Curbing Unfair-Dismissal of Workers in Nigeria: What Lessons from other Countries?

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Abstract

The 1999 Nigerian Constitution bestows on the National Industrial Court of Nigeria (NICN) exclusive jurisdiction to hear and determine labor disputes relating to or connected with unfair labor practices, including unfair dismissal. There are, however, no general statutory rights, in explicit terms, according to workers under the Nigerian Labour Law, not to be unfairly dismissed and to claim compensation, re-instatement, and re-employment for unfair dismissal. This paper reviews the practice of unfair dismissal of workers in Nigeria. The research methodology utilized by the author is basically a doctrinal analysis of relevant primary and secondary sources. The paper finds that the unfair dismissal of workers in Nigeria is contrary to the United Nations (UN) International Labour Organisation (ILO) Termination of Employment Convention 158 of 1982 (Convention 158) as well as international human rights norms or treaties. The paper suggests that Nigeria should enact a Labour Rights Act that would accord to workers, in explicit terms, the rights not to be unfairly dismissed and to claim compensation, re-instatement, and re-employment for unfair dismissal in line with the practice in other countries, including the United Kingdom (UK) and Kenya.

Keywords: Unfair-dismissal, Unfair labor practice, 1999 Nigerian Constitution, Constitution (Third Alteration) Act 2010, Employer, Worker, Re-instatement, Re-employment, Nigeria.

1. Introduction

The general rule under the Nigerian Labour Law, governed significantly by the common-law,[1] is that an employer in a mere master and servant relationship can terminate the contract of employment with an employee of any grade or level for a good or bad reason or no reason at all and contrary to the terms and conditions of the employee's contract of employment or the right to a fair hearing, guaranteed under the common-law and the Nigerian Constitution.[2] All the employee is entitled to damages for wrongful dismissal. The damages are the amount he would have earned over the period of a proper notice to terminate the contract of employment or the amount payable in lieu of a proper notice to terminate the same.[3]

The motive of the employer in terminating the contract of employment with the employee by giving a notice of termination is not relevant.[4] Motive is a reason for doing something.[5] Put differently, the motive is the hidden or real reason which made a party terminate the contract of employment.

Oftentimes, the employer decides to terminate his employee's appointment by giving notice of termination because of some hidden reasons, such as the active involvement of the employee in trade union activities. Where such is the real reason why the employee's appointment was terminated, it can be said to be a case of unfair dismissal for which the court should intervene to invalidate such a termination of employment.[6] It is an open secret that many Nigerian workers have been victims of unfair dismissal, due to their participation in union activities. A good case is that of *COB Eche v State Education Commission and Another,*[7] where the plaintiff was dismissed from the Anambra State Public Service on the ground that he took part in a strike by teachers in the State.

It is disappointing that the Nigerian Labour Law does not provide, in explicit terms, for general statutory rights of an employee not to be unfairly dismissed and to claim compensation, re-instatement, and re-employment for unfair dismissal as well as the circumstances where dismissal may be considered to be unfair. The National Assembly of Nigeria (NAN) is to blame for this, as none of its enactments, including the Constitution of the Federal Republic of Nigeria 1999 (1999 Nigerian Constitution),[8] as amended provides for general statutory rights of an employee not to be unfairly dismissed and to claim compensation, re-instatement, and re-employment for unfair dismissal as well as circumstances where dismissal may be considered unfair. These are the gaps this paper or research aims to address. Put in other words, the gaps

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1 By virtue of being colonised by Britain, Nigeria received English Law made-up of: (i) the statute of general application in force in England on 1 January 1900; (ii) the doctrines of equity; and (iii) the common-law of England. See s 32(1) of the Interpretation Act Cap 192 Laws of the Federation of Nigeria (LFN) 1990 (now Cap 123 LFN 2004).

2 See *Samson Babatunde Olarewaju v Afribank Nigeria Public Limited Company* [2001] 13 NWLR (Pt. 731) 691, 695 – 97, Supreme Court (SC), Nigeria.

3 See *Abalogu v Shell Petroleum Development Company of Nigeria Ltd* [2001] FWLR (Pt. 66) 662, SC, Nigeria.

4 See *Calabar Cement Company Ltd v Daniel* [1997] 14 NWLR (Pt. 188) 750, 758, Court of Appeal (CA), Nigeria and *Ben Chukwuma v Shell Petroleum Development Company of Nigeria Ltd* [1993] 4 NWLR (Pt. 289) 512, SC, Nigeria.

5 P Phillips et al (ed), AS Hornsby's Oxford Advanced Learner's Dictionary: International Students Edition (Oxford: 8th edn, Oxford University Press 2010) 963.

6 AE Abuza, *General Principles of Nigerian Labour Law: Law of Contract of Employment (*vol. 1) (Eku: Justice and Peace Printers and Publishers 2018) 91-92.

7 [1983]1 FNR 386, 391, High Court (HC), Nigeria.

8 Cap C 23 LFN 2004.

above constitute the rationale behind conducting this research. A point to make is that these *lacunae* in Nigeria's laws would not augur well for the system of administration of justice in the industrial sub-sector of Nigeria's political economy, as it is prone to abuse as has been the case, for example, since the coming into force of the 1999 Nigerian Constitution. The case of *Godwin Okosi Omoudu v Aize Obayan and Another*[9] is a typical example. In the case, the second defendant-university terminated the claimant's appointment, in breach of the contract of employment between the parties, as he was not paid one month's salary in lieu of notice before or contemporaneously with the termination as enunciated under the said contract of employment and for an unfounded reason.

Needless to mention the planned five-day warning strike by the Nigeria Labour Congress (NLC) as well as Trade Union Congress (TUC) and their affiliates in Kaduna State between 16 and 19 May 2021 to reverse the termination of the employment of over 7, 000 civil servants in Kaduna State on the ground of redundancy without following the due process, having not given notice to the workers and their unions as well as paid severance package as encapsulated under section 20 of the Labour Act[10] 2004. This is a clear case of unfair dismissal of workers by their employer, that is the Kaduna State government.[11] The strike paralyzed the economic activities of the State for the days it lasted.[12] The strike was, however, suspended on 19 May 2021 to pave way for a reconciliatory meeting on 20 May 2021 at the instance of the Federal Government of Nigeria (FGN). At the end of the meeting, a memorandum of understanding was signed by both the State government and the NLC. Despite this agreement, the Kaduna State government continued laying-off workers in the State, as announced before the commencement of the strike.[13] This prompted the NLC to write to President Muhammadu Buhari, threatening to resume the suspended strike in Kaduna.[14] Meanwhile, Governor Nasir El-Rufai of Kaduna State, however, says there is no going back on 'right sizing' of the State's workforce.[15] According to His Excellency, over 90% of the State's Federal Allocation is currently being spent on civil servants.[16]

It is noteworthy that the unfair dismissal of workers by their employers has an adverse effect on the victims of unfair dismissal and the political economy of Nigeria. To be specific, it has led to strikes by trade unions whose members had been unfairly dismissed by the employers of the same as well as Federations of trade unions to which the trade unions, whose members had been unfairly dismissed by the employers of the same, belonged. A typical example is the case of unfair dismissal of workers by the Kaduna State government. As disclosed already, the strike by the NLC and TUC as well as their affiliates in Kaduna State between 16 and 19 May 2021 to reverse the termination of the employment of over 7,000 civil servants in Kaduna State on account of redundancy without following the due process, having not given notice to the workers and their unions as well as paid severance package contrary to section 20 of the Labour Act 2004 paralyzed economic activities of the State for the days it lasted. A lot of people are

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9 (Unreported) Suit No. NICN/AB/03/2012, Judgment of Adejumo J of the NICN, Lagos delivered on 8 October 2014.

10 Cap L 1 LFN 2004.

11 'NLC may escalate Kaduna Strike to National Industrial Action' <https://m.guardian.ng>appointments> accessed 26 July 2021.

12 'NLC writes Buhari, threatens to resume suspended strike in Kaduna' <https://www.preminmtimes.ng> accessed 25 July 2021.

