obey the one in writing. This view is anchored on the principles that contents of a document cannot be varied orally.

DISMISSAL ON GROUNDS OF INCOMPETENCE

The competence of an employee is determined by the education and skill the employee represented at the time of employment and the aptitudes, method of business, dexterity or mental ability he acquires while working for his employer.[44] Bearing in mind the modern trend in advocacy for protection of rights of employees in their job and the growing industrialized society as well as work place that is characterized by advanced technology; effort is geared towards protecting employees from the enthusiastic desire of employers to lay off employees on grounds of incompetence. One such method is to place the burden of proof of incompetence on the employer. That instance, if an employee is fired for incompetence, the employer must prove that the person was incompetent, or the dismissal will be unjust or illegal. Another way is to distinguish incompetence from mistake. The fact that an employee made a mistake is no ground for dismissing him. This was sanctioned in the case of Garabedian v Jamakani.[45]

MISCONDUCT OUTSIDE WORKING HOURS AND WORKPLACE

It appears to be a settled stance that an employer has the right to fire an employee if the latter's actions harm the employer's business and bring him into disrepute, even if they occur outside of

[42]*Nigeria Arab Bank Ltd v Shuaibu* (1991) 4 NWLR (Pt. 186) 450.
[43]*Ibid*; *Co-operative & Commercial Bank v Essien* (2001) 4 NWLR (Pt. 704) 479; *Ezekere v Guinness* (2000) 8 NWLR (Pt 670) 648.
[44] Chianu (n 47) 196.
[45](1961) ALL NLR 186.

working hours.[46] The crucial question is whether the act of the employee did in fact adversely affect the proper discharge of his official duties or was capable of jeopardizing the business interest of an employer.[47]

It is worthy of note that there are circumstances where an employee's office will be tied to his private life. In such situations, what the employee does outside working hours and workplace may amount to misconduct justifying his dismissal. The Court in A-G Cross River State v Esin,[48] when it was reviewing the content of a letter sent in self-defense in response to a sexual harassment accusation against a judge, it noted that the rigors of a judge's job make his personal life inextricably linked to his professional life. His personal life reflects his professional persona. A judge must be cautious about what he says or writes in public and in private.[49]

In Moeller v Monier Construction Co (Nig) Ltd,[50] The plaintiff had a practice of bringing whores into his employer-provided apartment. The females arrived late at night and left early the next morning. The question was whether the plaintiff's conduct was likely to bring the company into disrepute with other people and in front of the public, as required in the service agreement. In response to this question, the Court of Per Salvage J. stated:

> True, bringing women into his room for the night is his private matter, but when he is inhabiting the company's flat, this is certain to have a negative impact on the company. By permitting its staff to bring in terrible girls, the public is forced to believe that the corporation fosters immorality among African girls. A girl that is picked in a hotel cannot be called a good girl, whether she is African or European.[51]

The purport of the foregoing is that whatever an employee does in his private life, he should take into cognizance, the nature of the office he occupies as there are private lives that may adversely affect the office of an employee. The allegation of sexual harassment may go down well in some

[46]*Ibid,*160.
[47] N A Inegbedion, 'The Class of Misconduct to Justly Removal from Employment: A-. G. Cross River State v Essien' [1993] (2)(1) *Edo State University Law Journal,* 121-122.
[48](1991) 6 NWLR (Pt. 197) 365.
[49]*Ibid*
[50] (1961) ALL NLR 176.
[51]*Moelle v Monier Construction Co (Nig) Ltd* (1961) ALL NLR 176.

organizations but not in others. The offence of rape provided in Nigerian criminal law[52] would constitute misconduct bordering on allegation of crime in cases involving university lecturers and medical doctors. Outside these, the law should lend its protection to employees against the excesses of the employers who may wish to constitute themselves into nuisance in the private life of their employees. The employer has the authority to fire employees for legally acknowledged reasons; but in every case, the dismissal or termination ought to accord with natural justice and substantiated with reasons which must be tied to the employee's capacity in connection to the activity he is hired to undertake This is the modern and international perspective on an employer's power to determine an employment contract.

