Accentuating the inherent precarious nature of the remedy of reinstatement in employer-employee relationships

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Accepted 23 October, 2012

Maslow (1954), in his masterpiece treatise, fashioned the hierarchy of needs, namely physiological, safety, belongings, esteem and self-actualization needs. He was of the opinion that on fulfilling one stage substantially, an individual aspires and is only motivated by the attributes of the next stage. In Nigeria, most of the population oscillates between the first and the second level. People work in order to live, that is, to satisfy needs and wants. Work is essentially an important socio-economic issue, that is, if individuals in the productive year are employed at all. According to the 2012 report of the National Bureau of Statistics, the official figure of unemployment in the country was an unprecedented and understated rate of 23.9% in 2011. This translates to about 41 million unemployed persons, without taking into consideration the under-employed. If a member of a family who was employed is retrenched, this will have reverberating effect on the family and the larger community as a whole. This is due to the extended family ties system, where there is no provision of any form of welfare in the majority of the African countries. This paper examines and exposes how employers are wrongfully dismissing their vulnerable employees unfairly in the workplace. The paper highlights the possible remedies available to the employees in cases of wrongful, unfair dismissals or termination of appointment.

Key words: Re-instatement, vulnerable employees, public and private sectors, remedy, judicial activisms.

INTRODUCTION

The major issue in industrial relations is the differing interests of the two actors: the employee and employer, and the endemic conflict which it originates (Animashaun and Shabi, 2009). The employers are interested in extracting long hours of service and paying the employee as low as possible. The employees, on their part, are interested in high wages for lesser work. In other words, the employers are interested in high profit by demanding long hours and low pay, while the employees are continually requesting improved condition of service, higher wages and better retirement packages. To the employer, this will erode the company’s profit. In order to continue to make profit and sustain the business, the employer might downsize by retrenching the employees. It must be mentioned that the intention could be to avoid some genuine obligations leading to wrongful and unfair termination of employment or indefinite suspension. The employee waits endlessly after suspension for recall; when this is not forthcoming, the employee applied, as in Ilodibia (1997), for a declaration of a court of justice that he/she is still in the employer’s service. In Nigeria, such employees are usually in precarious situations as they do not know whether reinstatement will be ordered by the court or not. This is exacerbated by the fact that contradicting conclusions are reached in the courts with regard to cases with similar facts, thus making the remedy very precarious in nature (Nnoli, 1993).

METHODOLOGY

Most of the data used in our analysis were obtained from secondary sources, such as books, journals, law reviews, national and international legal instruments and court’s decisions.
AN ANALYSIS OF THE BASIS OF EMPLOYMENT RELATIONSHIP

The basis of employer-employee relationship is the contract of employment and other ancillary documents, such as the company’s employees’ handbook and the condition of service for the private and public sectors respectively. The contract of employment is, however, product of the industrial revolution and the 19th century laissez-faire is its principal justification (Adeogun, 1986).

The 19th century laissez-faire rested on two pillars: the freedom of the contracting parties and the sanctity of contracts. The court considered their bounden duty to foster freedom and vindicate its sanctity. The dictum of Sir George Jessel is apt here (Printing, 1875): “If there is one thing more than another which public policy requires is that men of full age and competent understanding shall have the utmost liberty of contracting and that their contracts, when entered into freely and voluntarily, shall be held sacred and shall be enforced by the court of justice.”

Even though contracts of employment need to be fair in content to both parties, labour practices have shown that the parties are really not equal or do not have equal bargaining power. Adeogun (1986) believed that equality of the parties and the freedom and ability to make a choice is a mirage. More importantly, he gave a very cogent reason for the vulnerability of the employees during the time of negotiating employment contract. In his words, “this thesis presupposes equality between the parties but tends to ignore other social and economic considerations which may make this equality and its underlying freedom fictitious and hollow....the economic necessity which may compel an employee to accept a contract of service is not the concern of law.”

