

THE RIGHT TO RESIGN FROM MILITARY SERVICE: ABSOLUTE OR NOT?

INTRODUCTION



Alex Ojo, a skilled software engineer, joined the Nigerian Navy and was commissioned in June 2015. Assigned to the Abuja headquarters' IT department, he leveraged his experience to modernize the Navy's infrastructure. His exceptional performance and dedication earned him recognition, including being named "most diligent staff" three times. In his seven years of service, Ojo maintained a clean record and

exceeded expectations when performing assigned duties. He also contributed to the data security of the Naval Hospital in Abuja, by building state-of-the-art medical record-keeping systems and creating security protocols for patient records and data.

In July 2021, Ojo married Lucy, a Canadian citizen. Despite their commitment, the long-distance relationship became unsustainable, particularly with their desire to start a family. After careful consideration, Ojo made the difficult decision to resign and relocate to Canada. He submitted a formal resignation letter in June 2022, outlining his intentions and proposed end date of September 30, 2022. His commanding officer acknowledged the letter and forwarded it for processing.

Despite following protocol and providing ample notice, Ojo received no formal response. He continued working diligently while awaiting confirmation. However, after the proposed resignation date passed, Ojo was informed that his resignation was denied and he was still considered an active officer in the Nigerian Navy. Ojo was taken aback by this unforeseen turn of events. He firmly believed that the Constitution of the Federal Republic of Nigeria, guaranteed his right to resign which was activated upon submission of his resignation letter.

Despite finding himself in a difficult situation, Mr. Ojo remained steadfast in his decision to relocate. Consequently, he opted to contest the stance of the naval authorities in a labour court, asserting that his resignation should be deemed effective from the date specified in his letter. He argued that the refusal of the naval authorities to acknowledge his resignation encroached upon his right to resign.

A similar situation was considered by the National Industrial Court of Nigeria (NICN) in *Elkanah John Garang v. The Chief of Air Staff & The Nigerian Air Force* NICN/ABJ/117/2023, judgment delivered by Hon Justice O.Y Anuwe on February 29, 2024, where the court considered the validity of the voluntary resignation of an officer from service

FACTS AND FINDINGS



Mr. Elkanah John Garang (“claimant”), was a medical doctor who served in the Nigerian Air Force (NAF) hospital (“defendant”) in Kaduna State for 5 years. During his service, Mr. Elkanah served diligently from July 2014 to September 2019 without any disciplinary issues. However, upon deciding to resign, he submitted his resignation letter to the Nigerian Air Force (NAF) on July 22, 2019. Upon the expiration of the notice period, Mr. Elkanah believed his employment with NAF was duly

terminated. Despite acknowledgment of the letter by his unit's commander, NAF continued to treat him as an active officer, arguing that Mr. Elkanah had failed to follow the prescribed procedures for voluntary retirement or discharge under the Armed Forces Act of 2004. NAF claimed he exited service unofficially and was considered a deserter for not obtaining final approval from the Chief of Air Staff.

Aggrieved by this, Mr. Elkanah brought an action at the National Industrial Court Nigeria seeking declaratory reliefs affirming the validity of his resignation. The crux of the matter was whether his resignation was valid under the 1999 Constitution or if compliance with the Armed Forces Act was necessary.



Mr. Elkanah contended that, as a public officer, the 1999 Constitution allows resignation from any office upon submission of a resignation letter to the appropriate authority. Conversely, the defendants argued that compliance with the Armed Forces Act was mandatory, including obtaining approval from the Chief of Air Staff. They further claimed Mr. Elkanah failed to exhaust remedies under the Act for any grievances regarding the delay in approval.

COMMENTARY

The court ruled in favour of Mr. Elkanah, affirming his unqualified right to resign from NAF without requiring any approval. It emphasized that a resignation letter, regardless of wording, effectively conveyed the intent to resign, thereby validating Mr. Elkanah's action on July 22, 2019. As he voluntarily joined the service, he had the right to voluntarily resign. The court declared his resignation letter valid and effective, permanently restraining any action against him by the defendant regarding his resignation.



The right to resign is generally considered absolute because it protects individual autonomy and aligns with the core principles of human dignity and freedom of choice. This foundational concept finds robust expression in most employer-employee relationships, where individuals possess the freedom to determine their own employment status. However, it's understood that in certain contexts, such as military or paramilitary employment, the dynamics surrounding the right to resign may differ. This is likely due to the fact that considerations such as operational effectiveness and national security concerns may influence the application of the right to resign.

Regardless of these considerations, individuals in military or paramilitary employment are not slaves. They cannot be compelled to serve against their will. Therefore, such individuals are still empowered to exercise their employment rights, subject to specific regulations, procedures, or operational exigencies aimed at maintaining organizational effectiveness and mission readiness, and more importantly, previously agreed to by parties.



The right to voluntarily resign from military service/employment is a fundamental aspect of individual freedom, firmly entrenched in the Nigeria's Constitution. The 1999 Constitution, as amended, unequivocally guarantees this right by stipulating that any person appointed, elected, or selected to an office established by the Constitution may resign from that office by submitting a resignation letter to the appropriate authority¹. Such resignation, the Constitution provides, becomes effective upon receipt by the authorized individual or entity.² The Nigerian Armed Forces, being a creation of Nigerian Constitution³ is bound to adhere strictly to its provisions regarding the resignation of officers. Therefore, when the Constitution explicitly provides for the voluntary resignation of an office, no other law can curtail or limit this right, except as may be curtailed by the Constitution itself.

The principles outlined in the Constitution regarding resignation are clear and unambiguous. The resignation becomes effective upon receipt of the resignation letter by the relevant authority. It is thus firmly established that the validity of a voluntary resignation rests solely on the act of tendering the resignation letter to the authorized individual or entity. The decision of the Industrial Court in **Elkanah John Garang v. The Chief of Air Staff & The Nigerian Air Force** further emphasizes this position and goes further to imply that for resignation in military employments or similar employment relationships, there is no requirement for acceptance by the employer for the resignation to be valid. Once tendered and received, the resignation takes effect upon receipt or the indicated period of resignation.

In essence, the right to resign, even from military service, is still a sacrosanct constitutional prerogative, safeguarding individual autonomy and freedom of choice within the armed forces and an officer's right to resign from his employment or commission is duly protected.

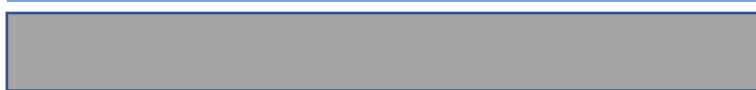
Having established the fundamental right to resign, even for military personnel, it is natural to consider how this stance might be upheld in scenarios where national security concerns come into play. The military's primary mandate is to safeguard the interest of a country which may necessitate measures to ensure the integrity of its operations and the protection of sensitive information. How does one reconcile the officer's right to resign with overarching considerations of national security?

Unlike conventional employment settings, where individuals may resign with relative ease, military/paramilitary personnel operate in high-stakes environments. Resignation under such circumstances could potentially disrupt operations, compromise unit effectiveness, and undermine mission objectives. While of course, what is agreed to before joining military service assumes critical significance in this context, it is still interesting to consider how the right to resign may cause legitimate concerns about its impact on mission continuity, troop morale, and overall operational integrity.

¹ Section 306(1) of 1999 CFRN

² Section 306(2) of 1999 CFRN

³ Section 217 of the 1999 CRN



As already stated above, voluntary resignation, even for military personnel, is recognized and established by the Nigerian Constitution and individuals under such employment are assured of the right to exit employment upon providing proper notice of resignation.

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