

## ADRESSING THE CHALLENGES OF UNFAIR DISMISSAL OF EMPLOYEE IN NIGERIA: A PERSPECTIVE OF THE INTERNATIONAL LABOUR ORGANISATION

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### **Abstract**

*Unfair Dismissal in the work place is a concept of global concern in labour relations. The incidence of unfair dismissals in Nigeria has become so alarming that it has raised a lot of concerns and appears to be an albatross in modern day employment as the employee is most times not protected by the statute nor by the terms regulating the contract of employment. In Nigeria, determination of contract of employment is employer friendly as the employer is free to determine such contract at any time and without adducing or giving any reason at all. This is notwithstanding the International Labour Organisation Convention on unfair dismissal.. The incidences of unfair dismissal ranges from dismissal without notice, termination without reason, irrelevance of motive for termination, termination consequent upon union activities. This paper is aimed at curbing the incidences of unfair dismissal in Nigeria. The paper undertakes the study of the International Labour Organisation standards on unfair dismissal of an employee vis-a-viz the practice in Nigeria, the attitude of Nigerian Laws to these standards as well as the applicability of these standards in Nigeria. It is the finding of this paper that Nigeria needs to adopt ILO standards on unfair dismissal with modifications where necessary. Also, that every legal and institutional impediments that hinder the application of ILO Convention on unfair dismissal should be removed by the concerted efforts of the three arms of Government of Nigeria for purposes of achieving the policy of fair dismissal in Nigeria.*

### **1.0 Introduction**

Contracts of employment can be determined in various ways. Unfair dismissal is one of the ways in which a contract of employment is determined which has now become common place in labour relations as the employee most times than not is not adequately protected by the law nor by the terms guiding and regulating the contract of employment. The menace of unfair dismissal has deeply taken root in industrial and labour relations in Nigeria, this vicious cycle is visible in every sector of the society. Unfortunately, workers or employees in the private sector tend to suffer more from this.

In Nigeria, the determination of contract of employment is employer friendly as the employer is free to determine such contract at any time and without adducing or giving any reason(s), which is also the common law practice.<sup>1</sup>

Most countries have deviated from this common law practice as a result of the adoption of international treaties such as the International Labour Organization Convention No. 158 of 1982 and

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<sup>1</sup>E Chianu, 'Towards Fair Hearing for all Nigerian Employees' [2007] (1) (1) *CALS Review of Nigerian Law and Practice*, 31.

Recommendation No. 166.<sup>2</sup> Hence, about 36 countries of the world have ratified the Convention while about 55 countries including those who have not ratified the Convention, have however embraced the provisions of the Articles of the Convention which contains International Labour Organization standards on unfair dismissal.

Despite the efforts by the International Labour Organization towards curbing the incidences of unfair dismissal and ensuring a policy on substantiality of employment, Nigeria is still in full practice of the common law termination of employment which is at the will of the employer.<sup>3</sup> The Constitution of the Federal Republic of Nigeria,<sup>4</sup> requiring ratification and domestication of treaties and conventions before they can be enforced in Nigeria is a factor accounting for the failure of the country to fully embrace the Convention on unfair dismissal.

## 2.0 Dismissal

Black's Law Dictionary defined Dismissal as release or discharge from employment.<sup>5</sup> Dismissal is the situation in which an employer officially makes someone leave their job. Nwauzi,<sup>6</sup> describes dismissal to simply mean termination of contract of employment without notice and the employer incurs no liability at all in his act or action under the common law.<sup>7</sup> Fitsgibbom opined that "the word dismissal is merely a convenient expression for the determination of employment whatever its nature may be and does not necessarily import the relation of master and servant."<sup>8</sup>

According to Osborn Concise Law Dictionary:<sup>9</sup>

An employee shall be treated as dismissed, if but only if his contract of employment is terminated by the employer, whether with or without notice; or where a contract for a fixed term, expires without being renewed; or the employee terminates the contract, with or without motive, in circumstances such that he is entitled to terminate it without notice by reason of the employer's conduct.

Dismissal usually connotes the exercise by an employer of a right to terminate a contract of employment on account of some misconduct on the part of the employee.<sup>10</sup> In *Calabar Cement Co Ltd v Daniel*<sup>11</sup>, the Supreme Court defined dismissal as a disciplinary measure without benefits. The court went further to state that the power to dismiss is a power exercised by the employer without the corresponding power in the servant.<sup>12</sup>

<sup>2</sup> International Labour Organization, 'Countries Urged to Ratify Labour Conventions'. Available at <www.ilo.org> accessed May 10, 2019.

<sup>3</sup> *Osianya v Afribank Nig. Plc* (2007) 6NWLR (1031) 565.

<sup>4</sup> CFRN 1999 (As Amended)

<sup>5</sup> B A Garner, *Blacks Law Dictionary* (8th edn, St. Minn. West Pub. Co., 2004) 365

<sup>6</sup> L O Nwauzi, *Elements of Industrial Law in Nigeria* (Port Harcourt: Convince Concepts 2006) 22

<sup>7</sup> *Ibid*

<sup>8</sup> *Graham v Ministry of Industry and Commerce & Anor* (1933) I R 156, 164

<sup>9</sup> S Bone, *Osborn's Concise Law Dictionary* (9<sup>th</sup> Edn, London Sweet & Maxwell 2001) 137

<sup>10</sup> J E O Abugu, 'ILO Standards and the Nigerian Law of Unfair Dismissal', [2009](17)(1) *African Journal of International and Comparative Law*, 181-212.

<sup>11</sup> (1991) 4 NWLR (pt 188) 591

<sup>12</sup> *Ibid*

These definitions point to the fact that only the employer has the right or power of dismissal<sup>13</sup>. Dismissal is also referred to as termination without notice which is justified at common law by reference to the conduct or capability of an employee.<sup>14</sup>

Dismissal may be summary or constructive. Summary dismissal occurs where an employer dismisses an employee without notice of which the employee is entitled by virtue of the terms of the parties, contract of employment or as provided in a statute, regulation or rules guiding the parties contract. Summary dismissal is the common law right of the employer to determine the contract of service of an employee without notice or payment in lieu of notice on account of gross misconduct of the employee which strikes at the root of the contract.<sup>15</sup> Summary dismissal is equivalent to an act of repudiation of a contract of employment by law. It is a unilateral act of one of the parties to a contract of employment.

