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AN APPRAISAL OF CHALLENGES OF MODERN EMPLOYMENT IN NIGERIA

By

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Abstract

Contact of employment is a creation of relationship between the employer and the employee. The relationship brings about the right, duties and responsibilities of both parties to the contract. In other words the terms and conditions specified in the contract are to some extent to be observed which most times include collective bargaining, collective agreement, method of termination of employment as well as welfare and health packages. Despite the availabilities of these packages, there are still some challenges befalling modern employment in Nigeria. These problems have been enumerated in course of this study and suggestions have also been stated in order to reduce the problems to a nearest minimum. Some international recommendations and conventions have been recommended for adoption and ratification in our local laws so as to be line with the best global practices in labour which eventually would lead to sustainable industrial relationship.

1.1 Introduction

The contract of employment between parties is a creation of rights, responsibilities and working conditions. It further states the minimum wage, termination clauses as well as many other rules set by the government between parties to an employment (i.e. employer and employee) which is why Henry Stesser stated thus: "that there is no branch of law which touches more closely the ordinary man in his everyday life than the subject of labour law. No man can employ another or be employed without immediately bringing himself within the operation of labour law[1].

Labour law is an important area of law which tends to strengthen the contractual relationship between the employer and the employee as well as wealth creation. Its importance lies also in its economic, social and political significance[2] and in other to appreciate the concept, it is imperative to study the legal rules in their economic, social and political context. The implication is the creation of a legal rules in other to influence and create efficiency of the economic system leading to the moderation of individuals needs and the type of social justice that need to be achieved in the society[3].

This paper will focus primarily on the problems of modern employment in Nigeria. It will also analyze the employment laws in the country Nigeria, it meaning,

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[1] K.C. Hennry Slesser, the place of labour law in English Jurisprudence (Economical No 13 1925) p. 28-37

[2] Economically means that employment provides services of income and wealth; socially presupposes the social interaction of individual members within he employment environment; politically, it relates to the conflict of interest in a capitalist economy.

[3] O.V.C Okene, Labour Law in Nigeria "the law of work"(Claxton and Derrick Ltd (2012) p.2

nature and scope and to some extent critically analyze the problems associated with the Nigeria employment in relation with the International Labour Standards knowing that the war between the profit maker and the wage earner is always before us[4].

1.2 Conceptual Analysis

What is Employment?

An employment is a creation of contract agreement between two parties where one accepts to render service to the other and the other paying for the service. It also examines the legal regulations of employment relations which is the relationship between an employer and employee[5] in which the terms and conditions of employment of the employee are provided[6].

Labour law can also be seen as the normative frame work for the existence and operation of all the institutions of the labour market: the business enterprise, trade unions, employer's associations and the state, in its capacity as regulator and as employers[7]. Accordingly, Wedderburn noted that "labour law rest heavily upon the legal phenomenon, the individual contract of employment in which the two sides that is the employer and the employee are looked at by law as equal to a legally enforceable agreement[8]. An employee under the Trade Dispute Act is an individual who works under a contract of employment[9]. Similarly Section 91 (1) of the Labour Act also define a worker to mean "any person who has entered into or work 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 ..."

Thus in *Phoenix Motors Ltd. v National Provident Fund Management Board,*[10] the court of Appeal defined a worker as a person not being a minor but employed under certain terms of a contract of employment[11]. It must be concluded that the whole essence of employment law is to create a dealings of all transactions and activities affecting the determination and enforcement of the terms and conditions of employment. The main parties involved are typically the employer and the employee and at another level, union of workers and their employers, although government also plays an important role through labour legislation and as a major employer of labour[12].

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[4] Paul Davies and Mark Freeland, Kahu Freund's labour and the law (London, Stevens and Sons 1983) p.5
[5] Okene (n 3)
[6] Black's Law Dictionary 9th edition p.369; see also *Union Bank of Nigeria Ltd v Edet (1993) 4 NWLR (pt 287) 288*
[7] S. Deakin and G. Morris Labour Law (London: Butterworths 2001) p.1
[8] K.W Wedderburn, the worker and the law (London: Penguin Books 1965) p.11, Okene (n3)
[9] *Cap T8, Laws of the Federation 2004*
[10] (1993) 1 NWLR (pt 272) 718
[11] *Ako Evans Bros (Nig) Pub Ltd v Falaiye (2003)* 13 NWLR (pt 838) 564
[12] E.A. Oji and O.D. Amucheazi, Employment and labour law in Nigeria (Meyi & Associates Nig. Ltd 2015) p. 1-2

