



CONSEQUENCES OF BREACHING THE LEGITIMATE EXPECTATION OF POACHED EMPLOYEES TO JOB SECURITY



Dolapo Plumptre (“*Dolapo*”) was at a high point in his career where many employers wanted him as their employee. He would usually jokingly tell his friends that he felt like there was a bounty placed on him; a good kind of bounty. His inbox on LinkedIn was usually on fire as recruiters struggled to get his attention. The more serious companies sent top executives to woo him. Peculiar Designs Limited (“*PDL*”), his current place of employment for over 15 years, were already out of their depths, having done everything to keep him. The only move left was for the Managing Director to resign and hand over the reins to Dolapo.

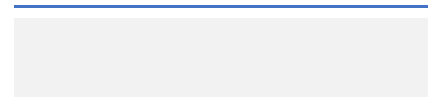
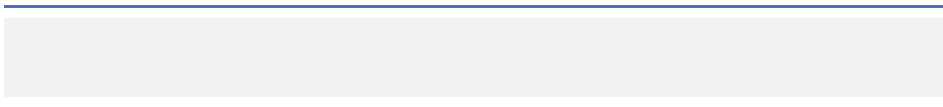
A Startup, Andoni, was looking to commence operations in Nigeria. Andoni’s co-founder, John Obot (“*John*”), reached out to Dolapo and asked that he come lead the business development efforts in Andoni. The offer was ginormous. Dolapo will now earn five times his monthly pay at PDL and was also offered stock options as well as other mouth-watering pecks. Dolapo was a bit concerned as to how a startup would be able to pay that much and offer all the benefits that were on the table. But John assured that Andoni was good for it, as they had concluded a finance round and were buoyant. Dolapo resigned from PDL and joined Andoni.

Less than three (3) months into Dolapo’s employment, Andoni’s CEO announced on Twitter that Andoni was reorganizing its operations in Nigeria, in a bid to provide better services to its customers. With this announcement, Andoni terminated the employments of some of its staff, including Dolapo, stating that their services were no longer required. Dolapo was distraught, sought legal assistance, and eventually sued Andoni.

A similar scenario was considered in the recently decided case of *Imuwahen Egbe v. Gokada Rides Limited*, Suit No.: NICN/LA/561/2019, the judgement of which was decided by Hon. Justice I. G. Nweneka of the National Industrial Court of Nigeria (NICN) on July 28, 2022 where the Court found merit in the claimant’s claim for the enforcement of her legitimate expectations.

FACTS AND FINDINGS

Imuwahen Egbe (“*Wahen*”) was an employee of Gokada Rides Limited (“*Gokada*”). Prior to joining Gokada, Wahen had worked in a reputable insurance company for twelve (12) years as Head of Business Transformation, having painstakingly risen through the ranks. To induce her to join Gokada, the



President/Co-CEO of Gokada, made representations to Wahren, promising her a successful career and job security if she joined Gokada. Although Wahren was a bit sceptical about joining a startup, she was assured that the company was profitable. However, barely two months after joining Gokada, the company initiated some structural reorganization and shutdown some of its operations. This led to the termination of about six (6) of its employees, including Wahren. Whilst it was clear to Wahren that she had been terminated on grounds of redundancy, Gokada did not formally declare redundancy nor did the company pay redundancy benefits to the terminated employees.



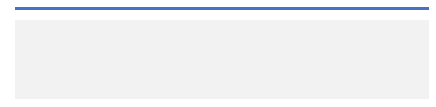
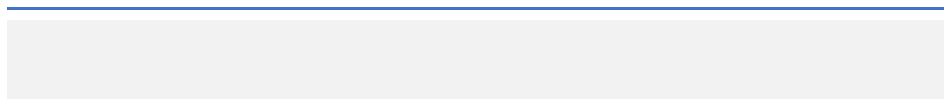
Aggrieved by the circumstances surrounding the termination of her employment, Wahren instituted an action at the NICN praying the Court, amongst other reliefs, that having convinced her to resign her employment of twelve (12) years with her previous employer to join Gokada in order to secure a thriving and more successful career, a legitimate expectation that she would have job security in Gokada for a reasonable time was created, and that the termination of her employment barely two months after, without stating any valid reason amounted to unfair labour practice.

In a well-considered judgment, the NICN found that Wahren's expectation to have job security and a fulfilling career in the employ of Gokada, having been sought after and given assurances by Gokada's President/Co-CEO, which influenced her resignation from her former employment, was reasonable and legitimate. The Court held that the luring of Wahren from her previous employment, only to terminate her employment for no cause and without reason barely two months after joining Gokada amounted to unfair labour practice. The Court deprecated the practice as being globally unfashionable and contrary to international best labour practices.

On redundancy, the Court found that indeed, Wahren was terminated for redundancy seeing that in line with Gokada's handbook, the structural reorganization that was carried out amounted to redundancy, and that having bound itself by the handbook to comply with Nigerian law during a redundancy, Gokada is under an obligation to comply with section 20 of the Labour Act and its own handbook to negotiate and make redundancy payment to Wahren. Gokada was therefore held liable in damages for all its wrongful acts.

OUR COMMENTS

There are important take-aways from the NICN's judgment in the subject case. Employers and Human Resource Managers should exercise care in poaching employees from their thriving careers and should ensure that the services of such employees are clearly needed. Companies risk financial liabilities for failed promises made in the bid to poach employees as failure to fulfil such promises would constitute a breach of the affected employee's legitimate expectation.



In addition, an employee may be held entitled to redundancy benefits where a formal declaration of redundancy is not made if the circumstances of that termination suggest redundancy. Redundancy is the “...involuntary and permanent loss of employment caused by excess manpower.”¹ It also occurs when the services of a worker, having been in the continuous employment of an employer, are no longer required by that employer due to no fault of the worker. When such a situation arises, the employer pays redundancy benefits to such a worker.² Generally, in no fault terminations for redundancy, employers must comply with the redundancy provisions contained in their employee handbooks and where no provisions for redundancy are contained in their employee handbooks, there must be compliance with the Labour Act.



Finally, notwithstanding that the offer of employment or employee handbook provides that an employee can be terminated without reason, termination without providing a valid reason for same is contrary to international best labour practices and wrongful. Employers must therefore ensure that terminations are only for valid reasons clearly expressed in the termination letters.

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¹ Section 20(3) of the Labour Act.

² See *Union of Shipping, Clearing and Forwarding Agencies Workers of Nigeria v. Management of Transatlantic Nigeria Limited* [1988] Unreported Suit No: NIC/14/87 delivered by this Court on the 26th of February, 1988.