13 *Ibid.*

14 *Ibid.*

15 *Ibid.*

16 *Ibid.*

actually upset by this ugly situation. Worse still, the officials of the government whose action of unfair dismissal led to the workers' strike are not being dealt with or removed from office by the Nigerian Government.

Of course, the practice in Nigeria contrasts with the practice in other countries like the UK, Canada, Ghana, South Africa, and Kenya. In the UK, for instance, section 94(1) of the Employment Rights Act (ERA) 1996 specifically provides for the right of the employee not to be unfairly dismissed. While sections 95, 99, 100, 104A, 104C, 105(1), (3), and (7A) of the ERA 1996 contain circumstances where termination of employment can be regarded to be unfair.[17] Again, the remedies of interim relief, compensation, re-instatement, or re-engagement are available to an employee who is unfairly dismissed in the UK.[18]

A relevant question to ask at this juncture is: is the unfair dismissal of workers in Nigeria lawful? Another relevant question is: are there lessons from other countries? A further relevant question is: should there not be statutory rights, in explicit terms, accorded to Nigerian workers not to be unfairly dismissed and to claim the reliefs of compensation, re-instatement, and re-employment for unfair dismissal in line with the practice in other countries? These questions form the basis or foundation of this paper.

The purpose of this paper is to review the practice of unfair dismissal of workers in Nigeria. It gives the meaning of employee, employer, unfair dismissal, re-instatement, and re-employment or re-engagement. It gives a brief history of the practice of unfair dismissal in Nigeria. It analyses applicable laws, including the Nigerian Constitution and case law on the practice of unfair dismissal of workers under the Nigerian Labour Law. It highlights the lessons or take-away from other countries. It takes the position that the unfair dismissal of workers in Nigeria is unlawful, unconstitutional, and contrary to Convention 158 as well as international human rights norms or treaties and offers suggestions, that, if implemented, could curb the problem of unfair dismissal of workers in Nigeria.

II. Conceptual Framework

The word 'employee' is a keyword in this paper. Section 48(1) of the Trade Disputes Act 2004[19] defines a worker as:

> any employee, that is any member of the public service of the Federation or a State or any individual other than a member of any such public service who has entered into or works under a contract with an employer, whether the contract is for manual labor, clerical work or is otherwise expressed or implied, oral or in writing and whether it is a contract personally to execute any work or labor or a contract of apprenticeship.

The foregoing definition can be vilified. To be precise, it includes as a worker any person under - a contract personally to undertake any work or labor, that is an independent contractor and an apprenticeship contract. These persons cannot be regarded to be engaged under a contract of service to call them workers[20].

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17 See, also, <https://www.acas.org.uk/dismissals> accessed 7 July 2021.

18 <https://www.acas.thomsonreuters.com> accessed 7 July 2021.

19 Cap T8 LFN 2004.

20 See AE Abuza, 'Lifting of the Ban on Contracting-out of the Check-off System in Nigeria: An Analysis of the issues involved' (2013) 42(1) *The Banaras Law Journal* 61.

Anyhow, a worker, irrespective of his grade, qualifies as an employee within the meaning of a worker in the foregoing definition.

On the other hand, an 'employer', another key-word in this paper, means:

> any person who has entered into a contract 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 representative of a deceased employer[21].

The employer of a worker would include a corporate organization or an unincorporated organization, an individual, the local Government Council, the State Local Government Service Commission, and the Civil Service Commissions of both the Federal and State governments.

'Unfair-dismissal' is another keyword in this paper. It is, also, known as unfair-termination or unjust-dismissal. It is part of unfair labor practice. 'Unfair dismissal' means the termination of a contract of employment bereft of a valid reason or good cause or fair procedure or both.[22] Another keyword in this paper is 'reinstatement'. It means to go back to a person's job. Reinstatement is a remedy that is only granted in Nigeria in favor of an employee whose contract of employment is with statutory flavor or protected by statute[23]. Lastly, 're-employment' is another keyword in this paper. Re-employment or re-engagement, as it is sometimes called, means that the worker gets his job back, but starts as a new worker.

III. Brief history of the practice of unfair dismissal in Nigeria

In this segment, the discussion shows that the practice of unfair dismissal in Nigeria dates back to the period when Nigeria was under the colonial rule of Britain.

What is called Nigeria today came into existence on 1 January 1914. This followed the amalgamation of the Colony of Lagos and Protectorate of Southern Nigeria as well as the Protectorate of Northern Nigeria by Lord Fredrick Lugard, the person whom the British colonial master of Nigeria appointed the first Governor-General of the country.[24]

The author cannot state with precision how and when the unfair-dismissal practice commenced in Nigeria. Nevertheless, it is crystal clear that the practice of unfair dismissal started with the introduction of wage employment during the colonial period of Nigeria.

It is noteworthy to state that Nigeria was accorded independence from the UK on 1 October 1960. The country became a Republic in October 1963. Over the period between when Nigeria came into being and today many Nigerian workers have suffered from the practice of unfair dismissal. A typical example is that of the *Eche* case. Unfortunately, some ordinary courts in Nigeria have refused to accord the Nigerian worker the right to sue for unfair dismissals and claim reliefs such as compensation or damages, re-instatement, and re-employment for unfair dismissal. Of course, a notable case on the matter is *Samson Babatunde Olarewaju v Afribank*

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21 See s 91 of the Labour Act 2004.

22 <https://deale.co.za/unfair-dismissal-southafrica> accessed 7 July 2021.

23 *Olaniyan v University of Lagos* [1985] 2 NWLR (Pt. 9) 363, SC, Nigeria.

24 See AE Abuza, 'A Reflection on the Regulation of Strikes in Nigeria' (2016) 42 (1) *Commonwealth Law Bulletin* 6 & 21, quoted in AE Abuza, 'A Reflection on the Issues Involved in the Exercise of the Power of the Attorney-General to enter a *nolle prosequi* under the 1999 Constitution of Nigeria' (2020) 1 *Africa Journal of Comparative Constitutional Law* 85.

Public Limited Company,[25] where the Supreme Court of Nigeria held that an employer in a mere master and servant contract of employment can terminate the contract at any time and for any reason or no reason at all. The position of the apex Court in Nigeria is hinged on the common law.

The 1999 Nigerian Constitution, as amended, based on the Presidential system of government came into force on 29 May 1999, signaling the beginning of the Fourth Republic of the nation. In 2010, the 1999 Nigerian Constitution was amended by the Constitution (Third Alteration) Act (CTAA) 2010.[26] Its section 254A (1) establishes the NICN. The Court is bestowed with exclusive jurisdiction over all labor and employment-related disputes. Section 254C(1)(f) of the 1999 Nigerian Constitution, as amended by the CTAA 2010 gives the Court exclusive jurisdiction to hear and determine labor disputes, relating to or connected with unfair labor practices or international best practices in labor, employment, and industrial relation matters. It is true that unfair dismissal is not mentioned in the provisions above. Regardless, it is an open secret that unfair dismissal is part of unfair labor practice.

Notwithstanding the provisions above, the practice of unfair dismissal has continued unabated in Nigeria.