There are no social benefits accruable to individuals who are willing, healthy and qualified to work but unfortunately unemployed. Against the above backdrop, Adeogun (1986) exposed the vulnerability of the aspirant workers in the developing countries, particularly in Nigeria where many workers (multitude) are chasing the few available job opportunities. What is important to the job seekers at this point is to secure the job irrespective of the terms and conditions inherent in the offer of appointment. The reason for this is that, usually, the job is needed by the applicant with a lot of desperation in order to make ends meet by solving pressing socio-economic needs and challenges. In the same time, many people also apply for the same position. Consequently, the applicant is ready to waive, mortgage or foreclose all his rights in order to accept the offer. What is of paramount importance for the applicant is to secure the job. This explains the plight of applicants and supplicants in the developing countries.

The above picture is exacerbated by population explosion, bad governance, restructuring, downsizing, privatization, commercialization, globalization, and more recently, global recession (Animashaun and Shabi, 2009). There have been instances of over twenty thousand qualified candidates responding to an advertisement by a firm that had only five vacant positions. The question to ask at this juncture is: where is the much taunted equality between the parties?

BRIEF EXPLANATION OF MASTER AND SERVANT RELATIONSHIPS

The statutes and the law courts tend to situate the employment relationship within the purview of master-servant. All the old statutes Labour Act Cap commenced 1st August, 1971 based on Trade Union Act cap T 14 LFN 2004 and Trade Dispute Act Cap 432 LFN 1990. Workmen Compensation Act Cap 470 LFN 1990 utilized the terms, worker, workmen, and not employee.

It is only the new statute that embraces the term ‘employee’, and the definition is rather restrictive. For instance, The Nigerian Pension Reform Act 2004 defines employee as, ‘any person employed in the public service of the Federation and the Federal Capital Territory or private company, organization or firm’. It defines employer as, ‘the Federal Government of Nigeria or any organization or business that employs 5 or more employees’. Thus, to understand employee-employer relationship within the Nigerian context, one must be conversant with master-servant relationship.

When we refer in our analysis to a worker/employee, it is equivalent to servant, while the employer, to master. The concepts can be used interchangeably.

WHAT IS REINSTATEMENT IN LABOUR DISPUTES?

Reinstatement is one of the remedies open to victim of unjust or unfairly dismissal. Reinstatement can be ordered in addition to other remedies. The concern is that it depends on the disposition of a court presiding over the case. In some instances, reinstatements have been ordered, whereas denied in others with similar facts with the successful ones. In view of this, reinstatement becomes precarious as a remedy. However, this does not mean that the aggrieved employee should not explore the possibility of getting the remedy as a redress for wrongful dismissal. For this reason, reinstatement will be examined from the perspectives of private and public sectors.

Reinstatement in private sector

The prevailing view among Nigerian judges is that the relief of reinstatement is available for confirmed pensionable employee whose contract is legal or who occupies a position with a special legal status (Shuaibu
versus Union Bank of Nig. Plc, 1995). For employees in private employment, re-instatement is only ordered when the employee is able to prove special circumstances (Chukwumah versus Shell Petroleum Devt. Co. of Nig. Ltd., 1993), and it is at the discretion of the courts.

The impression given by Nigerian judges is that re-instatement is an alien relief for private employees (Chianu, 2006). However, the decision in other common law jurisdictions such as the U.K. and India does not appear to support the attitudes of Nigerian judges.

The Indian Supreme Court awarded the remedy of reinstatement in Provincial Transport Services vs. State Industrial Court (1963) where the court said that although the court must recognize legal relationship based on contracts, this is regulated by a higher law. His dictum is aptly stated thus: "In dealing with industrial disputes.... The Supreme Court, by a series of decisions laid down by the law, says that, even though under contract law, pure and simple, an employee may be liable to dismissal without anything more, industrial adjudication would set aside the order of dismissal and direct re-instatement of the workman when dismissal is made without fair enquiry". Likewise, in Hill versus C.A Parsons and Co. Ltd (1971), the plaintiff/appellant, aged 63 had been employed as an engineer for about 35 years. He was dismissed with a month’s notice, notwithstanding that he was due to retire in two years’ time. He applied for an interim injunction to restrain the company from acting upon the dismissal notice. He failed at the trial court but succeeded at the court of appeal where it was held that the appellant case was extraordinary as he was liable to suffer disproportionate hardship if his contract was so determined.