ANALYSIS OF THE LEGAL IMPLICATIONS OF SUMMARY DISMISSAL OF WORKERS IN NIGERIA

When compared to the International Labour Organization rules on unfair dismissal derived from the Convention on Termination of Contract of Employment, certain dismissals and/or terminations of contract of employment in Nigeria constitute to unfair dismissal. The following are some examples of such circumstances and their legal ramifications:

DISMISSAL WITHOUT REASON

Keeping in mind the distinction already made between termination and dismissal as two limbs of contract of employment determination, an attempt is made here to test the employer's power to terminate or dismiss an employee without cause against the backdrop of ILO norms on unfair dismissal. In the instance of a master-servant relationship, Nigerian law appears to have established that an employer is not required to furnish an employee with reasons for terminating the employee's contract of employment provided the employer does so by complying with the contract's terms and conditions. In the case of contracts with statutory flavor, employers are only required to adopt the statutory prescribed way for terminating a contract of employment backed by statutes or regulations enacted according to the statute. Nigerian courts have often maintained the premise that an employer does not have to provide reasons for terminating an employee's contract. In Momoh v CBN[53] the Court determined that an employer has the authority to cancel an employment contract without providing reasons: Normally, a master has the right to dismiss

[52] Criminal Code Act, Cap. C38 LFN 2004, s 358
[53](2007) 14 NWLR (1055) 508.

his servant for good or bad reason, or for no reason at all, under common law. In accordance with this principle, courts rarely require particular execution of an employment contract so as not to create a situation in which an employee is forced upon an unwilling employer, just as no employer can prevent an employee from seeking work elsewhere. However, where there is a documented employment contract, statutory provisions, and regulatory service conditions, equity requires the courts to hold the parties to the terms of the employment agreement.[54]

A master can end an employment contract at any moment for any cause, good or bad.[55] Under Nigerian common law, an employer's primary obligation is to operate within the confines of the employment contract's clauses, rules, or laws governing the employment contract of the parties requesting termination.[56] Although the employer is not compelled to provide a reason, if he does, he must defend the reason; otherwise, depending on the circumstances, the termination will be improper or unlawful. In NEPA v Eboigbe,[57] the Court stated that a private limited corporation or any other employer of labor has no responsibility to keep an undesired employee on staff and may terminate the employee's employment at any time for any reason. In other words, an employer of labor is not obligated to keep an unwarranted employee on staff and may terminate the employee's employment for any reason. However, if an employer gives a reason for the termination, the justification must be believable in order to justify the employee's dismissal.

In such a situation where the employer relies on a ground for termination, the burden which ordinarily would have been on the aggrieved employee to prove wrongfulness of the termination will move to the employer who has chosen to give reason. The employee who is alleging wrongful or unlawful termination bears the burden of demonstrating the wrongfulness or unlawfulness of the termination, unless the employer relies on a cause. In this scenario, the employee must show the court that he is an employee of the defendant, that he understands the terms and circumstances of his employment, and that he understands how and by whom he can be fired.[58]

When compared to the ILO standards on unfair dismissal, which are found in the ILO Termination of Employment Convention, particularly Articles 2 and 4, it is clear that the purported

[54]*N.R.W. Ind. Ltd v Akingbulugbe* (2011) 11 NWLR (1257) 135.
[55]*L.C.R.I. v Mohammed* (2005) 11 NWLR (935) 4; *Olaniyan v Unilag* (1985) 2 NWLR (Pt. 9) 98*; Akinnnibosun v Union Bank of Nigeria Plc* (2014) 48 N.L.L.R (158) 489 N.I.C
[56]*Daodu v UBA Plc* (2004) 9 NWLR (878) 276; *Chukwuma v S.P.D.C. (Nig) Ltd* (1993) 4 NWLR (289) 512.
[57](2009) 8 NWLR (1142) 150; *Angel shipping & Dyeing Ltd v Ajah* (2000) 13 NWLR (685) 532
[58]*Anaja v UBA Plc* [2014] 4 ACELR 82.

exercise of the right of termination or dismissal that exists in Nigeria today without the requirement of justification amounts to unfair dismissal.[59]

DISMISSAL IN CONSEQUENCE OF UNION ACTIVITIES

Employees form unions in order to compel the company to provide them with favorable conditions and terms. Strikes, lockouts, work-to-rule, picketing, and go slow are examples of union activity. Strike is of particular importance in our study since it occurs frequently in Nigerian labor relations. Section 48 of the Trade Disputes Act defines a strike[60] as the stoppage of labor by a group of employees acting together, or a concerted rejection or refusal under a shared understanding by any number of employees to continue working for an employer as a result of a conflict, done in order to compel their employer, or any individual or group of those employed, to accept or reject terms of employment and working conditions.[61]

A refusal to work as a result of a strike could be considered a breach of contract, voidable at the employer's request under common law. The employer then has the choice of either ignoring the breach or accepting it as a repudiation of the employee's contractual obligations. This is exemplified by the case of Anene v Allen & Co Ltd[62] wherein his Lordship Brett J.S.C (as he was at the time) stated that a servant who willfully misses work commits a contract violation that may result in dismissal but does not necessarily terminate the contract.