There are circumstances which may lead to an employee being summarily dismissed which are but not limited to refusal to obey master's lawful orders, insubordination, moral misconduct pecuniary or otherwise, willful disobedience, habitual neglect, incompetence, negligence in duty, other gross misconduct incompatible with the employee's duty to the employer or prejudicial to the business interest of the employer.<sup>16</sup>

Dismissal may also be constructive which happens when the employee walks out of the employment or resigns as a result of the employer's conduct which makes it impossible for the employee to continue in the employment, this involuntary resignation is regarded as constructive dismissal.

Constructive dismissal can therefore be defined as opting out of contract of employment by an employee in a circumstance, such that he is entitled to terminate it without notice by reasons of the employer's conduct. Before an employee can claim for constructive dismissal, he must satisfy four conditions:

- i. The nature of the employer's breach of contract must be such as to entitle him to terminate the contract without notice. He may in fact leave without giving notice or he may leave after giving notice and work out the period of notice
- ii. He must not have terminated the contract before the breach of the contract has taken place. iii. He must show that the employer's breach was the reason he left and
- iv. He must not have waived his right to terminate the contract by delaying for an unreasonable period after the breach<sup>17</sup>

According to Salman,<sup>18</sup> Lord Denning M.R advanced two tests for the kind of breach of contract which entitles the employee to terminate the contract without notice. The first test is called "failure of performance criterion" which means the failure of the employer to pay wages and other agreed remunerations. The second test is called "remuneration criterion" which is a situation where the

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<sup>13</sup> R K Salman, 'Concept of Dismissal and Natural Justice: An Essential Correlation' [2005](2)(2) *University of Ilorin Law Journal*, 53

<sup>14</sup> M R Fredland, *The Contract of Employment* (Oxford University Press, 1976) 194

<sup>15</sup> O Ogunniyi, *Nigeria Labour and Employment Law: Perspective* (Ikeja: Folio Associates Limited, 1991) 208

<sup>16</sup> *Graham v Ministry of Industry and Commerce & Anor* (n 51)

<sup>17</sup> *Western Excavating (ECC) Ltd v Sharp* (1978) 1 KB 761

<sup>18</sup> Fredland (n 14)

employer evinces an intention not to go on with the contract which may be by word of mouth or conduct. The third was canvassed by Janner<sup>19</sup> which he called the intolerable conduct which means conduct by the employer which rendered it impossible to achieve the purpose of employment relationship. Such behaviour according to Janner includes

- i. Giving an employee the job that people in his category might not do
- ii. Making him feel a square peg in a round hole
- iii. Giving him the poorest equipment to work with and assigning him to a team, group or immediate manager whom he dislikes
- iv. Giving him the chance to look for another job and advising him to do so, and
- v. Removing the carpet painting, hat rock and other loved symbols of pleasure or authority from his office.

### 3.0 Unfair Dismissal

The concept of unfair dismissal though a novel idea in Nigeria Labour Jurisprudence<sup>20</sup> has not lent itself to a precise definition as there is scarcity of academic work on the concept in the world over, particularly in Nigeria where the concept has not really been given recognition.

However, Osborn Concise Law Dictionary<sup>21</sup> has made an attempt to describe unfair dismissal as

When an employee can prove that he has been dismissed the burden of proving the reason for the dismissal is on the employer. The determination of whether the dismissal was fair or unfair depends on whether having a regard to the reason shown by the employer, the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee. Certain reasons for dismissal are automatically unfair including those related to the membership or non membership of a trade union, pregnancy, exercising rights under working time, regulations or a statutory right.

Where a dismissal is not substantiated with reason or is not done with appropriate notice, the dismissal is presumed unfair. Unfair dismissal is the termination of contract of employment of an employee in a harsh, unjust or unreasonable manner. It is used in the UK Labour law to describe an employer's action when terminating an employee's employment contrary to the requirements of the Employment Right Act. Dismissal are also classified as unfair if the reason for dismissal is connected with an employee exercising specific rights to pregnancy, trade union membership, pay and working hours and family reasons such as parental leave, adoption leave or time off dependants.<sup>22</sup>

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<sup>19</sup>G Janner, 'Consolidated Compendium of Employment Law' available at <<https://www.bookdepository.com>> accessed 10 August 2019.

<sup>20</sup> O Animashaun, 'Unfair Dismissal: A Novel Idea in Nigeria Employment Law' [2008](2)(1) *Nigerian Journal of Labour and Industrial Relation*, 1

<sup>21</sup> Elias (n45)

<sup>22</sup>A Acas, 'Fair and Unfair Dismissal' available at <[www.acas.org.uk](http://www.acas.org.uk)> Accessed 10 May 2019

#### 4.0 Unfair Dismissal Situations in Nigeria

A careful perusal and painstaking review of the International Labour Organisation standards on unfair dismissal deducible from the Convention on Termination of Contract of Employment show that certain dismissal in Nigeria amounts to unfair dismissal when tested against the International Labour Organisation standards. An attempt is made hereunder to highlight some of such situations.

##### (a) Dismissal without Reason

The position of the law in Nigeria seems settled that an employer is not obligated to furnish an employee with reasons for his termination of the employee's contract of employment provided the employer terminates the contract by complying with the terms and conditions of the contract of employment in the case of master servant relationship. In the case of contracts with statutory flavour, the employer is only required to comply with the statutory prescribed procedure for terminating a contract of employment backed by statutes or regulations made pursuant to the statute. The position that the employer is not bound to give reasons for termination of his employee's contract has severally been sanctioned by courts in Nigeria. In *Momoh v CBN*<sup>23</sup> on the power of an employer to terminate contract of employment and whether the employer is bound to give reasons, the Court held:

Ordinarily at common law, a master is entitled to dismiss his servant from his employment for good or bad reason or for no reason at all. In consonance with this principle, the courts rarely order specific performance of a contract of employment so as not to create a situation whereby an employee will be foisted upon an unwilling employer, just as no employer could be allowed to prevent an employee from seeking employment elsewhere. However, where there is a written contract of employment, statutory provisions and regulatory conditions of service, equity demands that the courts should hold the parties bound by the terms of the employment agreement<sup>24</sup>

A master can terminate a contract of employment at any time with good or bad reason or no reason at<sup>25</sup>. The only obligation under the common law applicable in Nigeria on an employer is to act within the bounds of the terms of the contract of employment, statutes or regulation regulating the contract of employment of the parties sought to be terminated<sup>26</sup>. In *NEPA v Eboigbe*<sup>27</sup> the Court stated that:

