# THE INTERFACE BETWEEN EMPLOYERS AND EMPLOYEES: A CASE FOR AN IMPROVED LEGAL ORDER TO SECURE EMPLOYMENT MATTERS IN NIGERIA

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By

Yusuf Dankofa Ph.D*

## 1.0 PREAMBLE

The Concept of legality in this topic pre-supposes a condition where law as an important arm of the Legal System would regulate employment matters and protect employees. This is true. The main functions of law is to foster and maintain social cohesion, progress and justice in all spheres of human activities. Therefore in the area of employment matters, law must be seen to preserve positive values, and to outline acceptable standards of behaviour. Principally Labour Law which is the arm of law that regulates employment is supposed to promote fairness, equity and justice. In this context both Employers and Employees alike must have their interests protected especially the Employee because of obvious disadvantages. When this is done inter parties duties, obligations and rights would be spelt out, so much that, interests shall not only be protected, disputes would be fairly resolved. The ultimate consequence of these is that there would evolve a civil culture between the Employer and Employee and they would develop confidence, towards one another. Confidence generated by a sense of security in that, the law having prescribed how every body must behave, will always limit the exercises of any party or organ willing to subvert it rules. Therefore, the goal of labour laws is to equalize the bargaining power between Employers and Employees in order to enhance employment security and protection.[1]

It must be emphasized however that in the last two decades, the global labour market has changed profoundly both in its composition and dynamics Growing internationalization of economic activity has affected the nature and type of labour relations. It has rendered regulation of employment and standards of employment more difficult. Markets are more competitive. Technology is changing rapidly, and with it the organization of work. There are relatively more people engaged in service activities than in

* Head, Department of Public Law Ahmadu Bello University, Zaria.

[1] *http://www.law.comel.edulwexlinde:x.phpllahour. accessed on 4th April 2010.*

manufacturing and agriculture.[2] Various kind of employment that differ from full time protected regular wage and salary employment have also emerge. Such employment can be temporary, informal or external. There are more and more people in this kind of non - permanent contracts and an ever increasing numbers of displaced workers.

These changes in the labour market have been accompanied by a general decline of security of employment. Therefore, the trends towards increased labour flexibility or easier hiring and firing has negatively affected employment security.[3] Again non standard employment which increases with flexible labour markets has tended to be less secure with lower wages on the average. More women than men are in less secure employment relations.

In developing countries like Nigeria, employment in low income, unprotected informal activities has increased. Such employments amounts to over 60% of total employment in Nigeria. These categories of employment no doubt includes insecurity in employments and even lay offs. Most employments in Nigeria, do not therefore guarantee security and protection for employees and the concomitant effect of this is that incomes of employees are hardly secured for it is only when there is security in terms of income that, the employees can be truly secured in terms of job protection .

## 1.1 THEORETICAL FOUNDATION OF EMPLOYER - EMPLOYEE RELATIONSHIP AND THE CALL FOR THE PROTECTION OF EMPLOYEES

Employment security generally refers to protection against unfair or unjustified dismissals. According to the most commonly used definition, employment security means that workers have protection against arbitrary and short notice dismissal from employment as well as having long term contracts of employment and having employment relations that avoid casualisation".[4] This definition covers one category of the labour market, the wage and salary workers. It is they that are employed by some legal

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[2] Araki. T:- 1999. "Revisions of Employment Security law and worker dispatching law: Drastic reforms of the Japanese Labour Market Regulations" in Japan Labour Bulletin, vol. 38, No.9. p.14.

[3] Britton, A:- 1997, "Full Employment in industrialized Countries in" International- Labour Review (Geneva) vol. 136, No.3. p.62.

[4] International Labour Organization p. 18.

entity and are at the risk of being dismissed by that legal entity and can have a stable or unstable employment relation with their employer.

This definition no doubt is very restrictive bearing in mind that a lot of employees falls under the "non-standard employments" where there is often an absence of any "relation" with any one employer. However some people fall under the custody of self employment and most often this category are excluded from discussion on employment security, under the assumption that in self-employment, the self is responsible for his or her employment, because the "Self' has voluntarily chosen it. And the self has control over his or her employment and cannot be dismissed by another. This is partly true, because, some categories of disguised wage workers, such as sub-contractors, external workers, consultants or home workers can conveniently fall under this category and factors such as markets, credit availability and legal provisions, in which self-employed workers have little or no control, may result in their employment loss.