Section 43 of the Trade Disputes Act, on the other hand, stipulates that provides that regardless of anything else in this Act or any other legislation, any worker who participates in a strike is not entitled to any wages or other remuneration for the duration of the strike, and any such period shall not count for the purpose of reckoning the duration of continuous employment, as well as all rights based on such continuity, will be judicially affected.

The Supreme Court upheld this legal stance in the case of Abdulraheem v Olufeagba.[63] This demonstrates that strike action is a breach of the employment contract, which employers use to terminate workers' employment. As a result of their participation in a strike in Nigeria, workers have been threatened and abused. Nigeria's scenario contrasts sharply with the International

[59] *Ibid.*
[60] Cap T8 LFN, 2004.
[61] TDA 2004.
[62] (1975) 5 UI.L.R 404.
[63] [2006] 17 NWLR (Pt. 1008) 280.

Labour Organization's (ILO) Termination of Employment Convention standards on unfair dismissal, which specify, among other things, that union membership is not required or participating in union activities outside of work hours, or with the employer's permission, during work hours, is not grounds for dismissal. It is wrong to fire a worker who goes on strike in Nigeria. This is especially true in Nigeria, where a strike is all it takes to enforce a legally signed collective agreement between parties in a trade dispute. After all, the right to strike is the only recognized means of safeguarding workers' and organizations' professional interests. This right is a necessary component of the collective bargaining principle, without which organized labor would be helpless to cope with management[64] As a result, any dismissal or termination as a result of union action is considered an unfair dismissal.

DISMISSAL WITHOUT NOTICE

The right of an employer to fire an employee without cause is a well-known fundamental of law in Nigerian labor and employment law. Any employee who engages in significant wrongdoing that jeopardizes the employer-employee relationship of confidence and trust may be terminated without cause.[65] As a result, an employee's behavior that is harmful to his employer's interests is termed gross misconduct, and under Nigerian employment law, the employer has the right to dismiss the employee without cause and without warning. A summary dismissal is one that does not require prior notice.

In Nigeria, there is a distinction in the notice requirements for termination and dismissal. Dismissal, on the other hand, does not need notice or payment of salary in lieu of notice. Article 11 of the International Labour Organization's Termination of Employment Convention, which establishes ILO norms on unfair dismissal, affirms an employee's right to notice or salary reimbursement in place of notice. In any case of contract termination, communication is required under Article 7 of the Convention.

[64]K C Nwogu, *Collective Agreement in the settlement of Trade Dispute in Nigeria: Implications for Industrial and Labour Relations*, (Enugu: Nolix Educational Publications Nig, 2010) 181; P E Oshio, 'Banks Strike and The Law in Nigeria' [2004] (8)(1-2) *MPJFIL*, 206; O V C Okene, 'The Legal Regulation of Strike in Nigeria: A Critical Appraise' [2001](5)(4) *Modern Practice Journal of Finance and Investment Law,* 606.

[65]C Nwagbara, *Determination of Contract of Employment and Remedies for Wrongful Dismissal* (Nigeria: Tait Publishers, 2000) 50.

DISMISSAL AND TERMINATION WITHOUT MOTIVE

In Nigeria, the law believes that the cause for terminating an employment contract is irrelevant as long as the employer fulfills the contract's terms or the statutory rules that regulate the employment contract. This means that, in the case of employments with statutory flavor, an employer acting in bad faith or with malice can simply obey the provisions of a legislation governing employment, or the terms of the employment contract in the case of employment contracts without legislative protection. 'It is now clear that where an employer gives the requisite notice to terminate, the legitimacy of the termination cannot be challenged on the grounds that the employer acted with malice or any other unlawful motive,' adds Nwagbara.

Even if the termination is for an improper reason, an employment contract in Nigeria will be canceled at the end of the notice time granted[66]. The law that states that the reason for termination or dismissal is irrelevant if the employer respects the notice period or the employment act is no longer legitimate, especially in light of the ILO's unfair dismissal guidelines. This is a welcome development, especially in light of Article 4 of the ILO Convention.[67] Courts can use the Convention's provisions to call any contract of employment decision based on a reason other than those stated in Article 4 of the Convention on Termination of Employment into question[68]. The National Industrial Court can do so under section 254C of the Constitution, which allows it to deal with problems relating to or important to the application of international agreements like Convention 158 of 1982.

