



**A CRITIQUE OF NIGERIAN CASE LAWS ON LEGAL FRAMEWORK
FOR TERMINATION/DISMISSAL OF EMPLOYEES FOR CRIME
AND CRIMINAL MISCONDUCT.**

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Abstract

This paper applies the doctrinal research method to appraise the legal framework and legal ambits of the rights of employers to terminate the employment of workers for misconduct constituting criminal offences on the one hand and crime per se on the other. This paper concludes that both in master/servant employment relationship as well as employment governed by statute, the employer has the legal right to terminate the employment of, or dismiss an employee for misconduct which also constitute criminal offences without first prosecuting and achieving conviction of the employee by a court. It also concludes that where an employee is on the other hand alleged to have committed a crime, he must first be tried and found guilty by a court of competent jurisdiction before his employer can proceed to dismiss him. It is recommended that employers should ensure that an employee is granted fair hearing in disciplinary procedure to prevent the courts from declaring their termination or dismissal a nullity.

Keywords: *Legal Framework, Termination, Dismissal, Employee, Crime, Criminal Misconduct*

Introduction.

The statutory and legal definition of contract of employment is encapsulated in section 91 of the Labour Act 2004 which defines contract of employment as: “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 a worker”.

Inherent in this definition by the Nigerian statute is the fact that the contract of employment is defined within the context of a master/servant contractual relationship.

In the case of Samuel Ishero v Julius Berger Nig Ltd (2008) the Supreme Court of Nigeria reemphasized the relationship between employer and employee in a contract of employment where it held that under Nigeria jurisprudence, there exist a master- servant relationship between employer and employee, and that the employer had the right to hire and fire employees at his pleasure, but that this right must be exercise within the ambits of the law and without infringement on the right of the employee. The Apex court further held that the legal basis for this position of the law is that an employer cannot be forced to retain the services of an employee he does not require.

It is a well established principle of law that an employer can terminate the employment of an employee for good reasons, for bad reasons , or for no reasons at all. Where the employer gives no reason for terminating an employee’s contract, he does no wrong. However, where an employer gives reasons for such termination, the law places the onus on him to prove such stated reasons. This cardinal principle of Nigeria law was restated by the Supreme Court in the case of Shell Petroleum Development Co. Ltd. v. Sunday Olarewaju (2008) where it held *inter alia* as follows:

“an employer is not bound to give reasons for terminating the appointment of his employee. But where, as in this case he gives reasons or cause for terminating the appointment, the law imposes on him a duty to establish the reason to the satisfaction of the court. In this case, the Appellant stating gross misconduct as its reasons for the respondent’s dismissal

has the onus to establish that the respondent was indeed guilty of the alleged misconduct to warrant his dismissal. And in a case such as this, the court must be watchful to ensure that in the investigation or proceedings, of the domestic panel culminating in the employee's dismissal, the rules of natural justice were not breached".

It is evident from the above that where the employer gives reason for disengaging an employee and fails to prove such reasons, the courts would normally declare such termination /dismissal wrongful or unlawful.

This paper examines the legal ambit of the rights of employers to terminate the employment or dismiss an employee for commission of a crime or for gross misconduct which incorporates criminal offences. It also, examines the legal parameters of employees rights and protections in such circumstances,

Legal Framework.

One issue that has raised a lot of controversy in recent times is the dismissal of, or termination of employment of an employee where a crime is alleged and forms the basic for such dismissal or where the misconduct committed by the employee also constitutes a criminal offence.

Two dominant point of view have arisen in this discourse. On the one hand are lawyers, judicial activists and lay men alike who hold the view that once the misconduct committed by an employee discloses a criminal offence, his employer should not dismiss him or terminate his appointment until he has been found guilty and convicted by a court of competent jurisdiction. Those who hold this viewpoint predicate their position on the constitutional provision on presumption of innocence as enshrined in section 36(5) Constitution of the Federal Republic of Nigeria 1999 (as amended), which is to the effect that a person is presumed innocent until tried and found guilty by a court of competent jurisdiction.

