

UNDERSTANDING EMPLOYMENT DETERMINATION UNDER NIGERIAN LABOUR LAW: LEGAL PERSPECTIVE ON TERMINATION, DISMISSAL, AND REDUNDANCY

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1. Introduction

Employment termination remains a critical and often sensitive aspect of labour relations in Nigeria. Whether it occurs through dismissal, retirement or redundancy, the determination of an employment relationship carries considerable legal and financial implications for both employers and employees. A lack of clarity or understanding of the applicable legal framework frequently results in disputes, reputational risk, and, in many cases, costly litigation. The relationship between an employer and their employee is mainly contractual, and the parties are bound by the provisions and intentions evident in the employment contract; the termination of such employment relationships must be done in accordance with the contract.¹

Termination and dismissal are distinct concepts under Nigerian labour law, each with different procedures, justifications and consequences. Therefore, where a disciplinary panel or body misapplies one in place of the other, the outcome may undermine the employer's intention and expose the employer to legal risk with attendant reputational damage for the organization. Redundancy in the labour sector implies a situation where, as a matter of necessity, an employee's engagement needs to be determined due to a lack of work assignable to the employee.

This article explores the key legal concepts governing employment termination in Nigeria. It examines the statutory framework, judicial interpretations, and best practices relating to dismissal, retirement, and redundancy. The article aims to provide clear guidelines to employers, HR professionals, and employees on how to navigate termination processes in a lawful and fair manner.

2. Termination and Dismissal

Termination and dismissal are often misconstrued for each other in employment disputes, leading to unintended consequences. Some

¹ There are instances of employment relationships not well documented into a contract of employment. In such instances, the Court tend to adopt conventions and best practices in considering the rights of the parties. Please see Franklin G. Snyder, "The Pernicious Effect of Employment Relationships on the Law of Contracts," *Tex. Wesleyan L. Rev.* 10 (2003): 33.

literature explains that the difference between the two concepts relates to the fundamental aspects of the contract.² This implies that when the cessation of employment is based on the terms of employment, it is termed “termination.”³ However, in cases where the decision to end the employment relationship arises from an employer's right to do so, rather than in accordance with the terms of the contract, such a case would be “dismissal.” Joseph Abugu captures this promptly when he states that;

*Often, dismissal is confused with 'termination'. The latter simply refers to the cessation of a contract of employment, usually, in accordance with its terms. Dismissal on the other hand, is the assertion of a right of an employer to terminate a contract other than in accordance with the expressed terms. The distinction centres on whether an employment has been determined in accordance with its terms or not. This is a common feature of most disputes on termination; hence, it can be a veritable source of confusion whether to use the term, 'termination' or 'dismissal.'*⁴

The fundamental difference is that termination is a natural ending of the employment relationship between an employer and an employee, subject to the provisions of the terms of the agreement, whereas dismissal has a punitive implication that brings the relationship to an end without necessary regard for the provisions of the terms. Termination could arise from retirement, resignation, redundancy, agreements, or the expiration of the stipulated duration of the contract. More so, an employer, either through its by-laws, may decide to terminate the employment of an employee rather than dismiss the employee, even if the employee had committed an infraction of the codes and terms of his employment.

In distinguishing between termination and dismissal, one must consider the benefits accruing to the employee after the determination of the employment. When employment is terminated, the employee has the right to all benefits arising from the contract. This includes contractually stipulated salaries in lieu, allowances, pensions, and notices to the

2 G. O., Onuekwa, and Samuel Dike, "Termination and Dismissal: A Critical Case-Law Review in the Petroleum Industry," *African Journal of International Energy And Environmental Law* 3, no. 3 (2019).

3 Omed A. Ismail, "The Effect of Traditional and Modern Policies on Termination of Employment Contract" (2019) *LESIJ-Lex ET Scientia International Journal*, 26, no. 2: 34-52.

4 Joseph E. O. Abugu, "ILO Standards and the Nigerian Law of Unfair Dismissal" (2009) *African Journal of International and Comparative Law* 17, no. 2: 181-212.

employee. The Supreme Court put this appropriately in *Jombo v. P.E.F.M.B* when it held that:

*Under a termination of appointment, the employee is enabled to receive the terminal benefits under the contract of employment. The right to terminate or bring an employment to an end is mutual, in that either party may exercise it. Dismissal on the other hand is punitive and, depending on the contract of employment, very often entails a loss of terminal benefits. It also carries an unflattering opprobrium to the employee.*⁵

The statutory notice of termination is rarely observed in dismissal processes, as the employer is not required to meet those obligations unless stipulated in the contract of employment.⁶ The rationale is that the usual grounds for dismissal often arise from the employee's breach of contractual agreements, thereby rendering most parts of the contracts voidable at the discretion of the employer or even actionable.

