



## Legal frameworks for industrial relations in Nigeria: A systemic analysis

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### Abstract

The nature of contract of employment in Nigeria is still embedded in the anachronistic common law principles, as there is still no guarantee of job security arising from contracts of employment especially in areas of casual work. Employment in organized private sectors is a very precarious one because it does not give any one security of employment since it is characterized as a contract of personal service, and does not observe the principles of natural justice. However, in the public sectors, there is a presumption of job security to the extent of adhering strictly to the laws regulating such employment even where the conditions of services are not protected. This paper will attempt to examine the laws regulating job security and casualization in Nigeria. The work adopted doctrinal method of research and made recommendations towards an effective regulation in the practice of casualization by the employers.

**Keywords:** Casual workers, casualization, employers, employees, job security

### Introduction

The purpose of labour law, however is to regulate the rights of the parties in a dependent or/ subordinate labour relationships. It seeks to promote employment protections, social security and industrial harmony. In Nigeria, the regulation derives mainly from the common law either supplemented or modified by legislations and international instruments. The laws regulating employment relations in Nigeria include but are not limited to the Labour Act <sup>[1]</sup>, the Trade Dispute Act <sup>[2]</sup>, the Constitution of the Federal Republic of Nigeria 1999 (as amended) <sup>[3]</sup>, the National Industrial Court Act <sup>[4]</sup>, the Employees Compensation Act and the Trade Union Act <sup>[5]</sup>. The Nigeria Labour statutes have not responded adequately to securing the right to job or employment security of the Nigeria workers of which casual workers are inclusive. The labour statutes with regards to determination of contract of employment have mostly been regulated by the English Common Law which stipulates that the employer and employee agreement governs their employment relationship. The paper shall therefore delve into taking a closer look at these labour legislations.

### The Legal framework

#### a. The Constitution of the Federal Republic of Nigeria 1999 (As Amended)

In Nigeria, the constitution is a fundamental source of law and it has made provisions for the protection of the rights of its citizens of which the right to work and right to a secure job can be seen in Section 17 of the constitution which states that the State social order is founded on ideals of Freedom, Equality and Justice. However, this provision falls under Chapter II of the Constitution which remains non-justiciable <sup>[6]</sup> and unenforceable by virtue of Section 6 (6)(c) of the same constitution.

The Supreme Court of Nigeria reiterated the non-justiciability of Chapter II of the Constitution of the Federal Republic of Nigeria in the case of *A.G Ondo State v. A.G Federation* stating that 'It is well established as per section 6 (6) (c) of the constitution that the rights under the fundamental objectives and directive principles of the state

policy are non-justifiable <sup>[7]</sup>. The provision of Section 6(6) (c) of the constitution therefore stands as a formidable hindrance and obstacle to socio-economic development and the quest for job security to the Nigerian workers of which casual works are inclusive.

In the same vein, Section 40 of the constitution permits every person to assemble freely and associate with other persons, and form or belong to any political party, trade union or any other association for the protection of his or her interest. Most unfortunately, despite this constitutional provision, casual workers are restricted from joining or forming a trade union and this makes them unable to engage in collective bargaining to improve their work conditions thus making them to be treated as second class citizens in the workplace and stand the risk of dismissal on the slightest pretext especially if they have the temerity to participate actively in trade union activities <sup>[8]</sup>, entrenched therein such as the right to dignity of human person <sup>[9]</sup>, freedom from discrimination <sup>[10]</sup> can be said to have specific regards to individual labour law and the right to peaceful assembly and association are examples of specific provisions significant to collective labour law which casual workers are deprived from partaking in these rights.

Labour is defined in the exclusive legislative list of the constitution <sup>[11]</sup>. The labour statutes apply throughout the country unless a given statute provides otherwise, for labour to be in the exclusive legislative list, it means that it is the Federal government that has the exclusive power to legislate on labour matters <sup>[12]</sup>. The concurrent legislative list also vest powers on the Federal government to legislate on some labour matters already included in the exclusive legislative list <sup>[13]</sup> which is unnecessary, it also conferred power on the State to legislate on labour matters as defined in the exclusive legislativelist <sup>[14]</sup> which occasionally cause conflict to arise regarding such matters, although, this is not a great problem because where such conflict arises between the Federal and State, the Federal law will prevail <sup>[15]</sup>.

## b. Labour Act

Nigeria enacted the Nigeria Labour Act in its desire to protect and secure job, thus making the Act the principal legislation regulating employment relationship alongside the Constitution.

