

## **Reinstatement in Master-Servant Employment Relationship: A Detour from Conventional Nigerian Labour Law Rule**

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### **Abstract**

*The dominant view among most Nigerian judges and legal commentators is that reinstatement is available for only confirmed and pensionable employees whose employments are statutory flavour. Reinstatement is hardly awarded in private employment. The extant Nigerian Labour Law is often disposed to granting only damages in case of unlawful termination of an employee in the private sector. It however seems the rule is changing to the extent that reinstatement can be ordered by the Court even when an employment is not statutorily flavoured. Although in the past, some judges seemed ready to order reinstatement where an employee could establish the existence of special circumstances but only few judges have made strenuous effort in awarding this relief. The recent case of *Bello Ibrahim v. Ecobank Plc* is one of the judicial authorities which recognizes and awarded reinstatement in private employment. This decision is a detour from conventional Nigerian labour rule. It is hoped that this decision will dispel all doubts as to the award of reinstatement in a master-servant employment relationship. The methodology adopted in this paper is doctrinal. Primary and secondary materials were studied in arriving at a conclusion. This work opines that reinstatement in private employment is a step in the right direction as it will reduce the powers of overbearing employers.*

**KEYWORDS:** Reinstatement, Employment, Labour, Termination, Job Security

## 1. Introduction

Under Nigerian Employment Law, the most frequent remedy available to a private employee whose employment is wrongfully terminated is damages.<sup>1</sup> The Nigerian courts rarely order reinstatement in respect of termination involving private employees. The law on the issue of award of damages in cases of wrongful termination has been settled for a long time under Nigerian labour law.<sup>2</sup> The employee's remedy in damages is not expected to exceed what the employer would pay him under the contract of service had the employment not been terminated.<sup>3</sup>

Special damages may not be maintainable in cases of wrongful termination of employment.<sup>4</sup> The Nigerian courts have expressed their disinclination towards reinstatement in a number of cases.<sup>5</sup> The rationale for granting damages as the only remedy for wrongful termination of employment at common law is because of the personal nature of the contract of employment. In addition, the inherent difficulty of supervising or compelling specific performance also makes the court to often grant damages as the most common relief for wrongful termination of employment.<sup>6</sup>

However, the Nigerian court may order reinstatement even in private employment where the employee can prove that special circumstances exist for the award of such relief.<sup>7</sup> The extant position under Nigerian labour law is that there is a strict rule against reinstatement in cases of termination of

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<sup>1</sup> *Bello v. NEPA* [1978] ILRN 200; See also *Chukwumah v. Shell Petroleum Development Co. Ltd.* [1993] 4NWLR (PT. 289) 512, 539.

<sup>2</sup> S. Adegrooye, "The Contractual Freedom to Terminate a Contract of Service. An Analysis of the Nigerian Experience" (2004) 1 *Annals of Nigerian Law* 121 - 130

<sup>3</sup> *Ogba v. Arewa Textile Plc* (2000) RWLR (Pt. 24) 1493

<sup>4</sup> S. Adegrooye (n.2)

<sup>5</sup> See *W.N.D.C. v. Abimbola* [1966] NMLR 38; See also *Godwin Iweha v. Ebice Company Limited* (2004) 11 CLRN 135 at 149

<sup>6</sup> E.E. Ovieghara, *Labour Law in Nigeria* (Malthouse Press Limited, 2001) 81-83; See also; *Whitewood Chemical Company v. Hardman* [1891] 2 Ch. 416

<sup>7</sup> E. Chianu, "Reinstatement in Private Employment: Rejecting Legal Shibboleth" (2004) 1 *Annals of Nigerian Law*, 102-120; See also *Afrifbank (Nig.) Plc v. Nwanze* [1998] 6 NWLR (Part 553) 283, 296 where Mohammed JCA (as he then was) said the list of special circumstances was inexhaustive.

private employment but it appears that the National Industrial Court of Nigeria (NICN) has now given legal recognition to one of the special circumstances for reinstatement in private employment. The NICN was able to attain this feat 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.

The recent pronouncement of the NICN in the case of *Bello Ibrahim v. Ecobank Plc*<sup>8</sup>, and some few other cases<sup>9</sup> go to show that it is possible for Nigerian courts to order reinstatement as a remedy in master-servant employment relationship. As such, it may not be absolutely correct to assert that reinstatement cannot be ordered in a master-servant employment relationship although it is sparingly awarded under Nigerian labour law.

