

Contracts in Restraint of Trade and Confidentiality Clauses:

A Review of Halogen Security Company Limited v Mr Nnamdi Meli

labour and Employment Insights



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CONTRACTS IN RESTRAINT OF TRADE AND CONFIDENTIALITY CLAUSES: A REVIEW OF HALOGEN SECURITY COMPANY LIMITED V MR NNAMDI MELI¹

1. Introduction

A contract in simply terms is an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. It is a promise or a set of promises for breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty. In commercial contracts such as employment contracts and relations, contracts in restraint of trade and confidentiality clauses are common features of same, whereby employers often adopt restraint of trade clauses in employment contracts to limit an employees ability to engage in competitive trade/ employment activities against the employers trade or business, whilst confidentiality clauses in employment contracts are mostly deployed to protect an employer's sensitive information, trade secrets, tools of competitive advantage etc from disclosure. A contract in restraint of trade is one in which a party covenants to restrict his future liberty to exercise his trade, business or profession in such a manner and with such persons as he chooses.²

However, contract in restraint of trade clauses are often subjected to critical scrutiny by Courts before they can be declared as enforceable, as these clauses must pass the reasonability test, in the sense that they must be seen to be reasonable in scope, geographic reach, and duration, whilst also not being too unjustly restrictive of an employee's ability to work or trade. This article explores the applicability of these clauses and the legal principle governing them as considered by the Court in the National Industrial Court of Nigeria's decision in *Halogen Security Company Ltd v Nnamdi Melie* delivered on December 16, 2024.

2. Summary of the Case

The Defendant (Nnamdi Meli), a former employee of the Claimant (Halogen Security Company Ltd), a security services Company, worked in the service of the Claimant as Head, Corporate Strategy (Associate Director), by virtue of a contract of employment dated the 9th April, 2018 until his resignation in November 2021. It was the Claimant's case that the Defendant, in his position

¹ Unreported - SUIT NO. NICN/LA/39/2024

² Sagay - Nigerian Law of Contract 2nd Edition at page 427



as Head, Corporate Strategy, was the chief custodian of the Claimant's business strategies, trade secrets, and tools of competitive advantage in the industry, which constitute the Claimant's most important and most valued trade secret. Clause 3 of the Defendant's contract of employment provides that the Defendant shall not, within 24 months of leaving the service of the Claimant, engage in or take part in any business enterprise that has the same business or objectives as that of the Claimant or any company or business which may be a competitor of the Claimant.

The said Clause 3 of the Defendant's contract of employment provides as follows:

You shall maintain all classified information relating to the activities of the company in strictest confidence and for the sole and exclusive benefit of the Halogen Group.

Also, during the term of your employment and for a period of 24 months after determination of the employment, you shall not engage in any business in the industry which has the same objectives as that of the Halogen Group or with any other business or company that may in any way be deemed as competitor of the Halogen Group.

In April 2022, the Defendant left the service of the Claimant to join Sety Ltd, an Information Technology and Software Development Company, as the Chief Executive Officer (CEO). Agreed by this development, the Claimant sued the Defendant seeking declaratory reliefs and general damages, and cost in the sum of N50,000,000 (Fifty Million Naira) and N2,000,000 (Two Million Naira) respectively, for breach of contract on the basis that the act and conduct of the Defendant in joining the service of Sety Ltd as its CEO is not only a grave breach of his non-compete obligations to the Claimant as per Clause 3 of its contract of employment, the conduct is also most unethical, dishonest and a grave act of disloyalty.

The Defendant, in his defence to the suit, maintained that he was never the



custodian of the Claimant's alleged business strategies and tools of competitive advantage in the industry, which were domiciled in the office of the Claimant's Chief Executive Officer (CEO) and the Project Management Office (PMO). The Defendant further stated that he did not breach the restrictive non-compete obligations under Clause 3 of his employment, as Sety Limited is neither a competitor nor a security services company/provider as with the Claimant, rather, Sety Limited was an ICT/software development company, with its main objects being information technology and software development, computer ICT and technology, providing AI-powered analytics and technology advisory services, among others, which are not in the same line of business nor a competitor to the Claimant.