As earlier stated, labour matters are written in the exclusive legislative list and with this, the legal protection under the Nigeria Labour Act<sup>[16]</sup> is a bit blurry because casualization is not defined in it, and this statute does not provide a legal framework for the regulation of the terms and conditions of this kind of work arrangement. However, Section 7(1) of the Act states that workers should not be employed for more than three months without the formal recognition of such employment (this may be via a letter of employment), therefore, where every worker is stated; it literally includes casual workers who are workers themselves. The letter of employment should state the terms and conditions of the employment by the employer, and this obligation of an employer to give written statement stating the terms and conditions of employment within three months was upheld by the National Arbitration Court in the case of *Management of Harmony House Furniture Company Ltd v. National Union of Furniture Fixture and Wood Workers*<sup>[17]</sup>. Some companies have also developed sharp practices by employing casual workers for three months or less, dismissing them and using other means.

The Nigeria Labour Act despite defining who a worker is, did not truly clarify the interpretation of the statutes, only one category of worker was defined to mean:

Any person who has entered into work under a contract with an employer, whether the contract is for manual labour or clerical work or is expressed, or implied or written and whether it is a contract of service or a contract personally to execute any work or labour<sup>[18]</sup>.

This provision limits the range for which the definition can cover therefore making the courts to resort back to common law principle and its definition of who a worker is, and this clearly does not recognize workers on a non-standard work arrangement since at common law it is not every worker that can qualify as an employee. This is quite understandable because at the era of common law, non-standard arrangements were alien and foreign and the current Labour Act was originally enacted in 1974<sup>[19]</sup> and has gone through subsequent amendments.

The term employee is not defined in the Labour Act, this paved way for reliance on the common law definition, which states that an employee is a worker who has a contract of service. This definition is distinguished from an independent contractor or self-employed person(s) who are said to have a contract of service. Under the common law, an employee is a person who works under a contract of employment and so has a contract of service with the employer, therefore all the rights and obligations should apply to him. With this definition, it shows that a casual worker employed and supplied by an agency to the user company remains an employee of the agency and must therefore enjoy a normal employee/employer relationship with the employer with all the associated rights. This is not the case with an independent contractor or self-employed person who is deemed to have a contract for service which affords him/or her no protection.

The writer submits that under the common law definition, there is no distinction between a permanent and casual staff provided that they are engaged in a contract of service, such

casual staff is entitled to enjoy the rights and benefits accrued to the permanent staff.

The relevant sections created in the Labour Act to deal with termination of employment by the employer and also gear towards achieving job security for Nigeria workers are Sections 9(7) and 11 of the Labour Act which stipulates for the termination of employment. Also, the Labour Act in Section 11 (1) states that either party to a contract of employment may terminate the contract via notice given by one party to the other party.

The above shows that a contract of employment can be brought to an end by notice and in the absence of agreed length of notice, by both parties. Section 11 (2) prescribes the following period of notice;

- a. One day, where the contract has continued for a period of three months or less;
- b. One week, where the contract had continued for more than three months but less than two years;
- c. Two weeks where the contract has continued for a period of two years but less than five years; and
- d. One month, where the contract had continued for five years or more.

Section 11(5) of the Act appears to have specially retained the common law concept of termination at will. It states that the provisions as to notice do not affect any right of either party to a contract to treat the contract as terminable without notice by reason of such conduct by the other party as would have enable him so to treat it before the making of this Act. Section 11 (6) states further that; "Nothing in this section shall prevent either party to a contract from waiving his right to notice on any occasion or from accepting a payment in lieu of notice."

The period of notice appears to be highly insufficient and particularly difficult to justify where there is no faulty conduct on the part of such employee. This paper argues that the inadequacy is as a result of the weakness in the bargaining power of most employees and their vulnerability vis-à-vis the employer, when it comes to negotiation of a longer notice period with the employer at the inception of the employment relationship.

Section 11(8) of the Act further reduces what the weak worker should have earned upon termination of his employment by the employer, by providing that:

If an employer gives notice to terminate the contract of employment of a worker who has been continuously employed for three months or more, the employer shall not be liable under this section to make any payment in respect of a period during which the worker is absent from work with the leave of the employer granted at the request of the worker.

