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# CRITICAL APPRAISAL OF CONTRACT OF EMPLOYMENT UNDER THE NIGERIAN LEGAL SYSTEM

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## ABSTRACT

*Ever since the abolition of slavery, workers have become entitle to the freedom to determine what work they would want to do and also ascertain the terms and conditions upon which their services are being hired. Consequently, it is noted that Labour Law rest heavily upon the legal phenomenon, the individual contract of employment, in which two parties namely the employer and the individual employee are looked at by the law as equals to a legally enforceable agreement. The laws which govern employment occupy a position of considerable importance in any modern society. This is so because of the tremendous contribution which workers can make to a national growth and development as well as the general well-being of the nation's citizenry. In this paper we shall examine the various aspects of the contractual relationship between the employer and the employee, particularly the formation of contract of employment, rights and obligations of parties to the contract and the impact of the related legislations on the subject of discourse.*

**Key words:** *Contract, Employment, Legal-System, Nigeria.*

## INTRODUCTION

Black's Law Dictionary[1] defines employment contract as one between an employer and employee in which the terms and conditions of employment are stated. Labour Act,[2] also 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.*

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A contract of employment is like all other contracts, governed by the general principles of law of contract. Therefore, all the essential features which characterize ordinary contracts must be present in a contract of employment before it can be said to be a valid contract of service.

A contract of service is a relationship entered into between two parties namely; an employer and employee or sometimes referred to as "Master and Servant relationship" whereby the servant agrees to serve the master and to be subject to the control of the master either for a fixed term or a term of indefinite duration in return for a benefit.[3] Under the Labour Act[4] an employer is defined to mean-

> *any person who has entered into a contract of employment to employ any other person as a worker either for himself or for the service of any other person, and includes the Agent, Manager or Factor of that first-mentioned person and the personal representative of a deceased employer.*

The Act did not define an employee but a *worker* is defined in Section 91(1) to mean-

> *any person who has entered into or works under a contract with an employee, whether the contract is for manual labour or clerical 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, but does not include- (a) any person employed otherwise than for the purposes of the employer's business; or (b) person exercising administrative, executive, technical, or professional functions as public officers or otherwise; or (c) members of the employer's family; or (d) representatives, agent and commercial travelers in so far as their work is carried on outside the permanent workplace of the employer's establishment; or (e) any person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, repaired or adapted for sale in his own home or on other premises not under the control or management of the person who gave out the articles or the material; or (f) any person employed in a vessel or aircraft to which the laws regulating merchant shipping or civil aviation apply.*

It is imperative to note that the import of paragraph (a)-(f) above is that the employees under these categories will not enjoy the rights and privileges accorded to a "worker" under the Act, while correspondingly may not be subjected to liabilities attached thereto.

An employee or worker could also mean a person employed by another to do work for him on the terms that he (the employee) is to be subject to the control and directions of the employer in respect of the manner in which his work is to be done.

The relationship between an employer and an employee is traditionally referred to as master and servant relationship. It constitutes the very foundation of Labour Law and the relationship has its basis on the contract of service or contract of employment. The traditional test for examining who an employee is has been that of control which means that if the employer could control when, how and where the worker is to work, then that worker is his employee. Emphasis soon shifted from the fact of control or subjection to command to right of control due to the changing nature of the nature of the social and industrial scene where actual control could not be exercised because many employees had come to possess skills which their employers did not possess. This left the employer with only the residual right of control exerciseable by disciplinary sanction.[5]

In an attempt to distinguish between employees engaged for *Contract of Service and Contract for Service*, the Supreme Court of Nigeria, in the case of *E.P Iderima V. Rivers State Civil Service Commision* [6] categorize employment thus-

> *In the law of master and servant, employment falls into three categories viz:- (a) A pure master and servant relationship under common law. (b) Employment where office is held at pleasure. (c) Employment by statute.*

The fundamental reason for the distinction between the *Contract of Service* and *Contract for Service* is based on the fact that the rights and privileges of a worker or servant cannot be enjoyed by an independent contractor.

The Court in a bid to determine whether or not a person is a servant or an independent contractor has further devised three tests, namely: (i) The Control Test, (ii) The Integration/Organization Test and; (iii) The Multiple Test[7].