1.3 Categories of Employment

There are now three categories of contract of employment in Nigeria. These are

(a) Contract of employment governed by the common law

(b) Contract of employment governed by written agreement; and

(c) Contract of employment governed by statute or regulations made under statute[13]

The first two types of employment are generally regarded and originated from the common law, they have the same incidents and they are generally described as ordinary contract of master and servant. Under this class of employment, the master can terminate the contract with his servant at any time by giving the appropriate notice[14] or payment in lieu of notice[15]. The term master and servant has now been regarded as an old legal terminology. The modern legal term now is employer and employee. These categories of employment are generally regarded as an employment at will. The implication is that both the employer and employee can terminate the contract with or without notice and where there is a breach on the terms of the employment (if any) the remedies lies in damages for the required notice of termination not given. The damage is limited to the amount which would have been earned by the plaintiff over the period of notice bearing in mind that it is the duty of the plaintiff to mitigate the damages which he sustains by the wrongful dismissal[16].However, the employer may terminate on grounds of misconduct without fair trial and he is not bound to give reason for the dismissal of an employee. The moment the employer decides to terminate contract of employment in the above mentioned category of employment the employee's services is automatically terminated not minding the length of time the employee may have worked. The second categories of contract of employment are governed by statute or regulation made under statute; that is the civil servant who are in the pensionable cadre whose employments are governed by the Civil Service Rules made pursuant to powers conferred on the Federal Civil Service Commission by virtue of constitutional provisions.[17]

Another is the one public servant whose employments are provided for in a statute plus service agreements. In such a case, the employer must strictly follow the statutory procedure for dismissal. Noncompliance with the statutory provisions will render the dismissal unlawful, null and void[18]. The last but not the least is the company secretaries in public companies whose employments are governed by the companies and allied Matters Act[19]. In such situation, the employer must strictly follow the procedure

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[13] *Union Bank of Nigeria Plc v Ogboh (1991) INWLR (pt. 369)* at 387; see G.G. Otuturu Categories of contract of employment: A note on *Union Bank of Nigeria Plc v Ogboh" Modern Practice Journal of Finance andInvestment Law Vol 9 Nos 1-2 (2005) p. 201-213*

[14] *Labour Act Cap L1, Laws of the Federation of Nigeria 2004, S.11(1)* which prescribes minimum notice periods and requires any notice of termination for a period of one week or more to be in writing.

[15] *Chukwumah v SPDC (Nig.) Ltd (1993)* INWLR (pt. 289) 512 at 571

[16] *Evans Brothers (Nig.) Ltd (n 11)*

[17] Section 170 constitution of the Federal Republic of Nigeria 1999

[18] *Olaniyan v University of Lagos (1985)* 2 NWLR (pt. 9) 599

[19] Cap C20, law of the Federation of Nigeria 2004, .296

prescribed in the Act. Non-compliance with the statutory provision will render the dismissal unlawful, null and void[20].

1.4 Nigerian Workers and Challenges

The challenges confronting modern day worker in Nigeria is overdependence on the rules of the common law by the courts especially in matters of discipline and dismissal of workers. This is clearly demonstrated in the case of *Idoniboye-Obuv NNPC*[21], the courts have slavishly followed the common law doctrine of sanctity of contract to the extent that contractual rights and obligations are elevated above the clear provisions of Section 36 of the 1999 constitution of theFederal Republic of Nigeria (as altered) which requires all public authorities to observe the rule of natural justice in the determination of the civil rights and obligations of every citizen. Such rights and obligations include his contractual rights and obligations.

Another challenge facing workers in Nigeria is the inadequacy of the laws protecting employment. To be candid, the provisions granting protection to trade unionist under the Labour Act[22] are themselves discriminatory as they seek to protect only a small percentage of workers at the expense of the generality of workers. There is also clear inadequacy under Section 20(1) of the Act concerning redundancy. Under the A~t the only right conferred on a trade union is merely a right to be informed by an employer of a redundancy in his establishment without a corresponding sanction on failure to comply on same. This Section does not confer a right to sue in default of an employer notifying the trade union of a redundancy[23].