There is a need to move away from this ancient and archaic rule that allows an employer to fire their employees at any time for any reason, with the understanding that their only obligation is to follow the formalities imposed by the terms of the employment contract or the provisions of a statute governing the employment in question. It is past time for us to look beyond the formalities and investigate the motivation for such termination or dismissal, if only to provide employees with a semblance of security, as is the global trend in labor and industrial relations.

[66] *Ajayi v Texaco (Nig) Ltd* [1987] 3 NWLR (pt. 62) 577.
[67] Termination of Employment Convention No 158 of 1982.
[68] *Ibid.*

CHALLENGES OF SUMMARY DISMISSAL

ECONOMIC CHALLENGE

In the past, movement of people used to be restricted almost exclusively to intra-city but the movement of people from developing to developed countries has assumed a regenerated momentum.[69] Nigeria is witnessing unprecedented exodus of many Nigerians into the developed and even developing neighbouring countries. Apart from the harsh political climate, sudden dismissals of employees and inability to retain good jobs led many to "check out" of the country with their entire nuclear families. Many of those that "checked out" included teachers, nurses, doctors, university professors, top class civil servants, bankers, industrialists, many university graduates as well as skilled and semi-skilled labour. Many productive Nigerians are therefore providing a boost to the labour force of other countries, particularly in some specialized areas thereby causing serious economic fall and national brain drain.[70]

SOCIAL CHALLENGE

A major social outcome of summary dismissal is that almost half of the population today is faced with the paradox of poverty in the midst of plenty. Prior to the era of wide scale dismissal from employment and in some cases retrenchment, the incidence of advance fee fraud, popularly known as 419, was negligible. Summary dismissal, retrenchment, unemployment and redundancy of able-bodied men and women have led to a general decline in social values and Machiavellian approach towards earning a living by all means even including kidnapping, internet fraudsters, ritual killings and sundry.[71] It should be noted that the manner in which most 419 frauds is perpetrated shows some level of intelligence, skill and a lot of homework. Summary dismissal and high unemployment level among youths and fresh university graduates impoverished many families. In some cases, both husband and wife lost their jobs at the same time, whilst child labour became more common with everyone fending for him/herself. For those dismissed and unable to source commensurate employment, fall in standard of living was inevitable.[72]

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[69] S Fajana, *Functioning of the Nigerian Labour Market* (Lagos: Labofin and Company 2000) 174.
[70] *Ibid.*
[71] A I Ahmed and Others, 'A Review on Effects and Challenges of Staff Retrenchment on Organisational Performance of Commercial Banks' [2016] (2) *International Journal for Innovative Research in Multidisciplinary Field*, 12.
[72] J Bell, *An Employee Management Handbook*: *A Practical Guide on Managing People and Employment Law* (Watford: Stanley Thornes 1981) 79.

The period of mass dismissals usually coincides with increase in the wave of armed robbery, devious means of waylaying vehicles on express roads, robbery at sea and airports, insurgencies like Boko-Haram attack, oil theft, youth restiveness in some coastal areas, daylight and midnight robberies. The rise in costs and the poor state of infrastructural facilities also make adjustment difficult. The government also does not have in place, programmes or policies to rehabilitate workers who lost their jobs during their productive years.[73]

POLITICAL CHALLENGE

In terms of the political challenge of summary dismissal and in cases of mass dismissals, the remaining employees may push to protect their jobs when unemployment is high by blocking changes in policy that generate job reallocation across sectors. This applies to any change in government policy that has effects on the allocation of labour. This includes many labour market reforms, trade reforms, or changes in the composition of government expenditure.[74] The implication is that the more dismissals occur in a workplace or the more imperfect the labour market, the greater the political sclerosis in all areas. In the public sector such as civil service jobs in most countries such as Nigeria, dismissals induce people to stick to their jobs and accordingly lobby or vote against measures that would tend to destroy their jobs. Another political challenged posed by summary dismissal is that the dismissed employees or unemployed are not usually inclined to participate in politics to any great extent.[75] Their lack of involvement, though, is not attributed their employment status, rather, it is a consequence of their social position.

REMEDIES FOR SUMMARY DISMISSAL

Certain remedies are available to an employee whose employment contract has been unlawfully terminated and/or unfairly discharged. The contract of employment may itself make express provisions concerning the remedies available to the parties in the event of a breach. In such instances, the contract's specific stipulations will be followed by the court.