***The Control Test***

The House of Lord in *Mersey Docks and Harbour Board V. Coggins & Griffith (Liverpool) & Anr.*[8] *Stated as follows-*

> *The ultimate question is not what specific orders, or whether any specific orders, were given but who is entitled to give the orders as to how the work should be done.*

The decision above affirms the principle that a master is entitled to tell his servant the way in which the servant is to do the work upon which he is engaged.

This test has however been criticized for not meeting-up to the advancement in modern day contract of employment where the professional and other skilled-workers are not to be controlled on the way they exercise discretion and exhibit competence in the course of their employment.

It is therefore clear that the control test cannot be the sole determinant of the existence of the master and servant relationship as its potency has been greatly whittled down.

***Integration or Organization Test***

This test has its origin in Lord Denning's Judgment in *Stevenson, Jordan Harrison Ltd. V. Macdonald & Evans*[9] where the test endeavours to ascertain whether the role of the person performing a contractual duty is an integral part of the business of the employer. Where the answer is in affirmation, the person performing the duty is a servant but where it is negative, he is not. This test has also been criticized; particularly where the employee is the only one in the service of an individual employer, then there is nothing like organization.

***Multiple Test***

Under this test, the following factors are adopted: (a) Power of selection of the person to do the job; (b) The payment of wages; (c) Control of method of doing the job (d) Employer's power of discipline. The origin of this test is traceable to the decision of LORD THANKERTON,[10] when he stated thus quoting LORD COOPER:

> *The learned judge adds that a contract of service may still exist if some of those elements are absent altogether, or present only in an unusual form, and that the principal requirement of a contract of service is the right of the master in some reasonable sense to control the method of doing work and that this factor of superintendence and control has frequently been treated as critical and decisive of the legal quality of relationship.*

This test appears to be broad and flexible, hence its acceptability in modern day contract of employment.

**FORMATION OF CONTRACT OF EMPLOYMENT**

Contract of employment, like all other contracts are govern by the universal principles of law of contract. Therefore, all the elements or essential features which characterize ordinary contracts must be present in a contract of employment before it can be said to be a valid contract of service. The essential features of a valid contract are as follows: (i) Offer; (ii) Acceptance (iii) Consideration and (iv) Intention to enter into legal relations.

**OFFER**

Offer is defined as definite undertaking or Promise made by one party with the intention that it shall become binding on the party making it, as soon as it is accepted by the party to whom it is addressed.

The Court of Appeal in *B.F.I GROUP V. BUREAU OF PUBLIC ENTERPRISES*[11] gave a profound meaning and nature of offer thus:

> *An offer is a proposal which originates or emanates from the offeror to the offeree to enter into an agreement to do or not to do a particular thing, since the essence of offer is reciprocal acceptance, the offeror anticipates the expected acceptance and this he makes clearly in the offer. A valid offer must be precise and unequivocal, giving no room for speculation or conjecture as to its real content in the mind of the offeree. The offeror must have completed his own share in the formation of a contract by finally declaring his own readiness toundertake an obligation upon certain conditions leaving to the offeree the option of acceptance or refusal.*

In most cases of contract of employment the employer are usually offeror while in some other instances the nature of the contract of service determines whether the employer or employee is the offeror. Where the former is the offeror, the latter will be the offeree.

## ACCEPTANCE

A valid acceptance is defined as a final expression of assent to the terms of the offer. It should be noted that an offer will not be capable of acceptance, if the person accepting it was ignorant of the offer in the first place. For instance where a volunteer worker at a Community Town-Hall later discovered that the services he rendered had been offered to interested offeree (employees), the question is, Can he claim to have accepted the offer as at the time he did the job? the answer is in the negative.

There must be positive evidence from which the court can infer acceptance. It must not be subjective in nature because acceptance effectively brings the offer to an end as both merges into contract.

The Court in B.F.I *Group V. Bureau of Public Enterprises* (supra) gave an explicit meaning of acceptance as follows:

> *An acceptance is the reciprocal act or action of the offeree to an offer in which he indicates his agreement to the terms of the offer as conveyed to him by the offeror. In other words, acceptance is the act of compliance on the Part of the offeree with the terms of offer. It is the element of acceptance that underscores the bilateral nature of a contract. An acceptance of an offer may be demonstrated: (a) By conduct of the parties, or (b) By their words; or (c) By document that have passed between them.*

The Court posited further that-

> *For there to be an acceptance of an offer, there must be an external manifestation of assent, some word or act done by the Offeree or his authorized agent which the law can regard as the Communication by the Offeree to the Offeror. This is because in order To make a binding contract, it is necessary not only that it should be accepted but that the acceptance be communicated. Mental or internal acceptance is not enough.*

It is obvious from the judgment of the Court as stated above that acceptance means the following:

(a) Assent to the terms of the offer
(b) The assent must be absolute and unqualified.
(c) The acceptance (that is, assent) must be plain, unequivocal, unconditional and must be unreservedly given.
(d) Assent cannot be given in ignorance of the offer.