Comparing the above cases with that of Friday Abalogu versus Shell Petroleum Devt. Co (2003), the plaintiff/appellant was employed in the defendant company on 3rd May, 1971. The appointment was confirmed on 3rd May, 1972. Thereafter, he became a permanent and pensionable staff of the company. By a letter on 25th January, 1995, he was notified that he was due to retire on 3rd August 1996, his 55th birthday. However, by another letter of 31st January, 1995 his appointment was terminated, paying him 3 months’ salary in lieu of notice. He claimed that the termination must be null and void as he was already due for retirement. He lost in all the courts, that is, high court, court of appeal and Supreme Court.

The courts have consistently held that in a contract of service, a master is entitled to dismiss his servant for a good or bad reason or no reason at all (Osuna versus Edo Broadcasting Service, 2005). In Registrar and Trustee PPFN versus Shogbola (2004), the contention of the plaintiff/respondent was that his appointment with statutory flavour was rejected and the order of re-instatement by the trial court was upturned by the court of appeal. Similarly, although the court recognized the injustice of the termination of the appointment of 700 junior and 55 senior workers by the management, unlawfully and unjustly, it refused to order re-instatement; it only awarded minimal damages (National Union, 1995). In Ezekiel versus West Minister Dredging Ltd (2000), the trial court acknowledged that the termination of the plaintiff’s appointment was wrongful but only awarded a month’s salary. However, the court of appeal reversed the decision, in terms of the damages payable, reducing this to two weeks’ salary as stipulated on the contract of service.

The courts have in extra ordinary cases ordered re-instatement especially where a special status such as the tenure of public office is attached to the contract of employment (African Continental Bank Plc versus Nwodika, 1996). The National Industrial Court also ordered re-instatement of the wrongfully dismissed workers in Hotel and Personal Services Senior Staff Association versus Owena Hotels Ltd Akure (2005) and NNPC versus Petroleum and Natural Gas Senior Staff Association of Nigeria (1990). The decision in the latter case is not unconnected with the fact that “NNPC is a government parastatal and that the staff of such parastatals should enjoy security of tenure" (Oywumi, 2007). In Ewarami versus ACB (1978), the Supreme Court granted a declaration that a dismissed worker is still in the employment of his employer and should be awarded substantial damage.

It is noteworthy to state that most jurisdictions had moved away from the days of Fry L. J. where re-instatement was a taboo. His statement in De Francesco versus Barnum (1890) summarized his reasoning thus:

For my part, I should be very unwilling to extend decisions, whose effect is to compel persons who are not desirous of maintaining continuous personal relationship with one another to continue...I have strong impression and a strong feeling that it is not in the interest of mankind that the rule of specific performance should be extended to such cases...lest they should turn contracts of service into contracts of slavery; and therefore speaking for myself, I should lean against the extension of the doctrine of specific performance and injunction in such a manner.

This 19th century case is predicated on certain premises which are no longer applicable. The English judges have departed from refraining from re-instating a wrongfully or unfairly dismissed employee (Animashaun, 2008). Remedies following a finding of unfair dismissal by an employment tribunal are re-engagement, re-instatement or compensation (Animashaun, 2008). The employment tribunal has considerable discretion about making re-instatement order on the tests of practicability and justice. The tribunal will take into account the complainant’s wishes and whether it is practicable for the employer to comply with the order for re-instatement. It will also take
into consideration whether such an order would be just in the circumstances where the employer contributed towards the dismissal.

In Rao versus Civil Aviation Authority (1992), an employee with extremely poor attendance record was dismissed. The dismissal was held to be unfair on procedural ground but the employment tribunal refused to order re-instatement or re-engagement because of his conduct. It only awarded damages (Rao, 1992). In Bigham and Keogh versus GKN Quickform Ltd (1992), an employee working on a site was dismissed as a result of strike. Subsequently, he applied and successfully got a job at the employer’s head office elsewhere. He revealed his previous employment but not the dismissal. After a few weeks, the connection with earlier dismissal was made and he was dismissed from the new position. The tribunal ordered re-instatement as the employer had constructive knowledge of the employee’s previous employment. The tribunal ordered reinstatement when a shop manager was dismissed unfairly because she asked the trade union for assistance against the management with regard to her rights (Discount Tobacco versus Armitage, 1990). Likewise, an employee who was dismissed because he made derogative remarks about the company at a company recruitment meeting was reinstated. Also in Wood Group Heavy Industrial Turbines Ltd versus Crossan (1998), an employee was dismissed for a genuine belief by the employer that the employee has been dealing in drugs at the workplace. The employment tribunal ordered re-engagement due to the fact that the employer did not carry out sufficient investigation. On appeal this decision was reversed and the complainant/respondent was granted compensation because the court believed that there was a breakdown of mutual trust and confidence.