This work is divided into five parts. Part I is a general introduction of the subject matter. Part II examines the remedy of reinstatement for public employees whose employment are statutory flavour. It also interrogates the basis for restricting the award of this remedy for employees in the private sector. Part III explores the applicability of reinstatement in master-servant employment and it also discusses the legal implication that this departure portends for Nigerian employment law. Part IV deals with the application of other equitable remedies to employees. Part V is a general conclusion and recommendation.

## **2. Reinstatement in Public Employment**

In the past, a civil servant in Nigeria was once viewed as holding his employment at the pleasure of the State such that his employer could dismiss or terminate his employment at will without granting any form of fair hearing.<sup>10</sup> But the Supreme Court in the celebrated case of *Shitta-Bey v. Federal Public Service Commission*<sup>11</sup> rebutted the presumption that the Crown's Prerogative Rights still applied in Nigeria.<sup>12</sup> Accordingly, the apex

<sup>8</sup> Unreported NICN/ABJ/144/2018

<sup>9</sup> See *Adekoya v. Pan Electric Ltd.* [1973] 2CCHCJ 54; See also *Coker v. National Bank of Nigeria Ltd.* [1975] 9CCHCJ 1357

<sup>10</sup> See *Graham-Dopuglas v. A.G. River State* [1973]/NLR77 (Privy-Council; See also *Martins v. Administrator General Public Service Commission* [1972] 2U.I.L. R 145 at 155

<sup>11</sup> (1981) ISC.40 at 55 - 56

<sup>12</sup> J.E.O. Abugu, "ILO Standards and the Nigerian Law of Unfair Dismissal" (2009) 17(2) *African Journal of International and Comparative Law*, 181 - 212

court held that an order of reinstatement will be applicable to redress such wrongful termination of employment. However, in another case<sup>13</sup>, the court noted that the remedy of reinstatement may not always be available as the circumstances may dictate even though the plaintiff works with a statutory body. As such, the cadre of the employee and ascertaining whether such an employee is actually recruited by the statutory body are some vital questions that should be asked. This is because an independent contractor, sub-contractor or outsourced workers are generally not entitled to reinstatement under Nigerian Labour law<sup>14</sup>.

The *Shitta-Bey*'s case established that the Civil Service Rules governing conditions of service of Federal Public Servants "have constitutional force and invest the public servant over whom they prevail with a legal status, which makes the relationship with the Commission and government although one of master and servant, certainly more than a mere master and servant relationship"<sup>15</sup>.

In another ground breaking judgment, the Supreme Court in *Olaniyan v. University of Lagos & Anor*<sup>16</sup>, held that the termination of the appellants' employment was not in compliance with section 17(1) of the University of Lagos Act 1967. Oputa JSC expressly observed that:

The present appellants do not hold their office at the pleasure of anybody. They hold the same under the provisions of the University of Lagos Act No. 3 of 1967. The University of Lagos and University Council are both creatures of statute and cannot act except within and under the power conferred on them by the relevant statute, here the University of Lagos Act ... The University of Lagos Act No. 3 of 1967 was made pursuant to Section 69(1) of the 1963 Constitution .....

The apex Court discarded the common law concept of termination at will and ordered the reinstatement of the appellants. The decision in both *Shitta-Bey* and *Olaniyan*'s case dealt a fatal blow to termination at will under

<sup>13</sup> *Faponle v. U.I.T.H.B.M.* [1991] 4NWLR (Pt. 183)

<sup>14</sup> *Adejemiwa v Ogun State College of Education* (2000) ALL FWLR (Pt 456) 11804, per Mbaba (J.C.A. as he then was) (p. 41, paras. A-B)

<sup>15</sup> See *Shitta-Bey v. Federal Republic Service Commission* (Supra) at 15 [1985] 2NWLR 599

<sup>16</sup> [1985] 2 NWLR 599

common law and brought about some form of security of tenure for employees in the civil service as well as those in public service. What the Supreme Court did in the 1980s for the public sector changed the face of individual employment law in Nigeria.<sup>17</sup> This same principle was adopted in *Igbe v. Governor of Bendel State*.<sup>18</sup> Barring legal obstacles and some other variables, an order of reinstatement is the appropriate remedy for an employee removed in contravention of its enabling statutory provisions.<sup>19</sup>

## **2.1 Legal Basis for Restriction of Reinstatement under a Master-Servant Employment Relationship**

Damages constitute the main, and nearly always, the only remedy for wrongful termination at common law because the law considers the relationship of master and servant as one of personal service.<sup>20</sup> Consequently, even where an employer has committed a breach of contract by wrongfully terminating the employment of an employee in the private sector, the courts will not normally force the willing employee back on the unwilling employer.<sup>21</sup> Instead, it considers the contract as being terminated and awards the damages which the employee is entitled to under his contract of service.