In other words, where such a worker takes time off with the leave of the employer, he does so at his risk as the employer may not take the period the worker took time off (leave) into cognizance when calculating the worker's terminal benefits despite the fact that such worker went on leave or took time off with the consent or permission of the employer. It can therefore be said that the provisions of Sections 9 and 11 of the Labour Act did not add or bring any innovation in the law of employment to better or protect job security; rather they merely codified the harsh common law principles. Even though the law requires strict adherence to the stipulated period of notice, where this fails, the resultant effect which is termination is declared wrongful. The

redress available for lack of adherence is merely on award of infinitesimal damages, whose quantum is limited to the amount which the employee would be entitled to.

Furthermore, the Nigeria Labour Act do not fully apply in Export Processing Zones, since the Nigeria Export Processing Zone Act <sup>[20]</sup> states that disputes between employer and employee should be handled by the zones managing authorities and not through dialogue between employers and workers organization (trade union).

### c. Trade Union Act <sup>[21]</sup>

By virtue of Section 1(1) of the Trade Union Act which provides that permanent or temporary (which includes casual) workers or employees have right to form a trade union and unionize <sup>[22]</sup>. The right to organize is also a fundamental right of every worker be it permanent or casual worker <sup>[23]</sup>. Due to this prohibition from union membership, casual workers are not allowed to form a union even though the rate of casual staff or employees in Nigeria is high, it is most times concluded that there is no future for Nigerian casual workers.

Denying a casual worker this right to unionize makes such worker not to have an avenue to bargain collectively with other workers to improve the terms and condition of employment, this leaves the casual worker open to exploitation which is presently the situation in Nigeria.

In the Trade Union Act, there are a few legal restrictions to trade union membership, one of which is that no employee of the company who is recognized as a projection of the management structure of the company can be a member or hold any office in the trade union <sup>[24]</sup>. This is to ensure that there is no conflict of interest in the administration of trade union. In the Trade Dispute Act, workers under essential services are banned from unionizing <sup>[25]</sup>, even though the scope of essential Service is a broad one that includes armed forces, the Central Bank of Nigeria, health, education and other services beyond the International Labour Organization's definition of essential service. Whereas the Export Processing Zones manifests the most discriminatory practice against Trade Union and their members, the provision in the Nigeria Export Processing Zone Act <sup>[26]</sup> states that disputes between employer and employee should be handled by the zones managing authorities and not through dialogue between employers and workers organization (trade union).

### d. National Industrial Court Act, 2006

In the quest to bring about the labour practices to acceptable standard and liberalism, the Constitution of the Federal Republic of Nigeria was amended in 2010 <sup>[27]</sup> which introduced the concept of unfair labour practices and gave the National Industrial Court the impetus to administer or have recourse to international acceptable labour standards.

Section 254(c) (1)f of the constitution of the Federal Republic of Nigeria, (third alteration) Act, 2010 enlarged the jurisdiction of the National Industrial Court of Nigeria to matters relating to or connected with unfair labour practice or international best practices in labour, employment and industrial relation matters.

Section 254 (c) (1) (h) also empowers the National Industrial Court to exercise jurisdiction to the exclusion of any other court in matters relating to, connected with or pertaining to the application or interpretation of International Labour Standards.

In like manner Section 7(6) of the National Industrial Court Act 2006, also empowers the National Industrial Court to take into account international best practices. It provides that 'the court shall in exercising its jurisdiction or any of the power conferred upon it by this Act or any other enactment or law, have due regard to good or international best practice in labour relations. The provision obviously permits the court to borrow from foreign jurisdiction in tandem with the present global village system. The various conventions of the International Labour Organizations which the member states are enjoined to apply come in handy here and the supposed implication is that National Industrial Court will constantly have to take cognizance of these international best practices. Furthermore, in Section 254 (c) (2), the court is empowered to apply international convention, treaty or protocol which Nigeria has ratified that relates to labour, employment, workplace, industrial relations or matters connected therewith.

Despite the above provisions, it has been feared that Section 7(6) of the Act, 2006 and Section 254 (c) (2) of the Third Alteration Act, 2010 which mandates the court to apply these rules of international labour best practices that is international conventions, treaties, protocols, declarations, instruments, standards and policies and others seem to completely forget about the provisions of Section 12 (1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) which states that 'no treaty between the federation and other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly. Since Nigeria is a dualist country, no treaty is enforceable in Nigeria unless same is domesticated through legislative instrument <sup>[28]</sup>.

The Supreme Court in interpreting section 12 (1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) in the case of *African Reinsurance Corporation v. Abata Fantaye* affirming the dualist position of the application of treaties in Nigeria municipal law, held thus:

A treaty, though ratified by Nigeria did not constitute part of the law of the land merely by virtue of its ratification in Nigeria, by virtue of section 12 (1) of the constitution, treaties will have the force of law only after, or to the extent that they have been enacted into law by the National Assembly <sup>[29]</sup>.

