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AN APPRAISAL OF REINSTATEMENT IN PRIVATE SECTOR EMPLOYMENT IN NIGERIA

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Abstract
In private sector employment courts usually awards damages instead of ordering reinstatement for wrongful termination in Nigeria. This attitude is routed in common law principle that court cannot force a willing employee on an unwilling employer. there's been a paradigm shift in labour relations regarding relations of employment, influenced by the 3rd alteration of the 1999 constitution and international labour standards stating that employment cannot be terminated without a valid reason connected to the worker's capacity, conduct or operational requirement. The study reveals the national industrial court have exclusive jurisdiction over labour and employment disputes including wrongful terminations and reinstatement claims both private and public sector employment. This paper adopted the doctrinal research methodology where both primary and secondary sources laws were examined. The paper concluded inter alia that why damages and compensation remained the most common remedies for wrongful termination in the Nigerian private sector, reinstatement is a possibility, especially in cases where the dismissal is found to procedurally flawed, discriminatory, or in violation of international labour standards. The paper recommended among others and Nigeria should amend its legal framework to make the remedy of reinstatement available in private sector employment.

Keywords: Employment, wrongful dismissal, damages, reinstatement

1. Introduction
The subject of labour law is to regulate employer and employee relationship[1]. Just like any other relationship, disputes are likely to happen in employer and employee relationship and if not properly taken care of, the relationship becomes tense and most times brings the relationship to an end by both parties or either one of them.[2]Ending employment relation is something that must be done orderly by complying with the laws regulating the employment relation or on the basis of the agreement entered into by parties. In Nigeria, reinstatement in private sector employment refers to a court order that required an employer to take a wrongfully dismissed employee back into their job.[3] An order for reinstatement essentially treats the employee as if they were never fired[4], entitling them to any benefits they would have received during the period of dismissal. However, reinstatement as a remedy for wrongful termination is a complex and often challenging issue in the Nigeria private sector due to the master-servant relationship governed by common law principles. Reinstatement is a much more common remedy in cases of public sector employment or other situations that have statutory flavour.[5]Nevertheless, the Nigerian Court may order reinstatement even in employment in where the employee can prove that special circumstances exist for the award

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[1]Labour Act, Cap L1, LFN, 2004 s 1.
[2] O V C Okene, *Labour Law and Industrial Relations in Nigeria* (4thedn, Faculty of Law, Rivers State University, Port Harcourt, 2019)
[3] IPROJECT DOWNLOAD, 'Wrongful Termination of Contract of Employment in Nigeria: A Case of Reinstatement in Private Employees' <https//www.iprojectdownload.com/wrongful-termination-of-contract-of-employement-in-nigeria-a-case-of-reinstatement-of-private-employee/#:~:text=This%20type%of%20remedy%20istreated%as20not20been%dismissed> 25 March 2025
[4]ibid
[5] ibid

of such relief[6]. The legal landscape is evolving. The National Industrial Court of Nigeria (NIC), which has exclusive jurisdiction over labour and employment dispute, has shown a greater willingness to consider reinstatement even in private sector cases. The courts have been influenced by the international labour standards, such as those of the International Labour Organization (ILO), which emphasized the need for valid motive for termination. The NICN was able to achieve this accomplishment through the application of their powers enshrined in the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010 as well as the jurisdiction conferred by the National Industrial Court Act, 2006.[7]

2. Reinstatement of an Employment in Private Sector

Private employment can be referred to as a job or employment that is not government job.[8] The employers are non-government agencies in labour or employment relationship.[9] The principle of common law does not afford an employee in employment opportunity to answer to an allegation of misconduct before his employment is terminated or dismissed.[10] All that is required is justification whenever the employer is called upon to do, and if the dismissal is wrong the employee or servant is only entitled to damages for wrongful dismissal. The common law does not often permit reinstatement.[11]

This seems also to be the situation in Nigeria except for employment with statutory flavor. In employment governed by statute, the supreme court willingly grants or order reinstatement where the employee was wrongly dismissed or terminated[12] but will not in private sector employment.[13] The public/private labour law divide sees this non uniformity in approaching issue of wrongful termination in employment with statutory flavor of concern in labour law[14] reason being that there are changes brought into employment sector. The public sector now contract out works to private sectors who hire staff on behalf of the government to perform those works also number of industries and services previously under the state ownership are in the process of privatization. The question now is that since the public sector and private sector sometimes shares staff and render common services should there still be a distinguishing set of labour laws regulating public employment? In practice, it seems the case for special treatment with statutory flavor remains.[15]In the case of *Chukwumah v Shell Petroleum Dev. Co of Nig. Ltd*,[16]the Supreme Court and Court of Appeal stated respectively that the remedy of reinstatement is only suitable to employment in private sector upon proof of special circumstances their Lordships did not precisely give examples of what amount to special circumstances in this respect.

