Digital Disruption of the Workplace

– Legal Issues on Artificial Intelligence, Robotics and Automated Systems (AIRAS) in Nigeria

Thought Leadership | **By Chuks Okoriekwe** (*Originally published in BD Legal Business, 26. 04. 2018, p.25*)

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Introduction

Digitization is reshaping the workplace globally, and with even more untold potential vide Artificial Intelligence (AI), Robotics and Automated Systems (AS) (collectively, AIRAS). PwC's *Nigeria Fintech Survey,* (2017), highlighted digital disruption in the Financial Services Industry (FSI) with innovation and diverse products. According to the report, up to 40% and 30% of Banking and Payment Business and in Insurance, Asset and Investment Management respectively, would be at risk by 2020.

Business owners in their bid for greater efficiency through reduced overheads, often invest in technology infrastructure (AIRAS) which also help with managing customer experience. One direct fall out is the likelihood of many redundant employees, thereby leading to massive job losses. Recently in Saudi Arabia, *Sophia,* a robot, was granted citizenship (*Independent UK, 26th October, 2017*). Thus issues around the usage and limitation of AIRAS, has thrown up numerous questions begging for answers.

For instance, *what is the status of Sophia? Would 'she' be qualified for remuneration, pensions and other entitlement as a worker?* These similar questions may be asked for example, in respect of the recent introduction of 'Leo' (virtual banker) by UBA, 'Ada' (Chatbot) by Diamond Bank Plc and ALAT - a 'full-fledged' digital bank by Wema Bank Plc.

This article thus seeks to examine legal implications of adopting AIRAS in Nigeria's workplace.

Nigeria's Workplace: How Prepared for Digital Disruption?

Employment relationship in Nigeria is governed by contract and also labour laws, particularly ***Labour Act (LA), Cap. L1 LFN, 2004, Trade Unions Act, Cap. T14, LFN, 2004, Trade Dispute Act, Cap. T8, LFN, 2004, Employee's Compensation Act (ECA) Cap. E7A, LFN, 2004, Pension Reform Act No. 64, 2014,*** amongst others. These laws regulate employment, trade association, compensation upon injury and pension contribution responsibility in employment contracts.

Accordingly, ***section 91 LA*** defined a worker 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 service or contract personally to execute any work or labour…."* On its part, ***section 73 ECA*** defined an employee to mean *"a **person** employed by an employer under oral or written contract of employment whether on a continuous, part-time, temporary, apprenticeship or casual basis and includes a domestic servant who is not a member of the family of the employer including any person employed in the Federal, State and Local Governments, and any of the government agencies and in the formal and informal sectors of the economy."*

The above definitions presupposes that, an 'employee' must be a natural person, not even an artificial person created pursuant to statute like a company under the ***Companies and Allied Matters Act (CAMA) Cap. C20 LFN, 2004.*** This is despite the provision of ***section 38(1) CAMA*** that: *"….every company shall, for the furtherance of its authorised business or objects, **have all the powers of a natural person of full capacity**."* And according to *Salmond on Jurisprudence (11th edn. (by Glanville Williams) 1957, at page 351), '…a person is any being whom the law regards as capable of rights and duties….'* We must agree that in the aforementioned statutory employment context, only natural persons come within scope. One can therefore posit that AIRAS are unknown to law as persons. Consequently, AIRAS utilised in the production of goods and services cannot be validly classified as employees or workers under Nigerian labour laws. Their usage would be exempted from compliance with all forms of labour laws.

Illustratively, Guaranty Trust Bank Plc (GTB) introduced Electronic Banking Centres

(EBC), utilising only Automated Teller Machines (ATMs) with few support staff to ensure operational efficiency. Presumably the EBC model translates to optimised operations *vide* lower salary overheads because of reduced personnel count. Should GTB consider increasing the number of its EBCs (although this also implicates capital expenditure cost of acquisition and installation of ATMs and allied infrastructure), there is a high possibility of increased staff redundancies. This has been the trend with the banking sector which, according to the Nigeria Bureau of Statistics (NBS), has witnessed the most retrenchment in recent times in Nigeria due to introduction of new technology (NBS, *Selected Banking Sector Data: Sectorial Breakdown of Credit, ePayment Channels and Staff Strength Report, 2017).*