3. Decision of the Court

The Court, coram: Honourable Justice Joyce A. O. Damachi of the National Industrial Court, Lagos in delivering its judgment on December 16, 2024, held that the Claimant did not discharge the burden of proof placed on it; for the grant of the reliefs sought as the Claimant failed to prove that the Defendant disclosed its confidential information and trade secrets after he left the Claimant's employment. In this regard, the Court held that:

...the Claimant has failed to point out to the Court the specific secrets and confidential information, the particulars of breach, evidence of disclosure that the Defendant was alleged to have disclosed, the occasion or date he disclosed it, by what means or mode he disclosed it, there is no evidence before this Court, the Claimant is speculative and lacking in proof of material facts, what is left for the Court to do is to speculate the particulars of disclosure. The Claimant did not plead and provide evidence to display one incidence where the disclosure of its secret affected her negatively or how the trade secrets benefited Sety Ltd.

The Court further held that the non-compete clause in the Defendant's employment contract was unreasonable, as it was found to be open-ended



and unreasonably against the interest of Defendant. The Court also stated that the restriction was not specific with respect to the intended geographical spread of the intended restriction and thus, unenforceable against the Defendant. The Court consequently dismissed the suit for lacking in merit.

4. Analysis of the Judgment of the Court

a. Evidential Burden of Proof in Declaratory Reliefs:

The decision of the court reaffirms the age-long evidential burden in our adversarial system placed on a Claimant in establishing its case to be entitled to the reliefs sought and not to place reliance on any perceived weakness in the case of the defence. This evidential burden of proof is often expressed in the Latin maxim “*Onus probandi actori incumbit*” which simply translates to “He who asserts must prove.” The legal burden is on the plaintiff to plead and prove his claims for declaratory reliefs on the evidence called by him and not on the weakness of the case of the Defendant.³ The burden of proof on the Claimant in establishing declaratory reliefs to the satisfaction of the Court is quite heavy in the sense that such declaratory reliefs are not granted even on admission by the defendant where the plaintiff fails to establish his entitlement to the declaration by his own evidence.⁴

It is instructive to note that the grant of declaratory relief is discretionary, and the Court must act judicially and judiciously in granting the relief.⁵ It behoves on a Claimant who seeks declaratory relief to adduce cogent and credible evidence which will entitle him to the reliefs sought. He must succeed on the strength of his case and not on the weakness of the defence. So, the burden of proof or rebuttal does not shift to the defendant or respondent until the Claimant has discharged the basic burden of proof on him. Accordingly, if at the close of his case, the Claimant had failed to make out his case, the evidential burden to refute or rebut does not shift to the defendant in cases of

3 Edozien v. Edozien (1998) 13 NWLR (Pt. 580) 133 C.A. (Pp. 147, paras. G-H; 148, paras. B-C)

4 Oni v Gov, Ekiti State (2019) 5 NWLR (Pt. 1664) SC 1 See also Emenike v. P.D.P. (2012) 12 NWLR (Pt. 1315) 556 S.C. (Pp. 589-590, paras. H-B)

5 Nwaogu v. Atuma (2013) 11 NWLR (Pt. 1364) 117 S.C (P. 142, paras. C-D)



declaratory relief. Where the plaintiff failed by his evidence to make out his case, the trial court is entitled to dismiss same without further considering the defence's evidence.

In the case under review, the Claimant, Halogen Security Limited, had sought a declaratory relief that the Defendant, Nnamdi Meli, was in breach of clause 3 of his contract of employment, which contained non-compete and non-disclosure clauses. However, the Claimant was unable to adduce credible evidence to show first that the Defendant was in possession or the custodian of its trade secrets and tools of competitive advantage, and thereby breached clause 3 of his contract of employment in joining Sety Limited, the Claimant's alleged competitor. In contrast, the Defendant adduced both oral and documentary evidence by frontloading and tendering the Memorandum and Articles of Association of Sety Ltd, in showcasing the objects of Sety Ltd as a software development company. It showed that they were distinct from those of the Claimant's objects as a security service company, whilst the Claimant's sole witness also admitted, as testified by the Defendant, that the Claimant's trade secrets and tools of competitive advantage reside in the corporate archives of the Claimant and its CEO's office. It is worthy to note that the Claimant is seeking for a declaratory relief which are not granted as a matter of course, they must be proven by adducing credible, sufficient evidence, which burden of proof, the Claimant was unable to discharge to entitle it to the grant of the declaratory relief sought.

