



#MeToo?

In many parts of the world, sexual harassment is a cankerworm that continues to eat deep into the very fabric of the society.



Unfortunately, even in presumably organized environments such as the workplace, sexual harassment remains a major issue and has seen many employees either quit their jobs or have their employment terminated as a result of their refusal to succumb to the sexual advances of either their employers or co-employees. This is particularly in view of the fact that the perpetrators of sexual harassment in the workplace are often those in superior positions. Consequently, in a society plagued by scarcity of jobs, many employees, for the fear of losing their source of livelihood, are forced to accept or tolerate incessant sexual harassment by their co-employees and/or employers. In recent times however, there has been an increase in awareness of the fundamental rights of citizens and widespread protest against sexual harassment of any nature.

#MeToo MOVEMENT

The #metoo movement arguably ushered the modern day worldwide protest against sexual harassment both in the workplace, and the society as a whole. The phrase 'me too' was originated by a social activist Tarana Burke, in order to promote empowerment through empathy among women of color who had, at one point or another, been sexually abused. However, the #metoo movement gained traction and in fact became a global phenomenon sometime in 2017 following widespread accusations of the alleged predatory behavior by Harvey Weinstein, an American film producer. On October 15, 2017 an actress Alyssa Milano tweeted the hashtag #metoo to encourage victims of sexual abuse to talk about their experience. Within 24 hours, more than 4.7 million people on social media were reported to have used the hashtag #metoo, with many expressing their traumatic experiences as victims of sexual harassment. Since then, the #metoo movement has led to many governments and organizations critically examining their current structures and making radical changes to quell sexual harassment.

SEXUAL HARASSMENT IN NIGERIA

In Nigeria, save for Section 34 of the 1999 Constitution of the Federal Republic of Nigeria (CFRN) which guarantees the right of Nigerian citizens to respect for their dignity of human person, there seems to be a dearth of laws that specifically regulate sexual harassment, especially in the workplace. The CFRN, by Section 254C(1)(g) gives the National Industrial Court of Nigeria (NICN) the exclusive powers to adjudicate over matters relating to or connected with any dispute arising from discrimination or sexual harassment in the workplace. To this end, NICN through the National industrial Court of Nigeria (Civil Procedure Rules) 2017 provides some guidance on what constitutes or may ground a claim for sexual harassment. Under Order 14 of the NICN Rules, sexual harassment is divided into four main heads, as follows:

- a. **Physical conduct of a sexual nature:** such as unwanted physical contact, ranging from touching to sexual assault and rape, strip search by or in the presence of the opposite sex, or gesture that constitutes sexual harassment;

- b. **Verbal form of sexual harassment:** such as unwelcome innuendoes, suggestions and hints, sexual advances, comments with sexual overtones, sex related jokes or insults, or unwelcome graphic comments about a person's body, unwelcome and inappropriate enquiries about a person's sex life and unwelcome whistling at a person or group of persons;
- c. **A non-verbal form of sexual harassment** which includes unwelcome gestures indecent exposures, unwelcome display of sexually explicit pictures and objects; and
- d. **Quid pro quo harassment:** where an owner, employer, supervisor, member, supervisor, member of management or co-employee undertakes or attempts to influence or influences the process of employment, promotion, training discipline, dismissal, salary increments of other benefits of an employee or job applicant in exchange for sexual favours.

The above list is not exhaustive. Additionally, the United Nations Convention on The Elimination of All Forms of Discrimination against Women (CEDAW) also defines sexual harassment to include such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions; conducts that can be humiliating and may constitute a health and safety problem; discriminatory conduct that gives a woman reasonable grounds to believe that her objection would put her at a disadvantage in connection with her employment, including recruiting or promotion, or when it creates a hostile working environment.

Interestingly, Section 254C (2) of the CFRN empowers the NICN to deal with any matter connected with or pertaining to the application of any international convention, treaty or protocol of which Nigeria has ratified relating to labour, employment, workplace, industrial relations or matters connected therewith. Consequently, the NICN has in a number of decisions adopted international treaties such as the CEDAW and ILO Discrimination (Employment and Occupation) Convention 1958 No 111 which have been ratified by Nigeria in determining matters relating to sexual harassment.