On the other side of this discourse is the legal position that the contract of employment, except where governed by statute, is predicated on a

master/servant relationship. Inherent in this is that following the common law doctrine, and in the face of copious judicial precedents, it is settled law that even where a crime is alleged, a master need not wait for police investigation and conviction by a court or of competent jurisdiction before dispensing with the services of an employee he no longer requires.

From the foregoing, two separate positions of the law can be gleaned as it relates to termination of the employment of employees where criminal reasons are alleged. The two ambits are: the position of the law as regards employment contracts governed by master-servant relationship; and the position of the law as regards employment governed by statutory flavour.

Dismissal/Termination for Criminal Offence(S) In Employment Governed By Master-Servant Relationship.

It is settled law that a master cannot be forced to retain the service of a servant that he no longer requires. In consonance with this view point, the Supreme Court per Karibi Whyte JSC in the case of *Chukwuma v. The Shell Petroleum Development Company Ltd* (2000) lucidly stated the position of the law thus:

“It is a well established principle of the common law, and Nigerian law that ordinarily, a master is entitled to dismiss his servant from his employment for good or for bad reason, or for no reason at all such a servant does not need to be convicted by a court of competent jurisdiction. The rationale for this position, I would dare say, flows from the common law and the Supreme Court principle that a master can dismiss his servant “for good reason, bad reason, or no reason at all”.

Espousing the settled principle of law in this regard, the Supreme Court per Rhodes – Vivour JSC in *Eze v. Spring Bank Plc* (2011) posited:

‘The appellant’s contract of employment is a written contract of service, a master/servant relationship. In such relationship, a master can dismiss an employee for misconduct, and an employee can be dismissed for fraud and dishonesty’.

In this case, the Apex court emphasized the legal principle that the master is not obligated by law to report the matter to the police and wait for the conclusion of subsequent criminal trial before he dismisses the errant employee. The court further held that a master can proceed to dismiss the employee once he is satisfied that the employee did something against the interest of the master.

In the earlier case of *Garuba v. Kwara State Investment Company and ors* (2005) the Supreme Court per Oguntade JSC while restating this principle of law, enunciated further thus:

In the ordinary case, and following the Common Law principle, termination of a contract of service, even if unlawful, brings to an end the relationship of master and servant, employer and employee. The rule is that the relationship between master and servant which cannot continue in the absence of mutuality.

As to the issue as to whether the employer can validly terminate the appointment of an employee without recourse to the courts where criminal reasons are adduced in employment governed by master-servant relationship, it would appear that it is the law that the master can validly dismiss or terminate the employment of his servant on criminal allegations without first waiting for the employee to be trialed and found guilty.

Emphasizing the present position of the law in this regard, the Supreme Court in its lead judgment in the case of *Eze v. Spring Bank Plc, Mohammed, JSC* lucidly stated:

“... It is no longer the law that where an employee commits acts of gross misconduct against his employer, which acts also disclose criminal offences under any law, the employer has to wait for the outcome of the prosecution of the employee for such criminal offences before proceeding to discipline the employee under the contract of service or employment”.

From the recent decision of the Supreme Court in *Eze v Spring Bank*, it is argued that it is now settled law that where an employee in a master/servant employment is guilty of misconduct which facts also constitute criminal offences, the master (employer) does not have to wait for the prosecution or

conviction of the employee before dismissing or terminating his employment. He can validly terminate the employment of his servant at any time without recourse to the courts.

In addition, in the case of *Imonikhe v Unity Bank* (2011) it was held by the Supreme Court that where fraud is stated in the dismissal letter of an employee, the courts will not set aside the dismissal where the employee was provided ample opportunity to defend himself before he was dismissed. In this case, it was also held by the apex court that it is a settled principle of law that where an employee commits misconduct which also discloses criminal offences like fraud or dishonesty, the employer can validly terminate the appointment of or dismiss the employee without prosecuting him for the alleged offence provided he is afforded ample opportunity to defend himself before the decision is taken.

Termination/Dismissal of Employees for Misconduct which also Disclose Criminal Offences in Contracts with Statutory Flavour.