A further challenge facing workers in Nigeria is the non-ratification of ILO convention 158 of 1982. From the provisions of Section 12(1) and 254 (1) (f) ofthe 1999 constitution (as altered), it creates a doubt whether the jurisdiction of the National Industrial Court to apply international best practices in labour is of any practical relevance. These constitutional provisions are reinforced by the decision of the Supreme Court in *Fawehinmi v Abacha*[24] to the effect that in so far as an ILO convention has not been enacted into law by the National Assembly,it has no force of law in Nigeria and it cannot possibly apply[25]. Can it be construed that the jurisdictions of the National Industrial Court to apply international best practices in labour negate the need for ratification and domestication of international conventions and treaties in Nigeria?The answer is certainly not.

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[20] *Ezekwere v Golden Guinea Breweries Ltd (2000)* 8 NWLR (pt. 670)

[21] (2003) 2 NWLR (pt. 805) 582

[22] Section 7(6) cap L1, Laws of the Federation of Nigeria, 2004

[23] *National Union of Hotels and personal services workers v Imo Concords Hotel Ltd (1994)* 1 NWLR (pt. 320) 306 at 322 per Edozie JCA

[24] (2000) 6 NWLR (pt. 660) 228

[25] *Medical Health workers Union of Nigeria v Minister of Health and Productivity (2005)* 17 NWLR (pt. 953)120 at 155-106

1.5 Problems Associated with Modern Employment in Nigeria

I. Expatriate Quota

Where a particular skill of work requires the need to engage persons who are knowledgeable and skilled in that area of work and there are no available local workers to engage in such skilled work, the need to employ expatriate is very sacrosanct. It therefore refers to the allowable number of foreigners to be employed by business organization operating or wishing to operate in Nigeria[26]. Such business organization may be fully foreign owned, joint ventures or indigenously owned.

By the immigration Act[27] the immigration authorities are entrusted with the power of granting permission to persons who are not citizen of Nigeria come into the country and do or conduct their businesses. The grant of expatriate quota is renewable and it can be increased as the case may be depending on the fulfilment of specific conditions.[28] One cannot rule out possible benefit that may be derived in granting expatriate quota, such benefit like protection of labour, technology transfer and increase in value to our monetary policy. It has been argued being under the supervision of the Federal Ministry of Internal Affairs, there has been gross abuse of procedures and methods of granting such expatriate quota.

At a time where other countries are raising their borders to curtail the influx of foreign personnel to the detriment of her locals, it is unfortunate that the Nigerian government continues to fail in this elementary test of responsibility to her citizen. It has been observed that the number of foreign national's applications for such expatriate quota especially in the Aviation, oil and Gas industry possesses a greater danger to the local content policy of the country[29]. There is expatriate quota racket and it has been denying competent Nigerians jobs and the country multi-million dollars annually. Similar concern was raised 2016 by the current minister of labour during a parley session with the oil industry unions.[30] He went further to emphasize that the displacement of qualified Nigerian by foreigners will soon be a thing of the past[31].

The abuse of expatriate quota is indeed one of the current problems of employment in Nigeria. It is a serious issue and we call on government to declare state of emergency on it particularly now that there is high level of unemployment in Nigeria and the current threat of terrorism. It is sad when

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[26] C. Azu-Aligbe: Observation of expatriate Quota in Employment, effect on Airline Economics, Annual Conference of Aviation Roundtable held at Airport Hotel Ikeja, Lagos 2010

[27] Cap 11 Laws of the Federation 2004

[28] (PUR) Permanent until Review Quota is usually granted to enable foreign shareholders adequate protection for their investment

[29] The data which was supplied by the Nigeria content Development and monitoring Board (NCDMB) has it that within eleven months of this study 5,159 expatriate quota applications were received.

[30] The National Union of Petroleum and National Gas workers (NUPENG), the Petroleum and National Gas Senior Staff Association of Nigeria (PENGASAN0 and some contractors in the oil industry.

[31] available www.thisdayonline.net accessed on 17th Nov. 2017

considered that the foreigners now even venture into domestic services such as housekeeping and non-specialist services where there is abundant local skill. There is about 443 expatriate quota and engineers working on jet engine and aircraft and helicopters companies to about 217 Nigerians of same categories in the industry[32], a development to watch and regulate.

