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## A Newsletter on Labour Law and Emerging Trends

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**Perchstone & Graeys**  
SOLICITORS, ADVOCATES & ARBITRATORS

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### THE BATON OF COMPENSATION - MY INJURY, WHOSE PAIN?

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The doctrine of common employment has stood as a defense by employers in cases where the injury suffered by an employee was occasioned by another employee. In the view of employers, the fact that another employee caused the injury restricted the rights of the victim to sue for compensation from the employer. Whilst this may have been the case before now, the Courts have moved away from this doctrine, and extended the obligations of the employer by stating that an employer who fails to take such steps for the safety of an employee as a reasonable employer would render him/herself liable in damages to the injured employee. This means therefore that an employer can be held vicariously liable for the negligence of his/her employee which has caused injury to another employee. The onus is however on the injured employee to prove that in the circumstance, the employer had a duty which it breached. The right to claim, therefore, is not automatic, but one tied to proof. The National Industrial Court ('the Court') had an opinion on this in the recent case of Mr. *Ibrahim Yakubu v HITECH Construction Company Limited*

#### FACTS

Mr. Yakubu was employed as a casual labourer by Hitech in July 2014 and posted to one of the Hitech's construction site in Alimosho area of Lagos state. Sometime in August of that year, in the course of carrying out his duties, Mr. Yakubu was struck by a crane carrying a heavy equipment which was being operated by a fellow employee. The construction company directed him to a hospital in Lagos where he was supposed to receive medical care. Mr. Yakubu claimed that he received shabby medical care at that hospital and suffered excruciating pain which affected his ability to work. Upon making complaints to some of the officers at work, he was assigned to lighter tasks. Mr. Yakubu claimed that as his health continued to depreciate, he stopped work sometime in February of 2015 and sought better medical care in Kogi state in April 2015. According to the Hitech, Mr. Yakubu's employment was terminated at the time because it was downsizing as a result of redundancy; sequel to the termination, the entitlements of Mr. Yakubu were paid till the month of February 2015, which he worked. Mr. Yakubu aggrieved by his termination approached the NIC and sought the following reliefs against Hitech:

1. An Order of the Honourable Court mandating Hitech to pay ₦96,855.00 hospital expenses incurred by Mr. Yakubu in treatment of the injury sustained in the course of his employment between March and October 2015.
2. An Order of the Honourable Court mandating Hitech to pay Mr. Yakubu ₦410,000.00 being the arrears of salaries owed Mr. Yakubu by Hitech from March to December 2015.
3. An Order of the Honourable Court mandating Hitech to pay Mr. Yakubu ₦20,000,000.00 as compensation for the lifethreatening injury he sustained while in the employment of Hitech.
4. An Order of the Honourable Court directing Hitech to pay an interest of 25% on the ₦410,000.00 being the unpaid ten months' salary of Mr. Yakubu from August 2014 till Judgment is delivered, and thereafter 15% interest on the sum till finally liquidated.

## FINDING/DECISION

The court approached the issues under the following subheads thus:

1. ***Need to prove Negligence:*** Negligence is not proved simply because a person sustains injury in the course of his employment. A party seeking damages in negligence must prove the elements/ingredients of negligence, that is, the existence of a duty of care, a prove of the breach of the duty of care and the prove of the damage resulting from the breach of the duty of care. Mr. Yakubu in this case did not lead sufficient evidence nor establish that the injury he sustained was caused by the crane being negligently driven by the other employee or the negligence of the employer to entitle him to a claim for damages.
2. ***An employee's right to compensation at the incidence of an injury:*** compensation is a monetary award for the infringement of legal rights and the award of compensation is not by the mere existence of the legal right guaranteed. The entitlement to compensation must be proven where an injury has been occasioned by an employer. Mr. Yakubu having failed to establish that his injury was as a result of his employee's negligence had no basis to further prove his entitlement to an award for compensation for the injury he had suffered.



## CONCLUSION

While it is clear that employees can claim compensation and damages from their employers where they suffer injuries in the course of carrying out their duties, it is however important that, in order to make such a claim, the employee is able to establish the employer's duty of care and a breach of such duty; this Mr. Yakubu failed to do. In recognizing the general obligation of the employer to identify with an injured employee by compensating such employee, the law also notes that the employee's claim to an award of compensation and damages must be founded on the employer's specific obligation and a breach thereof to sway the court to grant such a compensation and award.

Mr. Yakubu could possibly have succeeded with his claim where he had, for example, established the negligence of his fellow employee in the way he drove the crane, as well as the breach of Hitech's duty by providing safety gadget to guard against any injury reasonably contemplated by Hitech. Hitech, in turn and in defense, would have to prove that it has done all expected of it to ensure working conditions are safe, and had carried out all its obligations under the Employee Compensation Act, 2010; the ECA requires a monthly contribution of 1% of the total monthly payroll into a fund and employers to report any case of injury to the board and seek compensation on behalf of the injured employee. It is no longer enough for an employer to stand as an onlooker in injury cases. It must be in a position to say that it has done everything expected of it to ensure full safety, and compensation were this fails.

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