Generally, the remedies available to an unfairly dismissed employee are: conciliation, reinstatement, damages, declaration, compensation, claim on a quantum meruit. The nature of the employment contract between the employer and the employee, on the other hand, will define the remedies

[73] E D Ekanem and E Umemezia, 'Retrenchment in Nigeria and Its Socio-Economic Effects' [2018] (6)(2) *Nigerian Journal of Management Sciences,* 295-302.
[74] G Saint-Paul, 'The Political Consequences of Unemployment' [1996] (5) *Swedish Economic Policy Review,* 259-295.
[75] K Schlozman and S Verba, *Injury to Insult* (Cambridge: Harvard University Press 1979) 2

accessible to an aggrieved employee. In a master/servant type of employment, the court in New Nigeria Newspapers Ltd v Atoyebi[76]stated that a servant unfairly dismissed in a master/servant type of employment, his only recourse is an award of damages equal to the amount he would have earned if his appointment had been determined correctly. The servant is entitled to all of his wages and benefits up to the day of his dismissal, as well as salary in lieu of notice when the conditions of the employment contract provide for it.

An unfairly dismissed employee whose contract of employment is clothed with statutory flavor, the remedies available to the employee are specific performance of the contract, injunction, and/or reinstatement, which are not available to employees whose appointments are terminated in simple contracts of master and servant.[77] When an employee is supposed to be compensated for completing a task but is unable to do so due to his employer's negligence, the employee has the right to sue on a quantum meruit basis (as much as he deserves).[78] As a result, the remedies available to an unfairly fired employee will be determined by the type of the contract, its provisions, and the facts and circumstances of the case.

INTERNATIONAL LABOUR ORGANIZATION STANDARDS ON SUMMARY DISMISSAL

When an employee is fired for no apparent cause or purpose, this is a violation of article 4 of ILO convention 158 of 1982, which specifies that a worker's employment shall not be terminated unless there is a valid reason, which must be related to the worker's capacity or behaviour or based on the undertaking, establishment, or service's operational requirements. The convention's goal is to assure substantive and procedural fairness prior to an employer's unilateral dismissal or termination of employment. As a result, employers must provide a valid basis for dismissal or termination. A justification is valid if and only if it is related to the employee's capacity or behavior. Factors such as gross misbehavior, incompetence, disobedience, and negligence, among others, are associated with an employee's capacity or conduct, as are reasons that may be regarded to be connected with an establishment's operating requirement[79]. This means that any exercise of the right to terminate employment or dismiss an employee in violation of article 4 is unjust.

[76] (2013) LPELR – 21489 (CA)
[77] *Emmanuel Odibo v First Bank* (2018) LPELR -46628 (CA)
[78] Okene (n 29) 128.
[79] G G Otuturu, 'The Limits of the Application of the Rules of Natural Justice in Contract of Employment' [2008] (2)(1) *Nigerian Journal of Labour and Industrial Relation,* 80.

The ILO's termination of employment standards strives to strike a balance between retaining an employer's ability to fire workers for valid reasons while also ensuring that such dismissals are fair, serve as a last report, and do not have a disproportionately negative impact on the worker.[80] It will be reiterated that valid reasons are mandatory requirement of the International Labour Organization Standards for Termination of Contact of Employment. It is a fundamental duty an employer owes an employee during the termination of the appointment of the employee. The treaty stipulates in Article 2 that it applies to all spheres of economic activity and to all employed people. The term "all employed persons" refers to anyone who works for a living in any capacity. In contrast to Nigerian labor and industrial law jurisprudence, employees in solely master servant relationships, as well as employees whose contract of employment is guaranteed by statutes, are covered by the preceding paragraph of article 2.[81] When there is a clear contrast between a master servant relationship and an employment connection covered by statutes or regulations enacted in response to a statute. The relevant authority can make any order that is reasonable in view of the facts and circumstances of a particular case to evaluate the fairness or otherwise of the termination. The provisions of the convention's articles 8 and 9 demonstrate this. The provisions of these articles are stated in chronological order.

"A worker who believes that his employment has been unjustifiably terminated shall be allowed to appeal against such termination to an impartial authority such as a court, labor tribunal, arbitration committee, or arbitrator in the place where the termination happened," according to Article 8 (1). 'The bodies referred to in article 8 of the convention shall be used to analyze the reasons for the termination and other relevant facts in order to establish whether the termination was justified,' says the first paragraph of article 9.

The employer bears the burden of proving the reasons for termination[82] The court will also take into account the parties' evidence and the procedures set by national law. The body will then decide whether the reasons submitted for the termination met the requirements of Article 4 of the agreement."