II. Method of Termination and Dismissal of Employee

One of the major problems of Nigeria worker is job security. In all employment, particularly employment created under the provision of common law, the right to hire and fire is the bedrock of the employer and employee relationship[33]. Situations are bound where the methods of termination of employments and the denial of fair hearing in deserving cases are also the problems of employment.

The courts have consistently given judicial backing to the phrase that "you cannot impose an employee on an unwilling employer[34]. The right to terminate is never restricted, provided the employer complies with the terms and conditions of employment. However, where there is a violation of the terms and conditions of employment, the employee is only entitled to damages and that only relates to the length of time/notice the employer ought to have given the employee before terminating his or her employment. In *Chukwuma v ShellPetroleum Development Co Nigeria Ltd*, the Supreme Court stated thus:"the matter of termination of appointment revolves upon contractual relationship in law, which is the contract governing the appointment. Thus in termination cases, the circumstances in which the employment was terminated, such reason for termination ... are irrelevant and cannot be taken intoconsideration so long as the termination is in accordance with the terms ofcontract[35]. Based on the above case, it is clear that job security is threatened especially in private employment. The courts have most times supported this view repeatedly that an employer can terminate the appointment of an employee for any reason or no reason at all, that the moment the employer complies with due notice or payment of salary in lieu of notice, the employer has no obligations again in the eyes of the law.In *Calabar Cement Co. Ltd v Daniel*[36], it was decided that so long as the termination is lawful the motive thereafter is irrelevant. But in a situation where the employment is coated with statutory flavour like in public employment, the courts have been consistent on the strict adherence with the provisions of the statute or the letter of employment in determining a contract of employment.

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[32] Azu-Aligbe (n 26) OP. Cit

[33] *Ilesa Local Planning Authority v Olayide* (1994) 5 NWLR 91, Section 11(1)(b) of the interpretation Act Cap 123 laws of the federation 2004

[34] Ibid Pp. 257-267

[35] Chukwuma (n 15)

[36] (1991) 4 NWLR (pt. 188) 705 at 758

In the case of *ObafemiAwolowo University v Onabajo*[37], the Appeal Court held that where a master and servant relationship is predicated on a statute or specific regulations which clearly stipulate the procedure for termination of the servant's employment, it is mandatory for the master to follow strictly the provision of the statute or regulations. Similarly in *Longe v First Bank of Nigeria Plc*[38], the Supreme Court stated that in the master and servant relationship, the master has unfettered right to terminate the employment, it want further to state that in doing so he must comply with the procedure stipulated in the contract. That contract with statutory flavor, the employment is protected by the statute in the event of termination of employment and strict adherence must be had to the statute creating the employment for statutory provisions cannot be waived.

These issues enumerated above tend to support the idea of labour standard in every legal system that the right to work is synonymous with the right to obtain and retain one's employment which was aptly captured by Karibi Whyte JSC when he held thus:"the law has arrived at the stage where the principle should be adopted that the right to a job is analogous to a right to property[39]

III Casualization

Casualization is a new phenomenon in labour law. The popularity of this concept is as a result of Global trade liberalization and it is more peculiar to Nigeria as it has continually lowered the labour standard because it does not fall within the conventional type of employment which is accompanied with benefits and rights[40], it is non-permanent. It has been argued that defining casualization in a labour market is very problematic since issues of hours of work, type of employment contract, who pays the employee, non-pecuniary benefits as well as working in the formal and informal sector with several meaning can be adopted in the definition of casualization[41].

The International Labour Organization ILO (2007)define casuals as workers who have an explicit or implicit contract of employment which is not expected to continue for more than a short period, whose duration is to be determined by natural circumstances, inother words, casual worker is anybody that works in the informal sector or a formal sector employee with a casual, temporary or seasonal employment contract or a part-time formal sector employee. In most advanced countries for instance, America and Europe, casualization is referred as Non Standard Work Arrangements (NSWAs).

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[37] (1991) 5 NWLR 549

[38] (2010) 6 NWLR 1

[39] Olaniyan (n 18) 589

[40] T.M. Fapohunda, Employment, casualization and Degradation of work in Nigeria: *International Journal ofBusiness and Social Science* Vol. 3 No 9 2012, p. 257

[41] H. Bhorat and T.J. Hinks : Changing pattern of Employment, and employer& employee relations in post apartheid South Africa available www.research gate.net publication accessed 7/2/18 5 p.m.