It is also to be noted that employment security will normally guarantee income security, it enhances the workers welfare and most International Human Rights Instruments broadly acknowledges the right to protection against employment loss[5] Article 23 of the universal Declaration of Human Rights Provides that, it is the right of all persons "to work, to enjoy free choice of employment, to enjoy being trusted and to also enjoy favourable conditions of work and to be protected against unemployment.

Thus employment security is essentially important in developing countries that do not have a system of unemployment benefit. Loss of employment in such situations leads to loss of income and loss of livelihood. This may mean hunger and misery not only for the person losing his employment but his or her family and dependants.

Employment security or protection encourages stable employment relationships that creates an atmosphere of microeconomic stability. Also secure employment means stable employment relations that encourage investment in worker training and skill development and which in turn

[5] Universal Declaration of Human Rights (1948) as proclaimed by the United Nations Organisation.

increases the commitment and motivation of workers and the productivity of the firm, it may also lead to workers increase in loyalty and discipline.[6]

## 1.2 THE PROVISIONS OF THE 1999 CONSTITUTION OF NIGERIA ON EMPLOYMENT PROTECTION

Employment issues falls under labour law. However both employment laws and labour law are often used interchangeable. Labour law, no doubt is a broad area, which includes all areas of the employer-employee relationship, minimum wage-regulation, workers compensation, workplace safety, whistle blower, collective labour relations, unfair dismissal, redundancy etc.[7]

Apart from the Labour Act which regulate employment matters in Nigeria, the 1999 Constitution too has some of its provisions related to labour issues. However, it must be emphasized that, only the National Assembly can legislate on this subject matter, because labour issues falls under the exclusive legislative list in part 1, item 34 of the 2nd schedule of the said constitution.

Section 34 1 (b) and (c) of the 1999 Constitution of Nigeria no doubt sets the tone for an effective and egalitarian labour regime in Nigeria. The section falls under the Fundamental Human Rights Chapter, which protect the Rights of Nigerians and make them inviolable. Thus section 34 1(b) provides that nobody shall be held in slavery or servitude while subsection (c) provides that nobody shall be required to perform forced or compulsory labour.

It is instructive to note that this provisions laid the foundation for employment security and protection in Nigeria because the constitution in outlawing these labour exploitations have made labour right a human right issue and that any Nigerian that is threatened or his above rights have been violated can seek redress in a competent court against such infractions. A corollary to this section is section 40 of the said constitution which also provides that

> *"Every person shall be entitled to assemble freely and associate with other persons and in*

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[6] Piore S.J and Sabel C.F (1998): The second industrial divide: possibilities for profit (New York basic books) p.40.

[7] Aturu B (2005): Nigerian Labour Laws, principles, cases, commentaries and materials (published-by Friedrich E. Stoftory) p.62.

*particular, he may form or belong to any political party, trade union or any other association for the protection of his interests"*

It is beyond debate that the above freedom is about the advancement or protection of interests of workers especially in labour matters. These freedoms are an inseparable aspect of liberty, hence the protection of these rights by the constitution. These liberties does not mean leverage to organize riots or disturb public peace, the provisions cover peaceful assembly; this is because freedoms to assembly which workers might seek to enforce for the purpose of collective bargaining would be limited or encroached upon by authorities if it would impact negatively on public peace and security, because there is always the rights of the authorities to prevent disturbances. The benefits of these provisions is that many of the labour reforms drew their flavour from the above constitutional provisions.

The 1999 Constitution in chapter 2, gave a deep insight on how to effectively give vent to employment protection. In section 17 of the said chapter, the following ideals were established:-

(a) All Nigerians shall have the opportunity of securing adequate means of Livelihood.
(b) All Nigerians shall be accorded with a just and humane conditions of work.
(c) The provision of Health Safety and welfare of all persons in employment should be guaranteed.
(d) Equal pay for equal work without discrimination on any ground whatsoever should be guaranteed.
(e) The prohibition of child and aged labour should be enforced.

