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## A Newsletter on Labour Law and Emerging Trends

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VALUE FOR THE LOSS OF USE OF A FINGER = NGN500,000 ?

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### FACTS

Solomon Jude lost a finger to an armed robbery attack in the course of attending to his duty out of station. He contended that the incident and the injury he sustained therefrom were a result of the defendant's default in keeping to the terms of the condition of service, specifically, to provide for him accommodation in the new station to which he was transferred.

Employed by the Nigerian Bottling Company in March 2003 and at different times transferred to work in different branch outposts/offices of the defendant's company, Mr. Jude was transferred to the defendant's Owerri office, and subsequently to its Orlu depot as a store keeper in September 2012. By his employment terms and condition contained in the Junior Staff handbook, the defendant had the responsibility to provide him with the means and facility to settle down where he was transferred to. However, because the defendant delayed in making such arrangements at Orlu, Mr. Jude had to shuttle daily between Owerri (his residence/physical location) and Orlu, the new work-station. On September 28, 2012, while returning to Owerri from Orlu, Mr. Jude was attacked by armed robbers who robbed him, beat him up and shot his middle finger. He informed the defendant of the incidence, was advised to seek medical attention and was granted medical leave. The employer did not, however, pay for the expense incurred in seeking medical attention, and his employment was subsequently terminated, ostensibly on a different reason.

Mr. Jude filed an action at the National Industrial Court (NIC), seeking for, amongst other reliefs, the sum of ₦90, 000,000.00 (ninety million Naira) being damages for the permanent injury sustained he sustained during his employment by the Defendant.



### ISSUES

At the hearing, the central issue turned on whether the claimant had proved his case as to be entitled to the reliefs he sought.

### Finding/Decision

The NIC held that the injury resulted remotely from the defendant's default and furthermore, awarded N89, 500,000 less the sum asked by an aggrieved employee for the loss of a finger in **Solomon Jude v. Nigerian Bottling**

**Company PLC**<sup>1</sup>; *“only a finger was lost. Although he is entitled to compensation for the loss of his finger, this court considers the sum claimed as being rather unrealistic, considering that the missing finger does not prevent the claimant from using the hand as a whole. The effect of the lost finger to the productivity of the hand does not necessarily justify the sum of N90, 000,000.00 claimed by the Claimant. From my assessment, the sum of N500, 000.00 will be adequate compensation to the claimant.”*

The NIC had earlier observed that the defendant had the plaintiff covered under a health insurance policy, and that as applicable in the particular facts of this case, one of the conditions under which the employer would be liable for an employee’s medical treatment (where the employee is not treated by an in-house medical personnel) is where the employee had obtained the written consent of the company. In the instant case the employee failed to obtain the written consent of his employer and the court held that the latter was not responsible for his treatment.

The court also considered the issue of whether Nigerian Bottling Company PLC fulfilled its obligations towards a worker sent to work outstation. A clause in the Employer’s Handbook stated that: *“...where made at employee’s request, an employee who is permanently transferred by management from one location/town to another will receive a special single payment equal to his two months’ basic salary, plus ₦5000 as resettlement grant. The company will also transport the employee and provide him with accommodation at the new station or pay in lieu of accommodation at the company’s prevailing rate for a period not exceeding one month...”*<sup>2</sup>

In the instant case, the employee had failed (or delayed) in making good of its obligations to the employee and the NIC, per Anuwe J. found that since the employee defaulted, it was remotely responsible for the injury caused.

## COMMENTS

The NIC’s decision in this case touches on some salient employment issues.

### **Employer's duty to employee when latter is sent to work outstation**

The dynamics of the Solomon Jude’s case enabled the court to reiterate the responsibility owed by employers to employees when the latter is transferred i.e. sent to work outstation. Thus, where workers are sent to work outstations (including to attend seminars, courses, trainings, etc. on the employer’s expense), employers must ensure such workers receive the entitlements/allowances due as any injury, accident, loss that results due to the employer’s default will be borne by it.



### **Balancing Employer/Employee Responsibility**

The facts of this case appear to lend credence to the reluctance of the NIC to interfere unduly with work place dynamics on the side of either party, where inappropriate. Put simply, the business of the court is to protect the interests of both the employee and employer, and in doing so, strike a balance to ensure that neither is meted with harsh or otherwise unfair treatment at the instance of the other. The NIC did not appear swayed by sentiments of occasioning permanent/physical disability. The interplay of the facts was a major/critical factor in reaching a conclusion of compensatory damages. Put simply, employees must note that where accident, injury or loss results in which the employee is mandated by law or the organisation’s handbook (or other internal document) to a

<sup>1</sup> Unreported Suit No. NICN/OW/33/2013 the judgment of which was delivered on July 19, 2016.

<sup>2</sup> Per Anuwe J.

compensation, the injured worker/employee must fulfil every pre-condition prescribed to successfully recover for such accident, injury or loss.

Furthermore, the NIC, while empathising with an employee's loss (and encouraging employers to do such), will not award unrealistic damages against the employer for employee's loss.

### How Termination can be effected

An employer can terminate employment orally, in writing or by conduct. However, the question arises as to whether terminations made orally or by conduct will not work contrariwise to international best practices which the NIC is empowered to enforce within the context of our local milieu.

Employers must thus ensure that a notice of termination must be given to the employee, as failure to do so amounts to wrongful termination. Also, employers must note that where they deliver a letter of termination to the employee, it will not be effective unless service to the letter is acknowledged or endorsed by the employee.



### CONCLUSION

A feature that stands out in this case is the fact that the court was brought to the level of “valuing” a human body part caused by the injury to award damages. Overall, a take-home from the court's decision is that the NIC is making real its recent rhetoric that it will ensure a balance of both employee and employer's rights in Nigerian labour jurisprudence—an area that appears traditionally focused on protecting employee's rights.



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