The English court declines to make a reinstatement order when economic condition of the company does not permit, for instance the worsening redundancy situation of the employer (Port of London Authority versus Payne, 1994).

If however the employer fails to reinstate or re-engage as a result of an order or an employee suffering loss as a result of non-compliance with re-instatement order, then the employee will be awarded compensation for unfair dismissal, which will include additional awards (Selfridges, 1997; Section 166 Trade Union and Labour Relations (Consolidation) Act, 1992).

Many legal writers and judges have reasoned that re-instatement is unsuitable in contracts of personal service. The bases of their reasoning and the inherent contradictions are discussed below (Chianu, 2006).

First, they argue that once an employee is dismissed irrespective of the fact that the dismissal is wrongful the employment contract is automatically repudiated and the employee’s only remedy should be damages (UTC Co. Nig. Ltd versus Nwokoruku, 1993). The matter may not be that simple. Certain contract terms survives the employment contract regardless of the supposed effect of a breach on the rest of it. For instance, employers are enabled to enforce restraint of trade clauses even after an employee has resigned or abandoned his employment (Thomas Marshall (Exports) Ltd versus Guinle, 1978). Also, employers have rejected employee’s resignation in many cases on the ground that they should first answer to charges of misconduct before they leave the employment and courts have upheld such insistence (Graham Douglas v A.G. Rivers State, 1973). If the employer is at liberty to reject repudiation why should the court reject the order of reinstatement in the event of wrongful or unfair dismissal? (Cartey, 1959).

Second, Oyedele and University of Ibadan (1990) and legal writers (Edward, 1903) basing their arguments on mutuality, insisted that the court could not foist a willing worker on an unwilling employer and vice versa. This is based on equality principle and sanctity of contract. One could fault this reasoning on the disparate consequences to the parties. The departure of any employee in most cases constitutes a mere inconvenience, distraction or is barely noticed (Animashaun and Shabi, 2009). However, on the part of an employee, a job loss usually leads to insecurity, poverty, health problems, striving for alternative employment, the use of dangerous drugs and engagement in social vices.

The third basis is that in contract of personal services, personal pride, personal feelings, confidence and confidentiality may be involved, which made it undesirable to impose a willing employee on an unwilling employer (Ipaye, 1992). This reasoning has been criticized on the ground that most employers today run large, impersonal organizations involving many departments and hundreds or even thousands of workers. In these cases, issues of mutual confidence and personal pride may not arise. It was stated that in the nineteenth century, when De Francesco case was decided, contract of service was chiefly between a farmer or an owner of a small workshop and his servant. A learned author, Chianu (2006) posited that, era involves personal confidence and intimacy and this should be distinguished from the era of large informal organizations. Furthermore, in modern day employment both management and workers are employees as ownership is removed from management. Thus, it is a case of some privileged workers dismissing other workers.

The fourth basis is that the court assumed that once an employee is dismissed, the employers cannot rescind its decision. Thus, an order of reinstatement is only adding to the employer’s burden. This premise had however been debunked by the Employer rescinding its decision on being pressured by trade union, the employee’s legal practitioner or on being found innocent after an investigation. In Cooperative and Commerce Bank Nig. Ltd and Nwankwo (1993), the respondent was dismissed in November 1975 on the ground of unethical banking practice of over lending. However, he was reinstated in
February 1996 following his appeal to the appellant's board. The above shows that there is a wide difference between the reasoning of the Nigerian judges and the industrial relation practice as the highlighted cases (and there are others) show instances whereby dismissed employee's case is reviewed he is reinstated suomoto.