Article 5 of the treaty establishes what constitutes valid grounds for dismissal and what does not. The following are not valid grounds for termination, according to the policy.

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[80] Otuturu (n 107)

[81] B Atilola, 'Legal Redress for Wrongful Termination of Contract of Employment: What Lawyers Must Note' [2011] (15)(2) *Nigerian Journal of Labour and Industrial Relation,* 12.

[82] ILO Termination of Employment Convention 1982 (No. 158), art. 9(2).

1. Union membership or involvement in union activities is permitted outside of working hours or with the approval of the employer.
2. aspiring to be a worker's representative, or acting or having acted in that position.
3. A complaint or participation in a legal action against an employer for alleged infringement of laws or regulations, or recourse to competent administrative authorities;
4. Race, color, sex, marital status, family responsibilities, pregnancy, religion, political viewpoint, national extraction, or social origin are all considered; and
5. Work absence during maternity leave.

The above implies that any employment contract determination based on these grounds is wrongful dismissal. According to Article 6 of the agreement, temporary absence from work owing to illness or injury is not a valid ground for termination. This means that if an employee's illness is long-term and hinders his or her ability to carry out the contractual relationship's objectives, the employer may be justified in terminating the employment contract. The convention's methods of implementation will establish the definition of a brief leave from work, the extent to which medical certification is required, and any limitations to the application of paragraph 1 of this article.

According to Article 7 of the agreement, a worker's employment cannot be terminated due to his or her conduct or performance unless the employer cannot fairly be anticipated to provide this opportunity. The provision of the article emphasizes the fundamental principles of due process in the determination of employment contracts[83]. According to the convention, a worker is entitled to notice or compensation in lieu of notice, except in cases of serious misconduct; serious misconduct dismissal should be limited to cases where the employer cannot reasonably be expected to take any other alternative; and a worker accused of misconduct should be given ample opportunity to state his case promptly, with the assistance of a representative where appropriate. The term "severe misbehavior" is not defined in the treaty, and each country must decide how to interpret it. However, a member state might exempt the following sorts of employees from all or part of the treaty's restrictions under the convention. Workers hired on a contract for a set amount of time or for a specific task,

a. Workers on probation or completing a qualifying period of work, determined in advance and for a fair period of time, and
b. Workers who are employed on a temporary basis.

[83] ILO Termination of Employment Convention 1982 (No. 158), Art. 7.

Despite the fact that the leverage appeared to allow member states to exclude certain types of workers from the convention's operation if they so desired, the safeguard is embedded in article 2/3 of the convention, which states that adequate safeguards shall be provided against recourse to contracts of employment for a specified period of time in order to avoid the protection provided by the convention.[84] This imposes an obligation on a member state that wishes to exclude certain employed persons from the convention's provisions to find protection for them that is equivalent to the protection provided by the convention. This is an international commitment to tenure security for employees in vulnerable groups. This contrasts with the common law notion of termination at will in Nigeria.

APPLICABILITY OF INTERNATIONAL LABOUR ORGANISATION STANDARDS ON SUMMARY DISMISSAL IN NIGERIA

The function of a country's government entities and the country's constitution are crucial to the application of International Labour Organization Standards (which has been discussed in chapter three). The Legislature, Executive, and Judiciary are the three arms of government in Nigeria, and each has a role to play in the application of International Labour Organization Standards on wrongful dismissal in Nigeria. As a result, this sub-chapter focuses on the roles of Nigeria's three branches of government in implementing ILO standards on unfair dismissal.

When the International Labour Organization judges it appropriate to adopt a specific standard to address a global labor issue, the executive arm of government of a state having executive power must accede to and ratify the convention. According to the CFRN 1999, the President has the following executive powers: The President has executive powers over the Federation, which he may exercise directly or through the Vice President and Ministers of the Federation's Government or officers in the Federation's public service, subject to the provisions of this Constitution and any law passed by the National Assembly.[85]

Because the government of the Federation has the power to make laws regarding the implementation of international treaties and conventions, it is clear that the president of the Federal Republic of Nigeria has the responsibility to ensure that International Labour Organization

[84] *Ibid,* art. 2(3)(4).
[85]Constitution of Federal Republic of Nigeria, 1999 (as amended) s. 5 (1).

conventions adopted by the International Labour Conference are ratified.[86] The Executive is also responsible for pursuing Nigeria's social and foreign policy objectives, as laid out in the Constitution. The International Labour Organization's member states have an obligation to ensure that the organization's standards are implemented. The ILO Termination of Employment Convention, which establishes International Labour Organization norms on unjust dismissal, aims to ensure job security in ILO member countries.

