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A critical appraisal on breach of contract of employment and remedies for the breach in Nigeria

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Abstract
A breach of contract of employment arises from the failure of either party to fulfil their obligations under a binding employment agreement. Such a breach may occur through deliberate actions or omissions that contravene the express or implied terms of the contract. When a breach occurs, the aggrieved party is generally entitled to pursue remedies against the defaulting party. These remedies are governed by the general principles of common law and, most importantly, by the Labour Act 1974, which codifies the rights, duties, remedies, and legal consequences relating to breaches of employment contracts. This paper examines the nature of contractual breaches in employment relationships and evaluates the remedies available under Nigerian law, with particular attention to how statutory and common law frameworks interact to determine the validity, enforceability, and limitations of such remedies in both ordinary and exceptional circumstances.

Keywords: Breach, labour, remedies, contract & emplyment

Introduction

The contract of employment constitutes the legal foundation upon which the employment relationship is built. It defines the terms and conditions that govern the interactions between an employer and an employee and reflects the mutual understanding of their respective roles, responsibilities, and expectations [1]. In its simplest form, a contract of employment is an agreement under which a person agrees to perform certain work or services for another in exchange for remuneration, subject to terms and conditions that may be expressly stated or implied by law [2]. The employment relationship is thus not merely contractual but also regulatory in nature, as it is influenced by a web of statutes, case law, and international labour standards [3].

This paper undertakes a comprehensive examination of the breach of contract of employment and the available remedies under Nigerian labour law. The discourse is structured to offer both theoretical and practical insights. It begins by exploring the meaning, nature, and essential features of a contract of employment. This involves a discussion of how such contracts are formed, the legal requirements for validity, and the various types of employment contracts recognised under Nigerian law—including fixed-term, permanent, and casual employment [4].

A core focus is then placed on the reciprocal rights and duties of the parties to an employment contract. While employers are generally expected to provide work, pay wages, and ensure a safe working environment, employees owe duties of fidelity, competence, and obedience to lawful instructions [5]. These obligations may arise either expressly (i.e. through written or oral agreements) or impliedly through statutory provisions and judicial interpretation [6]. The dynamic nature of the employer-employee relationship means that conflicts are not uncommon, and when a party fails to perform their contractual obligations, a breach is said to occur [7].

The paper explores the concept of breach in this context, considering its legal definition, types (such as anticipatory and actual breach), and consequences for the parties involved. Special attention is given to wrongful termination, constructive dismissal, and unfair labour practices, which are recurrent issues in the Nigerian labour landscape [8].

Furthermore, the paper critically examines the remedies available to an aggrieved party in the event of breach. These remedies include common law actions for damages, equitable remedies such as injunctions and specific performance (where applicable), and statutory reliefs provided under labour legislations like the Labour Act and the Employees' Compensation Act [9]. The role of the National Industrial Court of Nigeria (NICN) in interpreting and enforcing employment contracts is analysed, including its growing jurisprudence on fairness, equity, and international best practices [10].

Ultimately, the paper aims to provide a nuanced understanding of the legal implications of breaching an employment contract, taking into account both employer and employee perspectives. The analysis is supplemented with statutory provisions, judicial authorities, and comparative insights where relevant. The concluding section offers a synthesis of the major themes and identifies areas where reform or further judicial clarity may be necessary. For deeper engagement, a curated bibliography of relevant academic texts, case law, and statutory materials is provided.

Contract of Employment

The contract of employment is a species of contract, and as such, it is governed by the general principles of the law of contract. These principles include the essential elements of offer, acceptance, consideration, intention to create legal relations, and capacity to contract [11]. Consequently, a contract of employment has been defined to mean any agreement, whether oral or written, express or implied, whereby one person agrees to employ another as a worker, and that other person agrees to serve the employer as such [12].

In Nigeria, the question of capacity to enter into an employment contract has been modified by the provisions of the Labour Act 2004, particularly with respect to the employment of young persons and children. The Act prohibits the employment of children under the age of 12 and imposes strict conditions on the employment of young persons aged between 12 and 18 years [13].