It is important to note that this threshold established by the constitution is not enforceable and it is hoped that the present Constitutional Review will accommodate these objectives as enforceable values, since the constitution being the groundnorm of the polity should as a matter of policy lay down guidelines for effective protection of employees. The review mechanism should consider that these values are now enforceable in many jurisdictions like India, South Africa, Spain, Canada and The United States. Also a lot of regional and international treaties have made these protections enforceable. The African Charter on Human and Peoples Rights, which is an inter-regional treaty ratified by Nigeria, by virtue of the African Charter on Human and Peoples rights (Ratification and Employment Act) 1983 do

have some provisions relating to employment security. Article 15 of the charter provides:-

> *"Every individual shall have the right to work under equitable and satisfactory conditions and shall receive equal pay for equal work"*

The provisions of the charter is enforceable even during war or any emergencies. It provisions cannot be suspended. It is therefore heartwarming to employees, that as a municipal law, the above rights cannot be suspended. Furthermore articles 5 and 15 of the African Charter deepened the protection of workers. It provides that the legal rights of employees during economic recession will be protected, health care benefits and insurance will also be guaranteed.

The above protective measures are quite far-reaching especially in developing societies where government at the slightest advent of recession layoff employees. This provision no doubt secure workers from such arbitrariness and it is hoped that Nigerians would take advantage of this protection, by seeking the intervention of the courts whenever these rights are trampled upon.

Apart from the African Charter, Nigeria is also signatory to a plethora of International conventions and treaties protecting employees the world over. It also recognize- the important and critical role the International Labour Organization, which is a UN agency that brings together governments, employees and workers of its members states in common action to promote decent work throughout the world has been doing. It continually promote the preparation of treaties to enhance global employment protection and security. Member states are enjoined to ratify such treaties. It also act as an observatory to regularly monitor flashpoints of global job crises and also to act as a whistle blower against countries that negate the terms of social justice in employment relations.[8] However the most critical shortcoming the ILO is facing is that, it does not have any enforcement machinery.

Nigeria as a member state is enjoined to be guided by the above ideals and be devoted to advancing opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and human dignity and also to create as its national vision the philosophy that labour is

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[8] The ILO was founded in 1919 and it became the first specialized agency of the UN in 1946.

central to peoples well being. In addition to providing income, work can pave way for broader social and economic advancement, strengthening individuals, their families and communities. To achieve this, there must be the promotion of decent work. Decent work therefore sums up the aspirations of people in any community.

The ILO in furtherance to the establishment of the above ideals have further facilitated treaties and conventions to enhance employment security Notable areas of protection are in the following:

(a) Child Labour:- The ILO has continually impress it on member states to stop this practice through legislation. It has noted that more than 200 million children in the world today are involved in child labour. The work they do are damaging to their mental, physical, and emotional development. In fact in developing countries child labour assumes the most ugly and dastardly dimensions, like trafficking, armed conflict, slavery, sexual exploitation and hazardous work.

(b) Decent work: - Decent work is the most important security of employment and it sums up the aspirations of the peoples in their working lives. It involves opportunities for work that are productive and delivers a fair income, security in the workplace and social protection for families, better prospect for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.

(c) Strong economic and social development:- A viable economy is the key to sustaining employment security. The global economy must work for the majority and not a few capitalist. Thus globalization must be inclusive of developing nations and the tenets of constitutional democracy must take roots. It is only when this is achieved that, opportunities and tangible benefits will accrue to people. Again, a viable economy will unlock the enormous potential of enterprise, to create decent jobs that will help alleviate poor working conditions and provide a route out of poverty. In fact the informal employment sector will be greatly boosted, since it often come with poor employment conditions and also associated with increasing poverty. Some of the problems associated with these sector will also be addressed, issues like: lack of protection in the event of non payment of wages, compulsory overtime or extra shifts, layoffs without notice or compensation, unsafe working conditions

and the absence of social benefits, such as pensions, sick pay and health insurance.