IV. Analysis of Case-law on the practice of unfair dismissal of workers under the Nigerian Labour Law

The courts in Nigeria have discussed the practice of unfair dismissal of workers in many cases. A discussion on a few selected cases would suffice in this section. One significant case is *Babatunde Ajayi v Texaco* Nigeria Limited.[27] In the case, the appellant/plaintiff was employed on 7 March 1978, as Operations Manager by the first respondent/defendant company a post which is permanent and pensionable. The second respondent/defendant was the Managing Director of the first respondent/defendant's company. While the third respondent/defendant was the General Manager of the first respondent/defendant's company. By a letter dated 1 February 1979, the second respondent/defendant directed the appellant/plaintiff to proceed on leave on the ground that his future relationship with the first respondent/defendant company was under review. By another letter dated 23 March 1979, the second respondent/defendant invited the appellant/plaintiff to see him between 2 and 4 pm on that day. When the appellant/plaintiff went to see the second respondent/defendant, he was asked in the presence of the third respondent/defendant to tender his resignation of appointment, as Operations Manager to the first respondent/defendant company. He was given up to 26 March 1979 to hand over his letter of resignation, otherwise, he would be dismissed from employment. The appellant/plaintiff refused to resign as requested by the second respondent/defendant. On his failure to resign as requested, the second and third respondents/defendants, pursuant to Exhibit D1- Employee's Handbook of the first respondent/defendant-company, terminated the employment of the appellant/plaintiff for working against the first respondent/defendant-company. Instead of giving the appellant/plaintiff one month's notice of termination or paying the same one month's salary in lieu of one month's notice of termination, the second and third respondents/defendants

25 *Olarewaju* (n 2).
26 Act No 1 of 2010.
27 [1987] 3 NWLR (Pt. 62) 577, 593, SC, Nigeria.

paid the same three months' salary in lieu of notice of termination and gave the same all his entitlements.

The appellant/plaintiff instituted a suit in the High Court of Lagos State, Lagos claiming against the respondents/defendants-(1) a declaration that:(a) the appellant/plaintiff was the Operations Manager of the first respondent/defendant-company under a contract of employment; (b) any breach of the said contract of employment between the appellant/plaintiff and the first respondent/defendant-company is illegal, invalid, ultra vires, null and void and of no effect; (2) any injunction restraining the first respondent/defendant-company by itself, its servants and/or agents or otherwise from committing a breach of the said contract of employment existing between the appellant/plaintiff and the first respondent/defendant-company or in any way interfering with the appellant/plaintiff in the performance of his duties as Operations Manager. In the alternative, the appellant/plaintiff claimed against the first respondent/defendant-company the sum of 634, 833 naira (₦) as special and general damages for anticipatory breach of contract. The appellant/plaintiff argued that in terminating his contract of employment, the second and third respondents/defendants were not acting in the interest of the first respondent/defendant company but solely for their own selfish, irrelevant, and improper motives. The trial High Court, Olanrewaju Bada J, in its judgment delivered on 2 November 1979 stated that 'in the circumstances, I cannot make the declaration sought. In so far as a declaration cannot be made, an order for an injunction, in the circumstances cannot be made. His Lordship, however, held that 'the threatened termination of the appellant/plaintiff's appointment was unlawful'. The trial High Court granted the alternative claim because the Court found the termination of the appellant/plaintiff's contract of employment malicious.

Being aggrieved by the judgment of the trial High Court, the respondents/defendants appealed to the Court of Appeal. Justice Mahmud Mohammed JCA, delivering the leading Judgment of the Court of Appeal on 18 March 1985 with which the other two Justices of the Court concurred, allowed the appeal of the respondents/defendants and set aside the decision of the trial High Court in the matter. His Lordship held that the termination of the appellant/plaintiff's contract of employment with the first respondent/defendant company was lawful, having been done under the terms and conditions in Exhibit D1.

Being dissatisfied with the judgment of the Court of Appeal, the appellant/plaintiff appealed to the Supreme Court of Nigeria. Justice Andrews Otutu Obaseki JSC, delivering the leading judgment of the Supreme Court of Nigeria on 12 September 1987 with which the other four justices of the Court concurred, dismissed the appeal of the appellant/plaintiff and affirmed the decision of the Court of Appeal. His Lordship stated thus:

> where in a contract of employment there exists a right to terminate the contract given to either party, the validity of the exercise of their right cannot be vitiated by the existence of malice or improper motive. It is not the law that motive vitiates the validity of the exercise of a right to terminate validly the employment of the employee. There must be other considerations. The exercise is totally independent of the motive that prompted the exercise.[28]

[28] See, also, *Calabar Cement Company Limited v Daniel* [1991] 4 NWLR (Pt. 188) 750, CA, Nigeria and *Fakuade v Obafemi Awolowo University Teaching Hospital Complex Management Board* [1993] 4 NWLR (Pt.291) 45, 58, SC, Nigeria.

The author takes the position that the decision of the Supreme Court of Nigeria in the *Ajayi* case is not correct and, thus, unacceptable. It is argued that a termination of employment that contains ingredients of unfairness such as being ill-motivated or as a result of improper motive or bad or invalid reason like a worker's participation in a strike is unfair or unjust and the court ought to intervene and invalidate the same. In the *Eche* case, Araka, CJ of the Anambra State High Court of Justice rightly invalidated the dismissal of the plaintiff by the Anambra State Public Service Commission on the ground of participation in a teachers' strike. The Court seemed to have taken this stance because it considered the dismissal to be ill-motivated or based on a bad or invalid reason.

Another note-worthy case in point is *Samson Babatunde Olarewaju v Afribank Public Limited Company.*[29] In the case, the appellant/plaintiff was a Deputy-Manager of the respondent/defendant company. He was suspended from work on some allegations of fraud and embezzlement of money as well as sundry allegations. He later appeared before the Senior Staff Disciplinary Committee of the respondent/defendant company which tried him of the foregoing allegations. In the end, the Committee submitted its report to the respondent/defendant company. By a letter, the appellant/plaintiff was summarily dismissed from employment. No reason for the summary dismissal was advanced by the respondent/defendant company in the letter of dismissal. The appellant/plaintiff filed a suit in the High Court of Bornu State, Maiduguri challenging his summary dismissal from employment by the respondent/defendant company. The trial High Court held that the summary dismissal was wrongful on the ground that the appellant/plaintiff was not first arraigned before a court of law to have his guilt on the offenses alleged against the same established. It declared the summary dismissal a nullity and ordered the immediate reinstatement of the appellant/plaintiff.

Being aggrieved by the judgment of the trial High Court, the respondent/defendant company appealed to the Court of Appeal which set aside the judgment and order of the trial High Court. Being dissatisfied with the judgment of the Court of Appeal, the appellant/plaintiff appealed to the Supreme Court of Nigeria. Honourable Justice Aloysius Iyorger Katsina-Alu JSC, delivering the leading judgment of the apex Court to which the other four Justices of the Court concurred, dismissed the appeal of the appellant/plaintiff. His Lordship pointed out that the appellant/plaintiff had a mere master and servant relationship with the respondent/defendant company. Justice Katsina-Alu declared that:

> In a master and servant class of employment, the master is under no obligation to give reasons for terminating the appointment of his servant. The master can terminate the contract with the servant at any time and for any reason or no reason. In the instant case, no reason was given for the dismissal of the appellant.

His Lordship held thus:

> in a pure case of master and servant, a servant's appointment can lawfully be terminated without first telling him what is alleged against him and hearing his defense or explanation. Similarly, a servant in this class of employment can lawfully be dismissed without observing the principles of natural justice.

[29] See *Olarewaju* (n 25).

Furthermore, it was held by Justice Katsina-Alu that it was not necessary under section 33 of the 1979 Nigerian Constitution (now section 36 of the 1999 Nigerian Constitution) that before an employer can summarily dismiss his employee under the common law, the employee must be arraigned and tried before a court of law where the gross misconduct borders on criminality.[30] In His Lordship's view, where the employer's Disciplinary Committee had found the employee guilty of gross misconduct bordering on criminality, the employer can either cause the same to be prosecuted in a court of law or summarily dismiss him from employment.

Lastly, Justice Katsina-Alu held as follows:

> where a master terminates the contract with the servant in a manner not warranted by the contract, he must pay damages for breach of contract. The remedy is damages. The Court cannot compel an unwilling employer to reinstate a servant he has dismissed. The exception is in the case where the employment is specially protected by statute. In such a case, the employee who is unlawfully dismissed may be reinstated to his position.

It is crystal clear from the foregoing decisions of the Supreme Court of Nigeria and the other ordinary courts in Nigeria that they are not prepared to accord an employee under a mere master and servant relationship the right to sue for unfair dismissal or to claim re-instatement or re-employment for unfair-dismissal. Their stance is hinged on the position under the common law.