However, this position is changing as we shall soon discuss in Part III of this work. For a long time, the courts had taken a stand that the equitable remedy of specific performance would not be decreed in the case of contracts of service.<sup>22</sup> The common law has always denied an unfairly dismissed employee the equitable remedy of reinstatement because it cannot be adequately supervised if it was granted.<sup>23</sup> Justice George (as he then was) explicitly stated in the case of *Bankole v. Nigerian Broadcasting Corporation*<sup>24</sup> that it was contrary to the principle of common law to force a

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<sup>17</sup> E.E. Uvieghara and C.K. Agomo, "The Changing Pattern of Employer. Employee Relations in Nigeria Labour Law: Fact or Fiction?" in A.A. Adeogun and J.A. Omotola (ed), *Law and Development* (Unilag Press,1987)

<sup>18</sup> [1983] ISCNLR 73; See also *University of Nigeria Teaching Hospital Management Board & U.N.T.H. v. Hope Nnoli* [1992] 6 NWLR (pt. 250) 752

<sup>19</sup> J.E.O., Abugu, (n.12)

<sup>20</sup> C.K. Agomo, *Nigerian Employment and Labour Relations Law and Practice* Concept Publications ,2011)

<sup>21</sup> Ibid

<sup>22</sup> E.E. Uvieghara (n.6) p. 81-85; See also *Whitwood Chemical Company v. Hardman* [1891] 2 Ch. 416

<sup>23</sup> C.K. Agomo (n. 20); See also *De Francisco v. Barnum* (1890) 45 Ch. D430

<sup>24</sup> [1968] 2 All NLR at p. 79

master to accept a servant even if the dismissal of the servant was unlawful.<sup>25</sup> The major reason for restricting or refusing reinstatement in private employment is the argument relating to mutuality.<sup>26</sup> It has been posited that before a contract can be specifically enforced by the court, such contract must have mutual obligations and rights<sup>27</sup>; either party must have been able to enforce it against themselves. Thus, in the case of *Oyedele v. Ibadan University Teaching Hospital*<sup>28</sup>, Akpabio (JCA as he then was) expressly noted that a court could not compel an employer to continue keeping an employee he does not want anymore, just in the same way no employer can prevent an employee from resigning from his employment to seek greener pastures elsewhere. Similarly, per Okezie (JCA as he then was) in *Nfor v. Ashaka Cement Co. Ltd.*<sup>29</sup>, clearly observed that:

An employee cannot compel an employer to retain him on other grounds no matter how desirable that may be. In the same manner the employer cannot compel an employee to remain in his employment no matter how indispensable his service may be to the employer. Neither can the court compel an unwilling employer to retain an employee whose services are no longer required.

In spite of the foregoing, the approach of the NICN in respect to claiming remedies for wrongful dismissal has been somewhat different from the common law practice. In the case of *Industrial Cartons Ltd. v. National Union of Paper and Paper Converters Workers*<sup>30</sup>, the court awarded such compensation as would take account of all the circumstances, including the fact that the contents of the letter had prejudiced the worker's prospects of securing alternative employment. This is an obvious departure from the established common law principle that excludes compensation for emotional loss or other form of special damage in a contract of employment<sup>31</sup> It was however conceded by Onu J.C.A. (as he then was) in *Cooperative &*

<sup>25</sup> See also *Vine v. National Dock Labour Board* (1957) A.C. 488 at 507

<sup>26</sup> J.B. Ames, "Mutuality in Specific Performance" (1903) 3(1) *Columbia Law Review*

<sup>27</sup> I.C.F. Spry, *The Principles of Equitable Remedies* (5<sup>th</sup> ed, London, Sweet & Maxwell, 1997) 1-0-15

<sup>28</sup> [1990] 6NWLR (Part 155) 194, 199

<sup>29</sup> [1994] INWLR (Part 319) 222

<sup>30</sup> 1980 -1981 NICLR at 54

<sup>31</sup> *Addis v. Gramophone Ltd.* (1930) AC 488

*Commerce Bank (Nig.) Ltd. v. Nwankwo*<sup>32</sup> that reinstatement can be ordered if exceptional circumstances are established by an employee.<sup>33</sup>