## CONSIDERATION

As earlier noted, consideration is one of the essentials that must be present in a valid contract. Consideration serves as nexus between offer and acceptance.

In contract of employment, wages to be paid by the employer and services to be rendered by the employee in return for the wages are regarded as Consideration.

According to **Black's Law Dictionary**[12] consideration is defined as:

> *Something (such as an act, a forbearance, or a return promise) Bargained for and received by a promisor from a promise; that which motivates a person to do something, especially to engage in a legal act.*

The definition of LUSH J. in *Currie V. Misa*[13] appears to be a widely accepted definition of "Consideration", where it was defined as follows:

> *A valuable consideration in the eye of the law may consist either in some right, interest, profit or benefit accruing to the one party, or some forbearance, detriment, loss or responsibility, given, suffered or undertaken by the other. Thus consideration does not only consist of profit by one party but also exist where the other party abandons some legal right in the present, or limit his legal freedom of action in the future as an inducement for the promise of the first. So it is irrelevant whether one party benefits but enough that he accepts*

*the consideration and that the party giving it does hereby undertakes some burden or lose something which in contemplation of law may be of value.*

Section 1(1) of the Act[14] provides as follows: (1) Subject to this section (a)the wages of a worker shall in all contracts be made payable in legal tender and not otherwise; and (b) if in any contract the whole or any part of the wages of a worker is made payable in any other manner the contract shall be illegal, null and void the above provision is a clear departure from the general principle of contract where services can be exchanged for services or parties agreeing to any other form of consideration apart from legal tender, that is "something for value."

Sub-section (2) also provides that-

*An employer may provide food, a dwelling place or any other allowance or privilege as a part of a worker's remuneration if the food, dwelling place, allowance or privilege is prescribed by law, by a collective agreement or by an arbitration award because it is customary or desirable in view of the nature of the industry or occupation in which the worker is engaged; but in no case shall an employer give to any worker any intoxicating liquor or noxious drug by way of remuneration.*

Sub-section (3) specifies mode of payment which cannot be subverted by mutual agreement of the employer and employee as such contractual arrangement will be a nullity to the extent of its inconsistency with the said provision. Its provides thus:

*Except where otherwise expressly permitted by this Act, wages payable in money shall be paid only in legal tender or, with the prior consent in writing of the worker concerned, by cheque or postal order and payment or purported payment in any other form shall be illegal, null and void.*

There is no doubt that the wages or salary which an employer is obliged to pay will normally be a subject-matter of an express contract. Indeed, where an agreement for employment leaves out the matter of payment there might arise the question whether there is a contract of employment.

However, at common law, a contract may be implied from the conduct of the parties, particularly where it is clearly indicated that the employment was not to be gratuitous.[15]

## INTENTION TO ENTER INTO LEGAL RELATIONS

One of the major essentials of a contract is parties' intention to enter into legal relations with themselves. In other words, for a valid contract of employment to be

formed, there must be mutuality of purpose and intention. The two minds must meet at the same point, event or incidents. They must be saying the same thing at the same time. The meeting of minds of the contracting parties is the most crucial and overriding factor or determinant in contract. An agreement will not be binding on the parties to it until their minds are at one both upon matters which are cardinal to the species of agreement in question and also upon matters that are part of the particular bargain.

A contract of employment is a result of agreement between the parties thereto. The law does not impose an unwilling servant on a willing master or vice-versa, it is this freedom of contract that distinguishes a servant serving under a contract of employment and slave.

In *Nokes V. Doncaster Amalgamated Collieries Ltd.*[16] Lord Atkins noted as follows:

> *I had fancied that ingrained in the personal status of a citizen under our laws was the right to choose for himself whom he would serve and that, this right of choice constituted the main difference between a servant and a serf.*

The Constitution of the Federal Republic of Nigeria 1999 provides[17] for the right of the dignity of human person as no person shall be held in slavery or servitude and no person shall be required to perform forced or compulsory labour.