A private limited company or any employer of labour does not have any obligation to retain the services of any unwanted employee and may terminate the appointment of the employee without any reason given. In other words, an employer of labour is not bound to be saddled

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<sup>23</sup>(2007)14 NWLR (1055) 508

<sup>24</sup>*N.R.W. Ind. Ltd v Akingbulugbe* (2011)11 NWLR ( 1257) 135;

<sup>25</sup>*L.C.R.I. v Mohammed* (2005) 11 NWLR ( 935) 4; *Olaniyan v Unilag* (1985) 2 NWLR (pt. 9) 98; *Akinnibosun v Union Bank of Nigeria Plc* (2014) 48 N.L.L.R ( 158) 489 N.I.C

<sup>26</sup>*Daodu v UBAPlc* (2004) 9 NWLR ( 878) 276 at 280; *Chukwumav S.P.D.C. (Nig) Ltd* (1993)4 NWLR (289) 512.

<sup>27</sup>(2009)8 NWLR (1142) 150 at 152.; *Angel shipping & Dyeing Ltd v Ajah* (2000)13NWLR ( 685) 532

with an unwarranted staff and may terminate the services of such an employee without any reason for the termination. However, where an employer states a reason for the termination, such reason must be plausible to justify such termination of the appointment of the employee.

In such a situation where the employer relies on a ground for termination, the burden which ordinarily would have been on the aggrieved employee to prove wrongfulness of the termination will move to the employer who has chosen to give reason. Except where the employer relies on a reason, the onus of proving the wrongfulness or unlawfulness of termination rests squarely on the employee who is alleging wrongful or unlawful termination. In such a circumstance the employee is required to prove to the satisfaction of the court that: (a) he is an employee of the defendant; (b) the terms and conditions of his employment; and (c) the manner and by whom he can be removed<sup>28</sup>.

From the above, it is evident that purported exercise of right of termination or dismissal which exists in Nigeria at present without the requirements of reasons amounts to unfair dismissal when tested against the ILO standards on unfair dismissal which are contained in ILO Termination of Employment Convention<sup>29</sup> particularly Articles 2 and 4 of the Convention<sup>30</sup>

#### **(b) Dismissal in Consequence of Union Activities**

Employees embark on union activities to force on the employer the conditions and terms which are favourable to them. Such union activities include strikes, lock out, work-to-rule, picketing, Go slow and so on. But of major interest in this research is strike because of its recurrence in labour relations in Nigeria. Strike is defined in section 48 of the Trade Disputes Act<sup>31</sup> as:

the cessation of work by a body of persons employed acting in combination or, a concerted refusal or refusal under a common understanding of any number of persons employed to continue to work for an employer in consequence of a dispute, done as a means of compelling their employer or any person or body of persons employed, to accept or not to accept terms of employment and physical conditions of work<sup>32</sup>.

Under the common law, a refusal to work in consequence of a strike could be treated as a breach of contract voidable at the instance of the employer. The employer then has the option either to ignore the breach or to accept such breach as a repudiation of the workers obligation under the contract. This is also given vent by the case of *Anene v Allen & Co Ltd*<sup>33</sup> wherein his Lordship Brett J.S.C (as he then was) said a servant who deliberately absents himself from work commits a breach of contract sufficient to justify his dismissal and does not necessarily by so doing terminate the contract.

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<sup>28</sup>*Anaja v UBA Plc*[2014]4 ACELR 82

<sup>29</sup>158 of 1982

<sup>30</sup>*Ibid*

<sup>31</sup>Cap T8 LFN, 2004.

<sup>32</sup>*Ibid*

<sup>33</sup>(1975) 5 U.I.L.R 404



Under the statute however, section 43 of the Trade Disputes Act<sup>34</sup> provides:

Notwithstanding anything contained in this Act, or in any other law –  
Where any worker takes part in a strike, he shall not be entitled to any wages or other remuneration for the period of the strike, and any such period shall not count for the purpose of reckoning the period of continuous employment and all rights dependent on continuity of employment shall be judicially affected accordingly.

This position of the law was sanctioned by the Court in the case of *Abdulraheem v. Olufeagba*<sup>35</sup>. This shows that strike action amounts to a breach of contract of employment and upon which employers rely on to relieve workers of their employment. Workers in Nigeria have been threatened and victimized as a result of their involvement in a strike action. The position in Nigeria contrasts sharply with the position under the International Labour Organisation standards on unfair dismissal entrenched in the ILO Termination of Employment Convention<sup>36</sup> which provides *inter alia* that union membership or participation in union activities outside working hours, or with the consent of the employer, within working hours shall not be valid reason for termination. It is unfair to dismiss a worker who embarks on a strike action in Nigeria. This is particularly bearing in mind the unenforceability of collective agreements in Nigeria where it takes only but a strike action to enforce a collective agreement duly signed by parties in a trade dispute. After all, the right to strike by workers and their organisations is the only recognized means of defending their occupational interests. This right is an essential element in the principle of collective bargaining without which organized labour is powerless to deal with management.<sup>37</sup> It is the view of this paper that section 43 of the Trade Disputes Act is not friendly to the employee as it fails to recognize the right of the employee to a lawful strike. Consequently any dismissal or termination in consequence of a union activity amounts to an unfair dismissal.

### (c) Dismissal without Notice

It is a notorious principle of law in the Nigerian labour and employment jurisprudence that an employer can dismiss his employee without notice. Any employee who is guilty of misconduct which is weighty and of such a character as to undermine the relationship of confidence and trust which should exist between the employer and the employee could be summarily dismissed<sup>38</sup>. Therefore, the act of an employee which is against the interest of his employer amounts to gross misconduct which entitles the employer to dismiss the employee summarily without the necessity of notice under the law regulating dismissal of an employee in Nigeria<sup>39</sup>. Dismissal here is referred to as summary dismissal which dispenses with the necessity of notice.

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<sup>34</sup>*Ibid.*

<sup>35</sup> [2006]17 NWLR (pt. 1008) 280.

<sup>36</sup>158 of 1982.

<sup>37</sup>K C Nwogu, *Collective Agreement in the Settlement of Trade Dispute in Nigeria: Implications for Industrial and Labour Relations*, (Enugu: Noli Educational Publications Nig, 2010) 181; P E Oshio, 'Banks Strike and The Law in Nigeria' [2004] (8)(1-2)*MPJFIL*, 206; O V C Okene, 'The Legal Regulation of Strike in Nigeria: A Critical Appraise' [2001](5)(4) *Modern Practice Journal of Finance and Investment Law*, 606.

