AN ANALYSIS OF WORKERS' PROTECTION IN THE LABOUR ACT 2004 AND THE EMPLOYEE'S COMPENSATION ACT 2010 IN NIGERIA

By

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Abstract

The protection of workers' human rights involves a complex interplay of international, regional and national laws. Legal issues often arise from the need to balance the rights of workers with the interests of employers and the state. Workers have the right to form unions and bargain collectively, however, there are legal restrictions or barriers to unionisation, like the issues arising from strike (the no work, no pay policy in Nigeria), leading to disputes over the scope of these rights. Legal frameworks exist to protect workers from sexual harassment in the workplace, but enforcement and the process proving harassment can be challenging. Discrimination in employment violates principles of equality and non-discrimination found in international human rights instruments like the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination Against Women. Workers can also face illegal and unfair dismissal, leading to disputes over the reasons for termination and the appropriate remedies.

Keywords: *Protection, Workers, Rights, Workplace, Welfare*

1. Introduction

The protection of workers' rights and indeed their human rights in the work environment is very vital for a healthy workplace. Since it is established that the Labour Act is the principal legislation governing employment relations in Nigeria, whether of the public sector or private sector, contract of manual labour or clerical work and even mechanized labour, its primary legislation deals with the relationship between an employer and its employees; and workers without any doubt forms a non-negotiable part in an employment relationship, that is why it borders me to know that if provisions are made in the Labour Act 2004 to protect the human rights of workers other than these protective legislations, then it should have been adequate enough to see that industrial actions are no place for workers.

Human rights occupy a special position in Nigerian constitutional jurisprudence as indicated in Chapter IV of the 1999 Constitution.[2] These rights include but not limited to: right to life, right to the dignity of human person, right to personal liberty, right to fair hearing, right to private and family life, right to freedom of thought, conscience and religion, right to freedom of expression and the press, right to peaceful assembly and association, right to freedom of movement, right to freedom from discrimination, right to acquire and own immovable property anywhere in Nigeria, right to access the courts and legal aid. These rights and

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[2]Constitution of the Federal Republic of Nigeria 1999 (as amended) Chapter IV.

many others are available to the Nigerian worker; we shall however dwell on some of these rights only. The Labour Act[3] is also a veritable source of workers' rights in Nigeria which we shall also focus on.

The rights of every worker ought to be protected by the law as rights are sacrosanct, more so, human rights. The mere fact that the fundamental rights of every human being is enshrined in Chapter IV of the Constitution[4] does not automatically protect rights.[5] Human rights are being violated every day and the workplace is no exception. To this end, the legal issues that deal with protection of these rights will be raised to forestall continuous violation of persons rights, who may not be readily equipped or protected because they are not aware of the provisions made for them to protect themselves or may be aware but cannot afford to go with the process due to the harsh conditions surmounting them or associated with them.

The workplace should readily protect human rights of workers by the institutions it has kept in place for these rights to be upheld whether or not the worker is aware and this should be done with the intention that it is cheaper to protect than to solve the problems that will emanate from not protecting rights.

As much as workers have been seen from different points of view; a worker, also known as an employee may either enter into a contract for service or a contract of service with his/her employer with a view of receiving remuneration/wage for such contract. This means that whether or not workers' human rights are protected, is left in the hands of the employer and should be clearly spelt out in the contract that brought in that worker for the service to be rendered. This also brings to bear the capacity of the worker before any contract is to be entered into. The meaning of worker, employer and contract is defined in section 91 of the Labour Act[6] as:

Worker - A worker means any person who has entered into or works under a contract with an employer, whether the contract is for manual labour or clerical work or is expressed or oral or implied or written and whether it is a contract of service or a contract personally to execute any work or labour but does not include:

a. any person employed otherwise than for the purpose of the employer's business; or
b. persons exercising administrative, executive, technical or professional functions as public officers or otherwise; or
c. members of the employer's family; or
d. representatives, agents and commercial travelers in so far as their work is carried on outside the permanent workplace of the employer's establishment; or
e. any person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, repaired or adapted for sale in his own home or on other premises not under the control or management of the person who gave out the articles or materials; or

[3] Labour Act Cap L1 LFN 2004.
[4](n2)
[5]*Ibid*, There are rights in Chapter IV of the CFRN 1999 (as amended) that are not guaranteed rights such as sections 37, 38, 40 and 41 for the interest of defence, public safety, public order, public morality or public health for the purpose of protecting the rights and freedom of other persons, as it is said that "one's rights ends where the right of the other begins".
[6](n3)

f. any person employed in a vessel or aircraft to which the laws regulating merchant shipping or civil aviation apply.

