



WRONGFUL TERMINATION AND ITS ASSOCIATED RISKS



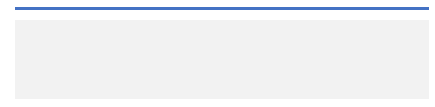
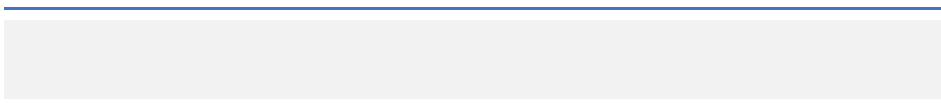
“...But counsel, what’s the worst that could happen? I have directed the termination of the affected staff’s employment. I understand that you say it is wrongful, but my legal team have also informed me that all that staff can get is one month’s salary in lieu of notice for wrongful termination. I struggle to see how that should make us lose sleep...” With these words, Dr. James Abiodun, MD/CEO of Bridge-Way Airline (*“Bridge-Way/Company”*) dismissed the words of caution offered by the company’s external legal counsel.

The events preceding the above conversation was the termination of the employment of Oluwakemi Gilbertson (*“Kemi”*) in circumstances that could be best described as humiliating, retaliatory, malicious, and outrageous. Prior to the termination of her employment, Kemi had occupied the position of Director, Internal Controls & Audits at Bridge-Way, but towards the end of her time at Bridge-Way, she was transferred to the position of Manager, Communications & Policies, with lesser seniority and responsibilities than her previous position.

Although she was informed of an investigation that was commenced pursuant to a whistle-blower complaint, the investigation was never concluded, nor was she invited to face any disciplinary panel or called upon to defend herself against the allegations raised by the whistle-blower. Kemi never even saw the allegations levelled against her. In truth, there were no allegations against Kemi. What was obvious was that Kemi was too ‘righteous’ to be let into Dr. James Abiodun’s inner circle. The word out was that Kemi was too rigid and was known to stand up against corrupt practices in the workplace. Rather than being rewarded, Kemi was fired for no reason.

Not willing to let the termination go without redress, Kemi has now instituted an action at the National Industrial Court of Nigeria (NICN) asking the Court to declare the termination of her employment wrongful and pay damages accordingly, especially exemplary damages.

Interestingly, similar scenario was considered in the case of *Abdul-Hakeem Olasewere v. Airtel Network Limited*, *Suit No: NICN/LA/90/2014*, judgment of the NICN delivered by Hon. Justice J.D. Peters on April 7, 2022. In this case, the Court, in addition to affirming that termination of employment without stating reasons for same was wrongful, the Court veered off what seemed to have been the usual or established damages payable to a wrongfully terminated employee to hold the defendant liable in hefty damages.



FACTS AND FINDINGS

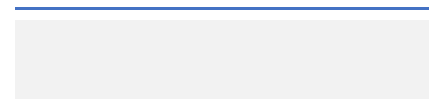
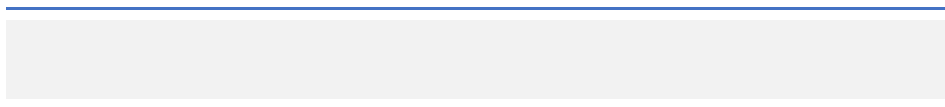
Mr. Abdul-Hakeem Olasewere (“*Mr. Olasewere*”) joined the employment of Airtel Networks Limited (“*Airtel*”) on February 1, 2008 and given his excellent work performance, he was promoted to the position of the Vice President, Operations and Support; a position that placed him as a potential replacement for the MD/CEO of Airtel. In taking his work seriously, and given the sensitivity of his role, Mr. Olasewere scrutinized and checkmated inordinate operational and procurement processes undertaken by some other senior employees. Rather than being praised for this prudence, he was seen as a threat and eventually terminated.



Before his termination Mr. Olasewere faced a panel set up to look into several petitions of alleged corrupt practices purportedly levied against him by external contractors. He was then told to step aside from that office for some days in order for the allegations to be investigated. Same day, an internal memo was passed moving Mr. Olasewere to the position of Vice President, Special Projects Site Optimization. A month after, he was summoned again before a panel of very top executives of Airtel and informed that there were serious allegations of intolerable misconducts against him. Two weeks afterwards, on December 24, 2013, his employment was terminated and he was informed that he would be paid one-month salary in lieu of notice as well as other entitlements already due to him.

Mr. Olasewere’s contention before the NICN was that his termination was accentuated by malice and the intention of depriving him of the potential opportunity of becoming the MD/CEO of Airtel. He claimed wrongful termination of employment on the ground that his termination was based on an undisclosed investigation of allegations made against him, and as such, he was not given fair-hearing. He then claimed exemplary damages over one billion on the premise that he has suffered serious embarrassment, loss of opportunities, depression, etc., because of the wrongful termination. On the other hand, Airtel’s contention before the NICN was that Mr. Olasewere’s employment was not terminated sequel to the investigation on any allegation but in accordance with his employment contract which only stipulated one month’s salary in lieu of notice and other entitlements which had fallen due before the termination. Airtel further argued that an employer is not bound to give reasons for the termination of an employee’s contract of employment.