<sup>38</sup>C Nwagbara, *Determination of Contract of Employment and Remedies for Wrongful Dismissal* (Nigeria: Tait Publishers, 2000) 50.

<sup>39</sup>*New Nigerian Bank v Osunde* [1998]9 NWLR (pt. 566) 511 at p. 514.

There exists a difference in Nigerian law on requirement of notice in termination and dismissal. Whereas dismissal dispenses with notice, termination *strictosensu* requires notice or payment of salary in lieu of notice<sup>40</sup>. The ILO Termination of Employment Convention containing the ILO standards on unfair dismissal also recognizes the right of an employee to notice or payment of salary in lieu of notice in article 11 of the Convention. Also, Article 7 of the Convention makes notice a condition in any case of termination of contract of employment.

#### **(d) Dismissal without Motive**

The position of law in Nigeria is that the motive for determining a contract of employment is irrelevant provided the employer complies with the terms of the contract of employment or statutory provisions regulating the contract of employment. What this means is that an employer who is actuated by malice or bad faith can just comply with the provisions of a statute regulating an employment in the case of employments with statutory flavour or terms of the contract of employment in the case of contract of employment without statutory protection. This is supported by Nwagbara<sup>41</sup> when he states: 'It is now settled that where an employer gives the required notice to terminate, the validity of the termination cannot be challenged on the grounds that the employer was actuated by ill will or malice or any other improper motive'.

The current position in Nigeria is that an employment will terminate at the end of the notice period given even where the termination is prompted by improper motive<sup>42</sup>. The law that motives of termination or dismissal is irrelevant provided an employer complies with the notice period or the statute regulating the employment is no longer tenable particularly in the light of the ILO standards on unfair dismissal. This is a welcome development particularly in the light of article 4 of ILO Convention<sup>43</sup>. From these provisions of the Convention, the courts can question any determination of contract of employment actuated by motive that is outside the recognized reasons in Article 4 of the Convention on termination of employment<sup>44</sup>. This, the National Industrial Court can do by relying on section 254C of the Constitution<sup>45</sup> which empowers the Court to deal with matters relating to or pertaining to the application of among other things, international conventions which include convention 158 of 1982.

There is a need to move away from this ancient and archaic rule which permits an employer to dispense with their workers at any time without any reason bearing in mind that the only obligation on them is to fulfill all righteousness by complying with the formality required by the terms of the contract of employment or provisions of a statute regulating the employment in question. It is time, for us to look beyond the formality and question the motive for such dismissal at least to afford employees a little sense of security which is the global trend in the world of labour and industrial relations.

### **5.0 International Labour Organization (ILO) Standard on Unfair Dismissal**

International Labour Organization is an agency of the United Nation Organization dedicated towards prescription of labour standards and recommending actions for member states. It was established

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<sup>40</sup>LA, s.11 (6).

<sup>41</sup>C K Agomo, *Nigeria Employment and Labour Relation, Law and Practice* (Lagos: Concept Publications Ltd, 2011) 169

<sup>42</sup>*Ajayi v Texaco (Nig) Ltd* [1987]3NWLR ( 62) 577

<sup>43</sup>Termination of Employment Convention No 158 of 1982

<sup>44</sup>*Ibid.*

<sup>45</sup>Constitution of Federal Republic of Nigeria 1999 (as amended) (Third Alteration) Act



following the treaty of Versailles which ended the World War II.<sup>46</sup> The International Labour Organization (ILO) is a United Nations agency whose mandate is to advance social justice and promote decent work by setting international labour standards. The International Labour Organization has developed a system of international labour standards aimed at promoting opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and dignity.<sup>47</sup>

The functions of the ILO include the development and promotion of standards for national legislation to protect and improve working conditions and standards of living. The ILO also provides technical assistance in social policy and administration and in workforce training; fosters cooperative organizations and rural industries; compiles labour statistics and conducts research on the social problems of international competition, unemployment and underemployment, labour and industrial relations, and technological change (including automation); and helps to protect the rights of international migrants and organized labour.

Although, numerous International Instruments have provided legal frameworks for the protection of job security, there are however, two principal international instruments that specifically deal with termination of employment which provides the International Labour Organization Standards on Unfair Dismissal which was adopted by the International Labour Conference in the form of a Recommendation in 1963 (No. 119) and the Termination of Employment Convention (No. 158) which was adopted in 1982 and came into force on the 24th of November 1985.

The adoption of the Termination of Employment Convention No. 158 of 1982 (hereinafter referred to as 'the Convention') represents a fulfillment of the ILO mandate to promote social justice, through the setting of labour standards consistent with the right of all human beings to pursue both their material well-being and their spiritual development in conditions of freedom and dignity of economic security and equal opportunity. The Convention, in effect makes natural justice and fairness a part of the employment relationship,<sup>48</sup> which is in all fours with section 36 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

The ILO standards on termination of employment seek to find a balance between maintaining the employers right to dismiss workers for valid reasons and ensuring that such dismissals are fair and used as a last resort, and that they do not have a disproportionate negative impact on the worker<sup>49</sup>. It will be reiterated that valid reasons are mandatory requirement of the International Labour Organization Standards for Termination of Contact of Employment. It is a fundamental duty an employer owes an employee during the termination of the appointment of the employee.

Article 2 of the convention<sup>50</sup> provides that the convention applies to all branches of economic activities and to all employed persons, the phrase all employed persons depicts any person who is engaged in a gainful employment of any category. By the above provision of article 2, it applies to employees in

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<sup>46</sup>International Labour Organisation 'International labour standards on Employment Security' available at <[www.ilo.org/global/standards/employment-security](http://www.ilo.org/global/standards/employment-security)> accessed 20 September 2019

<sup>47</sup>C Fred, 'Introduction to International Labour Standards'. Available at <[www.ilo.org](http://www.ilo.org)> accessed September 20 2019.

<sup>48</sup> Art. 7

<sup>49</sup>*Ibid.*

<sup>50</sup> ILO Convention 158 on Termination of Employment 1982

purely master servant relationship as it applies to employees whose contract of employment is backed by statutes without any discrimination this is unlike Nigerian labour and industrial law jurisprudence<sup>51</sup> where a clear-cut distinction exists between master servant relationship and employment relationships protected by statutes or regulation made pursuant to a statutory provision.