Employer - An employer is any person who has entered into a contact of employment to employ any other person as a worker either for himself or for the service of any other person, and includes the agent, manager or factor of that first mentioned person and the personal representatives of a deceased employer.

Contract of Employment – any agreement, whether oral or written, express or implied, whereby one person agrees to employ another as a worker and that other person agrees to serve the employer as a worker.

A contract of employment forms the basis upon which a relationship is built between the worker and the employer and thereafter forming the nexus of protecting the rights of the worker. "Human rights are part of a long and honourable tradition of dissent, resistance and rebellion against the oppression of power and the injustice of law".[7] Relatively, Tomuschat[8] views Human rights as "rights which a person enjoys by virtue of being human, without any supplementary condition being required", and "they are held by all human beings irrespective of any other rights or duties that they may have in any other capacities, for example, as workers, members of families or association".[9] "Fundamental rights have a common quality: They are regarded as basic to human worth and dignity or individual liberty and are protected as such".[10] It is therefore important to state that every human being/person is identified and recognized by his/her rights. This is because rights are inalienable; it is about the integrity and dignity of that person; it is a common cloth which we all wear as human beings. It is what defines humanity and unifies us and even groups us based on the category we want to be identified with. These groups are committed to protect generally or specifically promote rights, and it can be seen for example in professional organizations which could include lawyers, health workers, technical workers, and so on, or groups that comprise of women, children, migrant workers, the vulnerable population, and so on. It can also be seen in religious groups that promote often social justice and human rights consent, closely overlapping with their broader convictions.

Human rights could then be said to be an engagement towards the full realization of the human person. It is therefore safe to state here that workers' rights cover a large spectrum of human rights beginning from decent work and workplace and the freedom to associate, to equal opportunities and more especially protection against discrimination[11] The rights that relate to workplace are firstly, health and safety in the workplace and then the right to privacy at work,[12] amongst others.

[7] C. Douzinas, Human Rights and Empire: The Political philosophy of Cosmopolitanism, (Abingdon: Routledge – Cavendish, 2007)12.
[8] C. Tomuschat, *Human Rights: Between Idealism and Realism* (Oxford University Press, 2003) 3; J. Donnelly, *Internationals Human Rights* (3rd edn. Boulder, Westview Press, 2007) 18.
[9] N. S. Okogbule, *Globalization and Human Rights in Africa* (Sibon Books Limited, 2012) 33.
[10] S. Foster, *Human Rights and Civil Liberties* (2nd edn. Pearson Education Limited, 2008) 5
[11]CFRN 1999 (as amended) s.42.
[12]Global Support, 'Action Plans on Business and Human Rights' <https://globalnaps.org/issue/workers-rights-National> accessed 22 December 2022.

2. Labour Act Cap L1 LFN 2004

The Labour Act 2004 was first enacted in 1971. The Labour Act ordinarily ought to be the grundnorm of employment and industrial relations issues. Unfortunately, it is so restrictive that it seems not to adequately serve the purpose of protecting the rights of employees and ensuring their welfare as well as engender industrial harmony. For instance, it did not use the word "employee" expressly, also it did not define casual workers and even the issue of job security is not adequately addressed.

In section 91(1) the Act defines workers to mean any person who has entered into or works under a contract with an employer, whether the contract is for manual labour or clerical work or is expressed or implied or oral or written and whether it is a contract of service or a contract personally to execute any work or labour but does not include:

(a) Any person employed otherwise than for the purpose of the employer's business; or

(b) Person exercising administrative, executive technical or professional functions as public officers or otherwise, or

(c) Members of the employer's family; or

(d) Representatives, agents, and commercial travelers on so far as their work is carried on outside the permanent workplace of the employer's establishment; or

(e) Any person to whom articles or materials are given out to be made up, cleared, washed, altered, ornamented, finished, repaired or adapted for sale in his own home or on other premises. Not under the control or management of the person who gave out the articles or the materials; or

(f) Any person employed in a vessel or a craft to which the laws regulating merchant shipping or civil aviation apply.[13]

As earlier mentioned, there are some lacunas in the definition as provided in the Labour Act. As Erugo noted, the definition provided in the Labour Act at worst is an effort but not the expectation because the definition to say the least begs for the definition of terms used such as 'employer' and 'worker' and a number of other unclarified terms.[14] For instance, a worker is a broad term that includes independent employees. For Muhi, there are conditions under which a person working is determined and characterized as an employee or an independent contractor.[15] This is because an employee is that whose work is controlled by employer, whereas a worker could be classified as an independent contractor if the employer does not control the process of carrying out the work.

