



**LEGAL IMPLICATIONS OF NON-ISSUANCE OF
CONTRACT OF EMPLOYMENT**

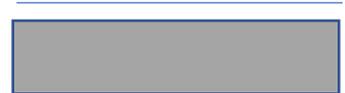
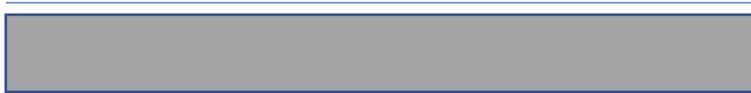
INTRODUCTION



Mr. Aruike Nnoli recently graduated from the University of Jos and applied to work with Prudence Microfinance Bank Nigeria Limited as a Store Manager. After a series of interviews, he was finally accepted as one of the candidates to resume in the Accounting department of the Company. This information was communicated to him through a phone call from the Managing Director's Personal Assistant. Following this, Mr. Nnoli resumed work on the 23rd day of September, 2016 with the understanding that he would receive a monthly salary of

N150,000 (One Hundred and Fifty Thousand Naira). However, upon completion of the first month, he received the sum of N120,000 (One Hundred and Twenty Thousand Naira) without any explanations from the management. Perplexed by this development, he sought counsel from his colleagues who informed him that they experienced the same issue but were unable to complain. Mr. Nnoli decided to observe the situation before making any complaints. However, the situation persisted for six more months during which he grew restless over the unexplained deductions and lack of clarity regarding the terms of his employment.

Uncomfortable with the progression of events and manner of work, he complained to the Human Resources Manager and also took the opportunity to request clarity about the Company resumption and closing times. He explained to the Human Resources Manager how he was unable to close from work every day even after dark until his supervisor approved. He also requested for his payslip to understand the breakdown of his compensation. However, the Human Resources Manager, without any reason, dismissed Mr. Nnoli's complaints as not germane enough to warrant further action. He was advised to continue work as usual, or in the alternative, resign if the conditions were unfavourable to him. Gravely dissatisfied by the turn of events, Mr. Nnoli spoke with his friend who advised him to resign and seek legal remedies against the Company.



The above scenario is patently similar to the facts in *Obembe Kikelomo v First Royal Oil Nigeria Limited, NICN/LA/110/2020, Judgement delivered by Hon. Justice (Prof) Elizabeth A. Oji on October 3, 2024* which was recently decided by the National Industrial Court of Nigeria (NICN).

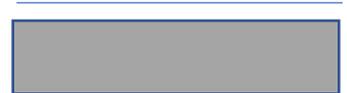
FACTS AND FINDINGS

Ms. Obembe Kikelomo (“Claimant”) was employed by First Royal Oil Nigeria Limited (“Company”) in July, 2009 as a graduate and she continued to work for the Company until her employment was orally terminated sometime in October, 2019. Upon commencement of her employment, the Claimant was never issued a contract of employment, therefore all conditions of her employment were oral. According to the Claimant, the Company had no standard resumption and closing time. Therefore, she was made to work odd hours most times getting home shortly before midnight. The Claimant also alleged that the Company deducted the sum of N10,000 (Ten Thousand Naira) monthly from her salary for two years without any explanations.



Among other reliefs, the Claimant claimed a declaration that the termination of her employment was wrongful as she was not given the statutory one- month notice required by the law. She also claimed for payment of other benefits including her gratuity, leave allowance, overtime allowance, remittance of pension deductions and other deductions made from her salary. The Company refuted the claims made by the Claimant and stated that she was just embittered because her employment was terminated, even asserting that she had appealed to be reinstated. The Company asserted that upon its refusal to reinstate her, the Claimant wrote a petition to the Directorate for Citizens Right where attempts were made at resolving the issue between the parties, however, the Claimant rejected the N350,000 (Three Hundred and Fifty Thousand Naira) payment made by the Company on the basis that it was not commensurate to her claims.

In determining the issue of wrongful termination, which is a common cause of dispute between employers and employees, the court considered in detail the evidence submitted by both parties in conjunction with the processes and arguments filed and concluded that despite the mutual understating of oral employment between the Claimant and the Company, and the oral termination of the Claimant’s employment, the Company was in breach of the law for failing to issue her with a written contract of employment. The court also found that having worked for the Company for



up to 10 years, the Claimant was entitled to one-month notice or one-month salary in lieu of termination of her employment. The court was disappointed that the Company sought to take advantage of the lack of an employment contract in denying the claims made by the Claimant and emphasized that non-issuance of an employment contract three months after commencement of the Claimant's employment constituted unfair labour practice. On this basis, the Company was ordered to pay the Claimant the sum of N1,000,000 (One Million Naira) as general damages for the wrongful termination of her employment and unfair labour practice. The court noted that the Claimant would have been entitled to the reliefs such as unlawful deductions, if the Claimant had furnished ample evidence such as account statements to prove such allegations.