Section 73(1) of the Act also provides that-

> *Any person who requires any other person, or permits any other person to be required, to perform forced labour contrary to section 34(1)(c) of the Constitution of the Federal Republic of Nigeria shall be liable to a fine not exceeding N1,000 or to imprisonment for a term not exceeding two years or both.*

Other fundamental issues in contract of employment include: (i) Capacity to Contract and (ii) Legality of the Contract, which we shall now examine in turn.

## CAPACITY

The contract of employment like every other specie of contract place restrictions on certain individuals who are statutorily not qualified to be a party, whether as an employer or employee in a contract of employment.

Section 9(3) of the Act provides that:

> *Except in the case of a contract of apprenticeship, no person under the age of sixteen years shall be capable of entering into a contract of employment under this Act.*

Section 59 of the Act further curtails the right of Young persons to enter into a contract of employment. The provision seeks to protect the Young persons against "hard" labour.

Section 59(1)(a) of the Act provides that-

> *No child shall be employed or work in any capacity except where he is employed by a member of his family on light work of an agricultural, horticultural or domestic character approved by the minister.*

Sub-section 2 of the above provision states that-

> *No young person under the age of fifteen years shall be employed or work in any industrial undertaking: Provided this subsection shall not apply to work done by young persons in technical schools or similar institutions if the work is approved and supervised by the Ministry of Education (or corresponding department of government) of a state.*

It should be noted that while *Sections 50-64 of the Act* are desirable, their impact is yet to be seen in the Labour Market since most of this provisions are better observed in breach than in compliance, usually with the active connivance of the child employee and his parents/guardian on the one hand and employer on the other hand.

However, the reason for the violation of these provisions and relevant legislations designed to protect the young persons has its root in poverty and poor Standard of living of majority of the citizens.

For instance *Section 64(1) of the Act* provides as follows:

> *Any person who employs a young person in contravention of sections 59-62 of this Act or any regulations made under section 63 of this Act, the proprietor, owner and manager of any undertaking in which a young person is so employed and any parent or guardian of a young person who permits the young person to be so employed shall be guilty of an offence and on conviction shall be liable to a fine not exceeding N100.*

It is clear from the provision above that the only penalty to be paid upon conviction is a fine of N100 which has in no way deterred desperate parents/guardian, young person and even employer from violating the said law.

Also the common law protects infants that is, those less than twenty-one years of age, against disadvantageous contracts. In so far as contracts of employment are concerned the common law position is that such contracts are, prima-facie, binding on the infant.[18] However, a contract of employment of an infant when looked at as a whole must be for the infant's benefit if he is not free to repudiate it. The approach under the common law is different from that of the Labour Act.

## ALIENS

Any person who is not a citizen of Nigeria is prohibited from accepting employment, except with the Federal or a state government, without the consent in writing of the chief federal immigration officer. Nor can he, own his own account or in partnership with any other person, practice a professional or establish or take over any trade or business or register or take over any company with limited liability, for any such purpose without the consent of the Minister responsible for immigration which may be given on such conditions as to the locality of operation and person to be employed or on behalf of such person.[19]

Also, where any person in Nigeria desires to employ a person who is national of any other country he must, unless exempted, make application to the chief federal immigration officer in the prescribed manner and must give such information as to the provision to be made for repatriation of that national and his dependants as the chief immigration officer may reasonably require.

No such person must be employed without the permission of the chief immigration officer given on such terms as he thinks fit.[20]

Sections 33 and 34 of the Act expressly provide for the procedural requirement for recruiting for employment in Nigeria.

### Persons of Unsound Mind

A contract of employment entered into by a person who claims to be insane is nevertheless binding on him unless he can prove that he did not know what he was doing at the time he entered into the contract and further that the other party knew he was so insane to have been incapable to understand what he was doing. Such proof will render the contract voidable at the option of the insane person.[21]

### The Form of Contract of Employment

There is no general law which stipulates the form which a contract of employment must take. It is governed by the common law. Thus, a contract of employment may be in writing, under seal, or it may be verbal or partly in writing and partly orally. It may also be by conduct.

An oral contract no matter the status of the person so employed, is as valid as a written contract, but there is no doubt that an oral contract presents greater problems of proof both of the existence and of its terms.[22]

However, two classes of contracts of employment must be in writing. Apart from a contract of apprenticeship or of seamanship no contract is expressly required to be in writing although requirements of section 7(1) of the Act will have the same effect as a written contract. It must be stressed that where a contract is required to be in writing, the statutory provisions must be scrupulously observed, otherwise the contract may be avoided by either of the parties to it.