Importantly, there is no prescribed form that a contract of employment must take; it may be oral or written, provided that its object is lawful and the essential elements of contract are present. However, certain statutory requirements apply—for example, under section 7 of the Labour Act, an employer is required to furnish a written statement of employment particulars within three months of the commencement of employment.

Labour statutes in Nigeria generally apply only to persons defined as "workers" under those statutes. Not every employee falls within the ambit of labour legislation, as each statute defines its own scope of application. An individual who is excluded either by express provision or by not meeting the statutory definition of a "worker" cannot claim rights or benefits under that statute [14].

This principle was applied in Union of Posts and Telecommunication Workers of Nigeria v Attorney General of the Federation, where the plaintiff union filed a suit on behalf of its members who had staged a 48-hour demonstration. The union sought a declaration that deductions made from members' salaries were illegal and violated sections 19 and 21 of the Labour Act. However, the court held that it would be improper to grant the reliefs in respect of some members, as it was clear they were not workers within the meaning of the Act, and thus had no statutory right under the relevant provisions [15].

Duties of Employer

An employer is required by law to issue to the employee, not later than three months after assumption of duty, a written statement specifying the core terms of the employment. This obligation is codified in section 7 of the Labour Act, which seeks to protect employees by ensuring they are informed of their contractual rights and obligations. The written statement must include, among other things:

- (a) The obligation to pay wages and salaries;
- (b) The duty to provide appropriate work;
- (c) The duty to maintain employee welfare and safety;
- (d) The right to discipline or take action in cases of misconduct;
- (e) Entitlements to rest periods, holidays, and break periods [16].

1. Duties of Employee

Employment may arise out of an agreement that lacks consideration and is thus not enforceable at law. For example, a person may voluntarily render services without expecting compensation, in which case no contractual obligations exist. However, in modern labour relations, most employment relationships arise from legally enforceable contracts supported by consideration in the form of wages or remuneration [17].

The Labour Act defines a "worker" as any person who has entered into or works under a contract with an employer, whether the contract is for manual or clerical work, and whether the terms are oral or written, express or implied [18].

This definition, while broad, excludes certain categories of employees such as professionals, administrative, and executive staff, who fall outside the scope of the Act but are nonetheless protected under common law and other applicable statutes.

The general duties of an employee in the employment relationship include:

a. The duty to obey lawful and reasonable orders of the employer;
b. The duty to render faithful and competent service;
c. The duty to comply with the express and implied terms of the contract of employment [19].

These duties form the foundation of the employee's obligations and are essential for maintaining a functional and lawful employment relationship. Breach of any of these duties may justify disciplinary action or, in severe cases, summary dismissal.

Meaning and Nature of Breach

Lord Jowitt defined breach as "an invasion of right or violation of a duty… the violation of an obligation [10]."

All contracts are made to be performed. Lord Macmillan in Beresford v Royal Insurance Co Ltd stated: "It is undeniably a principle of public policy that persons who enter into contractual engagements should be required to fulfil them [11]." In Ashibuogwu v Attorney General, Bendel State, Agbaje JSC added that parties to a contract are prima facie liable for obligations under it, including damages for breach [12].

A breach of contract occurs when a party violates an obligation under the contract. In Ishola Olateju v Lufthansa German Airlines, it was held that damages for breach of contract are based on infringement of right, not injury [13].

A fundamental breach goes to the root of the contract. In Obedian Ashaye v Akerele, Lewis JSC stated that a deliberate act is needed to attract liability [14].

Consequences of Breach

A breach of contract does not automatically discharge the contract unless it amounts to a repudiatory breach—one so fundamental that it goes to the root of the agreement. In Rookes v Barnard, Lord Devlin observed that an employer may choose to ignore a breach and insist on performance, thereby affirming the contract [20]. Similarly, in Babatunde Ajayi v Texaco Nigeria Ltd, Oputa JSC affirmed that the innocent party, upon a breach, retains the choice to rescind or affirm the contract, depending on the circumstances [21].