It should be noted thatthe silent features of the labour Act created the lacuna for the employers to avail themselves of the defect to adopt casualization in their contract of employment, for instance Section 7 (1) of the labour Act[42], provides that a worker should not be employed for more than three months without the regulation of such employment stating the terms and conditions of employment. This lack of celerity in the labour law concerning legal categories of workers is the motivating factor for the adoption of casualization by employers. The labourAct only defined one category of a worker thus:

> Any person who has entered into or work under a contract with an employer whether the contract is for manual labourer 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[43]

The practice of this type of employment in Nigeria is gradually gaining grounds and becoming a source of concern to some labour watchers. The increase in the spread and gradual acceptance of this practice in the Nigeria labour market should be regulated before it goes out of control. Employers of labour are increasingly filling positions in their organizations that are supposed to be permanent with casual employees. The trend has been largely attributed to the increasing desperation of employers to reduce their production cost in other to maximize profit. The resultant effect is accompanying poverty and a threat to economic development. The casual workers appear to occupy a precarious position in the workplace and society and indeed a newest of slaves and underclass in the modern capitalist economy[44]. The casual work is supposes to be a form of temporary employment but now has acquired the status of permanent employment in many organizations in Nigeria without any statutory benefits that is usually attached to permanent employment. Such workers are subjected to lower pay, barred from their right to join a union as well as denial of medical and other accruable benefits as an employee.

It has been stated that most companies avail themselves of this ugly phenomenon to often hire several part-time employees instead of one or two full-time workers in other to escape the obligation of providing the usual benefits, thereby creating a division in workforce and also dissuade unionizing efforts[45].

It does appear that the practice of casualization in most working organization is traceable to increased capital mobility and deregulation of the market, trade liberalization and technological changes. It has also led to inaccurate statistical record as to the number of real workers in contractual employment in Nigeria.

ıp L1 Laws of the Federation 2004
:ction 91 Labour Act LFN 2004
ıpohunda OP. Cit
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IV. Corruption and Nepotism

This is a widely known problem that has permeated in all fabric of our daily life especially in employment process. Corruption can be defined as the act of doing something with an intent to give some advantage inconsistent with official duty and the rights of others; a fiduciary's or official's use of station or office to procure some benefit either personally or for someone else, contrary to the rights of others. It is also a form of dishonest or unethical conduct by a person entrusted with a position of authority, often to acquire personal benefit[46].

Corruption again can be defined as "the abuse of public office for private gain". Public office is abused for private gain when an official accepts, solicits, or extorts a bribe. It is also abused when private agents actively offers bribesto circumvent public policies and process for competitive advantage and profit. Public office can also be abused for personal benefit even if no bribery occurs which may be inform of theft of state assets or diversion of state revenue[47].

The independence corrupt practices commission Act also states that corruption includes bribery, fraud and other related offences[48].

Corruption includes evasion of taxes and other legal payments to the public sector, as well as diversion of public funds from their intended use into private pockets. It is also referred to as favoritism or nepotism where there is a clear manifestation of preferential treatment of firms and or individuals by public officials regarding the compliance with government rules for the allocation of government contracts or transfer payments.

The embezzlement of public funds by public officials and politicians has left the country underdeveloped and thereby there is. continue increase of unemployed Nigerians. Government companies that offered employment to so many Nigerians have all been vandalized and rundown due to incompetency and nepotism. For instance the Ajaokuta steel company.

Indeed one is tempted to conclude that it has been a major problem of employment in Nigeria, politically an obstacle to democracy and the rule of law. It leads to thereduction of the Nation's wealth thereby creating economic hardship to the citizenry. It puts an imbalance in the way businesses are done, enabling those who practice corruption to win[49].

Therefore it can be concluded that corruption has led to lack of good road for the transportation of goods and services. It is also the cause of low supply of electricity even where huge tax have been collected from both the employers and the employees which ordinarily could have been used for economic catalyst for wealth and job creation.