Another reason for refusing reinstatement in private employment is that it could amount to forced labour if a willing employee is foisted on an unwilling employer. Besides, forced labour is prohibited by the 1999 Constitution of the Federal Republic of Nigeria (as amended).<sup>34</sup> Granting an injunction to prevent an employer from terminating the employment of his employee could amount to an indirect way of forcing the unwilling party to work with the willing party. Nevertheless, in exceptional circumstances, the courts will grant an injunction or even reinstate an employee.<sup>35</sup> Lord Denning MR and Sachs LJ granted the injunctions but based on their decision on the ground that the case was “indeed an exceptional case.”<sup>36</sup>

In the case of *Eyutcha v. NTA*<sup>37</sup>, the plaintiff prayed for a declaration and injunction. Happily, Araka (C.J. as he then was) affirmed that the trend of judicial opinion was towards making a declaration of an employee’s position in law, if his dismissal or termination of appointment had been made in breach of statutory provisions or in breach of the rules of fair hearing. The law is gradually changing as the NICN may order reinstatement of an employee whose employment was wrongly terminated if the private employee can prove the existence of exceptional circumstances.

### **3. Reinstatement in Master-Servant Employment Relationship and NICN’s Departure from Conventional Labour Rule in Nigeria**

Generally speaking, under Nigerian employment law, the court will not grant injunctions, or declaration or order reinstatement in cases of pure master and servant relationship save in exceptional circumstances.<sup>38</sup> From a careful study of 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 clothed

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<sup>32</sup> [1993] 4 NWLR 159, 174

<sup>33</sup> *Chukwumah v. Shell Petroleum Devt. Co. of Nig. Ltd.* (supra); See also *Afribank (Nig.) Plc v. Nwanze* (supra)

<sup>34</sup> 1999 CFRN (as amended); S. 34(1); See also O.V.C. Okene and N.K. Akani, “Human Dignity and Human Rights: The Nigerian Question” 17 (2019) *Maiduguri Law Journal*

<sup>35</sup> See the case of *Hill v. C.A. Parsons & Co. Ltd.* [1972]/Ch. 305

<sup>36</sup> Supra

<sup>37</sup> Unreported Suit No. E/283/79

<sup>38</sup> See C.K. Agomo (n. 20) p. 191

with statutory flavor.<sup>39</sup> This raises a presumption as to whether reinstatement is a strange relief for persons in private employment.<sup>40</sup> In *Michelin (Nigeria) Ltd. v. Footwear, Leather and Rubber Products Senior Staff Association*<sup>41</sup>, the National Industrial Court (NIC) would have ordered reinstatement but for the prior death of the employee. This shows that in appropriate circumstances, the NICN can award this remedy even though the employment centers on a master-servant relationship. Although most Nigerian judges and legal writers insist that reinstatement is an aberration for employees in master-servant employment relationship, but this has not deterred lawyers from seeking the relief.<sup>42</sup>

Reinstatement in private employment is beginning to take firm root in our labour jurisprudence. In *Adekoya v. Pan Electric Ltd.*,<sup>43</sup> the plaintiff was transferred from Sales to Store Department. He resisted the transfer whereupon his employment was terminated. His solicitor wrote on his behalf 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 the insistence on working in Sales Department that made the plaintiff's claim for wrongful termination fruitless. In *Coker v. National Bank of Nigeria Ltd.*<sup>44</sup> in 1969, due to police investigation into a criminal complaint involving the plaintiff and other employees of the defendant, the plaintiff was interdicted. While the case was in court, he was summarily dismissed by his employer. The plaintiff then claimed damages for wrongful dismissal. While the 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.