The NICN, in addition to finding that Mr. Olasewere established a strong case of bias, malice, and unfair hearing against Airtel which was not rebutted by any preponderance of evidence, held that Mr. Olasewere’s termination was wrongful on account of Airtel’s failure to give a valid reason for Mr. Olasewere’s termination and to comply with its disciplinary policy. Given the entire consideration of the unfair treatment of Mr. Olasewere by Airtel, which the Court further found to be sufficiently outrageous to merit punishment by exemplary damages, the Court awarded exemplary damages of ₦100,000,000.00 (one hundred million Naira) in favour of Mr. Olasewere. In addition to the exemplary damages awarded, the Court also awarded



₦60,000,000.00 (sixty million Naira) as general damages to compensate Mr. Olasewere for the stigma his unceremonious exit portends as well as ₦1,000,000.00 (one million Naira) as costs of action.

Airtel's counterclaim for the sum of ₦4,986,419.98 (four million, nine hundred and eighty-six thousand, four hundred and nineteen Naira, ninety-eight Kobo) also succeeded. In all, Mr. Olasewere was awarded the sum of ₦161,000,000.00 (one hundred and sixty-one million Naira) less, of course, the sum of ₦4,986,419.98 (four million, nine hundred and eighty-six thousand, four hundred and nineteen Naira, ninety-eight Kobo) successfully counterclaimed against him by Airtel.

OUR COMMENTS

There are new and enduring changes in the labour and employment law space, which employers must take into cognizance in their relationship with their employees. The powers of employers to do as they please with their employees is now clipped. This is now the era of the application of international best practices and labour standards in labour and employment relations. It is no longer globally fashionable nor acceptable for employers to terminate an employee's contract of employment without giving valid reasons for the termination.¹



Beyond stating reasons for termination of employment, employers must also ensure that their internal procedures and policies align with international best practices and labour standards. Procedural fairness must be entrenched in any company's handbook and more than that, must be religiously adhered to whenever an employee is being terminated or dismissed via disciplinary procedure.

The law has been that a wrongfully terminated employee is entitled to damages in the form of salary in lieu of notice.² Airtel's counsel presented this position before the Court, but the Court held the submission as an old, archaic, harsh, and outdated common law position which judicial authorities have confined to the dustbins of history, citing the Court of Appeal's decision in ***Sahara Energy Resources Limited v. Mrs. Olawumi Oyebola***.³ What is clear is that Courts will award exemplary damages where it is clear that a defendant's action is sufficiently outrageous, especially where issues of fraud, malice, cruelty, insolence, and flagrant disregard of the law are disclosed.⁴

On the other hand, general damages are such that the law will presume to be the direct natural or probable consequence of the act complained of, or damages resulting from the loss flowing naturally from the breach of contract and is incurred in due consequence of the breach.⁵ In the case under review, the Court

¹ *Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN) v. Schlumberger Anadrill Nigeria Limited* [2008] 11 NLLR (Pt. 29) 164; *Mr. Ebere Onyekachi Aloysius v Diamond Bank Plc.* [2015] 58 N.L.L.R 92 and *Duru v. Skye Bank Plc* [2015] 59 N.L.L.R (Pt. 207) 680).

² *Union Bank of Nigeria Plc. v. Soares* (2012) LPELR-8018 (CA); *Gabriel Otor v. Dangote Flour Mills Plc. & Anor.*, Suit No. NICN/AK/05/2018, judgment of which was delivered on January 17, 2020, per Hon. Justice A.A. Adewemimo.

³ (2020) LPELR-51806 (CA).

⁴ *Odugu v. Attorney General of the Federation* [1996] 6 NWLR (Pt. 456) 508.

⁵ *NEPA v. Anwal* [2011] 5 NWLR (Pt. 1241) 571.

considered the shameful and disgraceful manner Mr. Olasewere was treated before his eventual termination as well as the stigma which his unceremonious exit from Airtel portended and awarded two (2) years' salary to Mr. Olasewere as general damages.

Although it is settled that the decision of a court must always be considered in the light of its own peculiar facts or circumstances as no case is identical to another, though they may be similar, and each case is only an authority for what it decides, and nothing more,⁶ companies must take cognizance of the fact that the NICN's jurisprudence on damages for wrongful termination is departing or has departed from the era of salary in lieu of notice as compensation, to granting general and exemplary damages against companies. These are real risks HR practitioners and management of companies must factor in their relationships with their employees.

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⁶ *Skye Bank Plc v. Akinpelu* [2010] 9 NWLR (Pt.1198) 179; *Okafor v. Nnaji* [1987] 4 NWLR (Pt.64) 129.