The question that arises here is: what is the position of the law in respect to what actions an employer can take in contracts of employment governed by statute for commission of crime by an employee or where the misconduct committed by the employee also amounts to criminal offences? Can the employer validly dismiss the employee without recourse to the court, or is it mandatory that he must wait for the employee to be tried and convicted before he can validly dismiss the employee?

It would appear that the decisions of the Supreme Court in *Federal Civil Service Commission v. Laoye* (1989) and *Garba v. University of Maiduguri* (1986) have been variously interpreted to mean that where misconduct committed by an employee amounts to a crime, the employer must wait for the decision of the court before he can discipline or terminate/dismiss an erring employee.

However, the Supreme Court, has laid this controversy and misinterpretation to rest in the case of *Eze v. Spring* (2011). The current and correct position of the law was stated by the Supreme Court in the case of *Francis Azinge v. Union Bank of Nigeria Limited* (2004) where it posited per *Belgore JSC* thus:

“This is a simple case of employment and employer not covered by statutory rules as in Federal Civil Service Commission v. Laoye ... or Garba v. University of Maiduguri The later case has had many irrelevant references as holding that once a crime is detected, the employer cannot dismiss an employee unless he is tried and convicted first. This is unfortunately an erroneous interpretation of the judgment. In statutory employment as in private employment, the employer can dismiss in all cases of gross misconduct....”

This position was further reinforced at lucidly stated by the Supreme Court Per Mohammed JSC in the lead judgment in Eze v. Spring Bank (2011) where he said:

“It is no longer the law that where an employee commits acts of gross misconduct against his employer, which acts also disclose criminal offences under any law, the employer has to wait for the outcome of the prosecution of the employee for such criminal offences before proceedings to discipline the employee under the contract of service or employment”

In the earlier case of Arinze v. First Bank of Nigeria, the Supreme Court stated the current position of the law thus:

“In statutory employment as in private employment, the employer can dismiss in all cases of gross misconduct. In this case, the appellant was found guilty of insubordination and fraudulent claim of money; he claimed overtime allowance when he, in fact, was never on duty to work during the normal office hours. He claimed refund for a treatment in hospital which never took place; he, in this instance forged a doctor’s certificate thus, where, as in the instance case, gross misconduct is the reason, and the employee is given fair hearing, the employer can dismiss the employee without prosecution even where the misconduct also has elements that constitute criminal offences”.

Dismissal of an Employee Solely for Committing a Crime

As has been explained above, where the misconduct committed by an employee also contains elements that constitute criminal offences, an employer can validly dismiss the employee for gross misconduct without first prosecuting him and waiting for the outcome of such prosecution in court.

It is however very vital to distinguish this scenario from another situation in which the employer proceeds to dismiss an erring employee solely and purely on the grounds of the employee allegedly committing a crime. The question that arises here is: can an employer lawfully dismiss an employee only on the grounds that the employee has allegedly committed a crime? We shall attempt to provide an answer to this question by taking a careful look at the various angles to this question below.

Employer's Obligation where Crime is Alleged.

It is a well established and settled principle of law that an employer in a **contract of employment is not under an obligation to give any reason for terminating the employment of his employee or servant. However, where the employer gives reasons for disengaging an employee, he is under an obligation in law to prove such reasons on the standard of balance of probabilities.**

It is also a settled principle of law that where an employee is accused of a criminal offence allegedly committed, he must first be tried and found guilty by a court of competent jurisdiction before his employers can validly terminate his contract of employment. In the case of Institute of Health v. Anyip (2011) the Supreme Court of Nigeria stated the correct position of the law in this regard thus:

“If the Appellant strongly believed in the respondent's guilt, the proper thing to do is to submit the matter to a court of competent jurisdiction to determine since the allegation of crime or commission of crime is allegedly involved....”

Much earlier in the case of *Sojekun v. Akinyemi*, (1981) the Supreme Court of Nigeria had stated the position of the law in this regards per Fatayi – Williams, CJN (as he then was) as follows:

“Once a person is accused of a criminal offence, he must be tried in a court of law where the complaints of his accusers can be ventilated in public, and where he would be sure of getting a fair trial”.

It is clear from the foregoing that where an employee is alleged to have committed a crime, distinct and separate from his usual work duties, the employer cannot validly terminate his appointment or dismiss him from employment until he has been tried and found guilty by a court of competent jurisdiction.