The remedy of reinstatement not appropriate in private sector employment is based on their grounds.[17] In contract of personal service or private sector personal pride, personal confidence, personal feelings and confidentiality all be involved and all these make it hostile to force a willing

[6] E Chianu, 'Reinstatement in Private Employment: Rejecting Legal Shibboleth' [2004](1) *Annual of Nigeria Law* 102-120; *Afribank (Nig.) Plc v Nwanze* (1998) 6 NWLR (553) 283 at 296.
[7] J O Akinselure, 'Reinstatement in Master-Servant Employment Relationship: A Detour from Conventional Nigerian Labour Law Rule' [202](10) (1)*UI Law Journal*<https://journals.ui.edu.ng/index.php/uilr/article/view/1063> accessed 25 March 2025.
[8]J. Lewis, "what is the meaning of Public sector employment vs. Private' <http://www.smallbusiness.chrom.com/meaning-public-sector-employment-vs-private-32297html> Accessed 3 March, 2025.
[9]OVC Okene, Labour Law in Nigeria. The Law of Work (3rdedn: Claxton and Derrick Limited 2012) 45-54
[10]ibid
[11]ibid
[12]*Achu v Civil Service Commission of Cross River State & Anor* (2015) 57 NLLR (Pt 107) 511 CA.
[13]*Osisanya v Afribank Nigeria Nigeria Plc* (2007) LPELR-2809
[14]G S Morris "The future of Public/Private Labour Law Divide in Simon Deain and Catherine Banned (eds), The future of Labour Law: Liber Amicorum Sir Bob Hepple QC (Hart Publishing 2005) 162-164
[15]ibid 160-162
[16](1993) 4 NWLR (Pt 289) 512 at 539 and *Afribank (Nig.) Plc v Nwanze* (1998) 6 NWLR (Pt 553) 283 at 296
[17]Labour Law Review, 'Legal Redness for wrongful Termination of Contract of Employment: What Lawyers must Note' [2011] (15) (2) *NJLIR* 24.

employee on unwilling employer.[18]Reinstatement in private sector employment would impose compulsorily on the employer to keep an employee whom he does not feel comfortable or want to work with again; to order reinstatement in private sector employment would require regular supervision of the court.

On the whole, under the Nigerian employment law, the court will not grant order of reinstatement in cases of pure master-servant relationship save in exceptional circumstances.[19]After reviewing the judicial authorities on termination of employment in Nigeria, it appears that the courts are not disposed to awarding reinstatement in private employment unless for employees whose employment are cloth with statutory flavour[20].This raises a presumption as to whether reinstatement is a strange relief for persons in private employment in Nigeria.[21]

Though, the court orders reinstatement for directors and secretaries in private sector employment because their employment is governed by Companies and Allied Matters Act. The Court in the case of *Bernard Longe v First Bank of Nigeria Plc*[22] considered that the Appellant being a director and later a managing director of the Respondent's Bank and whose office as a director is protected by companies and Allied Matters Act and for that reason regulated by statute[23]. The employment of the Appellant according to the court qualifies as an employee whose office is spiced with statutory flavour and therefore the court order for reinstatement. The National Industrial Court (NIC) in the case of Michelin (Nigeria) Ltd vs. Footwear, Products Senior Staff Association,[24]would have ordered reinstatement if the employee hadn't died earlier. It is shown that in appropriate circumstances, the NICN can award this remedy even though the employment centered on a master-servant relationship. Even though most Nigerian judges and legal writers uphold that reinstatement is aberration for employees in master-servant employment relationship, but this has not discouraged lawyers from seeking the relief[25].