d) Forced Labour:- The idea that an estimated 12 million people work under coercion in forced labour, slavery and slavery-like practices motivated the ILO to take steps in combating this scourge. Women are the most vulnerable in this regard. Forced labour takes different forms like, debt bondage, prostitution, little or no wages. Fresh perspective in the area of legislation are also needed as an imperative to really combat this, because it is a multi-billion dollar illicit business and member states are suppose to collaborated with the ILO in this respect.

e) Freedom of association and the right to collective bargaining:- The ILO is concern about the need for member states to adhere to this. This right is an integral part of a free and open society. The advantages of this is very wide. These organization normally plays a vital role in most countries democratic transformation, they provide education and training for trade unions and even advise government on laboour legislations.

f) Safety and health at work:- Millions of people around the world work in hazardous conditions and a lot die of work related accident and diseases. The ILO have place special conditions to protect victims and also the need to adequately compensate them, especially at the back drop of newly emerging hazards and the HIV/AIDS scourge. Infact it has become one of the most critical workplace issues in our time. It has a devastating impact on men and women and their families. It also affect the world of work in many ways. Discrimination against carriers threatens fundamental right at work and undermines peoples opportunities to get decent work. The ILO has put in place certain codes of practice in this respect, this code will help prevent the spread of HIV/AIDS and also mitigating its workplace impact and the continuation of employment relationship.

g) Skills, Knowledge and Employment: Public employment services are usually the dominant government institution responsible for providing variety of active labour market programmes and their capacity often needs strengthening. It is imperative to continue to work out ways in which the public and private sector will continue to strengthen human capacity by promoting skills acquisition and development.

(h) Social Security: Social security is virtually non-existent in developing countries. The ILO therefore provides guidelines and assistance to developing countries especially to help extend adequate levels of social protection to all members of the society. This will involve access to health care and income security, especially for the aged, and the sick or invalid, work injury and maternity.

(i) Labour Law: All members states must ensure that their labour laws adopt all the regulations of ILO, which will be an important means of implementation of ILO standards, promoting the ILO declarations and treaties.

## 1.3 THE PRESENT NIGERIA LEGAL ORDER

Nigeria no doubt have overtime enacted labour laws to regulate employment issues and also protect the well being of her workers[9]. This is because decent employment occupies a position of considerable importance in any modem society. Statutes, that is legislation forms an important part of the labour laws in Nigeria. In this respect, we have the Nigerian Labour Act[10], the Child Rights Act[11] the Public Procurement Act and other subsidiary legislations on this subject matter.

Judicial decisions or case law in labour matters also constitute authorities in this respect and the question is? Can it be said that the law as it is can usher in the necessary protection and security of employment in favour of the workforce, which in turn will stimulate national growth? Can it be said also that the labour laws in Nigeria have been able to foster and maintain fairness, equity and justice in the area of employment relationship? Can the present laws on labour equalize the bargaining power between employers and employees in order to enhance employment security and protection?[12], How far has the laws or judicial decisions being in conformity with international laws, standards and best practices in labour matters and the current reforms going on globally especially the above standard established by the ILO.

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[9] Uvieghara F. (2000) Labour Law in Nigeria (Malt house law books) p.42.
[10] Labour Act Cap 1, Laws of the Federation of Nigeria 2004
[11] 2003.
[12] *http://www.law.comel.edulwexlindex.phpllabour.*

The Nigeria Labour Act tried to bring about some revolution in this context and some of its provisions are in alliance with global protection of workers. Child labour for example has been outlawed by the Act. It provides that an employee can only be a person above the age of 16. The Child Rights Act too in relation to the above have prohibited child labour. With these legislations children are no doubt protected from being exploited and this pieces of legislation are no doubt very revolutionary.

The Labour Act in line with the (general agreement on Tariffs and Trade)[13] which stipulates that countries around the world should consider possible ways of dealing with workers rights so as to ensure that their welfare is protected did provides some of its provisions to tackle this issue. Section 54 and 55 of the Labour Act entitled workers to their wages and also entitled to periodic upward reviews. The Labour Act also provides for compensation to injured workers. In the case of Priestly V. Fowler[14] which is a locus classicus on compensations established that an employer is bound to provide for the safety of his employees.

