

**SERVICE CONTRACTS AND INDEPENDENT CONTRACTORS AS WORKERS:
DETERMINATION UNDER THE JURISDICTION OF THE NATIONAL INDUSTRIAL
COURT IN THE NEW WORLD OF WORK**

Spring Limited (Spring) is one of the leading Fintechs in Nigeria and is headed by Brain, the CEO who was listed on the Forbes Under 30 2022. Recently, the company raised \$5m from its Series A funding round and intends to use these funds to set up more branches in certain strategic cities in Nigeria. In line with its plans, the company has now established new branches in Abuja and Portharcourt as a means to expand its operations and promote financial inclusion in the country. It contracted Paperrail Ltd (Paperrail), a company that provides cleaning services for the provision of these services to its newly set up Abuja and Portharcourt branches.

Upon the expiration of the one-year period of the contract, Spring Limited sought to terminate the contract, however, Paperrail has opposed the termination on the ground that the proper procedure stipulated under the contract was not complied with. Notwithstanding the complaint by Paperrail, Brain proceeded to terminate the contract and awarded same to Crocs Limited, a company owned by his sister, Angel.

Paper-Rail is aggrieved on how its contract with Spring was terminated and has approached the Nigerian Labour Court for redress. Spring Limited is convinced that the dispute is a contractual one, to be resolved at the High Court. Interestingly, a similar scenario was at play in the recently decided case of *Alphacyn Nigeria Limited v. Registered Trustees of Prince and Princess Estate Residents Association & Segad Security and Protection Company Limited Suit No. NICN/ABJ/57/2023* the judgement of which was decided by Hon. Justice B. B. Kanyip, PhD, OFR, of the National Industrial Court of Nigeria (NICN), Abuja Judicial Division on September 26, 2022, where the Court looked beyond the form of the contract between the parties and found that the NICN has jurisdiction to hear matters that bother on contract for service.

FACTS AND FINDINGS

The Registered Trustees of Prince and Princess Estate, being the Residents Association body established for the purpose of managing the affairs of the residents of the Estate, sometime in January 2018 entered into a Five-year Facility Management Agreement with the claimant, Alphacyn Nigeria Limited, a private limited liability company which carries on the business of providing services including but not limited to management of facilities and estates within Nigeria for several of its clientele. Upon the expiration of the Facility Management Agreement sometime in December 2022 by effluxion of time, the 1st defendant exercised its prerogative under the said agreement and elected not to renew its contractual relationship with the claimant after considering the claimant's application for a renewal of the said agreement. Alphacyn Nigeria Limited then brought an action before the NIC claiming inter alia, wrongful termination, award of damages and a declaration that the appointment of Segad Security and Protection Company Limited as the new facility manager is null and void.

The Registered Trustees of Prince and Princess Estate in opposition to the claim filed a preliminary objection to this suit on several grounds, the most crucial of which was the ground that the NIC does not have the jurisdiction to hear a matter that bothered on contract for service as it is merely a simple contract and not an employment contract.

The Court upon a holistic examination of the provisions of ***Section 254C(1)(a) and (b) of the 1999 Constitution*** and the definitions of worker, recruitment and employer as provided under the Labour Act, held that the provisions ***Section 254C(1)(a) and (b) of the 1999 Constitution*** which also refers “any labour” has the effect of encompassing both contracts of service and contracts for service, thus, the NIC has the jurisdiction to hear and determine contracts for service.

OUR COMMENTS

The distinction between employees and independent contractors remains important, as employment status determines a person’s ability to enjoy the legal benefits and protection available to employees under the Act. However, the lines between independent contractors and employees continue to grow lean as the current world of work continues to evolve and a class of workers with elements of independent contracting but still subject to significant control. Courts, in line with these changes, are now more accustomed to examining the true nature of the relationship between the parties than what name the parties give their agreements.

In ***Uber BV & ors v. Aslam & ors [2021] UKSC 5*** the UK Supreme Court considered the nature of the relationship of the parties and held that Uber drivers to be workers (and so in a contract of service) given the level of control of Uber over its drivers, and then unanimously held that Uber must pay its drivers the national living wage, and at least 28 days paid holidays, from the time that drivers log onto the Uber app, and are willing and able to work.

The Nigerian Industrial Court has also recognized the changes in the world of work and has consistently examined resolved issues of unfair labour practices and triangular employment, amongst others, in line with the current world of work, international best practices and even the ILO Conventions, as necessary.

In ***Alphacyn Nigeria Limited v. Registered Trustees of Prince and Princess Estate Residents Association & Segad Security and Protection Company Limited***, it was agreed by parties and resolved that the Facility Management Agreement was indeed a contract of service. The question then was for the NIC to consider its jurisdiction, if there were any, over contracts for service in addition to its jurisdiction over contracts of service. In doing so, the court referred to ***Section 254C(1)(a) and (b) of the 1999 Constitution*** and expounded on same.

Section 254C(1)(a) and (b) of the 1999 Constitution provides that;

“Notwithstanding the provisions of sections 251, 257, 272 and anything contained in this Constitution, the National Industrial Court

shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters relating to or connected with any labour, employment, trade unions, industrial relations and matters arising from workplace, the conditions of service, including health, safety, welfare of labour, employee, worker and matters incidental thereto or connected therewith". (Emphasis supplied)

Considering the above with decisions of superior courts, the NIC concluded that its jurisdiction under Section 254C with reference to 'any labour' extended to issues outside employment matters. For example, issues of secondary or sympathy strikes (strikes where the workers have no relationship with the employers) are deemed to be included in the labour jurisdiction of the NIC and as such, 'any labour' ought to be interpreted separately from employment.

Based on the holistic interpretation of the Constitution and other decisions of the superior courts, the NIC determined that its jurisdiction over 'any labour' covers contracts for service and of service. It therefore held that the Facility Management Agreement was an outsourcing of the service described in the agreement and easily fit into the definition of an ambiguous employment relationship as described as International Labour Organization (ILO) and adopted by the NIC.

While this finding has changed the previous position which excluded contracts of service, it seems to adhere with the global shifts in the world of work. The Alphacyn case therefore remains instructive as for a long time as the boundaries of the subject matter of labour and/or employment will continue to evolve.

Employers and workers must therefore take into consideration the standards of work as set by the NIC, the 1999 Constitution and the ILO and apply the standards for world of work whether in a traditional employment relationship or service contracts with disguised employment relationships.