Reinstatement in private employment is beginning to take firm root in our labour jurisprudence. In *Adokoya v Pan Electric Ltd*,[26] the plaintiff was relocated from sale to store department. He resisted the transfer whereupon his employment was terminated. In a letter sent on his behalf by his solicitor urging the employer to reconsider its decision. In response, the company offered to reinstate the plaintiff subject to his willingness to resume work in the store department but it was persistence on working in sales department that made the plaintiff's claim for wrongful dismissal unsuccessful. In 1969, *Coker v National Bank of Nigeria Limited*',[27]due to police investigation into a criminal allegation involving the plaintiff and other employees of the defendant, the plaintiff was interdicted. Although the case was pending in court, he was summarily dismissed by his employer. The plaintiff then claimed damages for wrongful dismissal. Even though the civil case was in court, the criminal case was decided in the plaintiff's favour and he was acquitted accordingly, the plaintiff was reinstated in 1971. Given the above, ordering of reinstatement after dismissal subsists because it may seem that employers are not as adamantly opposed to reinstatement as is often thought.[28]

Admittedly, the retention of the common law principle of termination at will by the Nigeria Labour Act[29] makes an employee mostly those in private employment susceptible to losing their jobs any

[18]A Ipaye, 'The Suspended Employee under Nigerian Law' (1992) (3) (1 and 2) *Justice* 62-67
[19]C K Agomo, 'Nigeria Employment and Labour Relations Law and Practice' (Concept Publications 2011) 191
[20]*Olaniyan &Ors v University of Lagos* (1985) 2 NWLR (Pt. 9) 599
[21]Chianu (n 6).
[22](2010). 6 NWLR (Pt. 1189)
[23]Laws of the Federation Cap C20, 2005
[24]NCI /13/78
[25]Chianu (n 6)
[26](1973) 2 CCHCJ 54
[27](1975) a CCHCJ 1357
[28]Chianu (n 6)
[29]Labour Act 2004, s 11 (5)

time the employer so decides.[30]Nevertheless, with the introduction of the Third Alteration Act which amended some part of the Constitution of the Federal Republic of Nigeria 1999, some notable changes have now been introduced by the NICN and this also affects every matter under Nigerian Labour Law.[31]Notably, section 254 (1) (f) of the Third Alteration Act provides: that nevertheless, anything, contained in the constitution of the Federal Republic of Nigeria, the National Industrial court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters pertaining to or associated with unfair labour practice or international standards in labour employment and industrial relations matters.[32]

The case of *Bello Ibrahim v Eco Bank Plc*[33] shall be thoroughly reviewed to support the idea that reinstatement in private sector employment is not foreign to our labour law jurisprudence. Here, the claimant's employment was wrongfully terminated by the Defendant and the claimant claimed for reinstatement, compensation for wrongful termination and also sought some money as special damages. The claimant's claim was that he was employed by the now defunct Oceanic Bank International Plc on 16/1/2006. He became employee of his employment. He also established that having served the Defendant for twelve years, he should be given reasons for the termination. According to the Claimant, it was because he raised certain issues of misconduct and fraudulent activities of some individual in his department that was why his appointment was terminated. Precisely, the claimant contented that because he protested against the issue of forging figures to demonstrate that the bank was making progress whereas, it was not, led to the termination of his employment.[34]

Although, the Defendant acknowledged that the claimant was not guilty of any embezzlement of fund, yet the claimant was suspended for one month without pay for no reason preceding the termination. It seems like the termination was done with the intention of ruining the claimant's career out of anger and vindictiveness. Additionally, claimant also asserted that several acts of discrimination were meted out against him in the exercise of the employer's right to terminate his employment contract. The Defendant argued in response that the claimant was affected by right sizing exercise carried out by the bank in January 2018 and that the termination of the claimant's employment was in accordance with the terms and conditions of the claimant's employment contract.

Remarkably, the court determined that claimant has made out a case in which it is exceptionally necessary to order specific performance in view of the unusual facts and circumstances of this case. Neither claimant was not found wanting in his job or has he been found to have committed fraud or serious misconduct.[35] Therefore, the court ordered the immediate reinstatement of the claimant back to the employment of the Defendant. A thorough examination at Nigerian Judicial authorities indicates that the award of reinstatement in private employment cannot be expressly implemented or enforced. Nevertheless, our judges are enjoined to award this remedy of reinstatement in rare cases, if it leads to a fair outcome as was done in *Bello Ibrahim v Eco Bank Plc*[36].