Another issue worthy of consideration is whether AIRAS can disrupt regulated professions such as legal, medical and pharmaceutical practices in Nigeria. Undoubtedly, a combined reading of ***sections 2*** and ***24 Legal Practitioners Act, Cap. L11 LFN, 2004*** restricts legal practice (as barrister and solicitor) in Nigeria to only those: whose names are on the roll; entitled to practice by virtue of their offices; and who are permitted by the Chief Justice of Nigeria to practice for the purpose of a particular proceeding in court. This was the crux in ***Awolowo v. Sarki (1962) LLR 177*** where the Court recognised the restriction placed on the rights of Nigerians to be represented by counsel of their choice, to only counsel eligible to practice in Nigeria. Similarly, under ***section 8, Medical and Dental Practitioners Act, Cap. M8 LFN, 2004*** *"a person shall be entitled to be fully registered as a medical practitioner or as a dental surgeon if – he has attended a course of training approved by the Council...; the course was conducted at an institution so approved...; he holds a qualification so approved; and holds a certificate of experience..."*

One can presume that AIRAS do not have a place in the practice of these professions in Nigeria. However, the reality dictates otherwise. In some advanced jurisdictions, the legal profession has been under attack, warding off threats from AI systems built to determine outcome of cases using specially built legal algorithms, as well as prepare standard contracts thereby eliminating the 'need' or reducing billing hours of conventional lawyers. This trend has also showed up in medical practice with the introduction of machine learning in predictive medicine which utilizes analytics on patient's data to proffer a medical solution.

One question worth asking is, *who bears the legal liability in cases of third party mishap by AIRAS?* Would it be the software developer or user? Attempts have been made in various jurisdictions including the European Union (EU) to identify liability of robots.

According to ***paragraph AD, European Parliament Resolution of 16 February, 2017 with recommendations to the Commission on Civil Law Rules on Robotics (2015/2103(INL))***: *"whereas under the current legal framework robots cannot be held liable per se for acts or omissions that cause damage to third parties; whereas the existing rules on liability cover cases where the cause of the robot's act or omission can be traced back to a specific human agent such as the manufacturer, the operator, the owner or the user and where that agent could have foreseen and avoided the robot's harmful behaviour; whereas, in addition, manufacturers, operators, owners or users could be held strictly liable for acts or omissions of a robot."*

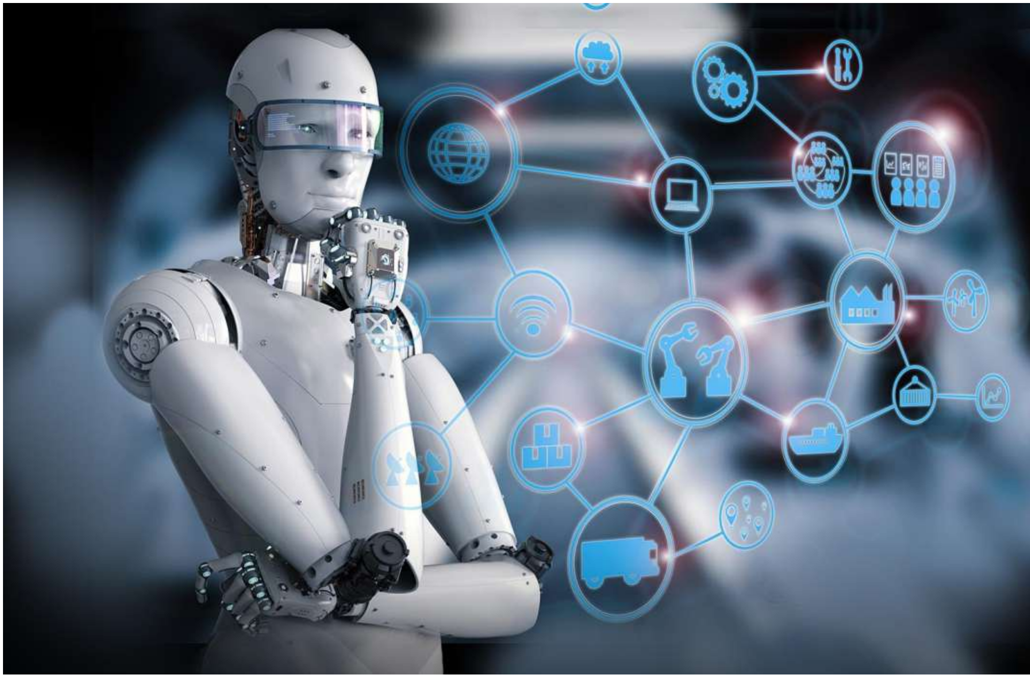
In other jurisdictions including Nigeria, the position of the law remains cloudy – it could therefore be rightly presumed that developers of AIRAS may be directly liable under 'product defect' where their product causes harm to third parties. For AIRAS to be legally liable for acts done by it, the law would have to confer on it a 'legal status' say, *electronic person* with its attendant rights and liabilities.

