



AN EMPLOYEE'S ABSOLUTE RIGHT TO RESIGN



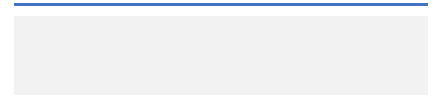
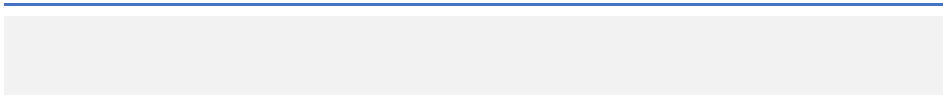
Thompson Macfarlane was a brilliant employee who had brought his smarts to bear on the business of Marina Savings Limited (MSL). His knack for business development, and the success rate he had achieved on the job brought him admiration from customers and colleagues alike. Everyone wanted TM, as he was fondly called, on their transaction. TM's rise to the peak of his career was no surprise to anyone. The song on all lips was "he deserves it".

Five years into his service with MSL, TM began deploying underhanded methods in his dealings with his customers and in relationships with colleagues. It was soon discovered that TM was receiving customers' funds into his personal accounts and cutting deals with customers at rates other than those approved by MSL, making unjust gains for himself. Trouble broke loose when TM erroneously gave his personal account details to a new customer who then escalated to MSL that he was asked to make his periodic repayments to a personal account, and not the designated official account.

MSL's human resource (HR) department was commissioned to look into the customer's complaint. The findings were damning, as more and more revelations came to light about TM's misconduct. TM was invited to face a disciplinary committee virtually, and upon conclusion of the proceedings, it was determined that TM deserved to be dismissed. Prior to the issuance of the letter of dismissal, TM got wind of the proposed dismissal, and quickly tendered his resignation.

On receiving TM's resignation letter, a staff of the HR department accepted the resignation by email. About two (2) hours later, another staff in MSL's HR department rejected TM's resignation, stating that the disciplinary committee empaneled to look into TM's misconduct had already forwarded their recommendation to the MSL's Board of Directors, who have now approved the termination of TM's employment with MSL. TM has now sued MSL, seeking a declaration that the rejection of his resignation is ineffectual, as his right to resign is absolute.

Interestingly, similar scenario was considered in the case of *Olubukonla Adegbulugbe v. Guaranty Trust Bank Plc., Suit No. NICN/LA/77/2021* judgment of the National Industrial Court delivered by Hon. Justice Ikechi Gerald Nweneka on January 10, 2022. The Court considered amongst other alternate issues, the question of whether having accepted the claimant's resignation, the defendant could in another breath reject same.



FACTS AND FINDINGS

Olubukonla Adegbulugbe (Bukonla) was an employee of Guaranty Trust Bank Plc. (now Guaranty Trust Bank Limited/GTB/Bank). Sometime in 2020, she was alleged to have viewed a customer's account information and divulged same to a third-party. GTB's system control unit (SYSCON) launched an investigation into the matter, and Bukonla was invited to face a panel of inquiry. Upon conclusion of proceedings, Bukonla was recommended for termination on August 7, 2020. Before the termination letter could be issued and served on her, Bukonla resigned her employment by email dated August 8, 2020.



Upon receipt of the resignation email, GTB's HR Group Head replied that he would not process the resignation because Management had approved termination of Bukonla's employment. On August 10, 2020, Bukonla received an email from one Samuel Ajiyon of GTB's HR department with an attached notice of termination of employment. By another email on the same day, Samuel Ajiyon advised Bukonla to disregard his earlier email, following the 'acceptance of her resignation'. Further to Samuel Ajiyon's email, one Ayodeji Fawole from GTB's HR department wrote Bukonla, directing her to forward a duly signed letter of resignation stating her current address and effective date of resignation. Samuel Ajiyon later forwarded a fresh letter of termination of employment dated August 11, 2020 to Bukonla.

Seeing that the Bank refused to accept her resignation, and that the refusal was allegedly hampering her ability to secure another employment, Bukonla approached the Court seeking amongst others, a declaration that having resigned her employment with the Bank, and the Bank having accepted same, she ceased to be an employee of the Bank, and no longer in the Bank's employment at the time the notice of termination was issued and served on her.

The Court, in finding that Bukonla's notice of resignation was effective upon service of same on the Bank, held that Bukonla had an absolute power to resign her appointment, and the Bank has no power to accept or reject her resignation. It was the view of the Court that at the time the letter of termination of employment was served on Bukonla, there was no existing contract of employment which could be terminated. On this score, the Court held the letter of termination of employment invalid, ineffective, ineffectual, null and void.