The strongest contention against re-instatement is the employer dismissing the employee afresh (Amokeedo versus IGP (1996)). In Eyutchae and Nigeria Television Authority (1986), the appellant was terminated and successfully sued to have this termination set aside. The respondent appealed but while the appeal was pending, the appellant was dismissed again. The Court of Appeal however felt its hands were tied by the second dismissal (AG Federation versus Roadside Engineering & Foundry Nig. Ltd & Soteye 1977). It is our contention here that the court should not indulge the employer in acting with impunity and that if they cannot order re-instatement or the employer is unwilling to retain the worker for no just reason, the court must be willing to impose a hefty award as aggravated damages to the employee as a deterrent.

Re-instatement in public service

As earlier stated, public employees whose contract of employment is legal or has special legal status enjoy higher privileges. The court in most circumstances gives reinstatement orders in these cases. The basis of this may not be unconnected with the fact that while damages may be appropriate for enforcing individual rights, it does not adequately ensure that public bodies act within their power. Furthermore, the amount paid as damages does not come from the purse of the individual officer who made the rash decision to wrongfully dismiss a successful litigant/employee. Thus, the courts are concerned with public authority power and with the abuse of power or discretion.

The major public law remedies are certiorari, injunction, mandamus and declarations. The Court has consistently held that where a servant's employment is founded on statute or has statutory condition and the appointment is not terminated in accordance with the procedure laid out in the statute, he will be entitled to automatic re-instatement (P.T.I &Ors versus Nelsimone (1995)).

The Supreme Court holds that a court cannot make an order of specific performance unless a contract is shown to exist (F. A. Airewele versus Refrigeration Engineer & Contractors Ltd. (1980) and if the party has performed his own part of the contract.

Secondly, the court claims that it would not order specific performance when the contract has ceased to exist; for instance, when the post had been filled, the court will be inclined to make an appropriate order. Thus in Igbe and Governor of Bendel State and Ors, the court awarded damages in place of reinstatement because the post had already being filled. But in Olaniyan et al., an order of re-instatement was made.

Thirdly, the court will not make the order where it will cause injustice to a third party (Emiola).

In Ex parte Kubeinje, the respondent successfully applied for an order of certiorari quash proceedings of the Mid-West State Public Service Commission that instructed him to accept a transfer to another post or consider himself summarily removed from the public service. The leading authority in Nigeria on the use of the remedy of mandamus in reinstatement is ShittaBey versus Federal Public Service Commission (1981). However, in the case of Eperokun and University of Lagos, declarative remedy was used in reinstating a wrongfully dismissed public officer.

The decision in the case of Bakare versus Lagos State Civil Service Commission (1992) is noteworthy, bold and commendable. The court was neither swayed by the fact that the relationship between the appellant and his employer was strained, nor was it perturbed by the fact that the appellant's first claim was for damages, reinstatement being an alternative (Chianu, 2006). In this case, the appellant was the Secretary of the Purchasing, Supplies and Maintenance Committee of the Lagos State Schools Management Board. He observed certain irregularities and petitioned the Executive Secretary of the Board; on receiving no reply he petitioned the Governor and eventually the Code of Conduct Bureau. The Governor met with him later and assured him that the investigation carried out revealed no irregularity. The next day, he was issued a query and redeployed a few weeks later. He refused to report at the new station for about a year. His salary was stopped and was issued a generation Engineer & University of Ilorin Teaching.

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In this case, the court held that the fact that the employer is a statutory body does not mean that the condition of service of its employees must be of a special character ruling out the relation of a mere master and servant (Udemah versus Nigeria Coal Corporation (1991)). This had led to conflicting and confusing decisions in Ideh versus University of Ilorin (1994), where the appointment of a principal technical officer in the employment of the respondent was terminated with a month's salary in lieu of notice. The court held that the appointment was not one with statutory flavour, hence, the respondent's power was properly exercised.

However, in University of Calabar versus Inyang, the
appointment of a junior administrative staff (store assistant) was held to be of statutory favor; hence ordered to be reinstated (Adeniyi versus Governing Council of Yaba College of Technology (1993). Also, the appointment of a pharmacist in a university teaching hospital was held to enjoy statutory flavour and the court ordered her reinstatement.

ALTERNATIVE REMEDIES

Award of damages or back pay

Under our law, a wrongfully terminated or dismissed person cannot get both damages and reinstatement at the same time. It must be one or the other. In the case where an order of reinstatement is made the claim that the employee could make would be only for an arrear of salary and not damages for wrongful dismissal (Devlin in Ridge versus Baldwin (1963)).

