

INTRODUCTION



John Adewale, a seasoned business consultant with a strong track record in developing and managing high-value client relationships, was employed by Global Solutions Ltd., a leading tech company specializing in innovative solutions for businesses. The company, known for its dynamic approach to the tech industry, often sought the expertise of external consultants to expand its market reach and streamline operations. John's employment contract with Global Solutions Ltd outlined his responsibilities, which included identifying and securing new

business opportunities, maintaining strong relationships with key clients, and providing strategic advice to enhance the company's competitive position. His role was pivotal in driving revenue growth and aligning the company's offerings with client needs. The employment contract detailed various benefits and entitlements, including reimbursement for business-related expenses incurred during the performance of his duties. Additionally, it provided for a commission-based incentive tied to the revenue generated from new business deals secured by John. The agreed commission was intended to motivate him to pursue lucrative contracts and deliver outstanding results. However, the contract lacked precise terms regarding the percentage rate for commissions, leaving room for interpretation.

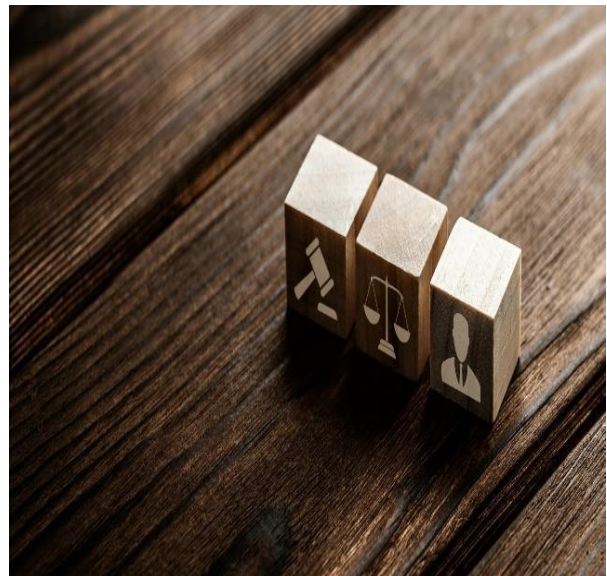
Over the course of his engagement, John demonstrated an exceptional performance, securing several high-value contracts that significantly boosted the company's revenue. However, challenges began to surface regarding financial reconciliations. John incurred substantial expenses on behalf of the company, including travel, accommodation, and local transportation costs, which were essential for meeting clients and closing deals. Despite submitting detailed expense reports, payments were often delayed or disputed, creating friction between him and the company.

The tension escalated when John decided to terminate his employment with Global Solutions Ltd. in February 2012. After his departure, he submitted an expense report to the company, which included outstanding expenses, unpaid consultancy fees, and commissions for contracts he had secured. Global Solutions Ltd disputed the claims, and ultimately refused to pay John, which led to the loss of his funds. Dissatisfied by this, John intends to seek legal relief against the company.

The above scenario is analogous to the facts in **Pharmacist Abiodun Sakiru Ali v Neimeth International Pharmaceuticals Plc, NICN/LA/319/2014, Judgement delivered by Hon. Justice M. N. Esowe on December 11, 2024**, where the National Industrial Court of Nigeria, considered among other issues, the duty of an employer not to undermine the trust and confidence of its employee.

FACTS AND FINDINGS

Mr. Abiodun Sakiru Ali (*the “Claimant”*) was a pharmacist employed by Neimeth International Pharmaceuticals Plc (*the “Defendant”*) on the 27th of July 2005 as a consultant. The Claimant’s contract was renewed yearly until February 2012 when he resigned from his employment with the Defendant. During his employment, Mr. Ali was expected to use his vast experience to sustain, consolidate existing relationships and create new government business initiatives. To this end he worked more frequently as an Executive Sale Representative for the Defendant selling existing programs and



products to government institutions. The Claimant subsequently developed improved versions of existing programs, new program portfolios, new business development and marketing strategies targeted at customers beyond government institutions. These innovations of the Claimant birthed the creation of a business development and marketing department, and a public sector business group which the Claimant was required to oversee. Given that the department and the public sector business group had not existed prior to his joining the Defendant, his role became a dual role surpassing his initial contractual engagement as Consultant.

By the nature of the Claimant’s new role, he was to be reimbursed for all his travel expenses incurred while generating business opportunities for the Defendant. However, upon presenting his expense reports for August 2005 to February 2012 for approval and reimbursement and after several meetings and exchange of correspondence, the Defendant



refused to pay the Claimant his outstanding entitlement which includes sale commission and consultation fees culminating in the loss of the use of this fund.