OUR COMMENTS

You will recall that in our March 2021 Edition, we reported the case of *Mr. Oluseyi Abiodun Fajuyitan v. Guinea Insurance Plc.*¹ where the Court recognized the fact that the defendant's handbook gives it the right to refuse a resignation notice from an employee where that employee is being investigated. Thus, the claimant having

¹ Suit No. NICN/LA/209/2012, judgement of the National Industrial Court delivered by Hon. Justice Obaseki-Osaghae on March 21, 2019.

admitted that he read the handbook and had knowledge that he was being investigated, which investigation was yet incomplete and without an outcome, could not validly resign from the employ of the defendant.

In the case under review, the Court distinguished *Fajuyitan* and held it inapplicable to the case under review on the ground that the handbook to which the claimant in *Fajuyitan* was bound donated power to Guinea Insurance Plc. to reject a notice of resignation on account of a pending disciplinary action, and this was not so in the case under review. The Court also considered an earlier decision of the selfsame National Industrial Court in *Ineh Monday Mgbeti v. Unity Bank Plc.*² where the Court struck down a provision in the contract of service which gave the employer power to reject a letter of resignation by an employee who is facing a disciplinary action, and held that such provision amounts to an unfair labour practice. The Court relied on *Mgbeti* in reaching its decision in the case under review, finding that *Mgbeti* was consistent with binding decisions and current best practices in employment relations.



You may also recall that in our December 2021 Edition, reviewing the case of *Mrs. Martina Oladipo Bakare v. Skye Bank Plc.*³ we deconstructed the employee's right to resignation, and showed that the claimant only applied for an early retirement, and in the absence of proof that same was accepted, the claimant could not be said to have resigned from the Bank's employment, even though she claimed she had resigned.

What is apparent from the case under review is that the fact that an employee is facing a disciplinary action does not preclude him or her from resigning his or her employment. Having knowledge of an impending disciplinary action is not necessarily sacrosanct in the face of the resignation of an employee. A letter of termination of employment which does not precede a letter of resignation takes effect not on the date it is written, but when it is delivered to the employee. An employee cannot therefore be terminated when an employment relationship has ceased to exist. Refusal to accept an employee's resignation is tantamount to forced labour contrary to section 34(1)(c) of the 1999 Constitution, section 73(1) of the Labour Act, and the ILO Convention Concerning Forced or Compulsory Labour, 1930 (No. 29).⁴

It is now firmly settled that the position of the law has reverted to what it was in *Benson v. Onitiri*⁵ to the effect that the employee has a right to resign his or her employment at any time. It is trite law that an employee's power to resign his or her appointment is absolute, and an employer has no power to accept or reject it. The legal effect of an employee's resignation is that there is no subsisting employment for an employer to issue a query on, investigate on, issue a suspension on, discipline on, and to terminate or

² Suit no. NICN/LA/98/2014, which judgment was delivered on 21st February 2017.

³ Suit No. NICN/LA/349/2015, judgment of the National Industrial Court delivered by Hon. Justice Obaseki-Osaghae on December 3, 2021.

⁴ *Mr. Ifechukwude Adigwe v. FBN Mortgages Limited*, Suit no. NICN/LA/526/2016, delivered by Hon. Justice B.B. Kanyin, Ph.D, PNICN on 9th July 2019.

⁵ [1960] NSCC 52 at 61. See also *W.A.E.C. v. Oshionebo* [2006] 12 NWLR [Pt. 994] 258 and *Yesufu v. Governor Edo State & Ors.* [2001] 26 WRN 121 at 133, 138.

dismiss an employee from.⁶ However, the tendering of a letter of resignation by an employee carries with it the right to leave the service automatically, but disentitles the employee to the payment of any benefit, except for earned salary⁷, and is subject to paying any indebtedness to the employer.⁸

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⁶ See *Jombo v. PEFMB* [2005] 14 NWLR (Pt. 945) 443 SC.

⁷ See *Dr. Dave Nwabor v. Oilflow Services Limited*, unreported Suit No. NICN/LA/552/2015, the judgment of which was delivered on 10th July 2017.

⁸ See *Mr. Beloved Patrick Anokwuru v. Omatek Ventures Plc & Anor.*, unreported Suit No. NIC/LA/140/2011, the judgment of which was delivered on 16th March 2016; *Abayomi Adesunbo Adetoro v. Access Bank Plc.*, unreported Suit No. NICN/LA/293/2013, the judgment of which was delivered on 23rd February 2016.