Thus, the burden of proof on the Claimant in establishing declaratory reliefs to the satisfaction of the Court is quite heavy (as he who asserts must prove) in the sense that such declaratory reliefs are not granted even on admission by the Defendant where the Claimant fails to establish his entitlement to the declaration by his own evidence. A Court does not grant declaration of rights either in default or an admission without taking evidence and being satisfied that the evidence led is credible.⁶ The Claimant failed to point out to the Court by

6 I.N.E.C v Atuma (2013) SC 11 NWLR (Pt. 1366) 494 at p. 520-521, paras. G-C; 540-541, paras. G-A



credible evidence, the specific secrets and confidential information, the particulars of breach, evidence of disclosure that the Defendant was alleged to have disclosed, the occasion or date he disclosed it, by what means or mode he disclosed it, thereby leaving its claim/ allegations in the realm of speculations. The Claimant did not also plead and provide evidence to display one incident where the disclosure of its secret affected her negatively or how the trade secrets benefited Sety Ltd.

b Reasonability of a contract in restraint of trade [non-compete clause]

It is worth noting that the question of whether or not a contract in restraint of trade or a non-compete clause is reasonable, is a question of fact, and thus determined based on the peculiar circumstances of each case. More importantly, the burden of proof of reasonability of a non-compete clause is placed on a Claimant seeking to enforce it. The validity of a contract in restraint of trade rests on the test of reasonableness. Reasonableness, in this instance, envisages that the clause must be “reasonable-reasonable.”⁷ This means that it must be reasonable to consider the interests of the employer and the employee on the one hand and the interests of the state on the other.⁸ To arrive at what is reasonable on both hands, the Court would deploy both the objective and the ordinary man's test.

To decide reasonableness, many factors are considered by the Courts, such as: scope of the restraint,⁹ protection of legitimate interest,¹⁰ and the interests of the parties and the interests of the public.¹¹ The duration, scope of restrained activities, geographical scope, and clarity of language in the clause would inform the court's decisions on the three factors above.

Based on the circumstances of each case such as (i) where the duration would be unbearably arbitrary (ii) where it is beyond two years as limited by the Federal Competition and Customer Protection Act,¹² (iii)

7 Tanksale v. Rubee Medical Centre Ltd [2013] LPELR-21445(CA) (Pp. 27-28 paras. F). Koumoulis v. Leventis Motors Ltd (1973) LPELR-1710(SC). More so, the Court would deploy the test of an ordinary man.

8 Lord Atkinson in Herbert Morris Limited v. Saxelby (1916) A.C. 688

9 Smith, Stephen A. "Reconstructing restraint of trade." Oxford J. Legal Stud. 15 (1995): 565.

10 Especially the protection of proprietary interest. See Herbert Morris Limited v. Saxelby (1916) A.C. 688 at 702 & 710;

11 Smith, Stephen A. "Reconstructing restraint of trade." Oxford J. Legal Stud. 15 (1995): 565.

12 See Section 68(1)(e) of the Federal Competition and Customer Protection Act.



where the geographical scope is too broad that it would bring hardship to the employee, (iv) where the activity restraints are such that they would incapacitate the employee, (v) and where the language is too ambiguous that many meanings could be construed, the clause would be considered as unreasonable.¹³

In Halogen's case, the second arm of clause 3 of the Defendant's employment contract provides that the Defendant shall not *during the term or after the determination of employment and for a period of 24 months engage in any business in the industry which has the same objectives* as that of the Halogen Group or deemed as competitor of the Halogen Group. It is worth noting, as has been stated above, that generally all covenants in restraint of trade are prima facie unenforceable in common law. They are only enforceable if they can be shown to be reasonable with reference to the interest of the parties concerned and of the public.