It is crucial to note that the difference between the two terms *termination* and *dismissal* often depends on the employer's intentions, which can typically be garnered from the employment contract, employee handbook, or the organisation's internal policies and bylaws. Whilst certain forms of misconduct may warrant termination of employment, more serious infractions could justify summary dismissal. In situations where an employer has not explicitly outlined the method of determination of the employment relationship, the court may construe the employer's intention by examining the employment contract and applying relevant laws, conventions, industry standards and international best practice.

3. Summary Dismissal

Summary dismissal refers to the immediate termination of an employee's contract without notice, often triggered by serious misconduct. Summary

⁵ *Jombo v. P.E.F.M.B.* (2005) 14 NWLR (Pt. 945) 443

⁶ *Maiduguri Flour Mills Ltd. v. Abba* (1996) 9 NWLR (Pt. 473) 506 C. A.

dismissal takes the characteristics of urgency and immediate dismissal due to the breach of serious terms of the employment contracts. The right to summarily dismiss an employee is founded on the common law principles that recognise an employer's entitlement to protect the integrity of the workplace. This right is further supported and reinforced by the provision of Section 11(5) of the Labour Act,⁷ which provides statutory backing to employers for immediate termination of employment relationships in appropriate circumstances.

In cases of gross misconduct, the employer needs only to show that the employee's conduct has gravely undermined the terms of the contract or that the confidence reposed in him has been breached. The position was upheld by the Supreme Court, in *Olatunbosun vs NISER Council*, where the Court emphasised that a summary dismissal of an employee may be upheld and justified where the employee has either admitted to the misconduct or is unable and/or failed to adduce a reasonable defence to the allegation.⁸

Unlike termination, which typically requires adherence to notice periods and procedures, summary dismissal reflects an immediate end of the employment relationship. In such situations, the employee cannot dictate the outcome once the employer has established a fundamental breach of duty by the employee. However, it is critical that the employer observes due process in determining the misconduct, even if the employee's actions appear indefensible. Failure to follow fair procedures can expose the employer to claims of wrongful or unfair dismissal, even where misconduct is established.⁹

One of the primary grounds for summary dismissal is gross misconduct, which is a serious breach of the employment contract that renders the continuation of the employment relationship untenable. Acts constituting grounds for misconduct may include cases of fraud, falsification of records or sensitive documents, breach of confidentiality, insubordination and any

⁷ Supra

⁸ (1988) 3 NWLR (Pt.80) 25

⁹ *Alhaji M. K. Gujba v First Bank of Nigeria Plc & Anor* (2011) LPELR-8971(CA)

other grounds that may be considered to be contrary to the employer's standard of practice or interest. Accordingly, willful disobedience to the employer's lawful and reasonable instruction may be sufficient to constitute gross misconduct, warranting a summary dismissal.¹⁰ Generally, an act must be contrary to the employer's interest to qualify as gross misconduct.¹¹ It is essential, and to avoid ambiguity, that employers clearly define acts constituting gross misconduct in the employee handbook or relevant workplace policies. This ensures that employees are aware of the expected standards of behaviour and the consequences of breaching them.

In some instances, instead of proceeding with outright dismissal, an employer may compel an employee to resign due to misconduct or breach of contract. This practice, often adopted by employers as a means to protect the employee's future reputation, is referred to as constructive dismissal. However, this term is more commonly associated with situations where the employee resigns due to the employer's conduct, not the other way around. Therefore, care must be taken in how such resignations are characterised in both practice and policy.

4. Wrongful Termination/Dismissal

Generally, whilst the employer has the right to terminate an employee's employment for just cause, wrongful termination or dismissal often arises when the termination does not comply with the terms of employment or fundamental rules of labour practice. A dismissal is wrongful if it is not carried out appropriately, in compliance with the provisions of the contract, and in breach of fundamental rules of employment and labour law. This includes the requirements for adequate notice periods for the determination of employment or payment of salary in lieu of notice. A dismissal can only be “wrongful” and cannot be “unlawful” as no law, except in the case of employment with statutory flavours, will compel an unwilling employer to employ a person. It is wrongful because it was not done in compliance with the rules and therefore can not be unlawful.