Remarkably, in a departure from some of its previous disapproving decisions, the court of Appeal in *Sahara Energy Resources Limited v Mrs. Olawunmi Oyebola*[37] being the final court on labour

[30]*Ajazi v FBN Plc* (2016) LPELR 40112 (CA); *Aure v NIPOST* (2014) LPELR – 22 629 (CA)
[31]A.A. Adejugbe, 'A comparison between Unfair Dismissal Law in Organizations Legal Regime' [2020] (1) *Uniport Journal of International & Comparative Law*96.
[32]National Industrial Court Act 2006 ss.7 and 8
[33]Unreported NICN /ABJ/144/2018
[34]Akinselure (n 7)
[35]INE Worugji, 'The National Industrial Court of Nigeria Swimming with the Tide in Ebere Onyekachi Aloysius vs. Diamond Bank Plc [2020](11) (3) *Gravitas Review of Business and Property Law*<https://gravitasreview.com.ng/product/national-industrial-court-swimming-the-tide-ebere-aloysius-v-diamnd-bank-plc/> accessed 7 March 2025.
[36]J.O. Akinselure (n 7)
[37]Appeal No. CA/L/1091/ 2016 delivered on 3/12/2020

and employment matters, affirmed the latitude, within set parameters, the power of the NICN to deviate from traditional common law prescriptions restricting the quantum of damages to remedy in deserving cases of wrongful termination of employment.

Similarly, the NICN, in the case of *Captain Benedict Olusoji Akanni v The Nigerian Army & 3 Ors*[38] award 75 million naira for loss of expectation and psychological trauma as a result of arbitrary and illegal actions of the first defendant. This is a radical departure from the common law principles of not awarding damages for psychological trauma. In the same vein, the NICN in Ugochukwu Edmund Okwu vs. Zenith Bank Plc[39] on a finding that a suspension without pay for 77 months was cruel and equal to unfair labour practice; the NICN awarded the sum of 33, 194, 245.70 naira in favour of the claimant. The rational was premised on arrears of salary from the date of suspension to the day the claimant retired.

Our judiciary should develop some form of revolution and resourcefulness instead of adhering strictly to the old common law rule which more often leads to injustice mainly on the part of an employee in most cases. A learned scholar has submitted that specific performance is merely one of the many of achieving a just result[40]. Consequently, he adviced that courts should make use of the opportunity offered them and should exercise the power to reinstate private employees with some flexibility and in deserving meritorious cases.[41]

3. Grounds for Reinstatement

A. **Failure to Follow Proper Disciplinary Procedure**: It is possible for an employee to sue for wrongful termination if their employer fires them without following the proper channels as outlined in the employment contract. In extreme circumstances, the NICN has mandated that employers restore the affected employee's appointment and, if the employee prevails, has awarded substantial damages.[42]

B. **Discrimination based on protected characteristics:** Reinstatement is possible in cases of termination due to discrimination based on gender, ethnicity, religion, or disability. It is absolutely forbidden to engage in any kind of discrimination, whether it be direct or indirect, and this includes victimization and harassment. In Nigeria, sexual harassment is not yet addressed by specific legislation. Nevertheless, Order 14 Rule 1[43] of the NICN Rules provides for acts that constitute sexual harassment, namely (a) physical conduct of a sexual nature (b) verbal form of sexual harassment, (c) non-verbal form of sexual harassment and (d) quid pro quo harassment. Sexual harassment is also criminalized in the criminal codes of some states in Nigeria. The 2019 Violence and Harassment Convention (ILO Convention No.190) acknowledges that everyone has the right to an environment at work free from violence and harassment, including harassment based on gender. Nigeria has also ratified this convention.[44] In addition, a company might be in violation of its duty of care to an employee if it knew about a sexual harassment occurrence at work but did nothing to investigate or resolve the matter. When an employer fails to complete inquiries into allegations of sexual harassment, the court in *Ejike Maduka v Microsoft &Ors*,[45]found that the employer is accountable for the harassing conduct. Later on, in the case of *Dorathy Adaeze Awogu v TFG Real Estate Limited* as decided.