Article 4 provides that the employment of a worker shall not be terminated unless there is a valid reason for such termination. The Convention in addition to providing for the termination for cause only, further precludes the termination of employment for reasons related to the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service.<sup>52</sup> The thrust of the above provisions are to ensure substantive fairness before dismissal or termination by the employer. Thus, the employer is required to give a valid reason for dismissal or termination of a worker. A reason is valid if only it is connected with the capacity or conduct of the employee or the operational requirements of the undertaking. Reasons connected with the capacity of the worker can result from lack of the skills or qualities necessary to perform certain tasks, leading to unsatisfactory performance or poor work performance not caused by intentional misconduct, as well as various degrees of incapacity to perform work as a result of illness or injury.

Similarly, reasons connected with conduct of the worker which is an act of misconduct may include one involving inadequate performance of duties the worker was contracted to carry out, for example, neglect of duty, violation of work rules, disobedience of legitimate orders, etc, or one which encompasses various types of improper behavior, for example, disorderly conduct, violence, assault, using insulting language, disrupting the peace and order of the workplace. The concept of operational requirements of the undertaking, establishment or service was neither defined in the Convention nor Recommendation. Nonetheless, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) defined it as negative terms as those necessitated by economic, technological, structural or similar requirements which are not connected with the capacity or conduct of the worker. This may include redundancy, transfer of undertaking, merger, privatization, takeovers, lay-offs etc.<sup>53</sup> In the case of unjustifiable termination, the worker is entitled to appeal against such termination to a body established under a collective agreement or to a neutral body such as a court or an arbitration committee or a similar body.<sup>54</sup>

Article 5 of the Convention provides a non-exhaustive list of reasons which would not constitute a valid reason for termination. The following grounds cannot constitute a valid reason for termination:

- i. Union membership or participation in union activities outside working hours or with the consent of the employer within working hours;
- ii. Seeking office as, or acting or having acted in the capacity of, a workers' representative
- iii. Filing of a complaint or the participation in the proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities

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<sup>51</sup> B Atilola, 'Legal Redress for Wrongful Termination of Contract of Employment: What Lawyers must note' [2011](15)(2) *Nigerian Journal of Labour and Industrial Relation*, 12

<sup>52</sup> Termination of Employment Convention, Art. 4.

<sup>53</sup> International Labour Standards Department, Sector 1.

<sup>54</sup> Application of Conventions and Recommendations (CEACR), Art. 8.

- iv. Race, Colour, Sex, Marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.
- v. Absence from work during maternity leave.

In addition to the above, the Termination of Employment Recommendation provides additional grounds for termination which are automatically unfair. These include:

- vi. Age, subject to national law and practice regarding retirement and;
- vii. Absence from work due to compulsory military service or other civil obligations in accordance with national law and practice.

The implication of the above is that any determination of contract of employment in any manner based on these reasons amounts to unfair dismissal.

Article 6 of the convention provides that temporary absence from work because of illness or injury shall not constitute a valid reason for termination. What this entails is that when the illness is protracted and in such a nature that it affects the capacity of the employee to carry out the object of the contractual relationship, it may well justify the termination of the contract of employment. The definition of what constitute temporary absence from work, the extent to which medical certification shall be required and possible limitations to the application of paragraph 1 of the article shall be determined in accordance with the methods of implementation referred to in Article 1 Of the convention.

Also, article 7 of the convention provides that the employment of workers shall not be terminated for reason to the workers conduct or performance before he is provided an opportunity to defend himself against the allegation made, unless the employer would not be reasonably expected to provide this opportunity. The provision of the article reiterates the fundamental principles of fair hearing in the determination of contract of employment<sup>55</sup>. According to the convention, it provides that a worker is entitled to notice except in cases of serious misconduct or compensation in lieu thereof, dismissal for serious misconduct should be limited to cases where the employer cannot in good faith be expected to take any other alternative in option a workers accused of misconduct should be given adequate opportunity to state his case promptly with the assistance of a representative where appropriate. The term serious misconduct is not defined in the convention and its interpretation is left to each country. However, the convention provides that a member state may exclude the following categories of employed persons from all or some of the provision of the convention<sup>56</sup> (a) workers engaged under a contract of employment for a specified period of time or a specified task; (b) workers serving a period of probation or a qualifying period of employment, determination in advance and of reasonable duration; and (c) workers engaged on a casual basis for a short period.

Article 8 provides that any worker who considers that his employment has been unjustifiably terminated is entitled to appeal against the termination to an impartial body such as a court, labour tribunal or arbitrator. However, a worker may be deemed to have waived his right to appeal against the termination of the employment if he has not exercised that right within a reasonable period of time after the termination. This could mean that the worker's claim if not brought within time to the appropriate

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<sup>55</sup> ILO Termination of Employment Convention, art. 7

<sup>56</sup> *Ibid*, art. 2(2)

impartial body, could be statute barred.<sup>57</sup> Recommendation No. 166<sup>58</sup> supplements Article 8 of the Convention in that provision may be made for recourse to a procedure of conciliation before or during appeal proceedings against termination of employment. The Convention in its Articles 13 and 14 made provisions to be applied in respect of termination of employment for economic, technological, structural or similar reasons.

On the other hand, if the worker brings his claim for unjustified or unfair dismissal within time to the appropriate court or labour tribunal and such tribunal or court finds that the employment of a worker has been unjustifiably terminated, if such tribunal or court is not empowered or do not find it practicable, in accordance with national law and practice, to declare the termination invalid and / or order or propose reinstatement of the worker, it shall order payment of adequate compensation.<sup>59</sup> It can be argued that these provisions clearly indicate that the Convention prefers reinstatement as the primary remedy for unjustified termination of employment. It is only when the court or labour tribunal is not empowered to order reinstatement under national laws or when reinstatement is not practicable that the court or labour tribunal is empowered to order adequate compensation, which may probably be stiffer as a form of punishment and serve as deterrence to arbitrary organizations.