The author takes the position that the decision of the Supreme Court of Nigeria in the *Olarewaju* case is not correct and, thus, unacceptable for the following reasons. First, the apex Court in the *Olarewaju* case had suggested that the master is under no obligation to give reasons for the summary dismissal of the servant. This is not correct, as in a contract of employment, whether a mere master and servant contract of employment or contract of employment protected by statute, reasons for the summary-dismissal of the servant must be advanced.[31] It should be noted that summary dismissal is predicated on the misconduct of the employee. An employer cannot summarily dismiss the servant from his job for doing no wrong. Of course, summary-dismissal goes with it a stigma and deprives the dismissed servant of benefits while the termination of a contract of employment does not carry a stigma and deprives the employee whose contract of employment is terminated of benefits. Oftentimes, a servant who is summarily dismissed from service cannot secure a job in public service for the remaining part of his life on earth. The courts, therefore, maintain that reasons for the summary-dismissal of the servant must be advanced by the master which said reasons must be justified by the master, otherwise the summary-dismissal would not be permitted to stand.[32] In addition to this, the courts of the law insist that where an employer pleads that an employee was dismissed from his job on account of specific misconduct, the dismissal cannot be justified in the absence of

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30 This view was upheld by the Court of Appeal in *BS Onwusukwu v The Civil Service Commission and Another* [2020] 10 NWLR (Pt.1731)201-202, CA, Nigeria.

31 See *Abomeli v Nigerian Railway Corporation* [1995] 1 NWLR (Pt. 372) 451-456, CA, Nigeria, quoted in AE Abuza, 'An examination of the power of removal of Secretaries of Private Companies in Nigeria' (2017) 4 (2) *Journal of Comparative Law in Africa* 50.

32 See *Johan Nunnick v Costain Blansevort Dredging Ltd* [1960] LLR 90, High Court, Nigeria, and *Ogunsanmi v CF Furniture (WA) Company Ltd* [1961] 1 ALL NLR 862, 864, HC, Nigeria, quoted in *Ibid.*, 51.

adequate opportunity being given to him to explain, justify or else defend the misconduct that is alleged.[33]

Second, the decision of the apex Court in the *Olarewaju* case is not in accord with its earlier decision in *Ewaremi v African Continental Bank Limited*,[34] where it upheld the decision of the trial High Court which ordered the reinstatement of a company-employee in a pure master and servant relationship on account that the purported dismissal of the appellant/plaintiff from the service of the respondent/defendant-company was null and void. Nigeria should borrow a leaf from other countries. For instance, in the Indian case of *Provisional Transport Services v State Industrial Court*,[35]the Supreme Court of India (per Nagpur Das Gupta J) declared that an industrial court would invalidate the dismissal of a worker and order reinstatement of the same where his dismissal was done without a fair inquiry.[36]

Third, the decision of the apex Court in the *Olarewaju* case is contrary to section 36(4) of the 1999 Nigerian Constitution, as amended. It states as follows:

> Whenever any person is charged with a criminal offense, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal.

The apex Court had in previous cases interpreted the foregoing provisions to mean that where a Nigerian is alleged to have committed an offense he must be brought before the ordinary court for trial to establish his guilt and that no administrative panel can try the same for the offense alleged against him.[37]

Arguably, the action of the apex Court in giving an employer or his disciplinary panel the option or right to try a servant who is a Nigerian on allegation of committing an offense is tantamount to a usurpation of the court's duty for the benefit of a master or his disciplinary panel and depriving a Nigerian servant the protection accorded by section 36(4) of the 1999 Constitution, as amended.[38] It is argued that no person in Nigeria should be permitted to usurp the jurisdiction and authority of the court of law in the country under any pretext or guise whatsoever.[39]

Fourth, the Supreme Court can be vilified for taking the stance in the *Olarewaju* case that a master in a mere master and servant relationship can terminate the contract of employment for any reason or no reason at all. It is contended that termination of an employment contract bereft of a valid reason is invalid or wrongful, being contrary to Convention 158. To be specific, article 4 of the Convention states that:

> The employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or

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33 See James *Avre v Nigeria Postal Service* [2014] 46 NLLR (Pt. 147) 1, 10, CA, Nigeria, quoted in *Ibid.*

34 [1978] 4 SC 99, SC, Nigeria.

35 AIR [1963] 114, 117, SC, India.

36 Quoted in Abuza (n 31) 56.

37 See *Garba v University of Maiduguri* [1986] 1 NWLR (Pt. 18) 550, SC, Nigeria and *Gregg Olusanya Sofekun v Akinyemi and Three Others* [1980] All NLR 153, 165, SC, Nigeria.

38 See Abuza (n 31).

39 *Ibid.,* 55. Good enough, the apex Court in the recent case of *Central Bank of Nigeria v Uchenna Godswill Dinneh* [2021] 15 NWLR (Pt. 1778) 91, 98, SC, Nigeria rejected the decision of Justice Katsina-Alu on s 36 above.

> conduct of the worker or based on the operational requirements of the undertaking, establishment, or service.

Articles 5 and 6 of the Convention above list matters which cannot constitute valid reasons for termination of employment. These matters are: membership of a trade union or participation in trade union activities outside working hours or with the consent of the employer within working hours; seeking office as, or acting, as having acted in the capacity of, a workers' representative, the filing of a complaint or the participation in proceedings against an employer involving alleged contravention of laws or regulations or recourse to competent administrative bodies; race, color, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin; absence from a job during maternity leave; and temporary absence from a job as a result of illness or injury.

It is argued that Convention 158 has no force of law in Nigeria and, therefore, cannot be applied by the NICN in labor dispute resolution, having not been ratified by Nigeria. As disclosed already, the NICN is the Court that has exclusive original jurisdiction over all labor and employment-related matters. It is rather worrisome that Nigeria a member of, and former member of the Governing body of, the ILO, has not ratified this Convention. The country should sign and ratify Convention 158 forthwith. As a member of the UN and ILO, it is obligated to apply Convention 158. Needless to emphasize that the nation must show respect for international law and its treaty obligations, as enjoined by section 19(d) of the 1999 Nigeria Constitution, as amended.

Lastly, the apex Court can, also, be vilified for taking the position in the *Olarewaju* case that in a mere master and servant relationship, the servant's employment can lawfully be terminated without first telling the same what is alleged against the same and hearing his defense or explanation as well as the servant in a mere master and servant relationship can lawfully be dismissed from employment without observing the rules of natural justice. This stance is certainly contrary to procedural fairness or the rules of natural justice, that is, *audi alteram partem*- meaning hear the other side of a case and *nemo judex in causa sua*- meaning a person cannot be a judge in his own cause. Procedural fairness or these rules of natural justice are enunciated under Convention 158, the common law, and section 36(1) of the 1999 Nigerian Constitution, as amended which guarantees the right to a fair hearing to all Nigerians. Thus, such dismissal from employment without adherence to procedural fairness or the rules of natural justice is void and a nullity for being inconsistent with, or contravention of, procedural fairness or the rules of natural justice or the provisions of the 1999 Nigerian Constitution, as already disclosed. To be specific, article 7 of the Convention 158 embraces the principle of a fair hearing before dismissal or termination of employment by the employer. It declares as follows:

> The employment of a worker shall not be terminated before he is provided with an opportunity to defend himself against the allegation made unless the employer cannot reasonably be expected to provide the opportunity.