10 University of Calabar v Essien (1996) LPELR-3416(SC), See also BOLANLE v. ACCESS BANK PLC (2015) LPELR-40994(CA)

11 Yusuf v UBN Ltd (1996) LPELR-3537(SC) See also Ajayi v. Texaco Nigeria Ltd. and Others (1987) 3 NWLR (Pt.62) 577; Olaniyan v. University of Lagos (1985) 2 NWLR (Pt.9) 599; Boston Deep Sea Fishing and Ice Co. v. Ansell (1888) 39 Ch. D. 339; Teliat Sule v. Nigerian Cotton Board (1985) 2 NWLR (Pt.5) 17

It is worthy of note that in cases involving employee misconduct, dismissal procedures by an employer must be seen to have complied with the terms and conditions of the employment contract, as any deviation from the same may give rise to a potential claim for wrongful dismissal.

The court usually evaluates the provisions of the employment contract and other relevant documents and policies to determine whether a dismissal is wrongful. Therefore, it is necessary to plead and tender the employment contract, along with other documents that outline the terms of employment, in cases concerning wrongful dismissal. This is the position of the Supreme Court in the case of *Morohunfola v Kwara State College of Technology*.¹²

An employer may not need to state the reason for termination, but may need to state it in dismissal because of the possibility of the employee laying claims to benefits that should have accrued to him or her if the employment had been terminated instead.¹³ When an employer alleges that there is a reason for dismissing an employee, the onus lies on them to prove it.¹⁴ This is because dismissal disentitles the employee from his terminal benefits. Accordingly, where there are no genuine reasons for a dismissal, the Court may be compelled to interpret the said dismissal as termination, directing the employer to pay all severance benefits. Furthermore, the standard of proof in this regard is proof beyond a reasonable doubt.¹⁵

It is, however, important to distinguish the circumstances under which an employer is required to provide reasons for the cessation of an employment relationship. In the case of termination of employment simpliciter, where the employment contract is brought to an end in accordance with its terms or the governing law, the employer may not be under any express legal obligation to provide reasons, provided that the termination is conducted in accordance with statutory provisions and contractual stipulations. However, in cases of dismissal, particularly where disciplinary issues are

¹² (1990) LPELR-1912(SC)

¹³ *Borishade v. N.B.N Ltd* (2007) 1 NWLR (Pt. 1015) 217 C.A

¹⁴ *Institute Of Health Abu Hospital Management Board V. Anyip* (2011) LPELR-1517(SC)

¹⁵ *N.E.P.A. v. Adeyemi* (2007) 3 NWLR (Pt. 1021) 315

involved, the position is notably different. While the law may not always mandate the provision of reasons, it is advisable for employers to articulate the grounds for dismissal. This promotes transparency in the employer-employee relationship and provides the employer with a defensible position in the event of subsequent legal challenges. This is especially relevant where the employee is denied entitlements, such as terminal benefits or accrued remuneration, which they would otherwise have received had the employment been terminated lawfully rather than through dismissal.

Where applicable codes of conduct, employee handbooks, or terms of employment provide for it, the employee must be afforded a fair hearing prior to dismissal. This aligns with the principles of natural justice, particularly the *audi alteram partem* rule. However, where no such procedural safeguards are expressly provided for, the failure to afford an employee a fair hearing in dismissal processes does not automatically render the dismissal wrongful or entitle the employee to judicial relief, as Courts may still uphold a dismissal where a *prima facie* case of gross misconduct is established or where the employer is able to prove such misconduct on the balance of probabilities. In such cases, procedural lapses may be excused, particularly where the substance of the employer's decision is justified. To bolster this point, the Supreme Court in *Arinze v First Bank of Nigeria Ltd* upheld a dismissal on grounds of misconduct even in the absence of a full disciplinary hearing.¹⁶

Ultimately, while employers may not always be legally bound to provide reasons or conduct hearings in all cases of dismissal, adherence to fair procedures and transparency remains the best practice. It strengthens the legitimacy of the employer's actions and reduces the risk of adverse findings in employment litigation.

¹⁶ [2004] 12 NWLR (Pt 888) 663 (SC),

5. Remedies for Wrongful Dismissal

The remedies available for wrongful dismissal largely depend on the nature of the employment relationship, specifically, whether the contract of employment possesses a statutory flavour. Employment is said to have a statutory flavour where it is governed by statutory provisions, typically in the context of public service or employment by a governmental institution. In such cases, the courts have consistently held that the primary remedy available to an employee wrongfully dismissed is reinstatement, along with the payment of any outstanding entitlements that would have accrued but for the wrongful dismissal.¹⁷

