



## Coercions: Reflections on Constructive Dismissal in Nigerian Labour Practice



o.james@lelawlegal.com

### Introduction

Apprehensions associated with negative work environment could lead to constructive dismissal or constructive discharge (CD). Such may not only negatively affect employees' performance, it could also lead to pecuniary injuries and some other non-economic damages, which may not be easily quantifiable.<sup>1</sup> Despite employment relationships being typically at-will,<sup>2</sup> the law does not permit employers to treat employees unfairly or dehumanise them.<sup>3</sup> Thus, Nigeria's regulatory regime, upholds the imperative of decent work environment in furtherance of strategic development and national competitiveness objectives. Same also aligns with international labour standards<sup>4</sup> and best practices.

It is trite that terms and conditions of contract of employment must be respected by both parties. However, when the employer's conducts violates the contract, this would give rise to claims for constructive dismissal.

The doctrine of CD is a relatively novel area of the Nigerian employment law, not because the concept has newly evolved; but due to the failure to bring the provisions of employment statutes in tandem with the current day realities. Thankfully however, claims for CD has gained prominence, amongst other forms of termination in labour matters. This article seeks to provide answers to questions of: what constitutes CD, when is the claim for CD maintainable, what requirements need be met for a successful claim and what remedies are available thereto?

### Concept Analysis: Constructive Dismissal

Advancing the concept of mutual trust and confidence in employment relations has spurred CD; one of the most recent developments within the common law of employment. The Nigerian **Labour Act**<sup>5</sup> neither define nor provide elaborately for "dismissal" in the employment context. **Section 11(5)** provides that "Nothing in this section affects any right of either

party to a contract to treat the contract as terminable **without notice** by reason of such conduct by the other party as would have enabled him to so treat it before the making of this Act".<sup>6</sup>

At best, the provision only describes what constitutes dismissal, rather than defining it. Meanwhile the word "constructive" relates to something "existing by virtue of legal fiction, though not existing in fact."<sup>7</sup> Thus, by way of common interpretation, the concept of CD describes an employer's way of disengaging an employee in a manner short of actual termination.



1. Such as loss of future expectations, emotional distress, mental anguish and health crises, and so on.

2. This connotes the employer's ability to terminate an employment contract at any time for any reason, or for no reason at all, without incurring legal liability.

3. Although an employer has the right to hire and fire an employee, they must follow the relevant (prescribed) procedure. See *Onajav. UBA Plc (2010) LPELR-3769*.

4. In modern employment relations, labour is recognised beyond being mere tool of production. Even **Article 1(a) International Labour Organisation (ILO) Declaration of Philadelphia (1944)** stressed that "labour is not a commodity." **The Declaration** is available at: <https://www.ilo.org/legacy/english/inwork/cb-policy-guide/declarationofphiladelphia1944.pdf>; and also annexed to the **ILO Constitution**, NORMLEX: [https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62\\_LIST\\_ENTRIE\\_ID:2453907:NO#declaration](https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO#declaration) (both accessed 14.07.2021). In addition, despite the non-provision for CD under Nigerian labour laws, **section 34 Constitution of the Federal Republic of Nigeria 1999 (as amended)** on right to dignity of person equally justifies the zero tolerance of the NIC for CD, where proved.

5. **Cap. L1. Laws of the Federation of Nigeria (LFN) 2004**.

6. Emphasis supplied.

7. Bryan A. Garner, '**Black's Law Dictionary**', (9<sup>th</sup> ed., 2009), p. 356.



The Courts have expounded this concept as illustrated in **Miss Ebere Ukoji v. Standard Alliance Life Assurance Co. Ltd.**<sup>8</sup> thus:

*“Globally, and in labour/employment law, constructive dismissal, also referred to as constructive discharge, occurs when an employee resigns because his/her employer’s behaviour has become intolerable or heinous or made life difficult that the employee has no choice but to resign. Given that the resignation was not truly voluntary, it is in effect a termination. In an alternative sense, constructive dismissal or constructive discharge is a situation where an employer creates such working conditions (or so changes the terms of employment) that the affected employee has little or no choice but to resign. Thus where an employer makes life*

*extremely difficult for an employee, to attempt to have the employee resign, rather than outright firing the employee, the employer is trying to create a constructive discharge. The exact legal consequences differ from country to country, but generally a constructive dismissal leads to the employee’s obligations ending and the employee acquiring the right to seek legal compensation against the employer.”<sup>9</sup>*

