# The position of the Nigerian Courts on termination of employment
## Part I

The question on the lawful procedure for the termination of employment contracts is a question that has been presented before the courts over the years. Different jurists have posited different views on the subject. There is, however, a consensus that firstly, the contract of employment must be categorized based on either the presence or absence of statutory flavour in the contract.[1]

A contract of employment is said to have statutory flavour where the conditions for the appointment and bringing the contract to an end are governed by an enabling statute.[2] The classification of the contract of employment along this line thereafter determines the procedure and extant rule that apply to the termination of the employment. We shall in the first part of this article, review, and state the extant position of the Nigerian courts on several procedural requirements for termination of contracts of employment.

**Employment with statutory flavour**

With regards to employments with statutory flavour, the enabling statute usually stipulates the procedure for terminating such an employment.[3] Any contravention of the conditions precedent or any other procedural requirements stated in the statute for the termination of such employment would render the termination void.[4] In the event that the court determines that the contract has been illegally terminated, the court is empowered to grant a decree of specific performance stating that the employee should be reinstated.[5]

The Nigerian courts have held that because the procedure for termination of such employment is regulated by statute, they are foisted with a legal status higher than that which obtains under a contract of employment *simpliciter*.[6] As a result of this higher status, if the procedure for termination is not followed, the employee cannot waive the illegal procedure because of the settled principle of law that as a matter of public policy, parties cannot change the provision stated in the constitution or a statute.[7]

It is important to note that an employer organisation being merely established by statute is not enough to confer statutory flavour on such an employment.[8] For the employment to be classified as an employment with statutory flavour, it is pivotal that the terms and conditions of service of the employment are engrained in the statute or in a subsidiary legislation made pursuant to the

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[1] *Olaniyan v University of Lagos (No.2) (1985) 2 NWLR (Pt. 9) 599; Balogun v University of Abuja (2002) 13 NWLR (Pt. 783) 42*
[2] *Oforishe v Nigerian Gas Company (2018) 2 NWLR (Pt. 1602) 35 at 53; Paras E-F*
[3] . For instance, Section 16 of the University of Abuja Statute No. 1 lays down the extensive procedure for termination of the employment of any academic, administrative, or professional staff of the University of Abuja. See also Section 17 of the University of Benin (Transitional Provisions) Act
[4] *Federal Polytechnic, Mubi v. Yusuf (1988) 1 SCNJ 1***;** *Afribank Plc v. Nwanze (1998) 6 NWLR (Pt.553) 283*
[5] *Ifeta v. S.P.D.C. Nigeria Limited (2006) LPELR-1436(SC); Isievwore v. NEPA (2002) LPELR-1555(SC)*
[6] *Olaniyan v University of Lagos (No.2) (1985) 2 NWLR (Pt. 9) 599; Balogun v University of Abuja (2002) 13 NWLR (Pt. 783) 42 at 62 Paras G -H*
[7] *AG, Bendel v AG, Federation (1981) 10 SC 1 at 54; Ogbonna v AG, Imo State (1992) 1 NWLR (Pt. 220) 647 at 696*
[8] *Fakuade v. OAUTH (1993) 5 NWLR (Pt. 291) 47; Nigerian Gas Company Ltd v. Dudusola (2005) 18 NWLR (Pt 957)320*

statute.[9] In addition, the employee must also prove that he was employed pursuant to these statutorily entrenched provisions.[10]

**Employment without statutory flavour (employment *simpliciter*)**

If a contract is devoid of statutory flavour, i.e., an employment *simpliciter*, the contract of employment would generally govern the terms of the employment.[11] The employee handbook in so far as it contains the terms of the employment would in addition to the letter of employment and any other employment contract, govern the matters and terms of employment contained in it.[12] As a general principle, if the terms of the contract are clear and unambiguous, the courts would restrict itself to the interpretation and application of the terms of the contract and not import external terms into this contract.[13]

The Labour Act (the "Act"),[14] the principal law regulating labour matters in the country also stipulates in certain instances, the procedure for terminating the employment of a 'Worker'. It should be noted that the term "Worker" under the Act has a restrictive meaning and does not have the same meaning attributed to it in popular parlance. A Worker is defined to mean "any person who has entered into or works under a contract with an employer, whether the contract is for manual labour or clerical work or is expressed or implied or oral or written, and whether it is a contract of service or a contract personally to execute any work or labour, but does not include –

(a) any person employed otherwise than for the purposes of the employer's business;