COMMENTARY



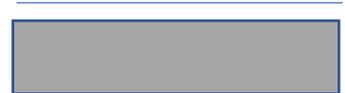
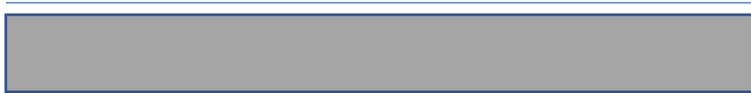
Employer-employee relationships have been recognized under the law as a type of contract validly entered into by parties. While contracts have been held to take either oral or written form¹, it is instructive to note that the common denominator in every contract of employment is that they all have terms and conditions which regulate the employment relationship such as terms on determinations, notices, wages and more². The underlying factor to note is that the relationship between an employer and his employee is generally to be found in the service agreement or letter of employment. See *Anaja v UBA Plc (2010) LPELR-3769(CA)*. Therefore even though oral agreements freely

entered into by parties are binding on the parties and gives rise to an enforceable contract³, the peculiar nature of employment relationships created the need for a written document for parties to better understand the terms and conditions of the employment. It was on this basis that the drafters of the *Nigerian Labour Act Cap L1 Laws of the Federation of Nigeria ("Labour Act")*, even while recognizing that an employment contract could take an oral, written, express or implied form, provided in *Section 7 of the Labour Act* that every employer is required to issue a written contract of employment to the employee within three months of commencement of the employment relationship. Such written contract is to contain the minimum terms and conditions of the employment relationship such as nature of employment, notice period, particulars of the employer and job location, hours of work, rates of wages/remuneration and method of calculation, manner and intervals of payment of such wages/remuneration and other special conditions of

¹ See *Adeboye Olanlege v Afro. Continental Nigeria Limited (1996) NWLR (Pt. 458) 29 @ 39*. In this case it was held that an agreement may be made by word of mouth or partly by word of mouth and partly in writing

² *Adedeji & Ors v. CBN & Anor (2022) LPELR-59629 (SC) (Pp. 25-25 Paras C-D)*

³ See *J.F Oshevire Ltd v Tripoli Motor Ltd (1997) 5 NWLR (Pt. 503) 1*



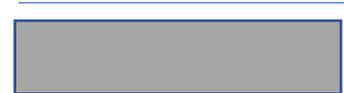
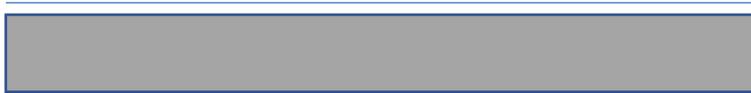
employment. Failure to issue such written contract or document that contains the conditions of work is an offence under the Labour Act and attracts the necessary penalties⁴. This was emphasized by the National Industrial in *Odah Ezekiel & 3 Ors v Total E&P (Nig) Limited & 5 Ors (Unreported Suit No. NICN/LA/663/2016) Judgment delivered on January 30th, 2024 per Honourable Justice E.A Oji*. In this case, the court held that not issuing an employee with a letter of employment is unlawful and constitutes an unfair labour practice. In the case under analysis, *Obembe Kikelomo v First Royal Oil Nigeria Ltd (supra)*, the court frowned at the non-issuance of an employment contract by the Company and was even more dismayed at the attempt by the Company to subvert justice by denying the claims of the Claimant because of the absence of an employment contract. It is trite law that a person cannot seek to benefit from his/her failure to perform an act⁵. In *Adedeji v National Bank of Nigeria (1989) 1 NWLR (Pt. 96) 212* Akpata JCA (as he then was), stated that “it is morally despicable for a person, who has benefitted from an agreement to turn round and say that the agreement is null and void”.