[38]Unreported Suit No. NICN/ABJ/128/2018 Judgement delivered on 27/5/2020
[39]Unreported Suit No. NICN/LA/85/2017 Judgement delivered on 10/9/2020
[40]E Chianu (n 6)
[41]J.O. Akinselyre (n 7).
[42]J Lambo and Others, 'Employment &Labour Laws and Regulations' <https://iclg.com/practice-areas/employment-and-labour-laws-and-regulations/nigeria> accessed 6 March 2025
[43]NICN Rules, 2016
[44]Global Legal Insights, 'Employment and Labour Laws and Regulations 2024- Nigeria' <https://www.globallegalinsights.com/practice-areas/employment-and-labour-laws-and-regulations/nigeria/#:~:text=190%E20%80%9D52Cwhich%20reconizes%theconsequences%20of20breaching%20the%20policy> accessed 25 March 2025.
[45](2014) 41 NLLR (Pt 125) 67

As a result of the employer's physical harassment and discrimination, the NICN granted N2, 500,000 in damages to the employee. Employers would do well to take the above into account when crafting a policy against harassment and victimization in the workplace. A reporting system, an investigation process, and disciplinary measures for infractions should all be included in this policy so that workers know what to do in the event of a claim.[46]

C. **Constructive Dismissal:** When a boss makes the workplace unsafe for their employees, it's considered hostile takeover. Any termination of an employment contract that is done in violation of its terms and conditions is usually considered a wrongful termination. When an employee's voluntary resignation is met with an employer-created hostile or unbearable atmosphere or when the workplace is purposefully unfavorable, this is known as constructive dismissal. The employee's resignation may be deemed as a termination if it is determined that it was not voluntary. By upholding the obligation of mutual respect in work relationships and safeguarding the dignity of humans, recent rulings of the National Industrial Court have revived the notion of constructive dismissal. In Nigeria.[47]Therefore, in a constructive dismissal or discharge, the employee is within their rights to end the employment contract without giving notice. This is because the employer's actions amount to a rejection of the contract and the employee is effectively accepting this rejection by leaving the job.[48]

D. **Poverty, Insecurity, Health Problem, Striving for Alternative Employment or engage in Bad Social Vices**: An employee who loses his job is most likely to face poverty, insecurity, health problems, striving for alternative employment or engage in bad social vices.[49] These negative effects are applicable to employees whose employment is wrongfully terminated whether the employee is under employment with statutory flavour or private employment. Therefore, if reinstatement is sufficient remedy for wrongful termination of contract of employment in contract of employment with statutory flavour, it should equally be applicable in private employment on the grounds of fairness, equity and justice.

E. **Pride, Feelings, Confidence and Trust:** Critics of the argument that it would be unfair to force a willing employee onto an unwilling employer[50]point out that most employers in the modern industrial age run huge personal organizations with many departments and units, and that private employment and personal service often involve feelings, pride, confidence, and trust.[51] The organization also involves ten to hundreds or even thousands of workers. In circumstances like these factors such as personal pride, trust, confidence may not arise[52] because the contract is mostly supervised by a manager whose is also an employee. A learned writer, Chianu[53]an educated writer, said that large-scale organizations should be separated from the age of one master and one or few slaves, which entails personal trust. Additionally, as ownership is detached from management in this industrial warden period of employment, it is common for workers and managers to be considered employees.[54]Thus, it is a matter of some privilege employee terminating or dismissing other employee.

4. Procedure for Reinstatement

[46]Global Legal Insights (n 44)
[47]E H Emmanuel and O Omojota, 'The Concept of Constructive Dismissal under Nigerian Labour Law: PerspectivefromSouthAfrica<https:unsipressjournals.co.za/index.php/CILSA/article/view/15773:#:text~:in%20general%2C%20an%employment%20contract,on%20constructive%20dismissal%20in%20nigeria> accessed 25 March 2025.
[48]Miss Ebere Ukoji vs. Standard Alliance Life Assurance Co. Ltd (2014) 47 NLLR (Pt. 154) 531; INE Worugji, Modern Labour Law in Nigeria (Malthous Press Limited 2021) 149
[49]K. Oduku and S Animashanu, 'Accentuating the Inherent Precarious Nature of Remedy of Reinstatement in Employe-Employee Relationship'[2012](6) (48) *African Journnal of BusinessManagement*<https://www.academicjournal.org/AJBM> Accessed 6 March, 2025.
[50] Ipaye, (n 18)
[51] Oduku and Animashanu (n 49)
[52]ibid
[53] Chianu (n 6)
[54]Oduku and Animashanu (n 49)