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[46] *Black's Law Dictionary* 9th edition

[47] Available www.worldbank.org. the role of the world Bank accessed 7/2/18 5 pm

[48] *Corrupt practices and other Related offences Act Cap c31 LFN 2004*

[49] Available: www.theguardian.com/sustainable-business/corruption-bribery Cost Service-challenges-business accessed on 5/2/2018

V. Technology

The world is fast changing with the introduction of technology, indeed making it a small village. It has to some extent reshaped labour market as well as affecting the rate of employment in Nigeria. Perhaps the most fundamental and direct impact that technology has on the everyday life of most people is economic in nature. The issue of jobs and unemployment is one that strikes a chord of concern in just about every person. While competition between machinery and human labour has long existed in the realm of physical task, it has only recently been introduced into the domain of mental work which to some extent may bring with it some risks with some workers or part of their functions being replaced by technology. The ability to take advantage of the opportunities will also vary among individuals; workers with higher levels of skill more likely to benefit, while those with lower skills might be less preferred and hence more exposed to risks of lower job quality and job loss. Technology is capable of changing the nature of employment relationships as well as individual employee involvement in the work activities thereby leading to a higher risk of being left behind in both skill and experience.

There are growing concerns about whether the adoption of improved and lower-cost technology by businesses and governments could have negative impacts on employment or lead to inequality, allowing some part of the population to benefit greatly, while others might find themselves with limited economic opportunities[50].

The use of technology though laudable, may have created some concern between employers and employees in the area of data privacy which previously never existed. Since technology leads to innovation there is likelihood that job security will be threatened leading to loss of job. Technology has led to some firms in Nigeria dropping many of their employees and to some extent leading to the closure of some companies like NITEL and NIPOST. They were all left behind due to advent of digital means of communication. KODAC company known with the production of film material was swept off due to technological advancement with the used of digital photographing.

VI. Sexual Harassment

Sexual Harassment is defined as "the imposition of unwelcome sexual demands or the creation of sexually offensive environment[51]". It is an invisible predicament which most women to some extent condone.

It must be noted that prior to industrialization women do not work but as time progress, there was a need to step out of their home for white collar jobs, although faced with so many challenges of having the same opportunities as men. This exposure created room and avenue of being confronted with sex advances from most employers.

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hode L. Deborah: Justice and Gender (Cambridge Mass, 1989)
hode L. Deborah (n 50)

It was due to these challenges that led the United Nations and International Labour Organizations (ILO) to enact some treaties to protect the minority interest. Sexual harassment can also be faced by the males; even though it is not widespread as such but it happens in most workplace. Harassment at work can come in any form and manner. It could be direct or indirect. A direct approach is the use of income inequality on women. An indirect approach usually comes in the form of spoken words. In order to ensure that the workplace is safe for women, employers must take cognizance of international instruments that are protective of women and such violations amounts to violation of their rights and fundamental freedom[52].

The relevant provision of the Nigerian constitution also provides against the violation of the dignity of human from any form of discriminations; as sexual harassment amounting to violation of the rights of the victims[53]. It is also recommended that Nigeria can borrow and adopt the India policy where it is mandatory for employers to have mechanisms for the protection of staffs which includes reporting and disciplinary measures to deal with violators.

VII. Wages

One fundamental problem of modern employment is the wages accruable to the employee having satisfactory performed his job or even at the negotiating table before he employment proper. Wages usually refer to fixed regular payment for earned work or main services, typically paid on a daily or weekly basis. It can also be seen as a monetary compensation paid by employer to an employee in exchange for work done on an hourly, daily, weekly or monthly basis.

The International Labour Organization (ILO) defines wages as remuneration or earning however designated or calculated, capable of being expressed in terms of money and fixed by mutual agreement or by virtue of a written or unwritten contract of employment incentive and straight time pay of time rest employees or workers[54]. The labour Act defines wages as remuneration or earnings capable of being expressed in terms of money and fixed by mutual agreement or law which are payable by virtue of contract by an employer to a worker for work done or to be done or for service rendered or to be rendered[55]. It is also regarded as total emolument paid every month to a work for performing services on the basis of a timely-hour[56].

An attempt will be made to state deferent categories of wages recognizable in any work environment, such wages as:

(a) **Minimum wage**: This is also known as base wage. It is the lowest wage an employer is allowed to pay as determined by contact or law[57]. It is the

[52] Article II convention on the elimination of all Discrimination against women, (CEDAW) 1979
[53] Section 34 constitution of the Federal Republic of Nigeria 1999 (as amended)
[54] ILO Recommendation on wages available www.ilo.org/global/topics/wage
[55] Cap L1 LFN 2004
[56] Cap N61 LFN 2004 (National Minimum Wage Act)
[57] Cap N 61 (n 56)

lowest wage that could be paid within an economy to workers of different cadre. This amount is usually backed by a legal enactment and is determined after reasonable adjustments have been put into consideration the cost of living index, inflationary rate and other social, political and economic considerations.