Even where the law does not require a contract to be in writing, important contract of employment are, as a matter of practice and prudence, made in writing and the terms set out fully in the contract document.

The Court of Appeal in *Pan African Bank V. James Ede* [23] held that a contract could be in writing. It could also be in parole. Courts can also infer the existence of a contract of the parties in the circumstances of the case.

In Shena *Security Co. Ltd. V. Afropak (Nig.) Ltd. & 2 ors.* [24] it was held that a contract of employment means any agreement oral or written, express or implied whereby one person agrees to employ another as a worker and the other person agrees to serve the employer as a worker.

It is important to note that under the Nigerian Legal System, employment is broadly classified into two groups particularly in adjudication over dispute. They are: Employment with statutory flavour and others without statutory flavour.

The Court in *Chief J.A. Ogieva & 378 ors. V. Chief Lucky Igbinedion & 3 ors.* [25] where in determining whether contract of employment has statutory flavour held as follows-

> *The fact that an organization or authority, which is an employer, is a statutory body does not mean that the conditions of service of its employees must be of a special character. The character of an appointment and status of the employer in respect thereof is determined by the legal character and the contract of the employee. Hence, where the contract of appointment is determinable by the legal character and the contract of the employee. Hence where the contract of appointment is determined by the agreement of the parties simpliciter, there is no question of the contract having a statutory flavour.*

The Court went further to state-

> *The fact that the other contracting party is the creation of a statute does not make any difference. In other words, where an employment is not governed by any statutory provision, it does not enjoy statutory protection and cannot be reasonably said to have statutory flavour. This is so, notwithstanding the fact that the employer is a creation of statute or is a statutory corporation. There must be something in the contract of employment, which brought it within the provisions of the enabling statute.*

### *TERMS OF THE CONTRACT*

The duties, liabilities and rights to a contract of service constitute the terms of contract. They may be written in a single comprehensive document. Sometimes the

terms are gathered from various documents. Where there is no written document then proof of trade practices or oral agreement or representations may be relied upon in determining the terms of contract between the parties.

It is stressed that the regulations between an employer and employee derives from two primary sources, statute and contract of employment itself.
The various labour statutes impose numerous duties and obligations on both parties to a contract of employment, it thus appear that, in practice the statutory and non-statutory rights & obligations are read jointly to give effect to the intention of the parties.

It is important to note that statutory obligations where impose, cannot be excluded by terms of the contract of employment, except where and to the extent that a statute itself so permits.

***Express Terms***

The express terms of a contract of employment are those terms which the parties formulated before or at the time of concluding contract. Sections 7, 13-20 of the Act provide for "Written particulars of terms of employment" and "Terms and conditions of employment" respectively. The specific formulations of the parties may be added to the content of the above provisions and clearly spelt-out.

The contractual terms, whether implied or express are meant to be negotiated and agreed to, with individual worker (employee) since a *Collective Agreement,* at common law is not regarded as contractually binding on the parties to the agreement.[26] Express terms may be found in documents with title such as "conditions of employment", "Works Rules", Administrative Manual", "Staff Handbook" etc.

***Implied Terms***

Terms or a term may be implied into a contract of employment which would impose rights and obligations on the parties to the contract although they have not expressly provided for them. Implied terms include:

(a) Terms implied by trade customs or practices
(b) Terms implied by Courts, and
(c) Terms implied by the statute

One test for determining whether a term may be implied or not is that laid down by Scrutton LJ in *Reigate V. Union Manufacturing Co. (Ramsbottom) Ltd.*[27] where he stated that-

> *A term can be implied if it is necessary in the business sense to give efficacy to the contract; that is, if it is such a term that it can confidently be said that if at the time the contract was being negotiated some had said to the parties "what will happenin such a case" they would both have replied, "of course, so and so will happen; we did not trouble to say that; it is so clearly."*

*Unless the Court comes to some such conclusion as that, it ought notto imply a term, which parties have not expressed.*

Similarly, Mckinnon LJ in *Shirlaw V. Southern Foundries Ltd*[28] asserted that-

*Prima-facie that which in any contract is left to be implied and need not to be expressed is something so obvious that it goes without saying; so that if while the parties were making their bargain an officious bystander were to suggest some express provision for it in their agreement they would testily suppress him with a common: "oh, of course."*

However, what is clear beyond doubt is that whether terms of contract of employment are "express" or "implied", they usually contain the rights and obligations of the employer and employee which are legally binding.