Employees who believe they were wrongfully terminated can take the following steps for reinstatement of his employment in the private employment.

i. **Consult an Employment Lawyer**: Legal advice is the key to understanding available options[55]for the remedies of wrongful termination of employment.
ii. **Gather Evidence**: Collect documents, including contract, correspondence and performance reviews to strengthen the case.
iii. **Negotiation with the Employer**: The Federal Ministry of Labour offers mediation to resolve disputes without going to court.[56]
iv. **File a Case:** If mediation fails, case can be filed with the NIC.[57]Also appeals can go to the Court of Appeal, which is, the final authority over employment dispute.

5. Rights and Benefits of Reinstatement

In Nigeria's private sector employment, the right to reinstatement following wrongful termination is limited, which courts generally opting for financial compensation rather than forcing an employer to reinstate an employee, meaning that while reinstatement is technically possible, it is not a common remedy in private sector employment disputes. The primary benefit of reinstatement would be the restoration of the employee's previous job position and associated benefits. However, this is usually only granted in cases with strong legal grounds where the court deems it appropriate. Some of these benefits are:

i. **Revocation of the Earlier Unlawful Act of the Employer**: This processinvolves the revocation of the previous unlawful termination of the employment by the employer. in other words, where reinstatement is successfully pleaded, the previous unlawful act of termination of the employment is normally declared null, void and of no legal consequences[58].
ii. **Reinstatement is Retroactive in Effect**: A major benefit of reinstatement is that its effect is to restore the victim of the unlawful termination back to his status quo ante before the unlawful act.[59]
iii. **Length of the intervening period is not a Bar:** A consequential result of the retroactive nature of reinstatement is that the length of the intervening period is not a bar to the award of reinstatement. In the case of *Shitta-Bay v Federal Public Service Commission,*[60]the intervening period was 6 years and few days. In Olaniyan's Case,[61] it was 4 years and 7 months. In *Adetaminwa v Osun state college of Education, Ilesha*[62], the intervening period was 21 years, 1 month and 13 days. In *Olorunntaba – Oju & Ors v Abdul Raheed*,[63] it was 8 years, 6 months and 22 days. In Longe vs, First Bank Plc[64] it was 7 years and 9 months.
iv. **Possibility of Award of Damages in Lieu**: The employee has attained the statutory retirement age (determined by length of service or age), the fixed tenure has ended, or the employee has been rewarded in suitable situations, making reinstatement almost difficult. Because the Appellant's constitutional term as a member of the Respondent Local Government Services Commission had ended prior to the conclusion of the case, damages were granted inOjo vs. Governor of Ekiti State.[65]The Supreme Court also awarded monetary

[55]Resolution Law form, 'Legal Remedies for wrongful Termination of Employment in Nigeria' <https://www.resolutionlawng.com/legal-remedies-for-wrongful-termination-of-employment-in-Nigeria/#:~:text=steps%20for20for%20employments%20seeking%20Remedies-finals%20authority%20over%20employment%20disputes> accessed 28 March 2025.
[56]Trade Dispute Act, Cap T32, LFN 2004
[57]National Industrial Court 2006 s7; (n20) Olaniyan's case
[58]Per Kanbi-Whyte, JSC (as he then was in Olaniyan's case
[59]F O Dada and J O Adewumi, 'Remedy of Reinstatement-Challenges and Benefits of its Judicial Application in Employment Contracts in Nigeria' <https://www.researchgatenet/publication/365596GES-AND-BENEFITS-OF-ITS-JUDICAL-APPLICATION-IN-EMPLOYMENT-CONTRACTS-IN-NIGERIA> accessed 28 March 2025.
[60](1985) ISC 40
[61](n 20) Olaniyan's case
[62](2009) All FWLR (Pt. 456) 1860
[63](2009) All FWLR (Pt. 497) 1
[64](2010) All FWLR (Pt. 525) 258
[65] (2006) All FWLR (Pt. 331) 1298

damages rather than reinstatement in the case of *CBN v Igwillo*,[66] where the Appellant had died before judgment.