From the foregoing, ordering of reinstatement after dismissal subsists because it may seem that employers are not as firmly and universally against reinstatement as is occasionally imagined.<sup>45</sup> Admittedly, the retention of the common law principle of termination at will by the Nigerian Labour Act<sup>46</sup>

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<sup>39</sup> See *Olaniyan & Ors v. University of Lagos* (supra)

<sup>40</sup> E. Chianu (n.7)

<sup>41</sup> NCI/13/78

<sup>42</sup> E. Chianu (n.7)

<sup>43</sup> [1973] 2 (CHCJ 1357)

<sup>44</sup> [1975] 9 CCHCJ1357, See also the case of *Cooperative & Commerce Bank (Nig.) Ltd. v. Nwankwo* (supra)

<sup>45</sup> E. Chianu (n.7)

<sup>46</sup> Labour Act; s. 11(5)



makes an employee particularly those in private employment susceptible to losing their jobs any time the employer so decides.<sup>47</sup>

However, with the introduction of the Third Alteration Act which amended some parts of the 1999 Nigerian Constitution, some significant changes have now been introduced by the NICN and this also affects every matter under Nigerian Labour Law.<sup>48</sup> Importantly, section 254 (1)(f) of the Third Alteration Act provides:

Notwithstanding, anything contained in the Constitution ... the National Industrial Court shall have and exercise jurisdiction to the exclusion of any other Court in Civil causes and matters relating to or connected with unfair labour practice or international best practice in labour employment and industrial relations matters<sup>49</sup>.

In buttressing the fact that reinstatement in private employment is not alien to our labour law jurisprudence, the case of *Bello Ibrahim v. Eco Bank Plc*<sup>50</sup> shall be examined in great detail. In this case, the claimant's employment was wrongfully terminated by the defendant and the claimant asked for reinstatement, compensation for wrongful termination and also sought some money as special damages.

The crux of the claimant's case was that he was employed by the now defunct Oceanic Bank International Plc on 16/1/2006. He became employee of the defendant as a result of merger and issuance of document affirming the continuity of his service with the defendant. According to the claimant, he carried out his duties commendably and diligently and he was praised on several occasions by the defendant. But in spite of this positive feat, he was not promoted to a position commensurate with the work he did for the defendant. It also stated that during his period of employment, the claimant was never involved in any disciplinary misconduct or misappropriation of finance of any kind. The claimant also said that at one time, he was

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<sup>47</sup> See *Ajuzi v. FBN Plc* [2016] LPELR-40112(CA); See also *Avrev NIPOST* [2014] LPELR-22629 (CA)

<sup>48</sup> A.A. Adejugbe, "A Comparison between Unfair Dismissal Law in Nigeria, and the International Labour Organisation's Legal Regime"1 (2020) *Unipost Journal of International & Comparative Law*, 96.

<sup>49</sup> See also section 7 and 8 of the National Industrial Court Act, 2006.

<sup>50</sup> Unreported suit NICN/ABJ/144/2018

interviewed for the position of the Country Head, Segments and Analysis. The claimant insisted that he was the best man for the job and waited from June to August for him to round up his existing assignment and resume work in that position. But, the claimant was completely shocked when he received a letter from the defendant terminating his employment for no reason whatsoever. The claimant argued that since the termination of his employment, his career has been brutally damaged and he was severely affected by the arbitrary and wrongful termination of his employment. He also affirmed that having served the defendant for twelve years, he should be given reasons for the termination. The claimant also stated that it was because he raised certain issues of misconduct and fraudulent activities of some individuals in his Department that was why his appointment was terminated. In particular, the claimant contended that because he kicked against the issue of falsifying figures to show that the bank was making progress whereas, it was not, led to the termination of his employment.

Although, the defendant admitted that the claimant was not guilty of any misappropriation of fund, yet the claimant was suspended for one month without pay for no reason prior to the termination. It appeared that this termination was spiteful, vindictive and geared towards destroying the career of the claimant. The claimant also averred 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 rebuttal that the claimant was affected by rightsizing 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.

Quite remarkably, the court held that in view of the peculiar facts and circumstances of this case, in that the claimant was not found wanting in his job nor has he been found to have committed fraud or serious misconduct, he has made out a case in which it is exceptionally necessary to order specific performance.<sup>51</sup> Therefore, the court ordered the immediate reinstatement of the claimant back to the employment of the defendant. A careful look at judicial authorities in Nigeria indicate that the main reason adduced for refusing the award of reinstatement in private employment is

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<sup>51</sup> I. Worugi and N.E. Worugi, "The National Industrial Court of Nigeria Swimming with the Tide in *Ebere Onyekachi Aloysius v. Diamond Bank Plc*" (2020) 11(3) *Gravitas Review of Business & Property Law*

because a contract of employment cannot be specifically enforced. However, if reinstatement brings about a just result, our judges are enjoined to award this remedy in exceptional circumstances just as was done in *Bello Ibrahim v. Eco Bank Plc.*<sup>52</sup>