(b) **Living wage**: This is popularized by the labour movement and entails wage that is capable of providing basic minimum necessities of life for a worker based on his station in life. It is believed that that is the take home pay that can take the worker home comfortably.

(c) **Fair or equitable wage**: This refers to that wage which is considered fair, adequate and commensurate with the worker's input into the production process.

(d) **Poverty wage**: This is a wage which is incapable of taking care of the basic necessities of the worker and cannot support a worker to live above the poverty index of two dollars a day.

(e) **Reservation wage**: This is a coinage by economists, which refers to a wage below which a worker will not accept a job, no matter how attraction the job description.

It is generally believed, including the organized labour that workers in Nigeria are poorly remunerated. Given the high inflationary rate and the interplay of other economic force in Nigeria, which has occasioned corresponding sustained astronomic rise in the prices of goods and services and living generally, the question has always arisen as to whether the workers take home pay can actually take him home in Nigeria?

Matters concerning wage have been a consistent one either from individuals or by various trade unions in Nigeria and that is why there is no time we do not see one agitation by the unions for implementation of collective bargain with the government, if it is not ASUU, it is the civil servants or medical doctors including those in the oil industry whose threat most times creates panicking and more hardship to the citizenry whenever there is threat to go on strike on matters pertaining their wages and welfare. The minimum wage (Amendment) Act fixes eighteen thousand naira as minimum wage. In Nigeria, it is usually a controversial issue, with the organized labour constantly seeking for increments to meet the economic realities. At present, there is a presidential committee setup by the president to look into the issue of minimum wage with a view of arriving at an acceptable minimum wage for workers in Nigeria. How long it will take the committee to conclude the issue is what people are considering because whatever the outcome, it may not be possible for implementation as such because increase in wage is not reflected in the current 2018 fiscal budget. This issue of wage has left average Nigerian worker impoverished compared to his contemporaries in the world.

VIII. Gender Discrimination

Discrimination especially in the area of gender disposition is derivable from customs and traditions which solely subjugate women[38], therefore it is the society that created the problem of gender differences especially how a male or female is viewed in their roles.

There are certain jobs which are reserved for a male even though a woman is capable of doing same, but society has made it solely the job of a man. Despite some progress made over the last few decades in increasing women's labour force participation and narrowing gender gaps in wages, gender equality in the world of work still remains an elusive goal. While millions of women have become successful entrepreneurs, women are still grossly underrepresented in the world's board rooms.

It is not in doubt that women, especially in developing world have continued to form large working force, regrettable though with poor working condition, less earned income and are more often affected by long-term unemployment than men. This is due to women's socio-economic disadvantages caused by gender-based discrimination and their double roles of being a worker and a care taker for the society. Women often have less access to productive resources, education, skill development and labour market opportunities than men in many societies, largely because of persistent social norms ascribing gender roles which are often slow to change.

In addition, women continue to undertake most of unpaid care work which has become an increasing challenge in their efforts to engage in productive work, both in subsistence agriculture and market economy especially in countries which are negatively affected by environmental changes. It is interesting to note that there are some international conventions and recommendations which clearly specified non-discrimination of women in any work force and compelled countries to adopt and domesticate same. It has also formed international labour standard. They include the Equal Remuneration Convention (No 100) and Recommendation (No 90), 1951 which apply to all workers in all economic sectors, private or public; these instruments set out principles for national policy on how to promote and secure equal remuneration for men and women workers for work of equal value. The accompanying Recommendation gives guideline and sets out special procedures for a step-by-step application of these principles. Also the Discrimination (Employment and Occupation) Convention (No 111) and Recommendation (No 111) 1958 is aimed at the elimination of discrimination in the employment relation through effective application of appropriate national policies and measures to implement such policies.

The International Covenant on Civil and Political Rights, 1966 (ICCPR) and the International Covenant on Economic, Social and Cultural Rights,

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[38] Ifinka Olomojobi (2015), *Human Rights on Gender Sex and the Law in Nigeria*, (Princeton & Associate Publishing Co Ltd) p.24

1966(ICESCR) are also International Instruments against discrimination of any type. It urges the member states to adopt these policies and domesticate them through Article 2 (2) which states thus:

"That states should undertake to guarantee that the rights enunciated in the present covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national, social origin, property, birth or other status".