The Labour Act also provides for formal contracts especially in formal employments, it goes without saying that these formal contracts or agreements or employment codes will specify in clear language terms and conditions of employment so that employees will be able to fully understand the nature of employment especially with regards to termination. The labour law prohibits temporary contracts and forbids casualisation. It supports Trade Unions for the purpose of collective bargaining and to assist its members to regulate terms and conditions of workers.[15] Under this wages and conditions of employment are settled by a bargain in the form of agreement between employers and employees.

The Labour Act of Nigeria prohibits discrimination at workplace, which is quite rampant in the area of gender, ethnicity and religion. No doubt there have been employment segregation against females in Nigeria, especially in the areas of wages. Women are being discriminated. The Labour Act recognizes this problem and fully understand that inequality on the part of women can adversely affect their welfare and it has made provisions against this unfair labour market practices. Thus the Act did protect women by

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[13] Promoted by the United States of America in 1986.
[14] (1837) 3 M & W 1.
[15] Section 1 (1) Trade Union Act Cap 437 Laws of the Federation of Nigeria 2004.

allowing them equal pay with men of the same cadre, giving them their benefits like pensions, allowing married women to take their maternity leave with all the attendant benefits. These protective legislation also extends to migrant workers and the aged and also to other vulnerable groups.

## 1.4 THE CALL FOR A NEW LEGAL ORDER

From the foregoing it becomes apparent that there are myriads of laws that are geared towards protection and security of employees and the poser is despite all these laws, why is there a palpable feeling of job insecurity in Nigeria? Why is it that most jobs available are informal and therefore insecure? Is there a need for a general reform of ail these laws?

As Nigeria moves towards industrialization it must have to reform its labour laws and upgrade them to accommodate the role and status of an emergent state in modern industrial societies. As those directly concern in the productive process, employees must be secured by standardised rules. Therefore workers standard of living, pay and prerequisite must be looked into.[16] For this to be achieved, Nigeria must pursue social-economic development so as to better the standard of living of its peoples. Leadership in Nigeria must strive towards establishing a viable social formation, i.e. good governance.

Law reforms within the above context will have to involve new legislation: The National Assembly of Nigeria must therefore brace up to the challenge of law making conferred on it by the constitution. Since labour matters fall under the Exclusive legislative list, the National Assembly has the exclusive right to make laws on labour matters. One area which the legislative must act is on how to protect all categories of employees, be they skilled or unskilled, manual or non manual. This is because an employee on his own is a marked disadvantage in labour markets transactions. His employer is usually economically stronger.

There must be new legislation to protect all categories of employees. These legislation must also allow them to work in concert, that is to unionise. Employees can best redress insecurity by acting in combination with one another.

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[16] Nmadu. T. (2000) Industrial Democracy under the constitution (Constitutionalism and Democracy in Nigeria) p.22. Published by Specton Boks

Also legislation on how employee must be given reasonable and international acceptable minimum wage standard must evolve. It is only when an employee can satisfy his basic needs of life, through a standard life, food, clothing, shelter, health and security of job that he can perform optimally. Again laws that allows him to satisfy his social needs through ability to voice concerns at workplace and offices must be enacted.

In Nigeria, unions have a poor showing, maybe largely because, they lack an economic base to fulfill their roles, especially how to support members during strike. Most of their sources of income come from membership subscription. Take this out, they become impotent. Laws must therefore be enacted to recharacterise the labour unions. In fact in some countries, labour unions metamosphosize into political parties, which ultimately work for the interests of workers, especially when they get elected into Government.

This paper is therefore advocating that, the legislature in Nigeria should look into the following critical areas that affect employment security and come out with laws that will assist employees (i) Rights not to be dismissed for making a public interest Disclosure (ii) Rights not to be dismissed for ascertaining a statutory Rights. We must all collectively agree that, every employee has the right not to be unfairly dismissed and there must be a law that protect this right. Women must be entitled to maternity pay and leave, timt; off and ante-natal care. Also rights to statutory sick pay must be established by law. The new legislations must adequately provides for strict sanctions against any employer found to be in breach of these rules.