SEXUAL HARASSMENT THROUGH THE CASES

In *Ejike Maduka v. Microsoft*¹, Mrs. Maduka a former employee of Microsoft Nigeria Ltd sued her employer: Microsoft Nigeria, together with its parent company, Microsoft Corporation. Her grouse, amongst other things, was that her employment was wrongfully terminated on account of her refusal to succumb to the sexual advances of her boss, the Chief Executive Officer of the company. Consequently, she sought (together with other reliefs) a declaration that the termination of her employment amounted to an infringement of her rights to dignity and freedom from discrimination. The Court found that the 3rd Respondent consistently tickled and touched Mrs. Maduka and some other female workers in the office against their will despite their protests. Consequently, the Court declared that the sexual harassment of Mrs. Maduka was an infringement of her fundamental right to dignity of human person and freedom from discrimination. The Court also held that by the inaction and silence of Microsoft Nigeria and Microsoft Corporation, both companies tolerated and ratified the acts of the Chief Executive Officer. Accordingly, both companies were held liable in damages for not taking utmost care to ensure that the employee's fundamental right to freedom from discrimination and degrading treatment in the workplace was not violated.

The facts in *Pastor (Mrs.) Abimbola Patricia Yakubu v. Financial Reporting Council of Nigeria & Anor*² are also instructive. In this case, Pastor (Mrs.) Yakubu (the claimant) claimed that she was at various times subjected to incessant seductive and unwelcome gestures from her boss, including outrageous marriage proposals, notwithstanding that he was fully aware that she was married. However, when she declined, he made her work under hostile circumstances, many times late into the night for no justifiable reason. When she further declined his sexual advances, he took steps to frustrate her employment by first transferring her to Kaduna and forcing her to report to a junior officer. Subsequently, her employment was terminated without fair hearing or just cause. The Court held that the claimant's right to human dignity and self-worth was violated by the 2nd defendant and awarded the sum of ₦5,000,000 (Five Million Naira) in favour of the claimant. The Court went further to express its disappointment with the manner in which the employer (1st defendant) condoned the acts of the 2nd defendant,

¹ (unreported) Suit NO: NICN/LA/492/2012

² (unreported) Suit No NICN/LA/673/2013

and stated that it would have awarded damages against the 1st defendant but could not do so, in view of the fact that the claimant did not ask for it.

Similarly, in **Stella Ayam Odey v. Ferdinand Daapah & Cuso International**³, the claimant averred that at every single opportunity, the 1st defendant made several sexual advances towards her, and she turned him down despite his persistent overtures. According to the claimant, she respectfully and emphatically told the 1st defendant that she was not interested in him as she was engaged. However, four (4) days after handing her wedding invitation to the 1st defendant, she was called into his office and asked to resign. She also averred that the 1st defendant asked her to write that she was getting married and relocating to Abuja, which she refused to do. Subsequently, the 1st defendant terminated her appointment without reason. After a careful review of the evidence before it, the Court held that the victimization, sexual harassment and subsequent termination of the claimant's employment because she turned down the sexual advances and overtures of the 1st defendant are malicious, unlawful and unconstitutional. Consequently, the Court awarded damages in the sum of ₦7,000,000 (Seven million Naira) in favour of the claimant.

WHAT EMPLOYERS MUST DO

A major takeaway from the above cases is that in appropriate circumstances, the Court will not hesitate to award damages against both the employer and the employee who committed the act of sexual harassment. This is because the law now imposes a responsibility on employers to provide a safe and secure work environment, and to ensure that preventive measures are put in place to prevent occurrences of sexual harassment in the workplace.

In light of the above, it is pertinent for employers to pro-actively take steps to ensure that the workplace is free from all forms of sexual harassment. This can be achieved by, amongst other things: having a zero-tolerance policy on sexual harassment; strict implementation and continuous review of anti-sexual harassment policies; creating a work culture and environment where employees feel comfortable to report instances of sexual harassment without fear of victimization or job loss; periodic training/awareness sessions on sexual harassment involving even senior officers; and setting up independent disciplinary committees to dispassionately investigate sexual harassment allegations, etc. The foregoing does not exhaust the strategies to be considered by employers to prevent sexual harassment in the workplace. In all, going by recent trends and activism against sexual harassment, it suffices to say that it is more cost effective to prevent and/or avoid sexual harassment, than to face the risk/consequences of a legal action.



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³ (unreported) Suit No: NICN/ /CA/ 03/2016