Although it is factual that introducing AIRAS, could lead to profit enhancement, government could be at the receiving end *vide* less tax revenue from employee taxes and other personnel related payments like Industrial Training Fund (ITF) contributions, etc. On the flip side, arguably, increased profits means increased companies income tax liability and payments to the Revenue. It is however noteworthy that this could be moderated by astute companies tax planning efforts.

Considering the long term nature of capital investments in AIRAS, what would be the tax treatment of adoption of this innovation in businesses in Nigeria? Essentially, these would be subject to capital allowances and investment allowance (the latter as a form of incentive) under ***section 31(1), Second Schedule and section 32 Companies Income Tax Act (CITA), Cap. C21 LFN, 2004***.

It is worth noting that AIRAS will not totally make humans irrelevant, but may create new categories of jobs – for example of managing the related systems. Repair, maintenance, evaluation and integration personnel would still be required. Personnel related costs are entirely deductible in the year they are incurred unlike capital allowances for capital expenditure, typically claimable over a five year period.

These issues might appear revolutionary, notwithstanding it behoves the Federal Government (FG) to have regulations in place to protect workers without stiffening innovation whilst considering their tax implications. For instance, in the Oil and Gas industry, the ***Department of Petroleum Resources (DPR)'s Guidelines on the Release of Staff in the Oil and Gas Industry, 2015 (DPR Guidelines)*** makes it mandatory for upstream employers to seek the Minister of Petroleum's approval (consent) through the



DPR before disengagement of a Nigerian staff *(Guideline 5.3).* According to the **DPR Guidelines**, disengagement include: dismissal, retirement (whether voluntary or forced), termination, redundancy, release on medical grounds, resignation, death, and abandonment of duty post. Could this operate as 'compulsory retention' of employees where employers no longer need them due to deployment of digital resources, more so given established rule that willing servants cannot be forced on unwilling masters?

The Supreme Court in ***Chukwumah v. Shell Petroleum Development Company of Nigeria Limited [1993] 4 NWLR (Pt. 289), 512, at 560*** upholding the principle of master/servant relationship in employment contract held that: *"It is well established principle … that ordinarily, a master is entitled to dismiss his servant from his employment for good or bad reasons or for no reason at all. Consistent with this principle, is also the law that the court will not impose an employee on an employer."*

Reflective of the circumstances and need for "future proofing", perhaps the DPR and stakeholders must begin to recognise potential redefinition of work competences for AIRAS. This could be as a form of career shift, rather than a downsizing option given Nigeria's growing population and the need to sustain Nigerian content in the industry in the face of rising adoption of AIRAS.

Digital Disruption: Considered Response Strategies in the UK

Some experts have argued that given the rate of adoption of AIRAS globally, governments must begin to make provision to impose taxes on them (robot tax which could also include transactions concluded by robots) as a means to shore up government's dwindling revenue whilst funding public education to retrain retrenched workers. The UK's Labour Party has been at the forefront of this idea. However, the UK government's response was the formulation of a digital strategy (*UK Digital Strategy*), which was released in 2017.

The *UK Digital Strategy* proposes to increase digital skills and inclusion of UK's population noting that such skills are essential to ensure the workforce is prepared for adoption of AIRAS. Certainly, training and retraining of workers can serve as a panacea to incessant job loss due to technology adoption, however, addressing the shortfall in government's revenue might need more than a simplistic approach of digital inclusion.

Practically, the construct of AIRAS is such that they are used to increase efficiency in production at a rate incomparable with humans. Thus, digital inclusion – which is a laudable initiative – may not be sufficient to address this impeding challenge. This is particularly important given that newer versions of AI, Robotics and AS are constantly being developed, which would intensify the pressure on the UK government to keep funding training programs (from a depleting public revenue) for its residents. More so, considering the rate of exponential population growth and dwindling natural resources, opportunities to explore the digital workspace as mulled by *UK's Digital Strategy* is greatly condensed. Thus, government must explore all possible options in ensuring that everyone contribute their fair share of resources to the State, which would thereafter be used for the public good.

Conclusion

The society is dynamic and continues to evolve with emerging trend and technology. Laws enacted decades ago would not be apposite to regulate today's world of AIRAS. Famous author, Prof. *Chinua Achebe* once said *"Eneke the bird says that since men have learned to shoot without missing, he has learned to fly without perching"*. It is therefore prescient for the FG to put in place, regulations and mechanisms by issuing guidelines on AIRAS usage to ensure that their downside effects are minimised and Nigeria is strategically positioned to leverage the inherent opportunities in AIRAS for national development.

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