Caselaw has established that involuntary resignation usually arise under two circumstances:

- i. When the employer advises or requests the employee to resign; or
- ii. When by conduct (calculated actions or deliberate omissions), the employer is creating or has created a hostile work environment to force the employee out of the job.<sup>10</sup>

In either case, the employee’s involuntary resignation must be traceable to alleged conducts or breach of contract by the employer.<sup>11</sup> Thus, the Court would adopt a “reasonable man’s” test when confronted with a CD claim. Some commentators noted that “it is not enough for the employee to subjectively believe his or her

*working conditions are intolerable. Courts instead look at whether a reasonable person would find the conditions to be unusually egregious and adverse. If a reasonable person working in the employee’s position wouldn’t find the conditions intolerable, the employee’s resignation will be treated as a voluntary resignation by the employee, even if the employee believes that he or she can’t work under the conditions imposed by the employer.”<sup>12</sup>*

In the Canadian case of **Lawrence v. Norwood Industries Inc.**,<sup>13</sup> to establish a case of CD, it was said that “a reasonable person in their position would have concluded that the conduct on the part of Norwood when viewed objectively constituted a fundamental change to the terms of employment to justify a conclusion that they were constructively dismissed from their employment.”

Such resignation could be triggered by a single event or a series of incidents which happened shortly before the resignation.<sup>14</sup> The fact that the employee terminates the contract, either with or without notice and such resignation being fundamentally laced with involuntariness, entitles the aggrieved employee to approach the Court for reliefs after exiting the employment.<sup>15</sup>

8. (2014) 47 NLLR (Pt. 154), 531.

9. See generally *Western Excavating (ECC) Ltd. v. Sharp* [1978] 1 All ER 713; *Atanda v. Abbey Building Society Limited*, Unreported Suit No. NICN/ABJ/211/2019; and Oladosu Ogunniyi, ‘Nigerian Labour and Employment Law in Perspective’, (Folio, 2nd ed., 2004), pp. 462–464; *Black’s Law Dictionary* (supra), p. 530.

10. See *Ebere Ukoji* (supra); and *Modilim v. UBA Plc Unreported Suit No. NICN/LA/353/2012*.

11. In the US case of *Jones v. Sirl & Sons (Furnishers) Ltd* (1997) IRLR 493, 495, it was held that the alleged breach or conduct may not be the sole cause, but must be the effective or operative cause for the resignation.

12. FindLaw’s Team, ‘Constructive Dismissal and Wrongful Termination’, FindLaw, 05.12.2018: (accessed 08.07.2021).

13. (2016) O.J. No. 4987. In this case, action was initiated alleging CD, based on a policy changing work resumption time to an earlier time. Sylvia was asked to resume work at 7:00am as against 8:30am, but refused. A few weeks later, she received a Letter of Reprimand for arriving late to work, declining to work overtime and about her overall attitude. She refused to sign the Letter of Reprimand and made it known that she would not take direction from the new Warehouse Manager as “he could not tell her what to do”. The Ontario Supreme Court held that while the working conditions were less than ideal, they were not as extreme as described by Kenneth and Sylvia in the action. Further, her refusal to return to work after receiving the Letter of Reprimand was not an appropriate response from an objective standpoint. The Court determined that a “reasonable person” would not have concluded that Norwood’s conduct constituted a constructive dismissal and therefore, dismissed the action brought on behalf of Kenneth and Sylvia. See further, Minken Employment Lawyer, ‘Constructive Dismissal? – What Would a “Reasonable Person” Think?’, 10.01.2017: (accessed 08.07.2021).

14. *Ebere Ukoji* (supra).

15. *Ibid.*



CD is often treated like unfair/wrongful dismissal.<sup>16</sup> This is because the termination arguably evinces a poor and unfair labour practice on the part of the employer.<sup>17</sup> It must however be borne in mind that whilst CD entails repudiatory breach of contract by the employer, it should not be narrowly construed as unfair - as some potentially fair reasons may justify circumstances occasioning involuntary resignation by employee. A unilateral reduction of wages for example may be justified by cuts in revenue received by the employer and/or any other external factors.<sup>18</sup> Be that as it may, employers owe the obligation to communicate any changes to the

terms of the contract to employees in the manner prescribed by law<sup>19</sup> and a breach of this obligation may generate such claim as CD.