If Nigeria's Federal Executive Council believes it is necessary to end the arbitrary exercise of dismissal and termination powers, it must ratify the International Labour Organization's Convention on Termination of Employment, which contains the standards on unfair dismissal that are the subject of this dissertation, and then work with the legislature to domesticate it.

In the domestication of International Labour Standards, the legislative has a role to play. In the context of international treaties, domestication simply refers to the process by which a state party to a treaty incorporates the treaty into its domestic law. The legislative arm of government in Nigeria must pass legislation to incorporate international treaties and agreements. This is because, according to the Nigerian Constitution, any international treaty or convention that is not accompanied by domestic legislation cannot give birth to any legally enforceable right or obligation on the side of any individual in a domestic court. This means that the legislature must ensure that every treaty or convention accepted by the Executive Arm of Government is enacted into domestic law, allowing citizens to benefit from the treaty or convention's inherent benefits and privileges.

The National Assembly is constitutionally empowered to domesticate international treaties and conventions that Nigeria has signed and ratified by the executive branch of government, regardless of the subject matter of the treaties and conventions. This is in accordance with the Constitution, which states, "The National Assembly may establish legislation for the Federation or any portion thereof on issues not included in the Exclusive Legislative List for the purposes of implementing a treaty."[87]

As a result, the National Assembly is charged with ensuring the implementation of labor regulations against unjust dismissal. It is encouraged that, as soon as the Convention is adopted, the National Assembly move quickly to create an enabling legal structure for the Convention that

[86] *Ibid,* s 12.
[87] CFRN 1999, s 12(2).

will allow it to be implemented without the need for domestication, as is the case with monist countries.

The Court, being the third branch of government, has a significant function to perform. This position is solely responsible for interpreting laws in order to determine the rights, responsibilities, and liabilities of individuals and entities in Nigeria. The CFRN 1999 establishes the court's principal responsibility: All matters between persons, or between government or authority and any person in Nigeria, and all actions and proceedings relating thereto for the decision of any question as to that person's civil rights and obligations shall be subject to the judicial powers vested in this section.[88]

This depicts that the court is in the business of determining rights and obligations of persons in a particular society. These rights and obligations are outlined in the laws that make up a country's legal system. So, how do Nigerian judges feel about treaty implementation in the country? The constitutional framework in Nigeria governs the application of treaties by domestic courts. The function of courts in the execution of international treaties and conventions in Nigeria is examined using four primary approaches:

a. International law is directly applied;
b. Interpretation of domestic law using international law as a guide;
c. Establishment of an international law-based jurisprudential principle; and
d. The use of international law to support a decision made under domestic law.

LESSONS FROM UNITED STATES OF AMERICA

In America, the doctrine of dismissal is employment at will which means that, absent express contractual or legal protections, an employer is free to discharge individuals no matter for reasonable or unreasonable cause, or no cause at all. The law of discharge in the United States began with the principles of the English common law.[89] The principle of master and servant was that all the employment contracts were fixed-term contracts and the length of term was determined by the contract. If there was no specific term-related clause in the contract, the length of term was determined by local custom. This principle could protect both parties from each other's opportunistic activity. For example, in agricultural production, most of work had been done in the

[88] CFRN 1999, s 6(6)(b).
[89] J M Feinman, 'The Development of the Employment at Will Rule' [1976] (20) *AM. J. LEGAL HIST.*, 118.

harvest in the fall and there was little work in the winter. Therefore, if a servant's term in the contract was one-year, the master should retain the servant in the winter. When a master wanted to discharge a servant, the master should offer reasonable notice period or a just cause for termination.[90]

Although America has a common law tradition, today, there are many statutes in some specific areas. In the federal level, National Labor Relations Act (NLRA) and Title VII are important acts related to the dismissal issue. The NLRA protects employees who take part in union activities and Title VII prohibits employers from firing employees on the basis of race, color, religion, sex and national origin. After Title VII, the Age Discrimination in Employment Act of 1967 (ADEA) protects employees aged 40 or older from discrimination on the basis of age in the discharge. The Americans with Disabilities Act (ADA) prohibits discriminations against employees with disabilities in the discharge. In addition, Occupational Safety and Health Act 1970 (OSHA) and Fair Labor Standards Act 1939 (FLSA) have whistleblower protections on the dismissal. If an employee engaged in any activity protected by the whistleblower protection law, such as reporting a violation of law, the law protects him or her against the employer's retaliatory dismissal.