However, continued performance or acquiescence in the face of breach may operate as a waiver of the right to repudiate or seek remedies. In Victor Taiwo v F.B.A. Princewill, where a party continued contractual performance despite a breach, the Supreme Court held that the right to repudiate was effectively waived by conduct [22].

In the context of employment contracts, a fundamental breach—such as wrongful dismissal or gross misconduct—usually brings the employment relationship to an end, since courts are reluctant to enforce personal service obligations through specific performance. Yet, where the termination is found to be a legal nullity, more complex issues arise, particularly in public employment. In Kolawole v Alberto, the Supreme Court reiterated that any act done in breach of a condition precedent or without requisite legal authority is

null and void ab initio [23].

Historically, the employment relationship was grounded in mutual trust and confidence. In Hill v C.A. Parsons Ltd, Lord Denning MR famously stated that a contract of personal service terminates once mutual confidence is lost, making specific performance inappropriate [24]. This view was reinforced in C.I. Olaniyan & Ors v University of Lagos & Anor, where Oputa JSC stressed that personal service contracts are built on trust, and such trust may not be applicable in relationships involving artificial persons or institutions such as universities or corporations [25].

The courts now distinguish between public and private employment. In the public sector, breach of statutory procedure renders dismissal void [21]. In Vine v National Dock Labour Board, Lord Kilmuir held that wrongful dismissal terminates employment even if in breach [22].

However, Francis v Kuala-Lumpur Councillors and Hill v Parsons Ltd introduced exceptions, allowing declarations that employment subsists in special circumstances [23].

In Adebayo O. Ojo v Lister Motors (Nig) Ltd, the court noted exceptions to the rule that personal service contracts cannot be specifically enforced:

1. where the employment is for life;
2. where termination is statutorily or contractually restricted [24].

Still, if breach of natural justice is established, such dismissal is void. In Ridge v Baldwin, Lord Reid held that a decision made without regard to natural justice is void [25]. In Garba v University of Maiduguri, the Supreme Court extended natural justice to domestic tribunals [26]. In Abbott v Sullivan, Lord Denning held that bodies with power to deprive someone of livelihood must adhere to elementary rules of justice [27].

Remedies for The Breach

The breach of contract of employment arises fundamentally from the existence of a valid contract and the deliberate failure of one of the parties to perform their obligations under it. A breach cannot be alleged where no contract exists, as the foundation of any remedy in contract law is the existence of a binding agreement. This principle was memorably articulated by Lord Denning in UAC v Macfoy, where he stated: "You cannot put something on nothing and expect it to stay there. It will collapse [26]." This statement underscores the logical sequence in contract enforcement—there can be no breach without a contract, and consequently, no procedural or substantive remedy can be claimed unless a valid contract of employment is first established.

a. Remedies Provided by Contract

implied from the nature of the employment relationship and the surrounding circumstances of the case. Depending on the context, the remedies may take different forms, including financial compensation, reinstatement, or equitable relief. Courts may also imply terms or remedies where necessary to give business efficacy to the contract or to ensure that justice is done between the parties [27].

Where a contract expressly provides for remedies in the event of a breach, those are the remedies that the courts will ordinarily enforce. This legal position is anchored in the principle that the express terms of a contract override any contrary implication or general rule of law. As Lord Lindley stated, a person who intends to benefit from an option or contractual clause must expressly stipulate to that effect [28]. The existence of a long-standing practice or custom cannot displace the express provisions of a contract, especially where such custom lacks legal recognition or is inconsistent with public policy. Nonetheless, parties to a contract are free to stipulate any terms they deem fit, including remedies for breach, so long as those terms are not unlawful or contrary to public policy.

In employment law, it has been commonly assumed that a party may terminate the contract at will upon payment of damages in lieu of notice. However, this belief has been challenged as a legal fallacy. In South Wales Miners' Federation v Glamorgan Coal Co., Lord Lindley declared:

"Any party to a contract can break it if he chooses, but in point of law he is not entitled to break it, even on offering to pay damages. If he wants to entitle himself to do that, he must stipulate for an option to that effect [29]."

