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CAN AN EMPLOYER ARBITRARILY REFUSE TO PAY A SEVERANCE PACKAGE TO AN ELIGIBLE EMPLOYEE UPON TERMINATION OF HIS EMPLOYMENT?



Mr. Frederick Okoro (“Frederick”) was employed by Volosaz 8Ventures Limited (“Volosaz Ventures”) as a General Manager. This employment came at an opportune time for Frederick, as there had just been a new addition to his family. Frederick discharged his duties as a General Manager with competence and diligence and his appraisal reports were consistently excellent. Consequently, his efforts and dedication were recognised by Volosaz Ventures, and he was rewarded with periodic promotions and raises. On that fateful Monday morning, Frederick received an email from Karen Salvador “Karen”, the Head of Human Resources of Volosaz Ventures, which

contained a letter of termination of his employment due to restructuring of Volosaz Ventures. Frederick was devastated by this news as he was the sole breadwinner of his family, and this job was his only source of income.

Notwithstanding the dire circumstances, Frederick took some solace in the fact that, being a senior management staff of Volosaz Ventures, he was entitled to a severance package upon termination of his employment based on the fulfilment of some criteria, which he met. However, to Frederick’s greatest dismay, Volosaz Ventures refused to pay him the severance package upon being disengaged from the employment of the company. This situation was a cause of grave concern for Frederick, as he had hoped to use the severance package due to him to maintain himself and his family, considering his sudden unemployment and loss of income. In the circumstances, Frederick engaged the services of a solicitor who, on his behalf, wrote several letters to Volosaz Ventures requesting for payment of his severance benefits. Frederick’s efforts towards amicable settlement proved futile, as Volosaz Ventures vehemently denied Frederick’s claims of being entitled to a severance package and declined his appeal for amicable settlement of the matter.

In light of the foregoing, Frederick was deeply aggrieved and engaged the services of the law firm of Amethyst LLP to proffer advice on his rights and institute an action to claim for his severance package and post-employment entitlements.

A similar scenario was considered in the recent case of **Mr. Josiah Unuane v. Royal Exchange Plc & Anor., Suit No.: NICN/LA/499/2020**, the judgment of which was delivered by the National Industrial Court of Nigeria (NICN), per Hon. Justice I.G. Nweneka, on February 28, 2023. In this case, the Court affirmed the right of an employee, who was a senior management staff, to be paid a severance package when disengaged for reasons other than misconduct or retirement, as contained in the conditions of service governing his employment.

FACTS AND FINDINGS



Mr. Josiah Unuane (“Josiah”) was employed by Royal Exchange Plc on 17th August, 2010 as an officer in the Audit and Controls Department on Deputy Manager Grade. Although the Royal Exchange Plc employed him, he simultaneously worked for, received instructions, directives and remuneration from Royal Exchange Plc and all its subsidiaries including Royal Exchange General Insurance Co Ltd throughout his employment. His terms of service indicated that while he remained in the service of Royal Exchange Plc, he would be liable to serve in any part of the country and/or be redeployed to any member company.

Royal Exchange Plc and Royal Exchange General Insurance Co Ltd, by two separate letters, promoted Josiah as their respective Head of Internal Audit and Investigation Department on Assistant General Manager Grade on 7th May, 2018 and 30th April, 2018, respectively. As an Assistant General Manager, Josiah was a management staff by virtue of clause 3.7 of the Conditions of Service for Senior Management and was entitled to severance benefits as stipulated in clause 15.11 thereof.

Josiah’s employment was terminated by a letter dated 25th June, 2020 on the ground of restructuring of Royal Exchange Plc but he was unfairly denied his severance package having been disengaged for reason other than misconduct or retirement. Josiah made demands to Royal Exchange Plc for payment of his severance benefits, but all his efforts were to no avail, as Royal Exchange Plc disclaimed liability to him and declined his requests for amicable settlement.

Aggrieved, Josiah instituted an action at the NICN seeking payment of his severance benefits. Royal Exchange Plc’s contention was that it exercised its discretion under clause 15.11 of the Conditions of Service for Senior Management Staff in not paying Josiah any severance package upon the termination of his employment. Royal Exchange Plc admitted that other former senior management staff who had been disengaged from the company were paid a severance package in line with the Conditions of Service for Senior Management Staff but asserted that the payment of severance packages was not automatic, rather the company in those instances chose to exercise its discretion in favour of paying the severance packages of those disengaged employees. Royal Exchange Plc denied Josiah’s claims and stated that the severance package was a discretionary payment, and the economic challenges influenced their decision to make no further payment to Josiah.

The NICN, in finding in favour of Josiah against Royal Exchange Plc, held that he is entitled to severance payment pursuant to clause 15.11 of the Conditions of Service for Senior Management Staff having been disengaged from his employment on the ground of restructuring of Royal Exchange Plc other than for misconduct or retirement. The Court held that Royal Exchange Plc’s purported exercise of discretion under clause 15.11 of the Conditions of Service for Senior Management Staff to exclude Josiah from severance benefits amongst disengaged employees is wrongful, unfair, discriminatory and an unfair labour practice. This finding was strengthened because it was established that Royal Exchange Plc had a recognized practice of paying a severance package to disengaged employees and had in fact, made payment to other employees terminated along with Josiah.

In the circumstance, the NICN made a consequential order directing Royal Exchange Plc to compute Josiah's severance benefits package in line with clause 15.11 of the Conditions of Service for Senior Management Staff and pay same to him.

OUR COMMENTS

Royal Exchange Plc's undoing, in this case, was its decision to not pay Josiah the severance benefits which accrued to him by virtue of the terms and conditions of his employment, as contained in the Conditions of Service for Senior Management Staff. Having fulfilled the criteria for eligibility for severance packages due to senior management staff, Frederick was entitled to a severance package upon the termination of his employment.

Severance payments are usually additional payments extended to employees upon the termination of employment on a no-fault basis. Although severance payments are not default post-employment benefits under Nigerian labour jurisprudence, they can become so if they are contractually agreed upon or reasonably inferred by actions of the employer (legitimate expectation).

Employers are sometimes more inclined to construe the clauses contained in employment documents such as contracts of employment, conditions of service and employee handbooks to suit the exigencies of their business operations. In so doing, they are likely to act contrary to the intendment of the documents, especially where payment of benefits is concerned. Therefore, employers ought to avoid such interpretation as it usually leads to the employer incurring liability if an aggrieved former employee elects to exercise his right to seek legal recourse against the erring employer. Hence, it is imperative for employers to adhere strictly to the terms and conditions which govern the contract of employment entered with employees as well as established practices to mitigate risk exposure and liabilities.

Where an employee's contract of employment or terms and conditions of service provides that certain benefits will accrue to the employee in the event of termination of his employment by the employer upon fulfilment of certain conditions, the employer is obligated to comply with the said terms and conditions of employment, where the employee has fulfilled the prescribed eligibility criteria.

It is also important to note that where an employer has established a practice of rewarding its eligible disengaged senior management staff, the existence of such practice creates a legitimate expectation that other eligible employees would be similarly rewarded. Hence, it will be considered discriminatory and an unfair labour practice for the employer to deny an eligible employee severance payment made to other former employees who exited the company's employment in similar circumstances¹. This clearly highlights the duty imposed on an employer to treat all its employees fairly and without discrimination as it pertains to the payment of terminal benefits to eligible employees.



¹ Mbilitem v. Unity Kapital Assurance Plc [2013] 32 NLLR [Pt. 92] 196 at 235-237

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