In the interpretation of the non-compete clause, it was found by the Court to be too ambiguous and excessively restrictive. The Court held thus:

...[H]e is restricted from engaging in a company deemed to be in competition with Halogen SCL for 24 months, there was however no geographical coverage specifying whether the restriction is to Lagos-Nigeria, West Africa or global. This clause, therefore, restricts Nnamdi Melie from engaging in any BUSINESS IN THE INDUSTRY WHICH HAS THE SAME OBJECTIVES AS THAT OF HALOGEN GROUP for a period of 24 months, approximately 2 years. Is this a reasonable restriction?

How is he expected to earn a living, if is he to exit the industry entirely? Not forgetting the fact that the Claimant is a private security service company, the clause is silent on whether the Defendant is restricted only to the private sector or to the public sector as well.

13 *Koumoulis v. Leventis Motors Ltd* [1973] LPELR-1710 (SC) (Pp. 13-14 paras. F).



The clause was found to have no geographical specificity, as the company cannot aim to protect legitimate interests against all companies in the world. It also tends to bar/ restrict the defendant from dealing with any industry, even if it has a variety of practices and expertise, thereby incapacitating the defendant from exploring other fields. These terms in the clause negate the grounds of reasonableness permissible under the law.

Another highlight of the decision was the Court's endeavour to set down parameters to establish competition between the initial employer and the new employer, Halogen and Sety, in this case. The defendant had argued that Sety is an IT company, tendering its Memorandum and Articles of Association and the MOU between it and the claimant as an exhibit. Unfortunately, the claimant only tendered its brochures and failed to tender its Memorandum and Articles of Association, which would establish its objectives. The Court, relying on the decision of the Supreme Court in *Court Continental Chemists Ltd v. Ifeakandu*, held that the correct approach was for the parties to place their objectives side by side.¹⁴

To avoid falling into the realm of speculation, the Court noted that the failure of the Claimant to plead and tender its Memorandum and Articles of Association left the Court to speculate, an endeavour the Courts often frowns at. Considering the evidence before it, the Court held that the two companies are not in the same business and are not competitors. In the determination of the enforceability and fairness of a non-compete clause, the reasonableness and geographical scope of the non-compete clause, amongst others, are critical factors to be considered by a Court in ensuring that an employee's right to work is not unduly restricted vis a vis the protection of an employers legitimate business interest.



5. Conclusion

The above decision highlights the Court's flexibility in enforcing contracts in restraint of trade, otherwise known as non-compete clauses and the National Industrial Court of Nigeria's cautious approach in labour and employment disputes/ matters relating to the restraint of individuals' right to work.¹⁵ The decision of the Court further puts into perspective questions about what amounts to confidential information, the ability or assumptions of disclosure of the same, and the parameters to be considered by the Court in evaluating non-compete clauses and the reasonability of same for the purpose of its enforcement. The decision further highlights the Court's duty to balance the business interests of employers and employee's right to earn a living and public policy consideration. The decision also demonstrates that overly broad and ambiguous clauses, lacking specifics such as duration, geographical scope, and the nature of restricted activities, are likely to be struck out as being unreasonable and unenforceable against employees by the Courts.

6. Recommendations

In drafting non-compete clauses in employment contracts, it is important that they are not crafted merely to suppress competition through excessive and undue restrictions. Instead, they should focus on protecting legitimate business interests, proprietary information, and the goodwill of employers within a clearly defined and reasonable geographical scope and time limit, with the scope of restricted activities clearly identified and narrowed down. This approach helps prevent the clauses from being struck down as unreasonable and unenforceable by the court.

It is also recommended that employers and drafters of non-compete clauses consider including severability clauses to same, to preserve any part of the clause that may be considered enforceable, as this could provide an opportunity for courts to strike out only the unenforceable part or portions of the non compete clause without voiding or striking out the entire clause.



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