The Claimant's case is that by his contract of employment with the Defendant, he is entitled to be reimbursed for expenses incurred during the period that he worked, provided that such expenses were incurred by him while carrying out his duty to the Defendant. He argued that parties are bound by their contract and the Defendant is not permitted to rescind the contract. The Claimant further argued that rather than approve the reimbursement, the Defendant developed a weak defence by arguing that the receipts for reimbursement were not presented within a reasonable timeframe of 30 days as stipulated by its Standard Operating Procedure (SOP), however, there was nothing in the contract between the parties that mandated submission within 30 days.

The Defendant, however, contended that the Claimant's case rises and falls on the burden of proof and further argued that it is common practice that an employee who incurs expenses in the course of his employment should present same within the earliest opportunity for approval or rejection. The Defendant maintained that the Claimant was claiming reimbursement for several years expenses which were never approved by the Defendant through the supervising officer (to whom the Claimant was to give account). According to the Defendant, this is contrary to its operating procedure.

The Court in delivering its ruling clarified the distinction between contracts for service and contracts of service, emphasizing that parties are bound by the terms of the agreements entered voluntarily. The court also reiterated the need for good faith and trust in employment as both employers and employees owe each other a duty to uphold trust and confidence. The court held that when an employer persistently tries to vary an employee's terms and conditions of employment, such an employer is regarded as being in breach of duty not to undermine the trust and confidence of the employee. The court partially upheld the Claimant's claims, granting reimbursable expenses (with deductions for ineligible items), approved expenses and consultancy fees, and general damages.

COMMENTARY

The duty of mutual trust and confidence is a cornerstone of employment relationships, forming the foundation for productive and harmonious engagements. This duty, though not always explicitly stated in contracts, is an implied term universally recognized in employment law. It ensures that both parties act in a manner that preserves the integrity of their relationship and supports the achievement of common objectives.

In this case the Defendants argued that the Standard Operating Procedure (SOP) of the company provides that employees are to submit an expense form for incurred expenses to be





reimbursed within 30 days, however, Mr. Abiodun's case was that the SOP only came into operation in November 2009 long after he had incurred the expenses and thus the SOP could not be made to apply retrospectively. This is in line with the decision of the Supreme Court in **Udoh v. Orthopaedic Hospitals Management Board (1993) 7 NWLR (Pt. 304) 139** where the court held that a law must apply only from the date of its enactment unless explicitly provided otherwise. Similarly, in the case of ***Yobe Judicial Service Commission v. Auta (2024) LPELR-***

61655(CA), decided on 6 February 2024, the Court of Appeal deliberated on the retrospective application of the National Industrial Court Civil Procedure Rules 2016 procedural rules. The court emphasized that, unless explicitly stated, procedural rules should not be applied to actions that occurred before their enactment. This decision underscores the judiciary's commitment to upholding the principle against retroactive application of laws, even in procedural contexts.

A significant principle further established in the case is that parties are bound by the terms of their agreement voluntarily entered by them in the absence of fraud, mistake, duress or misrepresentation – ***Ede v Access Bank Plc (2020) 4 NWLR (Pt. 1715) 417 at 440, A-B, Obanye v UBN Plc (2018) LPELR-4708(SC)***. Simply put, a party having entered into an agreement is bound to honour its terms and cannot renege or rescind same when time comes to carry out its obligations under the said agreement. In the employment contract, the company made provisions for reimbursement of expenses incurred by employees in the course of their work, which covered those incurred by Mr. Abiodun. By including this term in the employment contract, the company had secured a degree of trust and confidence for the employees, which it now severed by its failure to reimburse the funds expended by Mr. Abiodun. In labour law, one of the implied duties of an employer is not to undermine the trust and confidence of the employee ***Woods v WM Car Services (Peterborough) Ltd (1982) ICR 693, Malik v BCCI, SA (in Liq.) (1997) IRLR – House of Lords***. The company cannot in good faith fail to honour the terms of the agreement. When an employer persistently tries to vary an employee's terms and conditions of employment, it is regarded as being in breach of duty not to undermine the trust and confidence of the employee. In the current case, the company failing to reimburse Mr. Abiodun for his money is a breach of duty not to undermine the trust and confidence of its employee. Such conduct is likely to damage the mutual trust and confidence in the relationship between employer and employee, as one would ordinarily expect that for financial accountability the employee will provide a detailed account of the out

of expenses such that any reimbursement provided by the company will justify the out-of-pocket expenses.

The court criticized the act of the company and stated that the duty rested on the Defendant to undertake reconciliation of Mr. Abiodun's account and out of pocket expenses from the funds made available, but for reasons best known to the Defendant, it took over a decade for the Defendant to conduct such account reconciliation.

In conclusion, this case reemphasizes the need for employers to uphold the trust and confidence of their employees in line with the court's decision which affirms that employers are bound by the terms of their agreement and cannot excuse themselves from their responsibility by applying a rule in retrospection.

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