This principle reinforces the need for explicit contractual clauses authorising termination upon payment in lieu of notice. Without such a clause, a unilateral breach—even with payment—may still amount to wrongful termination.

Not only may parties agree on the type of remedies available in the event of breach, but they may also define the mode or process for enforcing such remedies. For instance, the contract may prescribe that compensation take the form of a liquidated sum, or that arbitration be used to assess and determine damages. In such cases, where the parties have clearly agreed that a particular dispute resolution mechanism—such as arbitration, disciplinary review, or an administrative hearing—must precede any court action, the courts will generally uphold that procedural requirement.

This was illustrated in Adeniran A. Adeyemo v Oyo State Public Service Commission, where the court held that it was ultra vires the Oyo State Public Service Commission to terminate the plaintiff's employment without following the procedure prescribed in the contract. Specifically, the contract provided that the head of department was responsible for initiating the disciplinary process, and bypassing that step rendered the termination procedurally invalid [30].

Thus, where a contract of employment stipulates both the remedies for breach and the procedural route for obtaining those remedies, the courts will not permit either party to sidestep those agreed mechanisms. The sanctity of contract and respect for procedural fairness demand that parties adhere strictly to the agreed terms.

b. Remedies Provided by Law

However, it is unusual for a contract of employment to expressly provide for detailed remedies such as those discussed earlier. While parties may agree on certain remedial measures in their contract, the standard practice in employment relationships is to rely on statutory provisions and general legal remedies rather than bespoke contractual clauses. For instance, section 20 of the Labour Act 1974 and section 42 of the Trade Disputes Act include remedies for termination and dispute resolution; however, these are statutory remedies and not based on individual employment contracts [31]. These provisions aim to protect workers' rights and promote industrial harmony, often applying

irrespective of whether the contract itself makes specific provision for remedies.

As a result, the bulk of remedies sought and granted in employment disputes are derived from:

- The general principles of contract law, which allow for remedies such as damages, reinstatement, or injunction;
- Applicable labour statutes, like the Labour Act or the Trade Disputes Act;
- And, in some cases, constitutional protections, such as the right to fair hearing under section 36 of the 1999 Constitution (as amended), particularly when employment involves a statutory flavour or affects civil/public servants.

It is these general and statutory remedies—rather than contractual ones—that courts in Nigeria frequently apply when resolving labour disputes. The discussion that follows will now examine these remedies in detail, considering the legal basis, applicability, and judicial interpretation relevant to each category.

Rescission

Rescission has been defined as *"the retrospective cancellation of a contract ab initio… by which the contract is destroyed as if its discharge by breach never impinges upon rights and obligations that have already matured [32]. However, this definition poses conceptual difficulties. The suggestion that the contract is cancelled from inception contradicts the idea that rights and obligations may still mature under the same contract. In practice, the idea of rescission being wholly retrospective often conflicts with the reality that parties may have acted upon the agreement before the breach occurred [2].

A more practical and widely accepted view is that rescission can also occur where there has been a repudiation or a fundamental breach, thereby justifying the contract's discharge. This perspective aligns with commercial and judicial reasoning. In Johnstone v Milling [33], Lord Esher MR explained that:

"A renunciation of a contract, or in other words a total refusal to perform it by one party before the time for performance arrives, does not by itself amount to a breach of contract but may be acted upon and adopted by the other party as a rescission of the contract as to give an immediate right of action."

Thus, repudiation—a party's clear refusal to honour the contract—may ground rescission in two key scenarios:

1. **Pre-performance repudiation:** This occurs after the contract has been concluded but before performance has commenced. For example, if one party abandons the agreement before the due date of performance, the innocent party may treat this as a repudiation warranting rescission.

2. **Post-performance repudiation:** Here, repudiation arises after performance has begun. It may result from an act or omission that substantially deprives the other party of the benefit of the contract. In such cases, rescission operates not merely as a backward-looking remedy but also as a means to prevent further performance under a defective or frustrated relationship [34].