Article 11 states that a worker whose employment is to be terminated shall be entitled to a reasonable period of notice or compensation in lieu thereof, unless he is guilty of serious misconduct. This is in line with section 11 of the Labour Act which states that either party to a contract may terminate the contract on the expiration of notice given by him to the other party of his intention to do so. In effect, a contract of employment can be brought to an end by notice. In the absence of the agreed length of notice by both parties, section 11 (2) prescribes the following period of notice:

- a) One day, where the contract has continued for a period of three months or less;
- b) One week, where the contract had continued for more than three months but less than two years;
- c) Two weeks where the contract has continued for a period of two years but less than five years; and
- (d) One month, where the contract had continued for five years or more

In the event of an individual dismissal and in addition to an award for compensation for loss of employment, the Convention<sup>60</sup> and Recommendation<sup>61</sup> enjoin employers to provide severance allowance or unemployment benefits or a combination of such allowance and benefits for any worker whose employment has been terminated. This is probably aimed at reducing poverty and ensuring income security for the worker whose employment has been terminated.

On the whole, the provisions of the convention are reasonably flexible and adaptable to the peculiar needs and circumstances of member states. The Committee of Experts on the Application of Conventions and Recommendations stated that the Convention clearly demonstrates awareness of the need to balance worker protection from unfair dismissal against the need to ensure labour market flexibility which will allow the employer some latitude to bring his organization or firm to the realities

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<sup>57</sup>*Ibid*, art. 8

<sup>58</sup>Paragraph 14.

<sup>59</sup>ILO Convention 1982, art. 10

<sup>60</sup>*Ibid*, art. 12

<sup>61</sup> ILO Recommendation 166, Para 18

of the present economic situation.<sup>62</sup> All these afford the employer reasonable opportunity to determine the ability and capability of its employees without being liable for unfair dismissal. On the other hand, care has to be taken to ensure that unscrupulous employers do not use these provisions as escape routes from the application of such law.<sup>63</sup>

## **6.0 International Labour Organization Recommendation No. 166**

The International Labour Organization (ILO) in adopting the Termination of Employment Convention No. 158 adopted the Termination of Employment Recommendation, 1982 (No. 166), which replaced its predecessor, Recommendation No. 119, as an augmentation or addendum to the Convention.<sup>64</sup>

The Recommendation contains a wide range of provisions aimed at bringing the law on termination into accord with current trends and requirements. Its adoption was informed by the need to put in place new international standards on the subject, having regard to the serious problems resulting from the economic difficulties and technological changes experienced in recent years in so many countries.<sup>65</sup>

Recommendation No. 166 provides for guidance as to the kind of measures which could be adopted to avert or minimize the terminations of employment.<sup>66</sup> Recommendation No. 166 (R166) provides additional role that might be played by the competent authority in order to mitigate the harsh effect of the termination which include promotion of the placement of workers affected in suitable alternative employment as soon as possible, training and re-training of workers where appropriate, collaboration of the employer and worker's representatives concerned where possible.<sup>67</sup>

## **7.0 Applicability of International Labour Organisation Standards on Unfair Dismissal in Nigeria**

Application of International Labour Organisation Standards revolves around the roles of the organs of government of a particular country and the Constitution of the Country. In Nigeria, there are three arms of government which are: the Legislature, Executive and Judiciary and they have a role to play in the applicability of International Labour Organisation Standards on unfair dismissal in Nigeria.

### **7.1 The Nigeria Executive and the Application of ILO Standards on Unfair Dismissal**

Once International Labour Organisation deems it fit to adopt a particular standard for purposes of curbing a global labour issue, it becomes the duty of the executive arm of government of a state with the executive power to accede to the convention and ratify same. The executive power aforesaid is vested in the President as provided in the Constitution:

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<sup>62</sup> CEACR, General Observation Concerning Convention No. 158 (2001)

<sup>63</sup> A Oyemumi, 'Job Security and the Nigerian Labour Law: Imperatives for Law Reform' in E Etteh (ed), *Rocheba's Labour Law Manual* (Rocheba Law Publishers 2007) 17-48.

<sup>64</sup> International Labour Standards Department (Sector 1) and Others, 'Note on Convention No. 158 and Recommendation No. 166 Concerning Termination of Employment' meeting document, 2004  
<[www.ilo.org/wcmsp5/groups/public/@ed\\_normes/documents/meetingdocument/wcm\\_100768.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_normes/documents/meetingdocument/wcm_100768.pdf)> accessed September 20 2019.

<sup>65</sup> Preamble to the Termination of Employment Convention No. 158 of 1982 available at  
<[www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0:NO::p12100\\_ILO\\_CODE:C158](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0:NO::p12100_ILO_CODE:C158)> September 20 2019.

<sup>66</sup> R166 at Para. 21

<sup>67</sup> CEACR, para. 26

Subject to the provisions of this Constitution, the executive powers of the Federation is vested in the President and may be, subject as aforesaid and to the provisions of any law made by the National Assembly be exercised by him either directly or through the Vice President and Ministers of the Government of the Federation or officers in the public service of the Federation.<sup>68</sup>

From the foregoing provision, it is obvious that the president of the Federal Republic of Nigeria has the duty to ensure that International Labour Organisation conventions adopted by the International Labour Conference are ratified since the power to make laws with respect to implementation of international treaties and conventions lies with the Government of the Federation.<sup>69</sup>

It is also the duty of the Executive to pursue social and foreign policy objectives of Nigeria as enshrined in the Constitution.<sup>70</sup> Member states of the International Labour Organisation are under obligation to ensure that effect is given to the standards adopted by the Organisation. The ILO Termination of Employment Convention<sup>71</sup> which provides the International Labour Organisation standards on unfair dismissal is targeted at ensuring employment security in member-countries of the International Labour Organisation.

If the Federal executive council of Nigeria deems it necessary to stop arbitrary exercise of power of dismissal and termination, then they will have to ratify ILO Convention on Termination of Employment which contains the standards on unfair dismissal the subject matter of this paper and pursue the legislature to domesticate it.

## **7.2 The Nigeria Legislature and the Application of ILO Standards on Unfair Dismissal**

The legislature has a role to play in the domestication of International Labour Standards. The concept of domestication in the context of international treaties simply refers to a process by which a state party to a treaty achieves incorporation of the treaty into its municipal law. This incorporation of international treaties and conventions requires the legislative acts of the legislative arm of government in Nigeria. This is because by the Nigerian Constitution, any international treaty or convention without domestic legislative cover cannot give rise to any legally enforceable right or obligation on the part of any person in a domestic court. This means that the legislature has the obligation to ensure that any treaty or convention ratified by the Executive Arm of Government is enacted into domestic law so that citizens can take the benefits and rights inherent in the treaty or convention.