A note-worthy case decided under the common law is *R v Chancellor, University of Cambridge*.[40] In the case, the University of Cambridge withdrew all the degrees it awarded in

[40] [1723] 93 English Reports (ER) 698, Court of King's Bench, the UK. See, also, *Adedeji v Police Service Commission* [1967] 1 All NLR 67, SC, Nigeria; *Eperokun v University of Lagos* [1986] 4 NWLR (Pt. 34) 162;

favor of its former student one Dr. Bentley without first hearing his explanation or defense. The Court of king's Bench declared the action of the University unlawful. It issued an order of mandamus to the University requiring the restoration of Bentley's Degrees of Bachelor of Arts and Bachelor and Doctor of Divinity of which he had been deprived by the University without a fair hearing. Fortesque, J of the Court stated that even the Almighty God adhered to the rules of natural justice, as he did not punish Adam by driving him and his wife, Eve from the Biblical Garden of Eden for disobeying the same[41]without first hearing him. It is a general principle settled by cases that the breach of statute or natural justice is a nullity.[42] Good enough, the Supreme Court of Nigeria in *Olatunbosun v NISER Council*[43] a case in point held that procedural fairness was acclaimed as a principle of divine justice with its origin in the Biblical Garden of Eden.

An important point to bear in mind is that the approach of the 1999 Nigerian Constitution, as amended, as could be discerned from its section 36(1) is in alignment with the position under international instruments. For instance, the Charter of the United Nations 1945 guarantees the right to a fair hearing. Also, the Universal Declaration of Human Rights (UDHR) 1948 guarantees the right to a fair hearing and other fundamental rights in its articles 3 to 20. Admittedly, the UDHR is a soft-law agreement and not a treaty itself and in this way not legally binding on Member-States of the UN, including Nigeria. Regardless, it has become customary international law that has been embraced globally in protecting human rights.[44]

Additionally, the African Union (AU) African Charter on Human and Peoples' Rights (ACHPR) 1981 guarantees to every person, including a worker the fundamental right to be heard in article 7. The African Charter has not only been signed and ratified by Nigeria but has equally been made a part of national law, as enjoined by the provisions of the same and section 12(1) of the 1999 Nigerian Constitution.[45] In *Sanni Abacha v Gani Fawehinmi,*[46] the apex Court in Nigeria held that since the ACHPR had been incorporated into Nigerian Law, it enjoyed a status greater than a mere international instrument and the same was part of the Nigerian body of laws.

Furthermore, the UN International Covenant on Civil and Political Rights (ICCPR) 1966 guarantees to every person, including a worker the fundamental right to a fair hearing in its article 14(1). It has been postulated that the ICCPR now has the effect of a domesticated enactment, as required under section 12(1) of the 1999 Nigerian Constitution, as amended and,

SC, Nigeria and *Bamgboye v University of Ilorin* [1999] 10 NWLR (Pt. 662) 296, 299, SC, Nigeria, quoted in Abuza (n 31).

41 See the Book of Genesis, Chapter 3, verses 11-19 of the *New World Translation of the Holy Scriptures* (New York: Watchtower Bible and Tract Society of New York, Inc., 2013) 46-47.

42 See, for example, *Adeyemi Adeniyi v Governing Council of Yaba College of Technology* [1993] 6 NWLR (Pt.300) 426, 461, SC, Nigeria and *Governor of Oyo State and Others v Oba Folayan (Akesin of Ora)* [1995] 8 NWLR (Pt. 413) 292, SC, Nigeria, quoted in Abuza (n 31) 51.

43 [1988] 3 NWLR (Pt.80) 25, SC, Nigeria, quoted in Abuza (n 31) 52.

44 See KM Danladi, 'An Examination of Problems and Challenges of Protection and Promotion of Human Rights under European Convention and African Charter' (2014) 6(1) *Port Harcourt Law Journal* 83.

45 See African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap A9 LFN 2004.

46 [2000] 6 NWLR (Pt.660) 228, 251, SC, Nigeria, quoted in AE Abuza, 'The Problem of Electoral Malpractices in the Democratic Politics of Nigeria: A Contemporary Discourse' (2019) 9(2) Gujarat National Law University (GNLU) Journal of Law, Development and Politics 57.

therefore, has the force of law in Nigeria, since the ICCPR guarantees labor rights to workers in its article 22(1) and has been ratified by the nation.[47]

Again, the Arab Charter on Human Rights (ACHR) 2004 guarantees to every person, including a worker the right to legal remedy in its article 9, and the European Convention on Human Rights (ECHR) 1953 guarantees to every person, including a worker the fundamental right to a fair and public hearing in its article 6. While the American Convention on Human Rights (AMCHR) 1969 guarantees to every person, including a worker the fundamental right to a fair hearing in article 8. It should be noted, however, that Nigeria is not obligated to apply the provisions of the ACHR, ECHR, and AMCHR above, as the country is not a member-State of the Council of the League of Arab States, Council of Europe and Organisation of American States, as well as State-Party to the ACHR, ECHR, and AMCHR.

It is wise to argue that as a member of the UN and AU as well as a State-Party to the ACHPR and ICCPR, Nigeria is obligated to apply the provisions of the Charter of the UN, ICCPR, and ACHPR. The country, in this connection, must demonstrate respect for international law as well as its treaty obligations, as enjoined by section 19(d) of the 1999 Nigerian Constitution, as amended.

Regarding the right to a fair hearing guaranteed to citizens of Nigeria under section 36(1) of the 1999 Nigerian Constitution, as amended the Nigerian Court of Appeal (per Helen Moronkeji Ogunwumiju JCA) held in *Nosa Akintola Okungbowa and Six Others v Governor of Edo State and Eight Others*,[48] that fair hearing is a constitutional and fundamental right encapsulated in the Nigerian Constitution which cannot be waived or unjustly denied to a Nigerian, including a worker, and that a breach of the same in any proceeding nullified the whole proceeding. Also, the Supreme Court of Nigeria (per Amiru Sanusi JSC) held in *James Avre v Nigeria Postal Service*[49] that the right to a fair hearing is such an important, radical, and protective right, that the courts of law put up every effort to protect the same. It even implies, according to the apex Court, that a statutory form of protection will be less effective if it does not warmly embrace the fundamental right to be heard. It went further to declare that when an employee is accused by his employer of committing any act of misconduct, he must be accorded the opportunity to explain and give his reason, if any, for committing such misconduct.

With respect to fundamental rights generally, the Nigerian Court of Appeal (per Abdu Aboki JCA) held in *Mallam Abdullah Hassan and Four Others v Economic and Financial Crimes Commission (EFCC) and Three Others*,[50] that:

> (a) fundamental rights are rights without which neither liberty nor justice would exist;
> (b) fundamental rights stood above the ordinary law of the land and in fact constituted a primary condition to civilized existence; and

47 See *Aero Contractors Company of Nigeria Limited v National Association of Aircrafts Pilots and Engineers and Two Others* [2014] 42 NLLR (Pt. 133) 64, 717, per Kanyip, Judge of the NICN and AE Abuza, 'Derogation from Fundamental Rights in Nigeria: A Contemporary Discourse' (2016) 1(1) North Eastern Hill University (NEHU) Law Journal 16.

48 [2015] 10 NWLR (Pt. 1467) 257, 268-69, CA, Nigeria. See, also: *Mohammed Sambo Dasuki v Federal Republic of Nigeria and Two Others* [2021] 9 NWLR (Pt. 1781) 249, 253, CA, Nigeria; and *Destra Investment Ltd v Federal Republic of Nigeria and Another* [2021] 6 NWLR (Pt. 1771) 57, 65, CA, Nigeria and *Sylvanus Eze v University of Jos* [2021] 2 NWLR (Pt. 1760) 208, 213, SC, Nigeria.

49 [2020] 8 NWLR (Pt. 1727) 421-422, SC, Nigeria.

50 [2014] 1 NWLR (Pt. 1389) 607, 610, CA, Nigeria, quoted in Abuza (n 31).

(c) it was the duty of the court, including the Supreme Court of Nigeria to protect these fundamental rights.

The words of the Nigerian Court of Appeal (per Obande Festus Ogbuinya JCA) in *Nigeria Security and Civil Defence Corps and Six Others v Frank Oko*[51] are apt. According to the Court:

(a) fundamental rights are rights attaching to man as a man because of his humanity;
(b) fundamental rights fell within the perimeter of species of rights and stood on top of the pyramid of laws and other positive rights;
(c) fundamental rights constituted a primary condition for a civilized existence;
(d) due to fundamental rights' kingly position in the firmament of human rights, section 46 of the 1999 Nigerian Constitution, as amended allocated to every Nigerian whose fundamental right was or had been harmed, even *quiatimet*, to approach the Federal High Court or State High Court to prosecute his complaint and obtain redress.