The laws at the state level in America is also something Nigeria can learn from. For instance, at the state and local level, there are also many statutes and ordinances related to the dismissal issue. For example, the Conscientious Employee Protection Act[91] in New Jersey provided that, when an employee reported his or her employer's misconduct violating public safety, public health or public welfare, or the employer has other cheat or inappropriate behavior, the law protects the whistleblower against the retaliatory dismissal of the employer. The Wrongful Discharge from Employment Act 1987 in Montana is the only state statute focusing generally on dismissal protection. It stipulated that if an employer has no good cause to discharge an employee, such a discharge is unlawful. This act also allows the economic termination that, "disruption of the employer's operation, or any other legitimate business reason"[92] are other important good causes for termination in the Montana. In addition, the National Conference of Commissioners on Uniform State Laws offered the Model Uniform Termination Act which can be a good reference for courts. The American Law Institute also provided the Restatement of Employment Law that

[90] *Payne v Western & Atlantic R.R. Co* 81 Tenn. 507 (1884).
[91] NJSA 34:19-1, et seq.
[92] Mont. Code Ann. § 39-2-903(5) (1989)

courts can refer to.[93] Regarding mass redundancy, the Congress enacted the Worker Adjustment and Retraining Notification Act (WARNA) to protect employees.

CONCLUSION

The current state of job termination and dismissal law and practice in Nigeria still leaves a lot to be desired. The position of law still twists the fate of an employee in the hand of a draconian employer who could dismiss his employee at will and without a valid reason for same. Unfortunately, despite the fact that many governments around the world have embraced the ILO requirements for fair and good grounds for evaluating employment contracts whenever the need arises, Nigerians continue to adhere to the unfair position of common law in determining employment. This ILO Convention has not witnessed life in Nigeria, some challenges have been bottlenecks for its realization. Non-ratification of the convention by the Nigerian Executive Arm of Government, for example, is one of these issues, the un-readiness of Nigerian Government to domesticate the convention, the seeming inconsistency in the Constitution as regards application of labour treaties and conventions. Another factor is the lack of a legislative framework in Nigeria for the effective implementation of ILO norms on unfair dismissal. Without a doubt, the foregoing stances have resulted in job insecurity in Nigeria, particularly in the private sector, where employment terms are not backed up by a legislation. However, if the recommendations in this paper based on the findings of facts are to be put in practical operations, termination of employment will wear a new look particularly with regard to unfair dismissal of employees.

RECOMMENDATIONS

1. Nigerian labour laws should be reviewed and redeveloped in the directions indicated by ILO Convention and Recommendations on Termination of Employment. This can be done by setting up a committee in the National Assembly for Ratification of ILO Conventions. This will reduce the rate of unfair dismissal of workers in Nigeria and further protect workers.
2. In order to close the gap in the relevant labour legislations, the CFRN 1999 (Third Alteration) Act 2010 which gives the NICN exclusive jurisdiction to hear and determine labour disputes concerning unfair labour practices and other laws such as the Labour Act should be amended to include a section that stipulates that a dismissal is automatically unfair if the employer fails to prove the reason for dismissal is based on issues related to the employee's conduct or

[93] S Estreicher, 'Unjust Dismissal Laws: Some Cautionary Notes' [1985] (33) *AM. J. COMP. L.,* 311.

capacity; or employer's operational requirements; and that the dismissal was effected in accordance with a fair procedure. This will help provide clarity and totally outlaw unfair dismissal in Nigeria. It will also help to introduce procedural steps to be followed by employers to help demystify the concept of unfair dismissal.

3. The constitutional provision requirement for domestication of labour treaties and conventions should be expunged. The criterion for deciding labour disputes with respect to unfair dismissal should not remain solely the court's interpretation of fairness but the provisions of international best practice.
4. There is need for Nigeria to pursue a policy of fair dismissal by ensuring the application of ILO Termination of Employment Convention 158 of 1982. It is time for Nigeria to look beyond the formality and question the motive for such termination or dismissal at least to afford employees a little sense of security which is the global trend in the world of labour and industrial relations.
5. *Nigeria should enact a new law to be known as the Labour Rights Act to provide for a right not to be unfairly dismissed and right to seek reliefs of re-instatement, re-employment and compensation for unfair-dismissal as well as circumstances where a termination of employment would be considered an unfair-dismissal. This will be in accord with the practice in the USA. A law on unfair-dismissal such as the proposed Labour Rights Act would take care of the problem above and give some protection to workers who may otherwise be rounded out of employment on account of their union activities and other invalid reasons for the termination of employment.*