The National Assembly is constitutionally empowered to undertake the domestication of international treaty which Nigeria entered into and ratified by the executive arm of government not minding the subject matter of the international treaties and conventions. This is pursuant to the Constitution which provides that: 'The National Assembly may make laws for the Federation or any part thereof with

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<sup>68</sup>Constitution of Federal Republic of Nigeria, 1999(as amended) s. 5 (1).

<sup>69</sup>CFRN 1999 s. 12.

<sup>70</sup>*Ibid*, s 15 & 16(2).

<sup>71</sup>158 of 1982.



respect to matters not included in the Exclusive Legislative List for purposes of implementing a treaty'.<sup>72</sup>

Therefore, the legislature saddled with the responsibility of ensuring the implementation of labour standards on unfair dismissal is the National Assembly. It is urged that as soon as the Convention is ratified, that the National Assembly will proceed immediately to give the Convention an enabling legal framework that will ensure the application of the convention without the necessity of domestication just like it happens in monist countries.

### **7.3 Nigeria Courts and the Application of ILO Standards on Unfair Dismissal**

The Court as the institution of the third arm of government has enormous role to play. This role is purely interpretation of laws to ascertain the rights, duties and liabilities of individuals and bodies in Nigeria. This primary duty of court is enshrined in the Constitution;

The judicial powers rested in accordance with the forgoing provision of this section shall extend to all matters between persons, or between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto for the determination of any question as to the civil rights and obligations of that person.<sup>73</sup>

This depicts that the court is in the business of determining rights and obligations of persons in a particular society. These rights and obligations are in the provisions of a country's laws which form part of its legal system. What then is the attitude of Nigerian courts to implementation of treaties in Nigeria? The application of treaties by domestic courts in Nigeria is anchored on the constitutional framework. Analysis of the role of courts in Nigeria over implementation of international treaties and conventions involves four main approaches which are: direct application of international law; use of international law as a guide for interpreting domestic law; establishment of a jurisprudential principle, based on international law; and reference to international law to strengthen a decision on domestic law.

Section 6 of the Constitution of the Federal Republic of Nigeria, (Third Alteration) Act, 2010 (hereinafter referred to as CFRN) enlarged the jurisdiction of the National Industrial Court of Nigeria to matters relating to or connected with unfair labour practice or international best practices in labour, employment and industrial relation matters. It also empowers the National Industrial Court to exercise jurisdiction to the exclusion of any other court in matters relating to, connected with or pertaining to the application or interpretation of international labour standards.

In the same vein section 7(6) of the National Industrial Court (NIC) Act 2006, also empowers the National Industrial Court to take into account international best practices. It provides as follows: 'the court shall, in exercising its jurisdiction or any of the powers conferred upon it by this Act or any other enactment or law, have due regard to good or international best practice in labour relations . . . '

The above provision obviously permits the court to borrow from foreign jurisdictions in tandem with the present global village system. The various conventions of the ILO which the member states are

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<sup>72</sup>CFRN 1999, s 12(2)

<sup>73</sup>*Ibid*, s. 6(6) b.

enjoined to apply come in handy here and supposedly, the implication is that the National Industrial Court will constantly have to take cognizance of these international best practices.<sup>74</sup>

Also, Section 6 of the Third Alteration Act further empowers the NICN to apply International Convention, treaty or protocol provisions of which Nigeria has ratified relating to labour, employment, workplace, industrial relations or matters connected therewith.

Despite the above provisions, it has been feared that both sections 7 (6)<sup>75</sup>, and 6<sup>76</sup>, which mandate the NIC to apply the rules of international labour best practices, that is, international conventions, treaties, protocols, declarations, instruments, standards and policies seem to completely lose sight of Section 12 of the CFRN 1999. Section 12 (1) of the CFRN 1999 (as amended) provides thus: 'No treaty between the Federation and other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly. '

The two principal theories regarding the relationship between international and domestic law are monism and dualism. Nigeria is a dualist country adopting the incorporation or transformation theories in that no treaty is enforceable in Nigeria unless same is domesticated through legislative instrument<sup>77</sup>. The legal position was affirmed in the celebrated case of *Abacha v Fawehinmi*<sup>78</sup> wherein the Supreme Court held inter alia that an international treaty entered into by the government of Nigeria does not become binding until enacted into law by the National Assembly.

It has been argued by a scholar<sup>79</sup> that the effect of Section 254 (c) (2) of the Third Alteration Act is radical in the sense that it changes Nigeria from a dualist country into a monist country as far as conventions relating to labour matters are concerned. Philip further argued that all International Labour Organization (ILO) Conventions to which Nigeria is a signatory or has ratified but yet to domesticate or transform into a domestic law can now be applied directly by the NICN without any legislative intervention. Hence, Convention No. 158 on Termination of Employment, though not domesticated by Nigeria, can be pleaded before the NICN and the court may apply its provision to cases brought before it to ensure and promote job security in both public and private sectors alike thereby putting an end to the hitherto tyrannous rule of the doctrine of termination at will in Nigeria.

Furthermore, Okene and Eddie-Amadi<sup>80</sup> argued that International Conventions and Instruments can be applied indirectly in Nigeria by the courts as an aid to interpretation and can also apply automatically where they have reached the point of recognition as part of customary International law<sup>81</sup> that is the point where the courts have taken judicial notice of the international conventions and instruments.

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<sup>74</sup>B A Adejumo, *The National Industrial Court of Nigeria: Past, Present and Future* (National Judicial Institute, Abuja 2011) 12.

<sup>75</sup> NIC Act, 2006

<sup>76</sup> CFRN (Third Alteration) Act 2010

<sup>77</sup> O.V.C. Okene and B. C. Eddie-Amadi, 'Bringing Rights Home: The Status of International Legal Instruments in Nigerian Domestic Law' [2009](1)(4) *Journal of Law, Practice and Procedures of Legislature*, 12-31.

<sup>78</sup> [2000] 6 NWLR (Pt. 660) 228

<sup>79</sup> Philip F.A., 'Job Security in Developing Countries: A Comparative Perspective'[2016](1) *Ife Journal of International and Comparative Law*, 22

<sup>80</sup>Okene and Eddie-Amadi (n 77) 14

<sup>81</sup> Customary International law which is also called Jus Cogens or peremptory norms are fundamental principle of international law that is accepted by the international community of states as a norm from which no derogation is permitted <[https://en.m.wikipedia.org/wiki/peremptory\\_norm](https://en.m.wikipedia.org/wiki/peremptory_norm)> accessed September 20 2019.

