
A Newsletter on Labour Law and Emerging Trends



Perchstone & Graeys
SOLICITORS, ADVOCATES & ARBITRATORS

‘When does one cease to be an employee?’

- STATUS OF EMPLOYMENT DURING STUDY LEAVE

Caught in the web of which career path to take, Raymond finally got a clue. As a young graduate who had just secured a job with one of the prominent financial institutions in the country, Raymond was still determined to continue his personal development and further his studies abroad. *‘Though persuaded by the very competitive salary, as well as the paraphernalia and pecks of office, I refuse to settle for the less’*, Raymond said to himself. Thus, upon application, Raymond was granted a year’s study leave by his company, with the hope of adding value to himself and in turn deploying same towards the growth of the company upon his return. The likelihood that his decision could impact negatively on his relationship with the company never crossed Raymond’s mind at any time before proceeding on his study leave, but later came to bare afterwards.

Though hypothetical, the above scenario is not an uncommon arrangement between employers and employees. The demands of productivity and vitality in the very competitive business world make skill acquisition and advancement a *sine qua non* to business growth, hence the need for individual employee capacity building. The question that agitates one’s mind is the effect of study leave on an employer-employee relationship and the role of the court in adjudicating on same, guided by the principle of substantial justice. This is the fulcrum of the decision of the National Industrial Court of Nigeria (NICN) in ***Michael Ogunbayo v Fidelity Bank Plc. and Managing Director Fidelity Bank Plc.*** NICN/LA/350/2013 [2017] NGNIC 3 (13 December 2017).

FACTS

By an employment letter dated March 25, 1997, Ogunbayo Oluwale Michael (“*Michael*”) was employed by FSB International Bank Plc. as a Banking Officer; he rose to Assistant Manager in 2003. In 2005, FSB International Bank Plc. merged with Fidelity Bank Plc. (“*the Bank*”) and Michael automatically became an employee of the Bank. In December 2006, he was again promoted from Deputy Manager 1 to Deputy Manager 3. In July 2009, Michael applied for 12 months study leave to pursue a Master’s Degree Program in Information Technology Management and Organizational Change. His application was approved, however in on following terms:

- *The 12 month leave is without any financial obligations from the Bank but counts as part of your years of service only if you eventually return and serve the Bank for at least six (6) months.*
- *The study leave period cannot be utilized as notice period for resignation. Where you wish to resign while on or immediately after the study leave your date of commencement of the leave will automatically be your date of separation from Bank.*

- *You are required to give six months' notice of your intention to return to the service of the Bank after the completion of your program. Please note that re-absorption will be subject to availability of vacancy and the required skills.*

Michael was encouraged to be a good ambassador of the Bank while on study leave and proceeded to the University of Lancaster for the program. Six months to completion and in accordance with the study leave policy, Michael gave the Bank notice, by email, of his intention to return to its employment upon completion of his program. Michael completed the program in September 2010 and returned to Nigeria to continue his employment. On return, the Bank requested that Michael submit his updated Curriculum Vitae and a business impact analysis of the course he had gone to study on the business of the Bank. This he did and subsequently, attended two re-absorption interviews. The last interview was with the Managing Director of the Bank who told him that he could no longer be re-absorbed owing to a lack of vacancy. Thus, after waiting for about 13 months without a salary or benefits, the Bank, by a letter dated November 9, 2011, terminated Michael's appointment, with effect from October 5, 2009, being the date he proceeded on the study leave.



Aggrieved by the bank's decision, Michael filed an action against the bank claiming, amongst others, a declaration:

- that the termination of his appointment was wrongful and unlawful, or, in the alternative, should take effect from the date of service with the termination letter;
- that he remained a staff of the bank until November 9, 2011 when his letter of disengagement was issued;
- that he is entitled to the salaries for the 13 (thirteen) months for which the bank kept him waiting; and
- for payment of his entitlement and severance, from the day he joined the bank till the issuance of the letter of disengagement, fifty million Naira general damages; and one million Naira solicitor's fee.

FINDING/DECISION

1. *Whether it is wrongful for the defendant to terminate the employment of the claimant retrospectively.*
2. *Whether the 1st defendant actually terminated the employment of the claimant in accordance with study leave approval and the policy of the 1st defendant.*

On both of these issues the court found that, based on the language of the letter approving the study leave, Michael remained an employee of the defendant whilst on study leave. Further, by law, termination or dismissal cannot be retrospective. Thus, the Bank was wrong to attempt to do so. Consequently, the termination could only take effect on the November 9, 2011. That said, the court did uphold the termination as valid, as the reason given for the termination was consistent with the conditions provided in the letter approving the study leave; i.e., *subject to availability of vacancy and the required skills.*

3. *Whether the claimant is entitled to the reliefs subscribed to and endorsed on the complaint and statement of claim in this suit.*

In this respect, the court held that it could not take notice of the six-month' notice given to the Bank by Michael as it was alleged to be an email printout without any further evidence to establish its veracity; *"In the absence of evidence that Exhibit C6 is a printout from an email, I cannot take the character of a document electronically signed as to make it of any evidential value."* Furthermore, since the approval was given in writing, the court held that notice must also be in writing. As a result, there was no evidence to show that Michael gave the 6-months' notice of his intention to return to employment as stipulated under the approval letter. Therefore, the court held that no relief could be granted for the 13 months (October 2010 to October 2011) that Michael was kept waiting before the eventual termination of his employment.

4. *Whether the claimant is entitled to NGN50, 000,000.00 (fifty million Naira) damages against the defendants jointly and severally.*
5. *Whether the claimant is entitled to NI, 500,000.00 (one million, five hundred thousand Naira) as the cost of prosecuting the suit.*

The court ruled that the claims for a severance package and general damages could not be granted as they were not supported by pleadings. As no relief was granted, Michael was therefore not entitled to any cost.

COMMENTS

For the present purpose, it is pertinent to emphasise the point that the Court (even though denied Michael, the claimant, sought monetary benefits/reliefs on ground of defect in way case was presented) agreed with the position that he (Michael) effectively remained a staff of Fidelity Bank up to November 9, 2011, when his employment was terminated. Put differently, the mere fact that the correspondence from the employer communicating approval to proceed on study leave with a caveat thus *'Please note that re-absorption will be subject to availability of vacancy and the required skills'* may not be enough to fortify an argument, or position by the employer that employment status of the affected employee ceased to be the period of his *'temporary exit'* from the Company.

This, undoubtedly, gives a concern. The Staff Handbook, employment contracts etc. readily come handy in resolving impending issues arising therefrom. There must be clear stipulation regulating/prescribing employment status/relationship, benefits and obligations etc. on both parties at all times during the tenure of employment relationship.



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