v. **Recognition of its judicial Application is a Triumph of reason over Slavish Adherence to Harmful Legal Doctrine**: Once again following the common law tradition, contracts involving personal services, and especially employment contracts, were seen to be incompatible with remedial measures like declarations, injunctions, and reinstatement. Therefore, Nigerian courts, historically behaving in accordance with the common law tradition, were reluctant to impose such orders. Nevertheless, judicial precedent has shown that the right to gainful work is just as fundamental as the inalienable right to possess property, and so, the times have changed. Therefore, the court upheld it in Olaniyan's case.[67]A right to employment is now at the same level as a right to property, and the time has come for the law to recognize this. As a result, in cases where an individual has a legal claim to a specific position, I fail to see any rational or legal basis for the opposing view that an employee should be reinstated as soon as possible after a dismissal, unless there are other legal hurdles that prevent this from happening, as this would be the only fair resolution. I have no qualms with reiterating the learned trial court's decision in cases where the conduct relied upon for the dismissal violates an enabling legislative provision, since damages are usually insufficient remedies for unfair dismissal.[68]

6. Challenges and Limitations of Reinstatement

Reinstatement is primarily seen as a remedy for government – related employment (statutory employment) where the court has more power to order an employee to reinstate an employee in the private sector; courts are more likely to award damages as compensatory for wrongful termination of contract. Even in cases where a court might consider reinstatement, factors like the severity of misconduct, the employer's willingness to have the employee back and potential disruption to the workplace will be taken into account. Some of these challenges are:

1. Traditional Common Law View of Reinstatement:

Conventional wisdom is that expanding the remedy to include employment contracts would be counterproductive to public interest. In an old English case, it was stated that courts have never intended to enforce agreements that are purely personal in character, such as those involving hiring and service (the common relation of master and servant), agreements for the sake of pleasure, agreements related to scientific endeavors, or agreements involving charity or philanthropy.[69]
The reasons that have always been advanced for that view inched:

(a) Impossibility of compelling unwilling party to maintain continuous personal relations with other willing party;
(b) The erosion of the necessary confidence or trust that should ordinarily characterize the relationships of parties to contracts, if they are legally forced to maintain relationships; and
(c) The impossibility on the path of the court to superintend obedience to its order.

No matter how fantastical or convincing the arguments given above may seem at first glance, they are not infallible. For example, court orders are not and should not be submitted to the personal supervision of the court before they are executed. The consequences for noncompliance are sufficient. Another difference between feudal England and Nigeria is that the former's social circumstances did not influence the common law's notion that there are no differences between a contract of personal service and a contract of service simpliciter. Thus, there should be no limitation or ban in circumstances under the latter, while the propriety or not of ordering reinstatement in employer contracts under the former is up for debate.[70] This fact was recognized by the supreme court in Olaniyan's case.[71]

[66](2007) All FWLR (Pt. 379) 1385
[67]Olaniyan's case (n 20)
[68]Dada and Adewumi (n 59)
[69]*Rugby v Connon* (1880) 14 Ch. D 482 at 487
[70]Dada and Adewumi (n 59)
[71]Olaniyan's case, at 632 of the Report (n 20)

2. Acceptance of Unilateral Repudiation of Contract:

If an employee or other party to a contract accepts, either explicitly or implicitly, the other party's unilateral rejection of the contract, it will be difficult for the court to rule that the contract remains in effect. The court would have been forced to deal with a fait accompli in such situation. That is why it is not enough for one party to repudiate the contract for it to be considered a contract termination in the case of Heyman vs. Dawins Ltd.[72]To put a stop to it, one party must repudiate the other and the other party must accept the rejection. For example, according to the basic principle of the formation and discharge of contract obligations, the court's decision in that case is consistent with the idea that a party's unilateral repudiation of a contract is typically seen as an offer by the party at fault to the innocent party to terminate the contract. The contract remains in effect until the innocent party agrees to the terms.[73]

Earlier it was said that an employee's reception of cash in place of service, particularly when done under protest, does not automatically mean that the unilateral repudiation has been accepted.[74]

3. **Wrongfulness and Unlawfulness of the Determination:**

Under this heading, the first difficulty arises from the question of whether, according to court decisions, the words "wrongfulness" and "unlawfulness" of determination of employment contract signify the same thing. A growing body of opinion suggests that these terms do not refer to the same thing, which could affect the likelihood of reinstatement.[75]