[13] Labour Act Cap L1 LFN 2004 s. 91 (a)-(d).
[14] S Erugo, *Introduction to Nigerian Labour Law: Contract of Employment and Labour Practice* (2nd edn Princeton & Associate Publishing Co. Ltd 2019) 27.
[15] C I Muhi, 'The Employment-at Will Doctrine: Three Major Exceptions [2000] (1) *Monthly Labour Review*, I

Secondly, the law has moved on to include light works such as hairdresser, train drivers, people employed to make chemical inventions, conductors and those who make bouquets which are not labour intensive and not manual work that are not accommodated in Section 2 of the Labour Act.[16] Similarly, professionals such as doctors, nurses, pilots, engineers, lawyers, accountants, surveyors among others who possess specialist skills that their employers may not possess and who have the technical know-how to determine how their work is to be done without the employer's control or directive are now regarded as employees which has exposed the limitation and loss of potency of the common law provision of the control test which hitherto was the major determinant of who is an employee and the inadequacy of using the word workers.[17] This position has a judicial sanctification in the case of *Cassidy v Ministry of Health*[18] where Lord Somerwell stated that the control test is not universally correct and applicable in all circumstances as there are many contract of service wherein the master cannot control the manner in which the work is to be done. Furthermore, it is old fashioned to state that a person exercising administrative, executive and technical service as public officers are not employees (or workers as used by the Labour Act).

This is because the various Civil Service Commissions at the Federal, State and the Local Government Service Commission have power to employ and determine the employment of their staff in accordance with their individual contract of services.[19]Both the constitutional and judicial precedent has proven to the contrary that the strict application of the Common law principle of master and servant is not absolute as stated in the case of *Shitta Bay v Federal Public Service Commission*; and *Olaniyan v University of Lagos*.[20] In the above cases the Court held that the law in Nigeria especially as it regards is that a contract of employment cannot be terminated without following due process in particular employment in the Public Service which are statutory employment. And the procedure set out in the law must be followed in the termination of the contract of employment.

As earlier stated, the Labour Act 2004, first enacted in 1971, is considered a cornerstone of employment and industrial relations law in Nigeria. However, despite its long history, it falls short of addressing the full spectrum of workers' rights and welfare, often leaving gaps in its provisions. In this article, we explore the limitations of the Labour Act and how the Employees Compensation Act (ECA) of 2010 attempts to fill some of the gaps, while also highlighting some of its own shortcomings.

2.1. The Labour Act 2004: Shortcomings and Gaps

[16] *Hoore v Robert Green Ltd* (1907)2 K.B 315.
[17] B A Hepple and O Higgins, *Employment Law'* (4th edn, Sweet and Maxwell 1981) 6.
[18] (1951)2 KB 343 at 352, 353
[19] *Ibid.*
[20] (198I) 1 SC 40; (1985) 2 NWLR (Pt. 9) 589.

The **Labour Act 2004** is intended to regulate the relationship between employers and employees in Nigeria, providing protection for workers and ensuring industrial harmony. However, there are several critical issues in the Act that limit its effectiveness.

2.1.1 Definition of a Worker

Section 91(1) of the Labour Act provides a broad definition of "workers," which includes anyone who has entered into or works under a contract with an employer, whether for manual or clerical work. However, the definition also includes a number of exclusions, such as:

- People working outside the employer's establishment (e.g., agents, commercial travelers);
- Certain categories of professionals (e.g., public officers, administrative, executive, or technical workers);
- Members of an employer's family;
- Workers in merchant shipping or civil aviation industries.

While the Act offers a definition, as noted by scholars like Erugo, it does not adequately address the various nuances of employment relationships, especially in modern work contexts. The term "worker" is too broad and needs to be clarified to distinguish between employees, independent contractors, and other types of labor arrangements. As Muhi points out, the distinction between an employee and an independent contractor is crucial for understanding rights and obligations within the employer-employee relationship.

2.1.2 Lack of Comprehensive Coverage for Modern Work

In the contemporary labour market, various types of work—such as light labour, professional services, and freelance work—are not sufficiently covered by the Labour Act. For example, professionals like doctors, engineers, or lawyers, who have specialized skills and operate with minimal supervision, are not fully captured by the traditional "control test" used to determine employee status. This test, which evaluates the extent of control an employer has over the manner in which work is performed, is increasingly outdated.