#### Caselaw Illustrations of CD

There are inexhaustible instances of CD; because circumstances giving rise to CD are as heterogeneous as conditions of each employment. However, common real life incidents that engender CD claims include:

- i. Workplace bullying and harassments, which may be sexual or non-sexual, physical or verbal;<sup>20</sup>
- ii. Placing ridiculous, extraordinary and unreasonable work

- demands/ expectations on an employee to pressure him/her into resigning;
- iii. Unilateral variations to the terms and conditions of the contract of employment without any notice to the employee and/or without the consent of the employee;<sup>21</sup>
- iv. Significant reduction of employee's compensation and/or demoting employee for unjustifiable reasons;<sup>22</sup>
- v. Exposing employee to danger and unreasonable hostility;<sup>23</sup>
- vi. Disciplinary proceedings which are manifestly unjust;<sup>24</sup>
- vii. Suspending employee indefinitely, with or without pay.<sup>25</sup>

Instructively, alleging any of the above instances does not guarantee a successful claim for CD: caselaw has shown that success will depend largely on the facts and circumstances of the case, and the test of the employer's conduct is objective. We highlight below some illustrative cases on the scope and applicability of CD in Nigeria.

16. The Court rightly noted in *Joseph Okafor v. Nigerian Aviation Handling Company Plc Unreported Suit No. NICN/LA/291/2016* that "... the concept is either constructive dismissal or unfair dismissal. The latter is often used to determine the quality of the dismissal where it is the employer that actually dismissed the employee. The former, on the other hand, is used where it is the employee who actually left the services of the employer but is arguing that he left because the employer's conduct made him to leave."

17. *Lucia Balonwu v. Voluntary Service Overseas (VSO) International, Unreported Suit No. NICN/ABJ/280/2018.*

18. Simon Deakin and Gillian S. Morris, 'Labour Law', Hart Publishing, (5<sup>th</sup> ed., 2009), p. 413.

19. Section 7(2) LA.

20. These include derogatory treatments or criticisms, open disregard of contributions or complaints, social isolation, exclusion or any repeated incidents or a pattern of behaviour that is intended to intimidate, offend, or humiliate an employee.

21. This does not only offend employment ethics but also contravenes the legal requirement provided under section 7(2) LA that an employer must inform the employee by a written statement made reasonably accessible in the course of employment if after the commencement of the employment contract, there is a change in the terms. The express terms of the contract which defines the scope of the employee's rights and obligations also limit the employer's prerogative, expressly or impliedly. It must be emphasized that mere variation of employment terms or conditions cannot be said to amount to constructive dismissal where it is not of such significant measure to ground the claim. See *Joseph Okafor (supra)*; *Smith v. Viking (1989) 68 O.R. (2d) 228 CA*. Likewise, changes in the terms and conditions of contract of employment, implicitly or explicitly accepted without any objection by the employee would not give rise to a successful claim of CD as he would be deemed to have acquiesced or condoned the change. See Catejan Osioma, 'The Doctrine of Constructive Dismissal in Labour Law - A Review of the Decision in *Modilim v. United Bank for Africa Plc.*', NJLIR, Vol. 9 No. 2, (June 2015), p. 16.

22. Unjustified reduction of wages constitutes an offence under section 21(1)(b) LA for which an employer found guilty may be liable on conviction to a fine. The Court found for the Claimant in *Salako v. Giant Beverages Ltd Suit No. NICN/LA/388/2016* on the claim for CD premised on allegation that the defendant paid less salary than agreed and later instructed the Claimant to resign from the job which he did.

23. In the case of *Lucia Balonwu (supra)*, the alleged deliberate hostility, systematic undermining of the Claimant's authority, demeaning conducts and pattern of unrelenting indignity from the Defendant towards the Claimant were held sufficient to ground the claim for CD.