## ENFORCEMENT

Every valid contract of employment are enforceable in law. However, like the general principle of law of contract, a contract of employment may be unenforceable or void whenever vitiating factors such as fraud, mistake, undue influence, illegality and duress are present.

### FRAUD AND MISTAKE

The general principle of contract law regarding contracts induced by fraud or entered into by one party in mistake as to the identity of the other or as to the character or nature of the obligation apply equally to contracts of service.[29]

It must be noted however that although fraud, without more, vitiates a contract of employment, mere non-disclosure giving rise to mistake does not. This is because a contract of employment is not one of *Uberrima fidei* (utmost good faith). In effect, a servant has no obligation to disclose any information unless he is required to do so.[30] Section 45(1) of the Act provides-

*No person shall by fraud, falsehood, intimidation, coercion or is representation induce any worker to enter into a contract under this part, and any contract entered into by reason of any such inducement shall be void, save that the employer or his agent shall be liable to pay wages due under the contract and to provide for the return to his place of abode of any workerengaged thereunder, together with any members of his family who have accompanied him.*

## ILLEGALITY

A contract of employment must have legal objects. Illegality vitiates such a contract and makes it unenforceable. Illegality may arise either because the contract infringes some provisions of the statutes or a rule of Common Law or where the employer engaged the service of the employee to carry out illegal or prohibited acts. In *ESI V. MORUKU*[31] the contract held that where parties purport to do that which the law prohibits, neither can have recourse to the court. For example, employment of people for the purpose of engaging in sexual immorality is illegal. Labour Act also declare as illegal the employment of women and young persons for certain category of services.

## DURESS

Ever since the abolition of slavery, workers have become entitled to the freedom to determine what work they would want to do, who they wish to work for or hire their services to and also ascertain the terms and conditions upon which they are hired. The whole essence of contract of employment rests on liberty and equality of the contracting parties, namely: employers and employees.

William R. Anson[32] defines duress as:

> *Duress consists in actual or threatened violence or imprisonment; the subject of it must be the contracting party himself, or his wife, parent or child; and it must be inflicted or threatened by the other party to the contract, or else by one acting with his knowledge and for his advantage.*

Duress, which means coercion, compulsion or 'naked' force vitiates contract of employment.

*Section 73(1)&(2) of the Act* underscore the importance of this vitiating factor when it states-

> *Any person who requires any other person, or permit any other person to be required, to perform forced labour contrary to section 34(1)(c) of the constitution of the Federal Republic of Nigeria 1999, shall be guilty of an offence and on conviction shall be liable to a fine not exceeding N1,000 or to imprisonment for a term not exceeding two years or both. (2) Any person who, being a public officer, puts any constraint upon the population under his charge or upon any members thereof to work in for any Private individual, association or company shall be guilty of an offence and on conviction shall be liable to a fine not exceeding N200 or to imprisonment for a term of not exceeding six months, or to both.*

Section 34(1)(c) of the Constitution of the Federal Republic of Nigeria puts it succinctly thus-

> *Every individual is entitled to respect to the dignity of his person, and accordingly- no person shall be required to perform forced or compulsory labour.*

Other vitiating factor that may render a contract of employment void is restraint of trade aside from other provisions of the Labour Act [33] which deals with restraint of employment of women and young persons.

## CONCLUDING REMARKS

The Nigerian Labour law, just like the British system upon which it derived its source has certain distinctive features. First, it is based mainly on common law- a combine interaction of the law of contract, the law of tort, the law of agency and statutory provisions but its basic foundation is the ordinary law of contract. The effect is that Nigerian labour law, following its British model, operates on the basis of straight bargaining between the prospective employer and the prospective worker[34].

It is apparent that even though our various enactments, namely: the Labour Act LFN 2004, the Constitution of Federal Republic of Nigeria 1999 and other relevant enactments point to the same direction on the issue of contract of employment in Nigeria, that is, the employer and the employee are looked at by the law as equals to a legally enforceable agreement yet in practice the reverse is the case as the employee hardly make any contribution to the terms and conditions under which they are employed.