Therefore, while rescission may conceptually relate to the destruction of a contract from its origin, in employment law and general contract practice, courts are more concerned with functional repudiation and whether such breach goes to the root of the contract, thereby justifying its termination.

Apportionment of Wages

Where an employment relationship is terminated by operation of law—such as liquidation of the employer's company or frustration (for example, through redundancy)—the employee is still entitled to wages, either under the express terms of the contract or, if the contract is silent, for the period during which services were actually rendered [35]. In such cases, the employee cannot bring an action for damages for wrongful dismissal, since the termination is not wrongful per se. Rather, the proper remedy lies in an action for debt [36].

Furthermore, if the contract does not specify the rate of remuneration, the employee may sue based on quantum meruit, that is, for a reasonable value of services rendered [37].

In Ekpe v Midwest Development Corporation [38], the plaintiff was engaged as a daily-paid worker and later received a conditional letter of appointment, stating that his employment would be formalised upon satisfactory references. Although no formal acceptance of the appointment was recorded, the plaintiff continued working under the stated conditions for six-and-a-half months. Upon being denied payment, he sued. The Benin High Court (Idigbe J) held that because work was actually performed, the plaintiff was entitled to remuneration on a quantum meruit basis. A similar principle was upheld in Anyaborne v Akugbe District Council [39], affirming that work done without formal contract still attracts payment under implied contract principles.

As Batt explains

"In … suing on a quantum meruit a plaintiff may be successful … when, for reasons of want of form or failure of other requirements, he would not be successful in suing on the original contract and, if wages are apportionable, there will be many cases where, although there is no breach of contract by the master, yet … the servant or his personal representatives can successfully sue either on a quantum meruit or directly on the contract [40].

On the apportionment of wages, two statutory instruments are relevant. First, the Apportionment Act 1870, which provides that wages and other periodic payments accrue daily and are apportionable in respect of time [41]. Secondly, under section 19 of the Nigerian Labour Act 1974, a magistrate or area court is empowered to adjudicate and adjust claims for unpaid wages, whether liquidated or unliquidated, and to direct appropriate payment to the aggrieved worker [42]. This statutory framework ensures that even where a contract terminates through frustration or other non-breach scenarios, the worker is not left without remedy.

Declaration of Rights

Although section 82 (1)(b) of the Labour Act empowers a magistrate's court to rescind a contract by apportioning wages or awarding damages upon equitable terms, the provisions do not appear to have derogated form from the rights of the parties under the agreement or the common law.

Any of the parties to a contract of employment may always apply to the court for a declaration of his right in respect of the employment. A declaratory proceeding is instituted for the main purpose of merely determining the legal rights of a party seeking it. The remedy is particularly suitable where the party aggrieved is desirous of challenging the validity of the decisions or action of the other party or public authority with a view to having it declared as null and void.

Although their other remedies such as injunctions, damages, specific performance and prerogative remedies all enforce by the Law through the application of the innocent party.

Conclusion

Based on the above discussion, it is clearly highlighted that the breach of contract occurs where that which is complained of is a breach of duty arising out of the obligations undertaken by the contract. It is therefore a breach of contract simply put, that the act or omission by one party to an agreement which violates some important term or condition of the contract of employment. We have also seen that there are circumstances when non-fulfilment of obligations under the contract doesn't fix the party apparently in default with blameworthiness. Equally, as already noted that a mere breach will not discharge a contract, including a contract of employment, unless it amounts to total repudiation of the entire contract or a destruction of the foundation upon which the contract was founded.

Recommendation

To enhance the academic depth, coherence, and legal relevance of this paper, the following recommendations are made:

- Harmonization of labour statutes to reflect contemporary realities
- Improved access to redress mechanisms at the NICN
- Promotion of alternative dispute resolution (ADR) mechanisms in employment disputes
- Stronger enforcement of employee rights in private employment
- Amend the Labour Act to provide broader protection beyond statutory 'workers'.

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