24. The law is trite that where a disciplinary action is to be taken pursuant to any statute, law or rule, there must be full compliance with them or any of them as required, before such disciplinary action can be properly justified. See *Zainab v. Nigerian Educational Research and Development Council Unreported Suit No. NICN/ ABJ/126/2018*; *Union Bank of Nigeria Ltd. v. Ogboh [1995] 2 NWLR (Pt. 380), 669.*

25. Nigerian employment law does not stipulate the procedure for suspension of employees. However, the acceptable notion of suspension is being a tool for investigation of an alleged misconduct and therefore must not be substituted for termination. The Courts, being Courts of law and equity, also frown at the adoption of indefinite suspension in lieu of termination. In *Mobil Producing Nigeria Unlimited v. Otoabasi Effiong (2011) LPELR-9055(CA)*, Akeju, JCA defined suspension thus: "The word 'suspension' means to defer, interfere, interrupt, lay aside, temporize or hold in abeyance. It does not mean terminate, extinguish, or bring to an end." In *Longe v. First Bank of Nig. Plc (2010) All FWLR (Pt. 525) 259*, suspension was said to mean a temporary privation or deprivation or stoppage of privileges and rights of a person and a disciplinary procedure that can be for a fixed or indefinite period. *Jessica Akaa v. Sterling Bank Plc., Unreported Suit No. NICN/KN/34/2016*, the NIC declared that the indefinite suspension of the Claimant which is indicative of the Defendant's intention to terminate the employment of the Claimant was wrongful and void. In the foreign case of *Hookimawillie v. Payukotayno James and Hudson Bay Family Services (2019) ONSC 3514*, the Court concluded that the Defendant's unauthorised administrative suspension of the Plaintiff without pay for an undetermined period of time, constituted a constructive dismissal.

In the popular case of **Modilim v. UBA Plc**,<sup>26</sup> the Claimant averred that he was offered employment by the Defendant as a Deputy General Manager (DGM) and the Defendant undertook to confirm his appointment as a General Manager (GM) after six months, subject only to meeting certain conditions and set targets contained in a performance contract executed by the parties. The Claimant contended that he met all the set targets and other pre-conditions for his confirmation. However, whilst his employment was confirmed, the Defendant continued to pay the Claimant, the salaries of a DGM for the 20 months he worked after confirmation.

This was despite the Claimant's repeated demands to the Defendant to review his employment and salaries appropriately. Given the Defendant's attitude to these repeated demands, the Claimant was left with no option but to resign from the Defendant's employment. The Claimant therefore contended that he was constructively dismissed, and the Court so found.

The National Industrial Court (NIC) also found in favour of the Claimant in **Ebere Ukoji (supra)**, wherein the Claimant claimed CD based on being queried by the Defendant on allegation of character assassination, the abrupt manner

that the panel of investigation was composed, its procedures and further threats to her employment.

Conversely, in **Joseph Okafor v. Nigerian Aviation Handling Company Plc**,<sup>27</sup> the Claimant presented serial breaches of the contract of employment by the Defendant between 2009 and 2014, which prompted his constructive dismissal on 31<sup>st</sup> December 2015. In his resignation letter, he alleged breach of job description and deliberate retardation of his professional growth; denial of promotion and entitlement; and failure to address his grievances. Upon distilling the issues and carefully considering all facts, the Court held that the grievances listed out against the Defendant cannot be seen as having the employee constructively dismissed.

#### The Claim and Remedy

Proving CD generally carries the same burden as in other civil litigation. A well-established principle of evidence stipulates that the primary duty of proof lies on the party who will lose, if no evidence was led.<sup>28</sup> Thus, an employee who quits involuntarily alleging CD, has the burden of proving, on the balance of probabilities,<sup>29</sup> that he or she has been constructively dismissed - the adverse party is not expected to do anything until that initial burden is successfully

discharged.<sup>30</sup> It is trite that a claimant must succeed on the strength of his case and not rely on the weakness of the defence.<sup>31</sup>

Since CD is a question of fact, meeting the requirements for success in a claim for CD is not without its challenges. The objective assessment of the claimant's case would determine the chances of succeeding in a CD claim, and the likely relief. The English Court of Appeal (CoA) set out four classic elements of CD as expressed in the authoritative judgement of Lord Denning in **Western Excavating (ECC) Ltd. v. Sharp**<sup>32</sup> which are now regarded as standard-determining tests for CD:

- i. There must be a breach of contract by the employer (this can be an actual or an anticipatory breach);
- ii. The breach must be sufficiently serious (a repudiatory or a fundamental breach);
- iii. The employee must leave as a result of the breach.
- iv. There must be no waiver or condonation of the breach, for example, through the employee's delay in leaving.<sup>33</sup>



26. Unreported Suit No. NICN/LA/353/2012.

27. Unreported Suit No. NICN/LA/291/2016.

28. Section 133(1) Evidence Act, 2011.

29. Section 134, *ibid*.

30. **James Okafor v. Nigerian Aviation Handling Plc**, *supra*; **Visitor, IMSU & Ors. v. Prof. Okonkwo & Ors.** (2014) LPELR-22458(CA); (2014) LCN/6823 (CA).