Notwithstanding the desirability of the provisions of our law which bothers on protection of young persons and women, regulations on recruitment for employment outside Nigeria, factors like poverty and ineptitude of different agencies saddled with the responsibility for enforcement are destroying the very essence of these lofty ideals.

Improvement in the standard of living of the citizenry particularly in the area of job availability and other infrastructures will put the employee or prospective employee at a vantage position at negotiating the terms and conditions of contract of employment with the employers.



## REFERENCES

**Emiola, A.** (1982). *Nigerian Labour Law,* Second Edition, Intec Printers.

**Nwagbara, C.** (2000). *Determination of Contact of Employment and Remedies for Wrongful Dismissal* (First Edition), Tait Publishers.

**Oguniyi, O.** (1991). *Nigerian Labour Law and Employment Law in Perspective* First Edition, Folio Publishers.

**Orojo. J. O.** *Nigerian Commercial Law* Vol. 1 Page 457.

**Tonwe S. O.** (1998). *Labour Law In Nigeria-Cases and Materials* First Edition. Amfitop Books.

**Uvieghara E. E.** (2001). *Labour Law In Nigeria.* Mathouse Press Ltd.

**Williams R. Anson** (1919). *Principles of the Law of Contract.* Third Edition.

Black's Law Dictionary. Eight Edition

Constitution of the Federal Republic of Nigeria, 1999.

Immigration Act Cap 11 LFN 2004

Labour Act Cap L1 LFN 2004

**FOOTNOTES**

[1]. Black's Law Dictionary 8th Ed. Page344.

[2]. Section 91 Cap L1 Volume 8 LFN 2004.

[3]. Oguniyi O. 1991, *Nigerian Labour and Employment Law in Perspective* First Edition, Folio Publishers Ltd. Page10.

[4]. Section 91(1) Cap L1 LFN 2004.

[5]. Nwagbara C. 2000 *Determination of Contract of Employment and Remedies for Wrongful Dismissal* Tait Publishers Page 2.

[6]. (2005) All FWLR PT. 285 Page 431 at Pp. 451-452, Paras. H-C.

[7]. Tonwe S. O, 1998 – *Labour Law In Nigeria-Cases and Materials* First Edition Amfitop Books. Pag 2.

[8]. (1946) 2 All ER.

[9]. (1952) T.L.R101.

[10]. Short V.J & W Henderson, Ltd.

[11]. (2008) All FWLR Pt.416 Page 1915 at 1937 paras E-H.

[12]. Eight Edition on page 324.

[13]. (1875) L.R 10 Exch. at 162.

[14]. Cap L1 LFN 2004.

[15]. Uvieghara E.E. 2001 *Labour Law in Nigeria* Mathouse Press Ltd. Page 34.

[16]. (1940) A.C 1014 Orient Bank (Nig.) Ltd. V. Bilante International Ltd. (1997) & AWLR Pt. 515 Page 37; Okubule V. Oyagbola (1990) 4 AWLR Pt. 147 Page 723.

[17]. Section 34(1) (c).

[18]. De Francesco V. Barnum (1890) 45 Ch. D. 430.

[19]. Immigration Act Cap11 LFN 2004.

[20]. Section 34 of Immigration Act.

[21]. Hart V. O. Connor (1985) 2 All ER 880.

[22]. Uvieghara E.E, 2001 *Labour Law In Nigeria* Malthouse Press Ltd Page 13.

[23]. (1998) 7NWLR Pt. 560 Pg. 227 at 229.

[24]. 2008 9SCM Pg. 169 at 180.

[25]. 2005 All FWLR Pt. 260 Pg 85 at Pp. 97-98 paras E-A.

[26] Ford Motor Co. Ltd. V. Amalgamated Union of Engineering & Foundry Workers (1969) 2 Q. B 303; Union Bank of Nigeria Ltd. V. Edet (1993)4 NWLR 288.

[27] (1918) 1KB 592, 605.

[28] (1939) 2 KB, 206.

[29] Orojo J.O, *Nigerian Commercial Law* Vol. 1 Page 457.

[30] Tonwe S.O,1998- *Labour Law in Nigeria-Cases and Materials* First Edition. Amfitop Books Page 34.

[31] (1940) 15 Nlr 116.

[32] Williams R. Anson 1919 *Principles of the Law of Contract, 3rd Ed. Page 261-262.*

[33] Section 91.

[34] Emiola A., 1982- *Nigerian Labour Law* Second Edition, Intec Printers Ltd. 7pp.