A noteworthy point to make is that due cognizance must be accorded to the import of the provisions of Chapter Four of the 1999 Nigerian Constitution, as amended in which section 36(1) of the 1999 Nigerian Constitution, as amended is a part. In actuality, they are sacrosanct. Should any provision require amendment, the 1999 Nigerian Constitution, as amended provides for a tedious and challenging procedure in section 9(3). The country, in this light, must apply, and show respect for, the Constitution. It is important to bear in mind that in Nigeria the provisions of the Constitution are supreme and binding on all persons as well as authorities throughout the Federal Republic of Nigeria, including the Supreme Court of Nigeria.[52]

In the final analysis, it is argued that the decision of the Supreme Court in the *Olarewaju* case on the matter is null and void. This contention is hinged on the insightful provision in section 1(3) of the 1999 Nigerian Constitution, as amended. The argument is fortified by the decision of the apex Court in *Attorney General of Abia State v Attorney-General of the Federation.*[53] Perhaps, the Justices of the Supreme Court of Nigeria would have come to a different conclusion if they had applied their minds to the foregoing points.

Good enough, the NICN seems to have departed from the old traditional or common-law position on unfair dismissal, owing to its expanded jurisdiction under the 1999 Nigerian Constitution, as amended by the CTAA 2010. To cut matters short, the NICN now has exclusive jurisdiction to hear and determine all labor and employment-related disputes, including disputes relating to or connected with unfair labor practice or dismissal[54]

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51 [2020] 10 NWLR (Pt. 1732) 314-315, CA, Nigeria.

52 See the 1999 Nigerian Constitution, s 1(1).

53 [2002] 6 NWLR (Pt. 763) 264, SC, Nigeria, quoted in AE Abuza, 'A Review of the Jurisdiction of the High Courts and National Industrial Court to hear and determine Labour Disputes Litigation in Nigeria' (2016) 3 (2) Journal of Comparative Law in Africa 157-58.

54 See the 1999 Nigerian Constitution, as amended by the CTAA 2010, s 254 C(1). See also *Musa Ismaila Maigana v Industrial Training Fund and Another* [2021] 8 NWLR (Pt. 1777) 1, 9, SC, Nigeria. Note that the NICN, also, has criminal jurisdiction, as it can exercise jurisdiction and powers in criminal cases and matters arising from any cause or matter of which jurisdiction is conferred on the same by s 254C of the Constitution

According to section 254 C (6) of the 1999 Nigerian Constitution, as amended by the CTAA 2010 an appeal shall lie from the decision of the NICN in criminal causes and matters, as stated in section 254C(5) above to the Court of Appeal as of right. Arguably, the decision of the Court of Appeal in any such criminal causes and matters shall be appealable to the Supreme Court of Nigeria.

A significant point to note is that based on the interpretation given to the provisions of section 243(2) and (3) of the 1999 Nigerian Constitution, as amended by the CTAA 2010, by the Supreme Court of Nigeria in *Skye Bank Public Limited Company v Victor Iwu,*[55] all decisions of the NICN in the exercise of its civil jurisdiction are appealable to the Court of Appeal which said Court shall be the final court on labor disputes not touching on criminal causes or matters of which jurisdiction is bestowed on the NICN by virtue of section 254 C or any other Act of the National Assembly or any other law.[56]

It is instructive to observe that the NICN considers unfair dismissal to be an unfair labor practice.[57] In line with global best practices, the Court now insists that valid reasons must be advanced by an employer in termination of the contract of employment of an employee, whether or not it is a mere master and servant relationship.[58] In short, the NICN is now prepared to declare invalid any determination of a contract of employment prompted by motive or reasons outside the recognized reasons for the termination of a contract of employment in article 4 of Convention 158 or not in line with procedural fairness or the rules of natural justice or the right to a fair hearing in alignment with the Convention 158 and other international best practices in labor, employment as well as industrial relation matters.[59] Also, it is now prepared to award appropriate remedies such as monetary compensation, reinstatement, and re-employment, whether or not the contract of employment involved is a pure master and servant relationship. To be specific, the NICN warmly embraced the principle of unfair dismissal in arriving at its decision in *Godwin Okosi Omoudu v Aize Obayan and Another.*[60] In the case, the first defendant was a Professor and Vice-chancellor of Covenant University, the second defendant. The NICN (per Adejumo J) held that the termination of the claimant's appointment by the second defendant university on 18 August 1981 was in contravention of the contract of employment between the parties and that the termination of the claimant's appointment was, also, based on an unfounded reason, as disclosed before and was, therefore, wrongful.

above or any other Act of the National Assembly or by any other law. See s 254 C(5) of the Constitution above.

55 [2017] LPELR 42595, SC, Nigeria.

56 This is consistent with the practice in other countries, including Kenya and Uganda where the Court of Appeal is the final appellate Court on labor disputes. See, for example, s 17(1) of the Employment and Labour Relations Act 2011 of Kenya and the Ugandan case of *DFCU Bank Ltd v Donnakamali,* Civil Application No. 29 of 2019 arising from Supreme Court Civil Appeal No. 1 of 2019<https://www.bownaslaw.com> accessed 25 July 2021.

57 See *Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN) v Schlumberger Anadrill Limited* [2008] 11 NLLR (Pt. 29) 164, NICN, Nigeria.

58 See CJ Chibuzor, 'The Concept of Unfair Labour Practice and its applicability in Nigeria' <https://www.patrelipartners.com/the concept-of-unfair-labour-practice-and-its-applicability-in-Nigeria/> accessed 11 July 2021.

59 Note that pursuant to s 254 C (3) of the 1999 Nigerian Constitution, as amended by the CTAA 2010 and the NICN (Civil Procedure) Rules, 2017 a judge of the NICN may refer a claim filed in the Court to the Alternative Dispute Resolution Centre within the Court premises for conciliation and mediation. But where conciliation and mediation fail, the judge shall adjudicate over the labor dispute. See NICN (Civil Procedure) Rules 2017, Order 24, Rules 1, 7 & 8.

60 See (n 9).

His Lordship stated that it can never be just where an employer bereft of just and established cause expresses doubt about the integrity of an employee and based on this expression of doubt about the integrity of the employee goes ahead to terminate his contract employment in a way that did not allow for discussion and refusal. Justice Adejumo went further to assert that the law has moved from the narrow confines of the common law in the master and servant contract of service to a more proactive approach that secures the rights of both parties to an employment contract. In this way, according to the learned Justice, the attention has shifted to the protection of employees in matters of unfair labor practices in tune with the practice of other nations.

Justice Adejumo concluded that section 254C(1) (f) of the 1999 Nigerian Constitution, as amended by the CTAA 2010 created an entirely new concept and right of unfair labor practice which is both alien to the common-law concept of master and servant relationship and the industrial relations jurisprudence hitherto- meaning before now, existing in Nigeria. According to his Lordship, it was natural and expected that if this new right was violated there must be a remedy, otherwise, the whole purpose of creating the right would be defeated. Justice Adejumo asserted further that if no specific remedy was created by the Nigerian Constitution, the NICN was duty-bound to look at the practice in other countries where the concept had been borrowed. The Court, in the view of His Lordship, was duty-bound to give section 254C (1) (f) above a broad interpretation and interpret the same as both accommodative of giving a right and imposing a remedy for its contravention.

Honorable Justice Adejumo granted the following reliefs in favor of the claimant:

(i) the termination of the claimant's employment is declared wrongful;
(ii) the claimant is awarded one-month salary in lieu of notice of termination of his contract of employment;
(iii) the claimant is awarded five months' salaries as general damages;
(iv) the claimant is awarded the costs of ₦100, 000; and
(v) the judgment sum shall attract 10% interest rate per annum, from the date of this judgment until the judgment debt is fully liquidated.