(b) persons exercising administrative, executive, technical or professional functions as public officers or otherwise;

(c) members of the employer's family;

(d) representatives, agents, and commercial travellers in so far as their work is carried out outside the permanent workplace of the employer's establishment;

(e) any person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, repaired, or adopted for sale in his own home or on other premises not under the control or management or the person who gave out the article or the material; or

(f) any person employed in a vessel or aircraft to which the laws regulating merchant shipping or civil aviation apply."[15]

[9] *Oforishe v Nigerian Gas Company (2018) 2 NWLR (Pt. 1602) 35 at 60 – 61; Paras G – A; Idoniboye-Obu v. N.N.P.C. (2003) 2 NWLR (Pt.805)589 at 622 Paras E – F; 631 Paras E – G.*
[10] *Idoniboye-Obu v. N.N.P.C. (2003) 2 NWLR (Pt.805)589 at 620 - 621 Paras E – A*
[11] *Olaniyan v University of Lagos (1985) 2 NWLR (Pt. 9) 599; Oforishe v Nigerian Gas Company (2018) 2 NWLR (Pt. 1602) 35 at 53 - 54; Paras E-A, C- H*
[12] *Shuaibu & Ors v. NBC PLC (Coca-Cola) (2020) LPELR-52110 (CA); Keystone Bank v Clarke (2020) LPELR-49732*
*(Pp 40 - 44 Paras F - B)*
[13] *Olanrewaju v Afribank Nig Plc (2001) LPELR 2573*
[14] Cap L1, Laws of the Federation of Nigeria, 2004
[15] Section 91 of the Labour Act

**Concepts applicable to termination of employment contracts**

*Notice period*

The contract of employment usually dictates the length of notice or payment in *lieu* required to terminate an employment. In the event however that the contract of employment is silent on the length of notice, the requisite notice period would be dependent on whether the employee comes within the definition of a Worker (as defined under the Act) or not. If a Worker, the requisite notice period depends on the length of employment and classified as follows under the Act –

(a) 1 (one) day, if the length of service is up to three months;

(b) 1 (one) week, if the length of service is up to two years;

(c) 2 (two) weeks, if the length of service is up to five years; and

(d) 1 (one) month, if the length of service is five years or more.[16]

If the contract of employment is silent on the notice period and the employee is not within the contemplation of the definition of a Worker under the Act, the courts have held that regardless, there is an implied term that the contract can only be terminated by the employer giving the employee reasonable notice.[17] What the court determines to be reasonable notice is a subjective test that would be determined on a case-by-case basis. In determining what is reasonable, the courts would usually consider the nature of the contract of employment and the status of the employee in the establishment – the higher the position of the employee and the higher the employee's salary, the longer the length of notice required to terminate the contract and *vice versa*.[18]

*Payment in lieu of notice*

If the employer elects to make payment to the employee in *lieu* of notice, one question that employers are usually faced with is in calculating the payment to be made, what sum is mandatorily required to be paid to the employee. For a Worker, the Act states that only the part of the employee's wages that the employee receives in money, exclusive of overtime and all other allowances would be taken into account in the calculation of the amount to be paid.[19] Flowing from the above, it appears that the employer is mandatorily required to make payment of the salary/wages alone as classified under the contract of employment and allowances such as wardrobe allowance, and other like allowances which are usually included in the employee's total renumeration package are excluded from the sum mandatorily required to be paid to the employee.

*Ex gratia payment*

Also, the employer is not required to make *ex gratia* payments to the employee and it is irrelevant that the employer usually makes such *ex gratia* payments when the employment of other staff

[16] Section 11 (2) of the Labour Act
[17] *Imoloame v WAEC (1992) 9 NWLR (Pt. 265) 303 at 321; Paras A – C; Kusamotu V. Wemabod Estate Limited (1976) LPELR-1720(SC)*
[18] ibid
[19] Section 11 (9) of the Labour Act

members have been terminated.[20] To adopt the reasoning of popular jurist, Henry Campbell Black, the author of the Black Law Dictionary, the term *ex gratia* applies to anything accorded as a favor, as distinguished from that which may be demanded *ex debito,* a matter of right, and because of this, it carries no legal obligation on the employer which the employee can seek to enforce.[21] It is also a settled legal principle that a legal obligation must flow from the existence of a right entrenched in a contract.[22]

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[20] *Giwa v Wema Bank (2021) LPELR-54851*
[21] ibid
[22] *Abdullahi & Ors V. El-Rufai & Ors* (*2021) LPELR-55627*