This provision was reaffirmed in the case of *Abacha v. Fawehinmi* <sup>[30]</sup> wherein the Supreme Court held that international treaty entered into by the government of Nigeria does not become binding until enacted into law by the National Assembly.

It has been argued that the effect of section 254 (c) (2) of the third Alteration Act is radical and would make Nigeria not to be a dualist Nation as far as the convention that relates to labour is concerned <sup>[31]</sup>. This is because section 254 (c) (2) has been interpreted by the scholar to mean that the International Labour Organizations Convention or Treaties and indeed any other international instrument that Nigeria has ratified or is a signatory to can now be applied directly by the court (that is the National Industrial Court of Nigeria) without any further legislative intervention of domestication by the National Assembly, however, this is not to be the case by virtue of Section 12 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) which provides for an Act of the National Assembly upon any international instrument to make it applicable in Nigeria. This section 12 is supported in the case of *Medical and*

*Health Workers Union of Nigeria v. Minister of Health and Productivity and Ors* <sup>[32]</sup> where the court held that the provisions of an international labour convention cannot be invoked and applied by a Nigeria court until same has been domesticated or re-enacted by an Act of the National Assembly. With these provisions and pronouncement, it shows that our legal system has given greater impetus to the denial of the right to security of employment of Nigerian workers especially casual workers.

#### **e. Employees Compensation Act, 2010**

The Employees Compensation Act includes a casual worker in its definition of employee. In section 73, the Act defines an employee as:

...a person employed by an employer under [an] oral or written contract of employment whether on a continuous, part-time, temporary, apprenticeship or casual basis and includes a domestic servant who is not a member of the family of the employer including any person employed in the Federal, State, and Local Governments, and any of the government agencies and in the formal and informal sectors of the economy <sup>[33]</sup>.

It is submitted that even though there is no statutory protection for casual workers under the Nigeria Labour Act, the Employees Compensation Act should be relied upon to furnish a more encompassing definition of 'employees' so as to protect them.

The National Industrial Court of Nigeria in the case of *Abel v. Trevi Foundation Nigeria Limited* <sup>[34]</sup>, relied on the definition of an employee under section 73 of the Act to hold that the claimant who was employed by the defendant as a 'contract staff' is an employee of the defendant and therefore entitled to compensation for injuries sustained in the course of his employment with the defendant. The court further held that the definition of who is an employee has been extended widely by the Act to include persons engaged temporarily or casual daily workers

#### **f. Pension Reforms Act, 2014** <sup>[35]</sup>

It is noteworthy that Pension is for business person or an individual. The Act became effective in 2014; it governs and regulates the administration of the contributory pension scheme for both public and private sectors in Nigeria <sup>[36]</sup>. The Act applies for two categories of employees and this includes all employees in the public sector and those in private organizations with employees numbering 15 and above.

Under the Pension Reforms Act 2014, all employees inclusive of casual workers are entitled to enjoy the benefits under the contributory Pension Scheme, in addition to Pension benefits, the estate of a deceased employee is also entitled to enjoy the benefits which accrue from the mandatory Group life insurance Policy, which the Pension Reforms Act, 2014 requires all employers to take out on behalf of their employees.

#### **The Role of Nigeria Labour Unions**

Casualization of labour is one of the challenges faced by Labour Unions in Nigeria. Since 2000, there have been a campaign by trade unions in Nigeria against casual/contract labour, this has been led by the Nigeria Labour Congress. The bone of contention of the Nigeria Labour Congress was to beckon on the employers to regularize employment status

of casual workers in their companies. Meetings have been held between the Nigeria Labour Congress and Nigeria Employers' Consultative Association to that effect.

It is important to have an understanding of what Trade Union is in order to know more about the Nigeria Labour Union's position on casualization. The Trade Union Act has defined Trade Union to be a combination of employees, or of employers, whether on temporary or a permanent enjoyment basis, who come together with the primary purpose or objective of regulating the terms and conditions of the employment of employees and resisting any practice that is in restraint of trade and lawfully applying its funds to providing benefits to its members whose benefits must not be political in nature <sup>[37]</sup>.