The decision of the NICN above is commendable, being in line with the practice in other countries, including South Africa, Kenya, the UK, Canada, and Ghana. Nonetheless, the Court can be criticized. Firstly, section 254C (1)(f) above does not stipulate in explicit terms the right of an employee not to be unfairly dismissed or the right not to be subjected to unfair labor practice. Secondly, section 254C (1)(f) above or any other Nigerian statutory provision does not provide for the circumstances that would amount to unfair dismissal or any remedy for unfair dismissal or unfair labor practice. Lastly, contrary to the doctrine of separation of powers, His Lordship tried to make law by substituting his own words for the words used in the Nigerian Constitution in order to give them a meaning that suits the Court. In *Abdullahi Inuwa v Governor of Gombe State and Two Others*[61], the Nigerian Court of Appeal held that it is not the function of the court to amend the Constitution.

To sum up, on the issue of analysis of case law on the practice of unfair dismissal of workers under the Nigerian labor law, it is not out of context to emphasize that the unfair dismissal of workers in Nigeria is unlawful, unconstitutional, and contrary to the Convention 158 as well as international human rights norms or treaties.

61 [2020] 5 NWLR (Pt. 1716) 32, 36-37, CA, Nigeria.

V. Practices on unfair dismissal in other countries

What is of interest in this subheading is the issue of the practices of unfair dismissal in other countries. The relevant countries with regard to the practice of unfair dismissal are discussed below:

United Kingdom

In the UK a country practicing the common law, the Parliament has intervened by enacting the ERA 1996 to provide for a right of the employee not to be unfairly dismissed,[62] circumstances where termination of employment can be regarded to be unfair,[63] remedies of interim relief, compensation, reinstatement or re-engagement[64] and employees who can sue for unfair dismissal. Regarding the latter, it should be stressed that the UK imposes limitations on the exercise of the right to file a suit for unfair dismissal. To be precise, only employees who have worked for an employer for a period of at least two years have a right to file a claim for unfair dismissal.[65] There are exceptions for those persons who are dismissed automatically and those persons who are dismissed principally for a reason connected with political opinion or affiliation.[66] Furthermore, the right to bring a complaint to an Employment Tribunal which is conferred with jurisdiction to hear and determine labor disputes, including cases of unfair dismissal is not accorded to self-employed people, independent contractors, members of the Armed forces, or Police forces, unless the dismissal is connected with health and safety or whistleblowing.[67]

VI. Observations/Findings

In this segment, the author highlights or gives the summary of observations/findings during the study as can be seen in the preceding sections.

It is glaring from the foregoing review of the practice of unfair dismissal of workers in Nigeria that some ordinary courts in Nigeria have not accorded Nigerian workers the right to sue for unfair dismissal. These courts have hinged their decisions on the position of employees in a mere master and servant relationship under the common law.

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62 See ERA 1996, s 94(1). See, also, M Suff, *Essentials of Employment Law* (London: Cavendish Publishing Ltd., 1998) 106.

63 These circumstances or invalid or bad reasons for the termination of the contract of employment include (a) where the employee is pregnant or on maternity leave; and (b) where the employee is a trade union member or representative. See <https://www.acas.org.uk/dismissals> accessed 7 July 2021. See, also, ss 95, 99, 100, 104 A, 104 C, 105(1), (3) & (7A) of the ERA 1996. For details, see S Deakin and G S Morris, *Labour Law* (Oxford: 5th edn, Hart Publishing Ltd., 2009) 429-430.

64 <https://www.acas.thomsonreuters.com>accessed 7 July 2021. See, also, CJ Carr and PJ Kay, *Employment Law* (London: Longman Group UK Ltd., 1990) 158.

65 See Carr and Kay, *Ibid*., 139.

66 <https://www.gov.ukdismiss-staff> accessed 25 July 2021.

67 *Ibid*. Note that in South Africa, Canada, Ghana, and Kenya-all countries practicing the common law, there are statutory provisions that provide for the right of a worker not to be unfairly dismissed by his employer, circumstances under which a dismissal or termination can be considered unfair and remedies such as payment of compensation, re-instatement, and re-employment for the unfair dismissal of a worker and employees who can sue for unfair dismissal. See, for example, South African Labour Rights Act1995, ss 2, 185, 187(1) &<https://www.labourguide.co.za/discipline-dismissal/712-unfair-dismissals> accessed 10 July 2021; the Canadian Labour Code Act 1985, s 240(1) & 'No 15-Adjudication of unjust dismissal complaints' <http://www.crib.ccri.ca<site>eng> accessed 19 July 2021; Ghana's Labour Act 2003, ss 63(1) – 4, 64 & 66; and the Kenyan Employment Act 2007, ss. 35(4)(a), 45(3), 46(a)-(i) & 49.

It is observable that the unfair dismissal of workers in Nigeria is unlawful and contrary to, among other international laws, Convention 158.

Also, it is observable that section 254C (1)(f) of the 1999 Nigerian Constitution, as amended by the CTAA 2010 gives the NICN exclusive jurisdiction to hear and determine claims on unfair labor practice, including unfair-dismissal. Regrettably, neither the Constitution above nor any other enactment in Nigeria provides for general statutory rights of an employee not to be unfairly dismissed by the employer and reliefs such as re-instatement, re-employment, and compensation for unfair dismissal as well as circumstances where a termination of employment of an employee would be considered an unfair dismissal. Thus, the problem of unfair dismissal of workers in Nigeria has continued unabated. A typical example is the *Omoudu* case.

Again, it is observable that the Parliament in the UK, South Africa, Canada, Ghana, and Kenya have intervened to give recognition to the right of workers to sue for unfair dismissal and claim reliefs, including re-employment for unfair dismissal, as disclosed before. These developments are certainly commendable. They are consistent with international law.

The problem of unfair-dismissal of workers in Nigeria must be accorded the highest consideration it deserves by the FGN under the headship of President Buhari so that it is not accused of pretending on the issue of vesting in the NICN exclusive jurisdiction over labor disputes relating to unfair labor practices, including unfair-dismissal. A continuation of the problem of unfair dismissal of workers in the country poses a grave danger to the industrial sub-sector of Nigeria's political economy. It is already engendering industrial disharmony with the capacity to stop economic growth and development. The author wishes to re-call the five-day warning strike by the NLC and TUC as well as their affiliates in Kaduna State, as disclosed before. Incessant strike by workers has the capacity to impact negatively on the economy of Nigeria. This would undoubtedly discourage both local and international businessmen from investing their resources in the economy of Nigeria. Thus, President Buhari may not be able to accomplish totally the 'Change Agenda' of the FGN for the all-around socio-economic development of the nation.

VII. Recommendations

The problem of unfair dismissal of workers in Nigeria should be effectively addressed in Nigeria. In order to overcome the problem, the author strongly recommends that Nigeria should enact a new law to be known as the 'Labour Rights Act' to provide for a right not to be unfairly dismissed and the right to seek relief of re-instatement, re-employment, and compensation for unfair dismissal as well as circumstances where termination of employment would be considered an unfair dismissal. A law on unfair dismissal such as the proposed 'Labour Rights Act' would take care of the problem above and give some protection to workers who may otherwise be rounded out of employment on account of their union activities and other invalid reasons for the termination of employment.[68] The recommendation above is a novelty or new recommendation in the paper, geared towards curbing unfair dismissal in the current situation in Nigeria, as it is not contained in the existing literature on labor rights protection in Nigeria consulted by the author and therefore addresses a gap in the same. It is significant to bear in mind that the unfair dismissal of workers is being undertaken in Nigeria by some employers for invalid or bad reasons. Some employers actually terminate the employment of their workers on account of their active involvement in trade union activities. This is

[68] O. Ogunniyi, *Nigerian Labour and Employment Law in Perspective* (Lagos: Folio Publishers 1991) 326

unacceptable, as it is not in tune with Convention 158. The author wishes to recall the provisions of Article 4 of Convention 158, as disclosed before.