When an employment decision is found to be unlawful, the typical remedy is damages, as the dissenting judge in that case noted in the first instance. However, a court will not hesitate to nullify an alleged act of termination when an appointment governed by statute is terminated unlawfully, for example, because the employee was not given a fair hearing. In such a case, the court will also order the employer to reinstate the employee.[76]

Once the matter of the proceeding is resolved, the next step is for the court to decide whether the employer's factual actions constitute unlawfulness. Once this decision is made, the question of the suitable legal remedy becomes moot.In the case of *Prof. Ndidi v Akinsumade & Anor*[77] two tests for determining the matters were propounded. These are:

a) Is the procedure adopted in effecting the dismissal (or determination of the employment, generally) conforms with the terms of the employment of the aggrieved employee; and
b) Although, there is no departure from the prescribe procedure for the determination, has the rules of natural justice been violated in the application of the procedure, thus, making the compliance travesty?
c)

In the first text, it is stated that the Appellant was removed from his position as Vice Chancellor of the University and retired as a Professor of Physics in the University's Department of Physics before the proper procedures were followed. This was determined to be in violation of section 15 of the University's Act, which addresses the removal of officials from their positions, as well as the retirement of faculty members from the Respondent University. The court upheld his appeal, reasoning that the procedure outlined above differs significantly from the one used to remove the appellant from his position at the university. The visitor, who does not have the authority to do so,

[72](1949) A.C 356
[73]Olaniyan's case, Per Karibi-Whyte at 683 (n 20)
[74]*Ulegde v Military Administrator, Benue State* (2000) FWLR (Pt. 22) 981 at 1001
[75] Imodu Institute of Labor Studies in the case of *Maliki v Michael* (2008) All FWLR (Pt. 491) 979
[76]ibid at 1016 to 1017 of the Report.
[77](2000) All FWLR (Pt 5) 709

relied on his own judgment and did not seek advice from the university council, the sole competent body with pension or removal powers.

The exercise has determined that the appellant's retirement from service violates the conditions laid down by section 15 of the University of Nigeria, Nsukka, Act. These conditions are inalienable and part of the appellant's conditions of service, regardless of any misconduct he may have committed while serving as a senior academic staff member at the university.[78]

On the second text, the case of *Adedeji v Police Service Commission*,[79]alleged corruption and violation of certain elements of the Respondent's General order led to the Appellant's dismissal from his position as a police officer. His removal followed the issuance of a formal question, to which he responded. The trial court maintained the appellant's dismissal notwithstanding the Respondent's rebuttal affidavit including fresh claims that were not included in the first inquiry. To the Supreme Court he appealed. We are thus not persuaded that, when the circumstances of this case are looked into, appropriate opportunity was provided to the appellant to address the case or the facts known to the commission, the court said, upholding his appeal. Was the appellant properly apprised of the case against him to the point that the criteria of natural justice were adequately met in light of the facts and circumstances? It is not necessary to evaluate whether the appellant is corrupt and committed the alleged offense. The letter dismissing the appellant is accordingly ruled inoperative, invalid, and of new consequence, and we hereby order that the writ shall go."[80]

Also, in the case of *UCH Board of Management v Morakinyo*[81] and the case of *FMC Ido-Ekiti & Ors. v Kolawole*,[82] where the court held that the Appellants not having followed the laid down procedure for terminating senior public officers violated the rules of natural justice, the termination is therefore null and void.[83]

7. Conclusion and Recommendations

Conclusion

Under the Nigerian employment law, the court will not grant order of reinstatement in employment in private sector except in exceptional circumstances. This shows that in appropriate circumstances, the NICN can award this remedy even though the employment centered on a master-servant relationship. Courts plays a crucial role in resolving reinstatement disputes in private employment in Nigeria but their approach is often guided by the special circumstances of each case and their applicable laws.

Recommendations

It is recommended that legal and institutional framework be strengthened, clarified and expanded by amending same to provide clear guidelines on reinstatement in both private and public sector employment particularly making the remedy of reinstatement to be available in both private and public sector employment.

[78]ibid
[79](1968) NMLR 102
[80]Ibid at 108
[81](2014) LPELR – 23416 (CA)
[82] (2011) LPELR – 4149 (CA)
[83]Dada and Adewumi (n 59)