The above argument with respect to the direct applicability of International Labour Conventions or Treaties in Nigeria without domestication appears to be mere suggestions or recommendations from the legal scholars. Just like Oliver Wendell Holmes of the realist school of thought defined law as 'the prophecies of what the courts will do in fact and nothing more pretentious are what I mean by law'.<sup>82</sup> Thus, International labour Organization conventions or treaties and indeed any other international instrument until they are pronounced by the court to be directly applicable in Nigeria without any further legislative intervention of domestication by the National Assembly even though Nigeria has ratified or is a signatory to it remains inapplicable in our legal system.<sup>83</sup>

This proposition of non-applicability of International law in Nigeria without domestication, finds support in the case of *Medical and Health Workers Union of Nigeria v Minister of Health and Productivity & Ors*<sup>84</sup> wherein the Court of Appeal held that the provisions of an International labour convention cannot be invoked and applied by a Nigerian court until same has been domesticated or re-enacted by an Act of the National Assembly.<sup>85</sup>

As a result of the pronouncements of the superior courts in Nigeria, and in the absence of a clear statutory intervention that may allow the direct applicability of International conventions as propagated by the monist theorists in our legal system has given greater impetus to the denial of the right to security of employment of the Nigerian worker under the Nigerian legal system, especially in private sector employment.<sup>86</sup>

## 8.0 Remedies for Unfair Dismissal

An employee who is unfairly dismissed has certain remedies available to him. The contract of employment may itself make express provisions concerning the remedies available to the parties in the event of a breach. In such instances, the court will follow the express provisions of the contract.

Generally, the remedies available to an unfairly dismissed employee are: conciliation, reinstatement, damages, declaration, compensation, claim on a quantum meruit. However, the nature of the contract of employment between the employer and employee will determine the remedy available to an aggrieved employee. In a master/servant type of employment, the court in *New Nigeria Newspapers Ltd v Atoyebi*<sup>87</sup> stated that a servant unfairly dismissed in a master/servant type of employment, the only remedy available to him is an award of damages in the amount he would have earned if his appointment had been properly determined. The servant is to be paid all his salaries and entitlements up to the date of his dismissal and salary in lieu of notice where the terms of the contract of employment provide such.

An unfairly dismissed employee whose contract of employment is clothed with statutory flavour, the remedies available to the employee are specific performance of the contract, injunction, and/or

<sup>82</sup> O. W. Holmes, Jr 'The Path of Law' [1897](10) *Harvard Law Review*; 457.

<sup>83</sup> S. E. Mbah and C. O. Ikemefuna, 'Core Conventions of the International Labour Organization (ILO): Implications for Nigerian Labour Laws' [2011](2)(2) *International Journal of Business Administration*; 134.

<sup>84</sup> (2005) 17 NWLR (Pt. 953) 120

<sup>85</sup> *African Reinsurance Corporation v Fantaye* [1986] 3 NWLR (Pt. 32) 811; *Abacha v Fawehinmi* [2000] 6 NWLR (Pt. 660) 228

<sup>86</sup> Worugji I.N.E., and Akpan E.I, 'Security of Employment Under Nigerian Labour Law: The Need for a New Face of the Law' [2010](6)(1) *Nigerian Bar Journal*, 117

<sup>87</sup> (2013) LPELR – 21489 (CA)

reinstatement, which are not available to employees whose appointments are terminated in simple contracts of master and servant.<sup>88</sup> Where an employee is to be paid wages for the completion of a certain task, but he was unable to complete it because of the fault of his employer, the employee will be entitled to sue upon a *quantum meruit* (as much as he deserves)<sup>89</sup>. Therefore, remedies available to an employee unfairly dismissed will depend on the nature of the contract, the terms of the contract, the facts and circumstances of the case.

## 9.0 Conclusion

The current status of law and practice of dismissal from employment in Nigeria still leaves much to demand. The position of law still twists the fate of an employee in the hand of a draconian employer who could dismiss his employee at will and without a valid reason for same. Sadly, Nigerian still adopts the unfair position of common law in determination of employment notwithstanding the fact that so many countries of the world have moved away from this ugly trend and embraced the ILO standards for fair and good grounds for determination of contract of employment whenever the need arises. This ILO Convention has not witnessed life in Nigeria, some challenges have been bottlenecks for its realization. These challenges are but not limited to non-ratification of the convention by the Executive Arm of Government of Nigeria, the un-readiness of Nigerian Government to domesticate the convention, the seeming inconsistency in the Constitution as regards application of labour treaties and conventions. Another factor is the absence of a legal framework for effective application of ILO standards on unfair dismissal in Nigeria. However, if the recommendations in this paper are to be put in practical operations, termination of employment will wear a new look particularly with regard to unfair dismissal of employees.

## 10.0 Recommendations

Having compared the ILO Standards with the current statutory authorities on contract of employment as regards the unfair dismissal of employees in Nigeria and having stated the need for the domestication of ILO standards in Nigeria as to what is obtainable elsewhere, the following recommendations are hereby suggested with a view of addressing the challenge of unfair dismissal in Nigeria:

- i. Set up a Committee in the National Assembly for Ratification of ILO Conventions: Nigeria is member of the International Labour Organisation and by its membership, she has an obligation to ratify and apply the ILO Convention on unfair dismissal. It is therefore necessary that a Committee be established to create awareness of international treaties and conventions not yet ratified and ensure that ILO Conventions are ratified by Nigeria.
- ii. Create a Supervisory and Monitoring Body for Implementation of Labour Treaties and Conventions: There are various international labour treaties and conventions that are not implemented in the country. It is imperative that a supervisory body be created whose role will be to supervise the implementation of international labour treaties and conventions. The body will ensure that employers administer labour treaties and convention appropriately. Also, employers and

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<sup>88</sup>*Emmanuel Odibo v First Bank* (2018) LPELR -46628 (CA)

<sup>89</sup>Okene(n 37) 128

employees are educated about their respective rights in the international labour organisation treaties and conventions ratified in Nigeria.

- iii. Adequate funding of the body/institution created for effective implementation: There should be adequate funding of the supervisory body created for effective implementation as no institution will function properly without funds.
- iv. Enactment of Unfair Dismissal Act: The Nigerian Legislature should take steps to enact an Act which will regulate unfair dismissal in Nigeria. The Act should amongst others ensure justification for termination of contracts of employment and adopt all the invalid reasons for termination of contract of employment provided by ILO.