It does appear that these international instruments prescribes that 'rights' are accessible to all regardless of sex. Conventions guaranteeing the equal rights of women with men are found in a number of other United Nations Human Rights Treaties[59]. It is sad to note that discrimination against women is still a big problem of our employment. The labour Act made provisions for the maternity protection, however, the provision appear discriminatory as women on maternity are paid at least 50 percent of their wages[60] which to some extent violate some Section of our constitution which abhors discrimination on ground of sex. For instance in Aviation industry women are meant to sign contract that they will not get pregnant within a number of years of their employment and this is discriminatory and up till now constitute a major challenge in Nigerian employment.

IX. Respect for Human Right

It has been noted that onefundamental bedrock of modern problem of employment is the lack of respect for human rights[61]. He defined human rights as claims which are invariably supported by law made on society especially on its official managers by individuals or group on the basis of their humanity. On issues concerning human rights, it is further stated that no man may be deprived without a great affront to justice. They are certain deals which should be done, certain freedom which should never be invaded, something which are supremely sacred[62]

Furthermore, it has been stated that human rights are cherished entitlement endowed upon every person by virtue only of being a human and which are not extinguished by denigrations .... as they carry the status of innateness being inherently inalienable and therefore immutable[63]. Because of the universally of theapplication of human right, it is today a major standard of international legitimacy which has led to it application without limit and until Nigeria learn to observe and respect the cannons of human right.

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[59]Article 3 of the international covenant on Civil and political Rights and economic, social and cultural rights; Article 2 (1) of the convention of the Rights of the child.

[60]Section 54 of the labour Act cap L1 Laws of the Federation of Nigeria 2004

[61] M. Cranston, Human, Rights: Real and supposed in Raphael ed. Political theory and Rights of man

[62] U.O. Umezuruike, (1997) *The African Charter on Human and Peoples' Right* (Martinus Nijhoff publishers) p.3 (Bloomington Indiana University Press) p.52

[63] O.W. Igwe, preliminary studies in human Rights Law (Rings and Favolit Ltd 2002) p.6

1.6 Conclusion

Although a lot of factors have been enumerated as the problems of modern employment, it cannot be ruled out that some human factors may have contributed to most of the problems of employment. Be it corruption, non-payment or under payment of wages, attitude of employers in opting for casualization and government lack of respect for collective bargaining.

It is therefore recommended as follows:

i. That the Government should stop interfering into the affairs of unionism in Nigeria, the issue of wages in employment should be tacked head on by the government and stakeholders without due political interference in other to come up with an acceptable living wage for the workers.

ii. There should be effective data base on employment in Nigeria which will capture those that are unemployed and the challenges of employment will to some extent be resolved. Respect for human rights is the key to rectifying the problems of employment especially in Nigeria. The respect for human rights is captured in our constitution and other International Instruments[64]. In addition chapter 2 of our constitution must be respected and observed, since we are signatory to most international treaties and as such binding on us.

Therefore the respect for right to life, work, to food, shelter, good working environment, good Health, safety, to associate, to express an opinion and right to development we submit are inalienable and must be respected. It is observed that the violation of these basic human rights has continually been the problems of modern employment in Nigeria. Hence KayodeEso stated that "human right is a right which stands above the ordinarylaws of the land .... It is the primary condition to a civilized existence[65] and those in employment with their relative work status.

iii. There should be separate legislation against sexual harassment and gender discrimination in other to forestall equal opportunity for all irrespective of gender, colour or race.

iv. There should be a reform in the employment law where all employees will be protected to checkmate abuse of employers right to hire and fire at will in both private and public sector.

The principle of *pactasuntservanda*should be made mandatory in our law to safeguard collective bargain agreement between Nigeria government and Trade Unions and provision of sanctions on breach of same. And there should be respect for human rights by both government and citizen of Nigeria. These labour rights should be enshrined into our constitution to give it a constitutional backing.

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[64]Sections 33-45 1999 constitution of Federal Republic of Nigeria (as amended)

[65]*Ransome Kuti v AG Federation (1985)* 2 NWLR pt. 6) 211