Legal Effect of Dismissal of an Employee Accused of a Crime Without Trial.

It is a cardinal principle of Nigerian Jurisprudence that where an employee accused of allegedly committing a crime is dismissed from employment without being tried and found guilty by a court of competent jurisdiction, it would amount to denial of fair hearing as provided for under section 36 of the Constitution of the Federal Republic of Nigeria, 1999 (as Amended).

Specifically, section 36(5) of the constitution is to the effect that every person accused of a crime is presumed innocent until he is found guilty by a Court of competent jurisdiction.

In the case of *Institute of Health V. Anyip* (2011) the Supreme Court held inter alia that dismissing an employee for an alleged crime without first subjecting him to a trial by a court of competent criminal jurisdiction, was a clear breach of the employee’s fundamental right to fair hearing as enshrined under section 36(1) of the 1999 Constitution. Espousing the correct position of the law in this regard, the court per Fabiyi, JSC held thus:

“...the proper venue to establish her guilt for the commission of the said offence as to warrant her dismissal from service is a court of competent criminal jurisdiction. The Appellant was not

imbued with the power to nail the respondent; as it were. By so doing, the respondent's right to fair hearing as guaranteed under the provisions of section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as Amended) was invaded by the appellant. It crossed the line".

It is trite law that where an employee is not given fair hearing before termination of his appointment, the entire process leading to the termination will be invalidated. However, in the case of Akiti v Oyekunle, (2018) the supreme court held that where a person is given an opportunity to present his case and fails to do so, such a person by so doing loses the right to complain of denial of fair hearing. This principle was again restated in the case of ENL Consortium Ltd v Shambilat Shelter (2018)

Thus, where an employee is given fair hearing and proper proceeding is followed, the courts would normally not grant his complaint in this regards. Eze v. Spring Bank Plc (2011) Zildeh v. RSCSC (2007)

Legal Effect where an Employer Acts Contrary to the Principles of Natural Justice and Fair Hearing.

It is a well established principle of law that where, in any administrative or judicial proceeding, the activities or actions are carried out contrary to the principles of natural justice and fair hearing, the Legal effect is that such proceedings or actions or decisions emanating therefrom are vitiated, and will be nullified or set aside by the courts.

It is therefore the law that where an employer dismisses an employee for an alleged crime without granting him opportunity for fair hearing and fair trial, such a dismissal is likely to be set aside by the courts. In the case of Patrick Ziideh v. Rivers State Civil Service Commission (2007) the Supreme Court of Nigeria per Mohammed, JSC stated the legal effect of non compliance with the requirement of fair hearing thus:

"It is also well settled that the consequence of a breach of the rule of natural justice ...is that the decision reached thereby is a nullity and liable to be set aside".

Also, in the recent case of Arije v Arije (2018) it was further reemphasized by the Supreme Court that any proceedings carried out in breach of the right to fair hearing of an individual as enshrined in section 36 Constitution of the Federal Republic of Nigeria 1999 is invalid, void and bereft of legal effect.

Conclusion.

Flowing from the foregoing discourse, this paper concludes as follows:

- I. Under the current legal framework in Nigeria, an employer can validly terminate the employment contract of, or dismiss an employee for misconduct which also constitute criminal offence without first waiting for the employee to be tried and found guilty by the courts
- II. Where an employee is alleged to have committed a crime per se , he must first be persecuted and found guilty by a court of competent jurisdiction before the employer can proceed to dismiss him or terminate his employment.
- III. Irrespective of the offence allegedly committed, the courts will always nullify or set aside the dismissal/termination of an employee as unlawful or wrongful where he is denied fair hearing and fair disciplinary procedure.

Recommendation

It is recommended as follows:

- i. All employers should take due cognisance of and abide by the legal requirements for disengaging an employee and adhere strictly to same so as to ensure valid termination of employment/dismissal of employees for misconduct that also disclose crime and for crime strictu sensu
- ii. Employers must fully comply with the principles of natural justice and fair hearing in discipline and disengagement of employees to prevent the courts from invalidating and nullifying such dismissal/termination.

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