In the case of Cassidy v. Ministry of Health, Lord Somerwell observed that the control test does not apply universally, highlighting the fact that modern work relationships often do not conform to the traditional master-servant model. This creates a legal ambiguity, as it becomes difficult to determine whether a person is an employee or an independent contractor.

2.1.3 Public Sector Employment and Employment Rights

The Labour Act also has limitations when it comes to public sector employees. While it excludes certain public officers from its definition of "worker," subsequent judicial rulings, such as Shitta-Bay v. Federal Public Service Commission and Olaniyan v. University of Lagos, have clarified that employment in the public service, though statutory, must adhere to due process when it comes to termination. The strict

common law application of the master-servant principle is not absolute, and public employees have specific protections under Nigerian law that ensure fair treatment in employment matters.

3. Employees Compensation Act 2010

Furthermore, the ECA clearly stated the procedure and time within which to give notification in case of injury as well as expanded the definition of liability to include injuries and death occurring in the workplace and out of and in the course of employment. Equally casual workers, domestic workers and some workers of government agencies who were hitherto excluded in some legislations are included as employee. Furthermore, the Act did not provide for payment of compensation resulting from the fault of an employer's agent(s) that is the issue of vicarious liability because it is a settled law and an accepted exception to the principle of no liability without direct personal fault.[21]

Although, this run parallel to the principle of Common Law which insist that a person should only be held liable for losses or damages or injuries caused by his or her own wrongful acts and that liability should be fault attached meaning that there should be no liability without a fault.[22] However, the position of the law and practice in Nigeria is that the concept of vicarious liability remains a part and parcel of the Nigerian common law and one of the several indicators of an employer and employee relationship.[23] Unfortunately, the ECA appear to have taken what it gave with the right hand back with the left hand because of the complicated process involved in determining and laying liability on the employer as provided in Section 9(4)(a) and (b).[24]

The objectives of the Act are to:

(a) provide for an open and fair system of guaranteed and adequate compensation for all employees or their dependents for any death, injury, disease or disability arising out of or in the course of employment;
(b) provide rehabilitation to employees with work-related disabilities as provided in this Act;
(c) establish and maintain a solvent compensation fund managed in the interest of employees and employers;
(d) provide for fair and adequate assessments for employers;
(e) provide an appeal procedure that is simple, fair and accessible, with minimal delays; and
(f) combine efforts and resources of relevant stakeholders for the prevention of workplace disabilities, including the enforcement of occupational safety and health standards.

[21] C D Drake, *Labour Law* (Sweet and Maxwell 1973) 81.
[22] F S Atiyah, *Vicarious Liability in the Law of Tort* (Butterworth's 1967).
[23] I N E Worugji. '*Modern Labour Law in Nigeria'* (1st edn, Malthouse Press Ltd 2021) 227; *R O Iyere V Bendel Feed Flour Mills Ltd* (2008) 18 NWLR (Pt. 1119) 30
[24] ECA s 9(4)(a).

The ECA substantially reflect the sentiment of International legal regimes in particular ILO Recommendation that deals with issues of employees' compensation. It clearly divorces itself from the inadequacies associated with the Common Law provision which placed so much burden of proof on the employee in order to succeed in a claim of damage against the employer fix injuries sustained, occupational diseases acquired, or disability suffered arising out of and in the cause of employment. The Act has made the claim to be against a fund and not the employer whose mandate is to contribute; it also stipulated amount payable for the various types or categories of injuries as well as established a Board to manage the fund.[25] The ECA also entrenched the "No fault" principle which hitherto limited the capacity of the employee or their dependent to claim compensation for injuries suffered at the work place.

In fact, this new provision makes the issue of who was at fault a no issue in particular the principle of violent non fit injuries and contributory negligence.[26] This is because before the enactment of the ECA employees and their dependents sometimes have a long walk to compensation as some claimants only get compensation after the matter has been determined by the Supreme Court especially where it involves a very uncooperative employer. This also resulted in compensation neurosis. Again, with the provision of sections 4, 5 and 8 of the ECA the Nigerian Social Insurance Trust Fund Board has the power to determine claims.[27] And with the third alteration that made appeals now lies with the National Industrial Court (NIC) Ibis has saved employees the strenuous and slippery sloppy walk to the Supreme Court before the settlement of their compensation claims.[28]

As recommended and acknowledged by Okene, complying and observing the new procedures specified in the ECA are very crucial to the payment and receipt of compensation. [29] However, the ECA is not entirely infallible as there are some lacunas and challenges to the full realization of the benefits of the Act and employee compensation. For instance, the ECA in section 260) made the additional medical and non-medical support that an injured employee may receive optional and at the discretion of the Board.[30] This is provision could be exploited to deny genuine employees who need extra support for injuries suffered at workplace the privilege and leave them to their own fate.