Interestingly, the Court of Appeal in *Sahara Energy Resources Limited v. Mrs. Olawunmi Oyebola*<sup>53</sup>, being the final court on labour and employment matters, in a significant shift from some of its previous disapproving decisions, affirmed the latitude, within set parameters, the power of the NICN to depart from orthodox 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*<sup>54</sup>, awarded 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 principle of not awarding damages for psychological trauma. In the same vein, the NICN in *Ugochukwu Edmund Okwu v. Zenith Bank Plc.*<sup>55</sup> on a finding that a suspension without pay for 77 months was inhumane and tantamount to unfair labour practice, the NICN awarded the sum of 33, 194, 245.70 naira in favour of the claimant. The rationale was premised on arrears of salary from the date of suspension to the day the claimant retired.

Our judiciary should develop some form of innovation and inventiveness instead of adhering strictly to the old common law rule which more often leads to injustice particularly on the part of an employee in most cases.<sup>56</sup> A learned scholar has submitted that specific performance is merely one of the

<sup>52</sup> Supra; See also the case of *Ebere Onyekachi Aloysius v. Diamond Bank Plc*(2015) 58 NLLR 92 judgment delivered on 17<sup>th</sup> May, 2017, where reinstatement was also ordered in private employment.

<sup>53</sup> Appeal No. CA/L/1091/2016, delivered on 3 December, 2020

<sup>54</sup> Unreported Suit No. NICN/ABJ/125/2018, judgment delivered 27 May 2020, per Hon Justice B.B. Kanyip, President, NICN

<sup>55</sup> Unreported Suit No. NICN/LA/85/2017, judgment delivered 10 September 2020, per Hon. Justice R.H. Gwandu; See also *Chukwudoro v. Oiltest Well Services Limited* judgment <sup>55</sup>Unreported Suit No. NICN/EN/25/2016delivered 29 September 2020, per Hon. Justice O.O. Arowosegbe

<sup>56</sup> See *Alhassan Maikano v. Abuja Electric Distribution Company Plc*, Unreported case no NICN/ABJ/338/2017delivered by Justice Sanusi Kado, April 29<sup>th</sup> 2019, para 6; See also *G.B. Olivant (Nigeria) Ltd. v. I.B. Agbabiaka* [1972]/2SC137

many means of attaining a just result.<sup>57</sup> Consequently, he advised the courts should make use of the opportunity offered them and should exercise the power to reinstate private employees though with some flexibility and in deserving meritorious cases.

#### 4. Application of Other Equitable Remedies to Employees

Although, the courts may not grant injunctions, declaration or reinstatement to employees in private employment, but as for employees in the civil service or public service who are able to also establish exceptional circumstance, the remedies of injunction or declaration may occasionally be granted to these classes of employees. It should be stated that employees in the private sector may also be entitled to these reliefs if they can establish the existence of exceptional circumstances. For instance, in *Hill v. C.A. Parsons & Co. Ltd*<sup>58</sup> a chartered engineer, aged sixty-three (63), was dismissed by his employers with one month's notice. This was substantially shorter than the notice implied under common law as reasonable notice. He was granted an injunction by the Court of Appeal restraining the employers from treating their notice as having determined the employment. The court denied any standing rule against the granting of injunctions. The court pointed out that such injunctions were completely exceptional.

#### 4.1 Appraisal of Orders of Injunction and Declaration in Employment Relationship

(a) **Injunctions:** The award of injunction is almost similar to specific performance in that it restrains dismissal until proper procedure is followed. The whole essence of injunction in this respect is to ensure or guarantee procedural fairness and not to compel the retention of an employee until retirement age.<sup>59</sup> It appears that the Nigerian courts are reluctant to grant this remedy. For example in *Shell Petroleum Development Co. of Nig. Ltd. v. Omu*<sup>60</sup>, the respondent was implicated by an Audit and Defalcation Committee set up by the Company. Afterwards, he applied for an interlocutory injunction to restrain the applicant from taking any disciplinary action against him. The injunction was granted by the trial court but on appeal, the court of Appeal granted an order of suspension of the order of interlocutory

<sup>57</sup> E. Chianu (n. 7); See also, *Bello Ibrahim v. Eco Bank* (supra)

<sup>58</sup> [1971]/Ch. 305

<sup>59</sup> E. Chianu (n.7)

<sup>60</sup> [1998]9 NWLR (Pt. 567) 672

injunction pending the determination of the appeal. This implied that the injunction was vacated and Uwaifo (JCA as he then was) specifically stated reasons for vacating the injunction. These reasons are:

- i. the respondent would appear to be foisted on an unwilling master;
- ii. the master would have no obligation in law to assign him any work;
- iii. salary and allowances would be paid out for no work done;
- iv. the business of the master would suffer in terms of productivity;
- v. the atmosphere of discipline in the applicant's company would be polluted even by the single fact that the respondent would appear to be above discipline and;
- vi. the fact that the applicant would seem to have lost control over its servants could cause instability.