Articles 5 and 6 of Convention 158 list matters which cannot constitute valid reasons for termination of employment including membership of a trade union or participation in trade union activities outside working hours or with the consent of the employer within working hours.

Also, the termination of the employment of a worker on account of his active involvement in trade union activities is contrary to section 12(4) of the Trade Unions Act[69] 2004, as amended by the Trade Unions (Amendment) Act[70] 2005 which provides that membership of a trade union is voluntary and no employee shall be victimized for refusing to join or remain a member of a trade union. Needless to recall that in the *Eche* case, Araka, CJ of the Anambra State High Court of Justice invalidated the dismissal of the plaintiff by the Anambra State Public Service Commission on the ground of participation in a teachers' strike. It is argued that the court took the position because it considered the dismissal to be ill-motivated or based on a bad or invalid reason.

Furthermore, it should be re-iterated that the unfair dismissal of workers may also conflict with the right to procedural fairness or the rules of natural justice, or the right to a fair hearing guaranteed under the common law, Article 9 of the ACHR, Article 7 of the ACHPR, Article 14 (1) of the ICCPR, Article 6 of the ECHR, Article 8 of the AMCHR, Article 3 of the UDHR, Article 7 of the Convention 158 and section 36(1) of the 1999 Nigerian Constitution, as amended.

The author wishes to re-iterate the provisions of Article 7 of Convention 158, as disclosed before. As a member of the UN and AU as well as a State Party to the ICCPR and ACHPR, Nigeria is obligated to apply the provisions of the ICCPR and ACHPR.

Also, Nigeria should sign and ratify Convention 158 forthwith, as disclosed before. The country, being a member of the UN and ILO, is obligated to apply Convention 158. It needs to be reiterated that the nation must show respect for international law and its treaty obligations, as enjoined by section 19 (d) of the 1999 Nigerian Constitution, as amended.

With respect to section 36(1) of the 1999 Nigerian Constitution, as amended, it has been disclosed before that the Nigerian Court of Appeal (per Helen Moronkeji Ogunwumiju JCA) held in the *Okungbowa* case that fair hearing is a constitutional and a fundamental right guaranteed under the Nigerian Constitution which cannot be waived or unjustly denied to a Nigerian, including a worker, and that a breach of the same in any proceeding nullified the whole proceeding[71].

Of course, due cognizance must be given to the import of Chapter Four provisions of the 1999 Nigerian Constitution, as amended in which section 36(1) of the 1999 Nigerian Constitution, as amended is a part. They are indeed sacrosanct. Little wonder section 9(3) of the 1999 Nigerian Constitution, as amended provides for a tedious and challenging procedure for their amendment. The nation is obligated to apply, and show respect for, the Constitution. It should be stressed that section 1(1) of the 1999 Nigerian Constitution, as amended declares the

69 Cap. T 14 LFN 2004.

70 No. 17 of 2005.

71 See, also, *Eyitayo Olayinka Jegede and Another v Independent National Electoral Commission and Three Others* [2021] 14 NWLR (Pt. 1797) 409, 443, SC, Nigeria.

Constitution above to be supreme and its provisions to have a binding effect on all authorities and persons, including the employer of a worker throughout the Federal Republic of Nigeria.[72]

The recommendation above is consistent with the approach in other countries, including the UK, South Africa, Canada, Ghana, and Kenya where the Parliament has intervened to accord workers a right not to be unfairly dismissed, a right to claim reliefs, including re-employment for unfair-dismissal and state the circumstance where a termination of employment of an employee could be considered an unfair-dismissal, as disclosed before. Of course, the approach in these countries is consistent with the UN Charter, UDHR, ACHR, ICCPR, ACHPR, ECHR, AMCHR, Convention 158, and other international human rights norms or treaties.

The law's approach to the servant and master relationship has changed dramatically. Workers are no longer considered slaves or properties of their employers. They have been granted labor rights, including the right to a fair hearing, the right not to be held in slavery or servitude and be required to perform compulsory or forced labor, the right to freedom of association, including the right to join a trade union for the protection of workers' interest, right to collective bargaining and right not to be unfairly dismissed under international law and municipal laws[73]. With the *Eche* and *Provisional Transport Services* cases as well as other countries of the world guaranteeing the right of the employee not to be unfairly dismissed, the dissipation and later extermination of the menace of unfair dismissal are feasible and, indeed, inevitable. Nigeria cannot fold its arms and do nothing serious on the matter. The country, in this light, must adopt positive measures to identify strongly with the international law-motivated efforts in these countries where unfair dismissal has become unlawful.

In the final analysis, it is postulated that unfair dismissal is not in the best interest of the worker, as the same is thrown out of employment unjustly. Section 17(3)(a) of the 1999 Nigerian Constitution, as amended guarantees the rights to adequate means of livelihood and suitable employment to all Nigerians, including workers. A plausible argument to advance is that employment ought to be regarded as a fundamental right so that where an employment contract is breached by an employer, whether or not in a mere master and servant relationship, for example, if he did not give to the employee fair hearing or follow the agreed or fair procedure in terminating the employment contract the appropriate remedy ought to be reinstatement. The judgment of Adolphus Godwin Karibi-Whyte, JSC in *Olaniyan v University of Lagos*[74] is very apt. His lordship declared that the law has reached the stage where the principle to be warmly embraced is that the right to a job is analogous to a right to property. According to the learned Justice Karibi-Whyte, where a man was entitled to a particular job reinstatement of the man to his job was the only just remedy where the termination of his employment was invalid.

Additionally, both the 1999 Nigerian Constitution, as amended, and the AU Convention on Preventing and Combating Corruption (AUCPCC) 2003 frown against corruption and abuse of power in the public and private sectors of the economy.[75] It is crystal clear that the unfair

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72 The supremacy of the Nigerian Constitution was upheld in *Iboyi Kelly v Federal Republic of Nigeria (2020) 14 NWLR (Pt. 1745) 479, 492, CA, Nigeria and Uyo Local Government v Akwa Ibom State Government and Another (2021) 11 NWLR (Pt. 1786) 1, 13, CA, Nigeria.*

73 See, for example, the UN ILO Declaration on Fundamental Principles and Rights at Work 1998, 'About the Declaration-ILO' <https://www.ilo.org>lang. en> accessed 6 July 2021, s 94(1) of the UK ERA 1996 and ss 33, 34(1) & 40 of the 1999 Nigerian Constitution, as amended.

74 (n 23), quoted in Abuza (n 31).

75 See, for example, the 1999 Nigerian Constitution, as amended, s 15(5) and AUCPCC 2003, art 3 (5).

dismissal of a worker is tantamount to corruption[76] and abuse of power. The emphasis is placed on the right of a worker not to be unfairly dismissed should be perceived, however, not as one seeking to accomplish the propagation of a labor right of workers as an end itself but rather as a means of assuring the economic prosperity of the entire citizenry or mankind. It is not for mere sloganeering that the motto of the NLC a Federation of trade unions of workers in Nigeria is 'Labour creates wealth'. To cut matters short, it is labor that creates the wealth of Nigeria and, indeed, any other country.

The author is of the view that the recommendation above if implemented, could effectively curb the problem of unfair dismissal of workers in Nigeria.

VIII. Conclusion

This paper has reviewed the practice of unfair dismissal of workers in Nigeria. It identified shortcomings in the various applicable laws and stated clearly that the practice of unfair dismissal of workers in Nigeria is unlawful, unconstitutional, and contrary to international human rights norms or treaties as well as Convention 158. This paper, also, highlighted lessons or take away from other countries and made suggestions and recommendations, which, if carried out, could effectively address or end the problem of unfair-dismissal of workers in Nigeria.

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[76] Note that President Buhari identifies corruption as the basic reason for the prevalence of poverty in Nigeria. See Vanguard (Lagos 14 September 2015) 7, quoted in AE Abuza, 'A reflection on the Law and Policy on Curbing Desertification in Nigeria' (2016) 6(2) GNLU *Journal of Law, Development and Politics 143*.