31. In addition, the absence of a statement of defence or evidence led by the Defendant does not exonerate the responsibility on a Claimant to prove his claim: **Salako v. Giant Beverages Ltd** Unreported Suit No. NICN/LA/388/2016.

32. [1978] All ER 713; [1978] QB 761.

33. There was however an interesting tweak to *Item (iv)* above by the UK CoA in **Lewis v. Motorworld Garages Ltd (1985) IRLR 465, CA** where Mr. Lewis was demoted without any reason given, and his salary and other entitlements were accordingly reduced. Mr. Lewis could have left and claim both CD and breach of contract at this point, but he ignored the breach and stayed. Thereafter, consequent to vague complaints about his standard of work, he resigned and claimed CD. The CoA found in his favour despite the initial waiver, taking into account subsequent actions of the employer that constitute a breach of the implied obligation of trust and confidence.

Several case law principles have been propounded on the above listed fundamental elements with little or no variations. The decisions of the Supreme Court of Canada in *Farber v. Royal Trust Co.*<sup>34</sup> and *Potter v. New Brunswick Legal Aid Services Commission*<sup>35</sup> outlined two distinct determinant tests for a successful CD claim as follows, whether the employer's:

- i. single unilateral act breached the employment contract in a manner that substantially altered the essential terms of the contract; or
- ii. ongoing conduct demonstrates an intention to no longer be bound by the employment contract, from the perspective of the reasonable person.<sup>36</sup>

Several Nigerian cases have exemplified the persuasiveness of the elements of claim expressed in the *Western Excavating* case. Though a claim for CD failed in *Joseph Okafor*, the Court, regarding the requirements for a successful plea of CD pointed out that:

*"...to be able to succeed in a claim for constructive dismissal, the claimant must show that he resigned soon after the incident(s) he is complaining about. The claimant himself agreed with the defendant that for the claimant's case to succeed, he must prove as enumerated in Western Excavations v. Sharp [1978] 1 All*

*ER713..."*<sup>37</sup>

Likewise, in *Lucia Balonwu v. Voluntary Service Overseas (VSO) International*,<sup>38</sup> it was held that: *"The employee may resign over a single serious incident or over a pattern of incidents. **But generally, the employee must have resigned soon after the incident.**"*<sup>39</sup>

With respect to remedies, most cases of CD reflects the fundamental legal mantra - *where there is a right, there is a remedy (ubi jus, ibi remedium)*. Although, the strict common law rule of remedy for wrongful dismissal is generally limited to payment in lieu of notice; however, the courts have taken up the role to award reliefs that is just, fair and equitable in the circumstances, having regard to the loss sustained by the claimant, in so far as that loss is attributable to the employer's actions.



Certainly, the exact legal consequences differ from case to case; from country to country but in Nigeria, remedies for CD are enshrined in the common law decisions in wrongful termination or unfair dismissal actions. In *Ebere Ukoji* case, the NIC laid bare what CD entails by pointing out that CD brings to an end, the employment of the employee, leaving that employee only with the right of recompense. On this premise, the Court in another case refused to make: a declaration that the Claimant's employment subsists, an order setting aside the letter of resignation, an order of reinstatement and an order for payment of the outstanding salaries until retirement, because *"...in the instant case, there is no employment relationship between the Claimant and the Defendant that is subsisting as to warrant the grant"* of those reliefs.<sup>40</sup>

In addition, the Court rightly further affirmed the fact that an employee could potentially have an employment up to retirement age, is no guarantee that that employment will last that long; the time stipulated for retirement only set out the maximum duration possible for the employment under the existing contract. Consequently, the court will not grant a claim for payment of salary up to the retirement age of the employee in a claim of wrongful dismissal.<sup>41</sup>

34. (1997) Can. LII 387 (SCC).