It is respectfully submitted that some of the points highlighted above are at best assumptions which may not be properly substantiated. An injunction only restrains an act yet to be carried out momentarily; it is not synonymous with an order of specific performance. Injunctions are not usually granted for completed act. This remedy may only be applicable to an employee who has a fore knowledge that his employment is about to be terminated and so he hurriedly goes to court before receiving a letter of disengagement in order to restrain his employer from terminating his employment until he is granted procedural fairness or until the employer complies with disciplinary procedure laid down in statutes establishing the body.<sup>61</sup>

- (b) **Declaration:** A declaratory decision is a judicial statement affirming or denying the claimant's legal right. It only declares or ascertains the rights of parties. It does not necessarily delve into pronouncing a consequential relief to the plaintiff. Although consequential relief may be accommodated, yet the court has a discretion to issue a declaration without any coercive direction for its enforcement.<sup>62</sup> Therefore, the whole essence of a declaratory judgment is that

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<sup>61</sup> See the case of *University of Nigeria Teaching Hospital Management Board & U.T.H. v. Hope Nnoli*[1992]6NWLR (pt. 250) 752.

<sup>62</sup> *Western Steel Works v. Iron & Steel Workers* [1987] 1 NWLR (Part 49) 284

parties' rights are determined without either of them being compelled to undertake a legal obligation. As such, a declaration that a dismissal is void can be pronounced without the court ordering an employer to reinstate the employee back to his former position.

Gladly, some Nigerian judges have shown some inclination towards making a declaratory judgment in favour of dismissed employees. For instance, in the case of *Chukwumah v. Shell Petroleum Development Co. of Nig. Ltd*<sup>63</sup>, Karibi-Whyte (JSC as he then was) stated that an employee would be "entitled to the declaratory relief claimed if he is able to establish.....that his contract of service was not lawfully determined, and is therefore still subsisting." In the case of *Steyer (Nigeria) Ltd v. Gadzama*<sup>64</sup>, two top management employees were forced to resign. However, Orah (JCA as he then was) held that if they (employees) had sought an order of reinstatement, he would have granted it since he considered "the manner of the termination of the appointments of the respondents as grossly irresponsible, wrongful and a naked exhibition of power devoid of human milk and an unwarranted humiliation of the respondents without any reasonable cause."<sup>65</sup>

## **5. Conclusion and Recommendation**

From a careful study of relevant judicial authorities, this work found out that Nigerian judges sparingly order reinstatement as a relief in cases of wrongful termination of employment in private sector. This may possibly be due to a misunderstanding about the nature of specific performance and a rigid adherence to common law relief such as awarding damages in case of wrongful termination of an employee's appointment.

It however hoped that the Nigerian judges will respectfully embrace the gradual departure from old common regime and order reinstatement in master-servant employment relationship particularly where a private employee establishes that his case falls within the purview of exceptional circumstances. It is my view that the decision of the NICN in *Bello Ibrahim v. Eco Bank* is good law as it curtails the wide discretion given to private employers to hire and fire their employees at will. In addition, this decision will also restore some form of job security to employees in the private sector in Nigeria.

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<sup>63</sup> Supra

<sup>64</sup> [1997] 7 NWLR (Part 407) 30

<sup>65</sup> See also *Bello Ibrahim v. Eco Bank* (Supra)



It is recommended that the remedy of reinstatement should not only be granted to employees in civil or public service alone, this equitable remedy should also be awarded to workers in private employment especially those employees who can prove the existence of exceptional circumstance. After all, what is sauce for the goose should also be sauce for the gander. It is also suggested that the Nigerian Labour Act should be amended in order to protect employees in the private sector. A situation where only public and civil servants are granted job security without extending same privilege to private employee seems discriminatory and ought not to continue forever.