Conversely, where the employment is purely contractual, that is, without statutory flavour, the relationship is governed solely by the terms of the contract. In such cases, reinstatement is generally not an available remedy. Courts have held that compelling a willing employer to retain an unwilling employee in a purely private contract of service would be inappropriate and contrary to the principle of mutuality that underpins contract law.¹⁸

Nonetheless, this does not imply that employees in purely contractual relationships are without remedies. The appropriate legal redress for wrongful dismissal in such instances is an award of damages, usually reflecting the salary or benefits the employee would have earned had the contract been properly terminated in accordance with its terms. These damages are often classified as special damages, which must be specifically pleaded and strictly proved. Courts have traditionally shown reluctance in awarding general damages in wrongful dismissal claims, especially where the claim arises purely from breach of contract rather than tort or violation of statutory rights.¹⁹

In assessing such damages, employees are under a legal duty to mitigate their losses. This means they must take reasonable steps to seek

17 C.C.B. (Nig.) Ltd. v. Nwankwo (1993) 4 NWLR (Pt. 286) 159 C.A

18 Union Bank of Nigeria Ltd v Ogboh [1995] 2 NWLR (Pt 380) 647 (SC)

19 SAKA & ORS v. GLOBAL SOAP & DETERGENT INDUSTRY LTD (2017) LPELR-42009(CA)

alternative employment or otherwise reduce the financial impact of the dismissal. The failure to do so may result in a reduction of the damages awarded. In *Olatunbosun v NISER Council*, the Supreme Court placed the burden and onus on the employee to demonstrate that he had taken steps to minimise the effects of the wrongful dismissal, emphasising that damages should not be inflated by avoidable losses.²⁰ The court stated in the matter thus:

*This Court in Nigerian Marketing Board v. A.O. Adewunmi (1972) 11 S.C. 111 at p.117 did address itself to the question of the measure of damages in cases of wrongful dismissal and held at p.117:- "In a claim for wrongful dismissal, the measure of damages is prima facie the amount that the plaintiff would have earned had the employment continued according to contract (see Beckham v. Drake (1849) 2 H.L.C. 579 at pp. 607-608). Where, however, the defendant, on giving the prescribed notice, has a right to terminate the contract before the end of the term, the damages awarded, apart from other entitlements, should be limited to the amount which would have been earned by the plaintiff over the period of notice bearing in mind that it is the duty of the plaintiff to minimise the damage which he sustains by wrongful dismissal."*²¹

Consequently, while the nature of the employment contract significantly affects the remedies available for wrongful dismissal, both statutory and contractual employees have enforceable rights. For contractual employees, the emphasis lies in monetary compensation and strict compliance with evidentiary requirements, while statutory employees may be entitled to more robust remedies, including reinstatement and the restoration of benefits. Although courts generally take a restrictive approach to awarding general damages in cases of wrongful dismissal, such damages may be recoverable in exceptional circumstances.

In order to succeed in a claim for general damages, an employee must

²⁰ (1988) LPELR-2574(SC)

²¹ OLATUNBOSUN v. NISER COUNCIL (1988) LPELR-2574(SC)

demonstrate that the dismissal had a substantial adverse impact beyond the immediate financial loss of income or benefits. This may include reputational harm, long-term damage to career prospects, diminished employability, or other reasonably foreseeable consequences directly attributable to the manner and context of the dismissal. For instance, the Supreme Court in *Ativie v Kabelmetal Nigeria Ltd* considered emotional and professional impacts in assessing compensation.²² However, Nigerian courts have typically insisted that these broader heads of loss must be supported by credible evidence, and have shown a preference for awarding special damages, which are subject to strict pleading and proof. The mere fact of dismissal, without more, is not sufficient to justify an award of general damage.

6. Redundancy

Redundancy is the reduction in assignable work because a sector of a company, or a scope of work, is no longer available. Redundancy arises when a position within an organisation ceases to exist, thereby rendering the employee occupying that position surplus to requirements. Unlike termination or dismissal, which typically result from the actions or conduct of the employee or the employer's decision to sever ties, redundancy is necessitated by organisational or operational changes, such as downsizing or restructuring.

The Nigerian Court of Appeal in *Nigerian Society of Engineers v. Ozah* made a crucial distinction between termination of appointment and redundancy. The Court held, thus:

The termination of appointment of an employee is therefore in a bracket of its own removed from the incident of an employee leaving service because of redundancy. Termination of appointment implies complete severance of an employer/employee relationship by dispensing with the services of an employee with his post extant, while redundancy implies that the post occupied by an employee is no

²² [2008] 10 NWLR (Pt 1095) 399 (SC). See also, *British Airways v Mkanjuola* [1993] 8 NWLR (Pt 311) 276 (CA).