35. (2015) SCC 10.

36. Phil White, 'Constructive Dismissal Defined', *Employment Law 101*, <https://employmentlaw101.ca/constructive-dismissal/constructive-dismissal-defined/> (accessed 15.07.2021).

37. See *Mrs. Vivien Fodayemi Asana v. First Bank of Nigeria Ltd, Unreported Suit No. NICN/LA/184/2016*.

38. NICN/ABJ/280/2018.

39. Emphasis supplied.

40. *Asana (supra)*.

41. See *Okeke v. Civil Service Commission, Edo State [2000] 14 NWLR (Pt. 68), 480; Alonge v. WAEC, Suit No. NICN/LA/277/2016; Akintolu-Ojo v. UBA Plc Suit No. NICN/LA/497/2012; and Asana (supra)*.

Under English law, remedies for CD include re-instatement and reengagement,<sup>42</sup> but one remedy for CD that is common in virtually all jurisdictions is award of damages (monetary compensation), against the employer. **Sections 114 and 115 United Kingdom Employment Rights Act (ERA), 1996** recognise reinstatement and re-engagement as remedies for unfair dismissal.<sup>43</sup> Similarly, **Section 33 Barbados ERA 2012** provides that the Tribunal where appropriate, may make an order for reinstatement or re-engagement of the employee, in accordance with the provisions contained in its **sections 34 and 35**.<sup>44</sup>

In Nigeria however, the only available remedy is damages by way of monetary compensation.<sup>45</sup> According to an erudite scholar, at common law, specific performance cannot be granted for contract of employment, neither re-instatement, except in public employment, where the employee is so willing to be reinstated.<sup>46</sup>

Damages may either be general damages (basic award) or compensatory award.<sup>47</sup> Additional compensation may be awarded, as deemed fit. In the **Ebere Ukoji** case, although the NIC found in favour of

the Claimant for CD, her claim for general damages was not granted. Rather, the Court awarded a sum constituting her outstanding emoluments for the unexpired period of her fixed term of contract. The same Court ordered in **Patrick Obiara Modilim** case, that the Defendant pay the entire sum of ₦75,535,128.00 being the Claimant's emolument, had the Defendant reviewed his employment on confirmation (as contracted), and another ₦1,120,221.60, as damages for wrongful dismissal.

For special damages to be awarded, it is trite that same must be specially claimed and strictly proved.<sup>48</sup> Punitive damages, though rarely awarded, may be supported by allegation of conducts considered as grievous, malicious, high-handed and offending the sense of decency. The Ontario SC, in **Gordon v. Altus**,<sup>49</sup> awarded punitive damages due to the outrageous fabricated or highly embellished allegations of the Defendant in trying to get rid of an employee as they approached arbitration for the determination of any adjustment in the asset purchase agreement price.

Regarding assessment of damages, the Courts have expressed

different determinants for measuring the amount of damages awardable, based on the facts of each case. The long-standing position for measuring damages for wrongful termination applies, which is that *the employee is only entitled to salaries and benefits he would have earned within the period of notice as stipulated in the contract of employment*.<sup>50</sup> Thus, the CoA in **Barth Ozoama v. Public Service Commission**<sup>51</sup> succinctly put it that *“the measure of damages to be awarded by a Court of law is restitutio in integrum (that is restoration or restitution to the previous condition) and not restitution in opulentiam”* (that is not as a windfall).

Illustrative is **Shell Petroleum Dev. Co. Ltd v. Victor Sunday Olanrewaju**,<sup>52</sup> where the SC held thus: *“In cases of wrongful dismissal of an employee, the measure of damages is prima facie, the amount the employee would have earned had the employment continued according to the contract of employment, subject to the deduction in respect of amount accruing from any other employment which the employee in minimizing damages either obtained or should reasonably have obtained...”*

42. Whilst reinstatement means returning the employee back to his former job and to his former position, re-engagement may mean taking back the employee in a different but suitable job/role or in a different place of work/organization. See Prof. Israel Worugji and Nheoma Worugji, 'Constructive Dismissal Under the Nigerian Labour Law: The Missing Link', in Prof. Amucheazi, SAN and Bimbo Atilola (eds.), 'The National Industrial Court of Nigeria and Progressive Development of Labour and Employment Law in Nigeria', (2019, Hybrid Consult), p. 527.