Trade Union is any combination of workers or employers, the purpose of which is to regulate the terms and condition of employment of workers. The Constitution of the Federal Republic of Nigeria 1999 (as amended) in chapter four provides for freedom to join and form union for the protection of their rights <sup>[38]</sup> although there are a few exceptions in specific areas like people working in the armed forces, police and young workers under the age of sixteen <sup>[39]</sup>. Employers of labour are not allowed to make it a condition of employment to join or leave the trade union. One of the reasons given for an employee or worker to join a trade union is that it enables such employee to be able to collectively bargain alongside his colleagues on issues regarding conditions and terms of employment with their employer, a group of employers or an organization. The National Industrial Court has held that both casual and permanent workers have the right to form or belong to a trade union of their choice. In preventing casual workers to form or belong to a trade union this has resulted in a drastic decline of trade union membership, density and influence of trade union.

The negative path of casualization is on the increase and this weakens the strength and activities of labour union. Nigeria Labour Congress has tried to stem the anti-labour practices through picketing and other measures as allowed by the law. The Federal government has actually been passively concerned about the development even with a promise to ensure workers in the country are given their dues, the Federal government can only promise to reduce casualization rather than putting a stop to it completely. It is very obvious that the practice of casualization violates existing laws on labour in Nigeria and International Conventions.

Notwithstanding the efforts made by the Nigeria Labour Congress concerning the issue of casual labour, very insignificant number of cases have been filed in court by workers against this practice and some employers of labour still find it convenient to commit illegality and disregards Nigeria laws. This goes to show that the Nigeria Labour Congress needs to make more efforts. It is seen that the Trade Union in Nigeria have failed to build twenty first century tools and capacity to enlighten their own member and economically protect them whenever their employment interests are threatened or jeopardized. Trade Union has also failed in creating/finding a more effective negotiation tool other than threats of or actual strike or industrial actions which have failed due to weak economic structure in Nigeria and lack of financial support to the employee during the periods of strike action. Labor union should consciously resist social and political pressures and ensure the interests

of all workers at all levels are placed at the forefront in their bargain. There should be representatives of labour in the management of companies in order to help reduce inhumane work condition of casual workers. The labour movement continues to find it very difficult to show good governance example as they had in the past due to their poor structures and the non-enforcement of the provisions of the Trade Union Act as well as the provisions enshrined in the Constitution. This lack of enforcement continues to be a bane in the workforce.

### Legal Status of Casual Workers in Nigeria

The term casual has no precise legal meaning though it is used to refer to individuals who are called on to attend work on 'as and when required' basis. The term casual worker is not defined in employment law. The rights and protections available to a casual worker depends on the legal status of the individual in question, this status may be determined by contractual documentation and most times the casual workers are ascribed some of the benefits of permanent workers because of their employment status. The disadvantage of the status of a casual workers is that it can change overtime as the working relationship evolves as well as the relationship that exist with the employers. A key consideration in determining the status of a casual worker will be whether or not mutuality of obligation exists in the working relationship and where this cannot be found a casual worker would not be an employee.

Within the context of the law, a casual worker is regarded as a worker or an employee<sup>[40]</sup>. A contract of employment was defined as 'any agreement whether oral or written, express or implied whereby one person agrees to employ another as worker and that other agrees to serve the employer as a worker'.

The Act describes a worker as:

Any person who has entered into or works under a contract with an employer, whether the contract is for manual labour or clerical work or is expressed or implied, or oral or written and whether it is a contract of service or a contract personally to execute any work or labour<sup>[41]</sup>.

The Employees Compensation Act, 2010 extends the definition of an employee to persons employed on a casual basis. According to the Act, an employee includes a person employed under apprenticeship or on a casual basis<sup>[42]</sup>.

A casual labourer or worker or employee by nature of his employment hardly enters into a written contract with his employer and the mere fact that such documents are not documented does not however exclude casual workers from the benefits and protection of workers under the Labour Act. The consequences of casual worker not provided for in Labour Act is that they do not fall under the purview of protection and the rights available to permanent employees covered by it and thus, making such a casual worker unstable, lack benefits, lack right to organize and collectively bargain<sup>[43]</sup>.

### Conclusion and Recommendations

The casual workers in Nigeria have not been specifically protected under the Nigeria laws, and this has made them vulnerable and easy to be exploited by their employers. These unfair labour practices in Nigeria are clearly against the best labour International practices. Therefore, it is recommended that the Federal Government of Nigeria should propose a bill to criminalize the adoption of casual

workers by the employers. Government should also establish an agency meant to regulate, control and administer punishment on any employers who continue to adopts/or employ any worker as casual workers.

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