The issuance of an employment contract is not merely a statutory obligation; it is also a logical and essential practice. This document serves as the cornerstone of the employment relationship, outlining the respective rights, duties, and expectations of both the employer and the employee. In its absence, resolving disputes arising from alleged breaches of the employment relationship becomes inherently challenging, as there is no formal agreement to reference. This difficulty may explain why some employers neglect to provide such contracts during the course of the employment relationship, possibly to avoid creating a record of binding obligations. Recognizing the significant disadvantage this imposes on employees, the courts have consistently deemed the non-issuance of employment contracts to be an unfair labour practice. In *Mr. Olumide Anawoye v. Smart Mark Limited (Unreported Suit No: NICN/LA/400/2016), Judgment delivered on October 3, 2024, by Honourable Justice M.N. Esowe*, the court addressed the implications of the absence of a written contract of employment. It held that the relationship between the parties constituted an implied contract of service in the absence of a formal or written agreement.

The court further emphasized that the failure to issue a written contract was a violation of **Section 7(1) of the Labour Act**, which mandates that employers must provide a written contract to employees within three months of engagement. More importantly, the failure to issue a contract of employment contravenes the foundational principles enshrined in **Section 17(3)(a) and (b) of the Constitution of the Federal Republic of Nigeria (Third Alteration Act)**. This section mandates that all citizens, without discrimination, should have equal opportunities to secure adequate employment under conditions that are just and humane. It is indisputable that withholding a detailed contract of employment falls short of these constitutional requirements, as it cannot reasonably be considered a just or humane condition of work.

⁴ See Section 21 of the Labour Act Cap L1 LFN 2004

⁵ See *Oilfield Supply Centre v Johnson (1987) 2 NWLR (Pt. 58) 625; Adedeji v National Bank of Nigeria (1989) 1 NWLR (Pt. 96) 212.*



This principle is further reinforced by the International Labour Organization's ***C111 - Discrimination (Employment and Occupation) Convention, 1958***, which promotes equality and fairness in employment. The National Industrial Court of Nigeria is empowered to apply these international best practices pursuant to ***Section 254C(1)(f) of the Constitution (Third Alteration Act)***. This underscores the critical importance of providing employees with clear and comprehensive employment contracts as a safeguard for their fundamental rights.

In conclusion, employers are strongly advised to provide their employees with a comprehensive employment contract that clearly outlines all aspects of the employment relationship. Such a contract not only serves as a definitive guide throughout the tenure of employment but also minimizes the risk of unfounded claims. Moreover, in the event of a breakdown in the employment relationship, the contract becomes an invaluable tool for efficiently addressing and resolving disputes. While conflicts between employers and employees are an inevitable aspect of workplace dynamics, the degree of attention and discipline applied to fundamental and foreseeable elements of the employment relationship can significantly influence the duration and intensity of such disputes. Crucially, where the employment relationship is governed by a detailed contract in compliance with ***Section 7 of the Labour Act***, the likelihood of disputes is greatly reduced, and where they arise, they can often be resolved amicably and expeditiously.

Lagos: 1, Perchstone & Graeys Close, off Remi Olowude, Lekki Epe Expressway, Lagos; Tel: +234- 1-3429131, 7611051
Abuja: D3, Jima Plaza, 1627 Ahmadu Bello Way, Area 11, Garki Abuja; Tel: +234 92919191, 07045984792
Benin City: 40, Adesogbe Road, Benin City, Edo State; Tel: +234 7068518650, 07045984776
Email ; counsel@perchstoneandgraeys.com

https://www.google.com/search?q=employment+law&rlz=1CDGOYI_enNG957GB957&hl=en-GB&prmd=nibxv&source=lnms&tbn=isch&sa=X&ved=2ahUKewjP7rqFu9vyAhXimOAKHeSaDdIQ_AUoAnoECAIQAg&biw=414&bih=720&dpr=2#imgrc=La5Aw6bzSfODbM

https://www.google.com/url?sa=i&url=https%3A%2F%2Fwww.123rf.com%2Fphoto_14582359_man-try-to-escape-from-jail-with-bended-bar.html&psig=AOvVaw2MeFoQFMaZArQcn5euWpAe&ust=1616344558852000&source=https://www.travelblog.org/Photos/8561112=images&ccd=vfe&ved=0CAYQjRxxqFwoTCICrzILjwO8CFQAAAAAdAAAAABAD

We do not own the rights to the images used.

Copyright: All rights reserved. No part of the publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means without the prior permission in writing of Perchstone & Graeys or as expressly permitted by law.

Disclaimer: We invite you to note that the content of this newsletter is solely for general information purposes only and should in no way be construed or relied on as legal opinion. We urge you to contact us should you require specific legal advice on any of the topics treated in this publication