43. See the UK ERA at 'Employment Rights Act 1996': <https://www.legislation.gov.uk/ukpga/1996/18/contents> (accessed 04.08.2021).

44. "Cf. with section 89 (2)(c)(iii), Zimbabwe Labour Act, [Chapter 28:01], available at <http://zimlil.org/node/8656> (accessed 19.08.2021)"

45. **Section 19(d) NIC Act 2006** permits the NIC to make an order of compensation or damages in deserving circumstances. Correspondingly, **Section 8(1)(a) and (2) Employee Compensation Act Cap. E7A, LFN 2004**, mandates employers to compensate employees for mental stress, only if the mental stress is an acute reaction to a sudden and unexpected traumatic event arising out of or in the course of the employee's employment; or caused as a result of the employer's decision to change the work or working conditions in such a way to unfairly exceed the work ability and capacity of the employee.

46. Gwyneth Pitt, 'Dismissal at Common Law: The Relevance in Britain of American Developments', Wiley, 01.1989, p. 37: <https://onlinelibrary.wiley.com/doi/pdf/10.1111/j.1468-2230.1989.tb02594.x> (accessed 04.08.2021).

47. Prof. Israel Worugji, (supra), at p. 528.

48. **NNPC v. Klifco Nigeria Ltd [2011] 10 NWLR (Pt. 1255), 209 (SC); 7UP Bottling Company Plc v. Augustus (2012) LPELR-20873(CA).**

49. (2015) ONSC 5663.

50. See Bimbo Atilola, 'Legal Redress for Wrongful Termination of Contract of Employment: What Lawyers Must

Note', *NLIR*, Vol. 5, No. 2, (2011), pp. 15-16.

51. (1995) 5 NWLR (pt. 391) p. 629 at 632.

52. [2008] 18 NWLR (Pt. 1118), 1, SC.

Similarly, the CoA in *B.E.D.C. Plc. v. Eseluka*,<sup>53</sup> having found that the Respondent was constructively dismissed, ruled that he was only entitled to his salary from the date he was interdicted on half pay, till when he was deemed to have been constructively dismissed.

There is no gainsaying that remedies for CD are largely discretionary as they are not expressly provided by law. The provisions of the employment contract, including the employer's human resources (HR) policy, staff handbooks, etc could provide helpful context. It is critical that both parties do not gloss over their employment contracts, especially when drafts are being exchanged; the euphoria of engaging a new employee/employment must not overshadow the need to pay attention at the contracting stage.

It is submitted that the

discretionary resolutions of the NIC so far, accord with law, equity and common sense. The Courts have demonstrated their resolve to remain committed to discouraging labour abuse, exploitation and dehumanisation in Nigeria. However, considering the seeming inequality of bargaining power and influence underpinning employer-employee relationships, the legislature, just like the judiciary, need to be more sympathetic to the employees by giving dismissal issues more statutory substance.

As CD tends to be one of the negative impacts of insufficient provisions on employment termination and dismissal, further work needs to be done on the legislative and regulatory aspects - the **LA** and other employment-related statutes should be revised to address some emerging vices in employment relations and further curb incidences of unfair discharge.

### Conclusion

The trend is changing as employers' unhealthy conducts and substantial unilateral alteration of employment contracts are now being challenged. This, without doubt, will reduce the likelihood of arbitrary dismissals and resulting dispute resolution time and costs. Awarding damages and compensation for CD, despite being a progressive step towards protecting the dignity of employer-employee relationships, does not address issues of job security as the employment contract is deemed terminated. Hence, the NIC should further widen the scope of reliefs for CD to accommodate reinstatement and re-engagement, when both the employer and employee are willing and its denial would frustrate the intent of justice.



### LeLaw Disclaimer:

Thank you for reading this article. Although we hope you find it informative, please note that same is not legal advice, and must not be construed as such. However, if you have any enquiries, please contact the author, Oluwaseyi James at: [o.james@lelawlegal.com](mailto:o.james@lelawlegal.com) or email: [info@lelawlegal.com](mailto:info@lelawlegal.com).

LeLaw Barristers & Solicitors, Plot 9A Olatunji Moore Street, Off TF Kuboye Road, Lekki Phase I, Lagos, NIGERIA

53. [2015] 2 NWLR (Pt.1444), 411CA.