3.1. The Employees Compensation Act 2010: A Step Forward

In contrast to the Labour Act, the **Employees Compensation Act 2010** (ECA) offers more comprehensive protection for workers in Nigeria, particularly in the area of workplace injuries and compensation. The ECA aligns with international standards, particularly the **International Labour Organization (ILO)**'s

[25] O D Amucheazi, *Employees Compensation Under Nigerian Labour Law* (1st edn, Kraft Books Ltd 2019) 31.
[26] Amucheazi (n23) 23-24.
[27] Employees' Compensation Act 2010 ss 4, 5 & 8
[28] Constitution of the Federal Republic of Nigeria 1999 (as amended) Third Alterations 254.
[29] O V C Okene, *Labour Law in Nigeria* (3rd edn, Claxton and Derrick Publications, 2010) 159.
[30] Employees' Compensation Act 2010 s 26.

recommendations on employee compensation, and addresses several issues that the Labour Act does not adequately cover.

3.1.1. Inclusion of Casual and Domestic Workers

One of the key advantages of the ECA is its inclusion of casual and domestic workers, as well as some government employees who were previously excluded from similar protections. The Act guarantees compensation for employees suffering from injuries, diseases, or disabilities incurred in the course of employment, regardless of fault. This "no fault" principle marks a significant departure from the common law principle, which places the burden of proof on the employee to establish fault before compensation can be awarded.

3.1.2. Procedure and Access to Compensation

The ECA establishes clear procedures for compensation claims and ensures that employees or their dependents can seek redress without having to prove the fault of the employer. Prior to the ECA, employees had to endure lengthy legal battles, often involving extensive evidence gathering, before receiving compensation for workplace injuries. The ECA simplifies the process by allowing claims to be made directly against a fund rather than the employer, thus easing the burden on employees.

Additionally, the establishment of the Nigeria Social Insurance Trust Fund (NSITF) Board to manage compensation claims and the subsequent appeals process at the National Industrial Court (NIC) has streamlined the claims process, reducing the time and complexity involved in seeking justice.

3.1.3. Comprehensive Coverage for Injuries and Disabilities

The ECA extends coverage to a wide range of injuries, including occupational diseases, and provides rehabilitation for employees with work-related disabilities. This is a significant improvement over the previous system, which often failed to offer adequate compensation or support to employees who were unable to work due to workplace injuries.

3.1.4. Limitations of the Employees Compensation Act

Despite its many strengths, the ECA has its own challenges. For example, Section 26 of the ECA makes additional medical support optional, leaving employees who suffer from severe injuries without guaranteed access to necessary medical care. This discretion could be exploited by the Board, leading to potential denial of support for those who need it most.

Moreover, the ECA’s complexity in determining liability - especially in cases involving multiple parties - can still cause delays and frustration for employees seeking compensation.

4. Conclusion: Bridging the Gaps in Labour Law

Both the Labour Act 2004 and the Employees Compensation Act 2010 play essential roles in regulating employment relationships and ensuring the welfare of workers in Nigeria. However, there remain

significant gaps in both pieces of legislation. The Labour Act's outdated definitions and exclusions leave many workers without adequate legal protection, while the ECA, though progressive, faces challenges in implementation, particularly with regard to medical support and the complexity of the claims process.

To achieve a more effective and equitable labour law framework, further reforms are necessary. This may include refining the definition of "worker" to cover emerging forms of employment and ensuring that all workers—regardless of their status—have access to comprehensive benefits. Additionally, streamlining the compensation claims process and ensuring full access to medical and rehabilitation support for injured workers could make the ECA a more robust tool for safeguarding employee welfare in Nigeria.

5. Recommendations:

1. Revise the Labour Act to include clearer definitions of key terms such as "employee" and "worker" to reflect contemporary work environments.
2. Amend the ECA to ensure that all workers, including casual workers, have guaranteed access to medical and rehabilitation support, and streamline the claims process to avoid delays.
3. Strengthen enforcement mechanisms to ensure compliance with occupational safety and health standards, reducing the incidence of workplace injuries and diseases.

Ultimately, a more inclusive and responsive legal framework will better serve both employees and employers, fostering a more harmonious and productive workforce in Nigeria.