*longer necessary and/or useless to the employer.*²³

This distinction highlights that while termination severs the employment relationship with the role still in existence, redundancy affects the role itself, making it redundant or obsolete within the employer's operational structure.

The legal framework governing redundancy in Nigeria is principally set out in **Section 20(1) of the Labour Act 2004**, which outlines several procedural requirements that must be satisfied before an employee can be lawfully disengaged on grounds of redundancies:

- 20 (1) In the event of redundancy-
 - a. the employer shall inform the trade union or workers' representative concerned of the reasons for and the extent of the anticipated redundancy;
 - b. the principle of "last in, first out" shall be adopted in the discharge of the particular category of workers affected, subject to all factors of relative merit, including skill, ability and reliability, and
 - c. the employer shall use his best endeavours to negotiate redundancy payments to any discharged workers who are not protected by regulations made under subsection (2) of this section.
- (2) The Minister may make regulations providing, generally or in particular cases, for the compulsory payment of redundancy allowances on the termination of a worker's employment because of his redundancy.
- (3) In this section "redundancy" means an involuntary and permanent loss of employment caused by an excess of manpower.

Section 20(3) defines redundancy as the “*involuntary and permanent loss of employment caused by an excess of manpower.*” This statutory definition underscores that redundancy is not a reflection of employee conduct but rather a consequence of structural or operational decisions by the employer.

23 (2015) 6 NWLR (Pt. 1454) 76

In practice, many employers include redundancy provisions in employee handbooks or internal policies, specifying the formula or process for redundancy payments. In the absence of such internal guidelines, redundancy entitlements must be negotiated on a case-by-case basis. The courts have recognised and enforced such negotiated settlements, particularly where they align with fair labour standards. In *Spring Bank Plc v Babatunde*, the Court of Appeal upheld negotiated redundancy benefits based on a collective agreement and internal policy.²⁴

It is therefore evident that redundancy differs substantively and procedurally from other forms of cessation of employment, such as termination or dismissal. The remedies available to employees in cases of redundancy are distinct and are shaped not only by statute but also by the existence (or absence) of negotiated agreements and internal employer policies. Unlike wrongful dismissal, where damages are awarded based on breach of contract, redundancy entitlements derive from statutory duties and collective labour principles, placing a heavier emphasis on procedural compliance and fair compensation.

In a redundancy situation, reliance on the Act covers only employees who fall within the statutory definition of workers as defined in the Labour Act. Unless there exists an agreement between the affected employees and the employer highlighting a procedure for compensation, workers who are administrative staff, management staff and skilled workers may not be protected in such instances. In such cases, reference will be made to their respective contracts.

For workers under the Labour Act, the employer is expected to act fairly and consult appropriately. Section 20 (1) (a) – (b) of the Act provides for the procedures employers must undertake in the event of redundancy as follows.

24 [2012] LPELR-19720(CA),

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- i. Inform the trade union or workers' representatives. This information must capture the reasons and scope of the proposed redundancy.
 - ii. The employer must adopt the principle of 'last in, first out' in discharging the categories of workers, subject to such factors as relative merit, skill, reliability and ability.
 - iii. The employer shall provide redundancy benefits where applicable.

The collective agreements made by the members of staff will then guide the severance or determination benefits.

8. Conclusion

Employment determinations, whether by termination, dismissal, retirement, or redundancy, are an inevitable aspect of labour relations. Given their far-reaching legal and socio-economic consequences, it is essential that employers, legal practitioners, and policy drafters pay careful attention to the structuring of employment relationships from the outset. The content and clarity of employment contracts, employee handbooks, codes of conduct, and disciplinary procedures play a pivotal role in ensuring compliance with statutory obligations and in mitigating disputes.

Although contracts of employment are often concise, they should be drafted with sufficient detail to reflect the essential legal dynamics surrounding the cessation of employment. Where brevity is necessary, supporting documents such as employee handbooks must be meticulously prepared to fill in the gaps. These documents should outline not only the grounds and procedures for termination, dismissal, or redundancy, but also the rights of employees and duties of employers, including compliance with the Labour Act and relevant judicial precedents.

A nuanced understanding of the legal distinctions between various forms of employment determination, particularly between termination simpliciter, dismissal for misconduct, voluntary or compulsory retirement, and redundancy, is critical. Failure to observe these distinctions may expose employers to legal liability, while also undermining employee trust and industrial harmony.

Ultimately, a well-documented, procedurally sound, and legally informed approach to employment determination serves the interests of both parties and promotes a stable and predictable labour environment in Nigeria.

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