Also relevant courts and tribunals with jurisdictions over labour matters must be adequately equipped by knowledgeable staff and experienced jurists. As it were, the National Industrial Court in Nigeria should be made more effective. All its presiding members should be lawyers as opposed to the present composition. It is heart warming that the Senate has passed the New National Industrial Court Bill. The bill is expected to ease and hasten the dispensation of justice in matters relating to labour and trade unions. It has jurisdiction in civil cases relating to employment, labour, trade unions, industrial relations and conditions, health, safety and welfare of employees. This bill has been given concurrence by the House of Representatives.

## 1.5 CONCLUSION

The Nigerian Judiciary must strive to remain judicially active with regards to employment matters. It is only when there is a great deal of judicial

activism that labour ,matters can be given full effect and interpretation. Judicial passiveness can only lead to stifling the growth of our laws. In most advance countries courts tend to view the issue of labour protection seriously and it has been said times without numbers that the American judiciary is a friend of labour because of its many progressive decisions regarding labour protection.

We have instances, where in Nigeria, employers will act outside the law or even above the law, and also refuse to obey court orders and workers will be left frustrated, this must stop. Judges are the conscience of the nation and the bastion of justice and hope. They must be impartial and their decisions must be rooted in law. But it is only, when the legisture enact relevant and consistent laws that protect not only the employees, but also promote public good, that courts can effectively interpret them.
The new legislation must also articulate social security problems of workers and employees the Pension Reforms Act 2004 is a good step in this direction. The new Pension Act is to ensure that all retired workers in Nigeria are paid their retirement benefits.

But one area that is begging for attention is the area of unemployment benefits. Persons without employment must be made to feel as a part of the society. New legislation must have to be enacted to take into consideration, the needs of the unemployed. Without doing this, we shall continue to grapple with the problems of youth restiveness, area boys syndrome and Almagiris (beggars) and the militants in the Niger Delta region etc.
There should be good governance in the management of public affairs. This implies, proper management and application of natural resources. Transparency and accountability and also redirecting the National economy towards growth and development.

Also a sound poverty alleviation programme should be devised. Though Government is trying to make some impact in this areas. Programmes like National Directorate Employment and African Growth and Opportunity Act from the US are laudable programmes. More still need to be done. A huge budgetary allocation to alleviate poverty is now a necessity. Also negative capital flow has to be reversed and a competitive and liberal economic environmental devoid of corruption has to be guaranteed. The liberalization policy of this government can only be applauded, if it becomes transparent. As it were now, it is dubious, since rather than create jobs even in the short term, it is a case of jobs dismissals. If this can be done employment will be

secured and poverty levels are bound to decline. The case of recent bank layoffs have reinforced the fallacy of reforms.

The educational sector has to be rejuvenated to produce qualitative manpower so that decline in capacity building will stop. There should also be deliberate policies and law aimed at increasing industrial, manufacturing and agricultural outputs. Nigeria must legislate against huge and reckless spending. This will insulate the national economy and resources from revenge missions and profiteering by politicians.

All trade unions, professionals bodies and Non-Governmental Organisations (NGO's) have to develop keen and not passive interests in Nigeria's political processes to save the country from inept, ill educated, poorly trained and mediocre leadership and governance.
The literacy level in Nigeria is embarrassing low. Education must be readily affordable to Nigerians to be able to participate in Nation Building, Nigerians must seek for qualititative education from their leaders so that their capacity as skilled and enlightened people will be deepened.

Nigeria requires a participatory and well defined Civil Democracy to allow her develop as a responsible member of the international community.

The political class must rescue this country from the looming dangers ahead. Law and Order must be maintained and the social compact relationship between the government and the people must flourish so that Nigeria will move towards an Egalitarian society, where no person or worker is oppressed.

The International and Regional Community should provide ways of enforcing some of these rules, where countries downplay them. The ECOW AS treaty should be reviewed to involve labour matters and the ILO should be given some enforcement powers.

The African Commission and also the African Court on Human and Peoples Rights should be given an effective power of sanctions, to enable them sanction any member state that tend to treat Employment Security with levity.