The confusion of the Nigerian courts also reared its head in Eperokun or University of Lagos, where the Supreme Court directed that in computing the arrears of salary due the appellant it should be taken into account that he was gainfully employed during part of the period. Similar pronouncement was made in Okongwu versus NNPC (1989). However in Bakare versus Lagos State Civil Service Commission, the appellant was awarded his full back pay notwithstanding that he refused to report to his new duty post for over a year before he was unlawfully dismissed (Sadiq versus Bundi, 1991). Similarly, in CBN and Ors versus Mrs. Agnes M. Igwilolo (substituted for Dr. Victor Igwilo), the court ordered payment of arrears of salary from date of dismissal till date of death of the deceased.

CONCLUSION

In this treatise, we have seen the reluctance of our courts in giving an order of reinstatement to private employee, their befuddlement and confusion in the award of this privilege to employees in the public sectors. One could argue that the position of the law is that the employment that is spiced with statutory flavor is only the one pronounced by the court to be so.

We advocated that our courts should be more liberal in making the order of reinstatement in the private employment as well because dismissals in most cases means more than a loss of a particular job, but also a loss of opportunity to pursue one’s profession and barring of one’s future activities. Thus, damages are hardly an adequate remedy. The affected person may ask for a hearing to clear his name. Reinstatement is the remedy for combating unfair labour practice such as employer short charging loyal employees by terminating their employment a few years before they are due for pension and gratuity. For instance, the courts lamented in Abalogun versus Shell Petroleum Devt. Company Ltd. In fact, the dictum of the trial judge is apt here: 

I am in deep sympathy with the plaintiff whose appointment was terminated by the defendant barely two years before attaining retirement age and after serving the defendant satisfactorily and meritoriously (emphasis mine) for over twenty three years; but exhibit D which governs his contract of service with the defendant renders the court impotent as far as the relief claimed by him is concerned.

Despite this, all the courts, starting from the trial court–court of first instance–up to the apex court–the Supreme Courts – refused to put on their equitable garbs to reject this injustice. His only entitlement was a mere three months’ salary in lieu of notice, as per the terms of the contract. We prefer the ruling of the Indian Supreme Court in Hindustan Times versus Industrial Tribunal (1963), where it was held improper to deprive an employee of gratuity he has earned because of his dismissal for misconduct. They reasoned that if any employee is dismissed for misconduct which has resulted in financial loss to his employer, the amount lost should be deducted from the gratuity due. The decision of the Indian Court seems just, while the decision in Abalogun is considered as the triumph of law over justice. It is our contention that even if the employer is unwilling to reinstate Abalogun, the court should have awarded him a hefty damages including his pension, gratuity and general damages by invoking and relying on a liberal life expectancy principle. We have also exhaustively stated that the parties to the contract of employment are in no way equal; therefore, the dichotomy of master-servant and those with statutory flavor and special status be blurred.

We recommend a complete overhaul of the Nigerian labour law and industrial relations system with the promulgation of new laws akin to the English Equal Right Act (1961), the introduction of unfair dismissal (Animashaun, 2007), and the blurring of the private/public sector dichotomy. It is noteworthy to state that the new Pension Reform Act CAP P4 LFN (2004) is a step in the right direction, as the employer would be unable to deny their terminated or dismissed staff their due pension and gratuity as they used to do.

In the final analysis, it is our position that reinstatement should be ordered where it is equitable and just to do so, and where it would not create a friction or hurt the employer if the dismissed staff is reinstated. However, where reinstatement is not possible or is not practicable, there should be sufficient damages to start a new life especially once there is no misconduct on the employee’s part. We also recommend that the benefit enjoyed by public servants be extended to the private sector. Consequently, the facts and circumstances of each case
should be the basis upon which judgment is handed down by the court.

REFERENCES


De Francesco (1890). De Francesco v Barnum, 45 Ch. D 430, 438


Ewarami (1978). Ewarami v ACB, 4 SC 99

Eyutchae (1986). Eyutchae v Nigeria Television Authority, 4 NWLR (pt 41) 395


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