



**WHY EMPLOYERS MUST ENSURE TERMINATION LETTERS ARE
SERVED PERSONALLY ON EMPLOYEES**



Mr. Ranjit Kumar (“*Ranjit*”), an engineer, was employed by Poojay Construction Limited (*PCL/the company*) as a site engineer for projects undertaken by the company. During his employment with PCL, Ranjit was found to be engaged in private practice for other construction companies, contrary to the provisions of the Employee Handbook and internal practices of PCL.

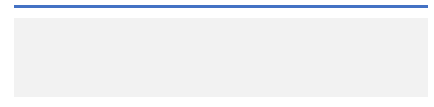
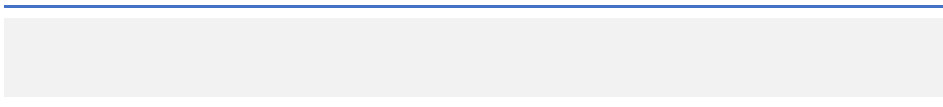
In February 2021, PCL found out that Ranjit was committed to other engagements with rival construction companies, and suspended Ranjit indefinitely without paying him salaries during the period of the suspension. The purpose of the suspension was to carry out further investigations without any interference from Ranjit. However, PCL failed to conduct the investigations, nor was any further steps taken. In March 2023, after 13 months without pay and without any communication from PCL, Ranjit wrote a letter to the company inquiring about the status of his employment and his arrears of salary but got no response from the company.

Ranjit subsequently instituted an action against the company for all his accrued salaries during the period of his suspension without pay only to find that his employment had been terminated without his notice. This information came with the defence processes served on Ranjit’s counsel by PCL’s counsel.

Interestingly, the foregoing set of facts, raising issues on the subsistence of an employee’s employment after the purported termination of such employee’s employment without the employee’s notice was determined by the National Industrial Court of Nigeria (NICN) in the recent suit of ***Mr. Biobele Thomas and Anor. v. Konfiyeybi Nigeria Limited and Anor.***, unreported Suit No. NICN/PHC/106/2019, judgment delivered on March 14, 2023, per Hon. Justice F.I. Kola-Olalere (FCI Arb) (UK).

FACTS AND FINDINGS

Mr. Biobele Thomas (“*Biobele*”) and Mr. Levi T. Ibiama (“*Levi*”) were employed by Konfiyeybi Nigeria Limited (“*KNL*”) as Special Assistant or Personal Assistant to Hon. Prince Amaibi Hornby (“*Hon. Hornby*”) at separate times in 2015. In May 2018, Biobele and Levi were asked to stop official duties until further communication to resume is made to them. After waiting for 14 months to be recalled to work, Biobele and Levi wrote KNL and Hon. Hornby demanding arrears of their salaries. The response of KNL and Hon. Hornby to the request for arrears of salaries was to intimidate Biobele and Levi with the Police. Aggrieved by this attitude, the subject suit was instituted.



In putting forward a joint defence, KNL and Hon. Hornby contended that Biobele and Levi were dismissed for gross misconduct after neglecting several queries and invitations to enter defence against the allegations in the queries as well as absconding from their duty posts for no official reason. The only problem with the joint defence put forward by KNL and Hon. Hornby is that neither the queries nor the letters of termination were served on Biobele and Levi. They both got to know about the queries and letters of termination when their counsel received the joint defence processes filed by KNL and Hon. Hornby.



In deciding the subject case, the Court found no evidence that the queries and notices of termination were served on Biobele and Levi at any time until January 30, 2020 when counsel for Biobele and Levi was served with the joint defence processes of KNL and Hon. Hornby. Being that it was at this time that Biobele and Levi got notice of the termination of their employments, the Court found that January 30, 2020, was the effective date of the employment termination. As a result of this finding, the Court held that Biobele and Levi were entitled to their salaries from May 2018 to January 30, 2020, and ordered KNL and Hon. Hornby to pay those salaries within 30 days from the date of the judgment.

OUR COMMENTS

Compliance with procedures for termination of employment is strict. Employers are either bound by the termination procedures provided in the contract of employment with its employees or provision of statutes such as the Labour Act where termination procedures are not provided in the contract of employment.¹ Failure to comply with the procedures for termination are not without consequences. Non-compliance with termination procedures will ground such termination as wrongful and expose an employer to liabilities in damages.²

Dismissal or termination of employment cannot be with a backdating effect. Thus, backdating a letter of termination would amount to wrongful termination.³ A termination letter necessarily takes effect from the date on the letter or the date the employee receives the letter, or a future date mentioned in the letter.⁴ Failure to serve a valid notice of termination on an employee could also amount to constructive dismissal, as it leaves the employee hanging in the air.⁵

¹ See *Union Bank v. Salaudeen* [2017] LPELR-43415 CA, *Ibama v. S.P.D.C (Nig) Limited* [2005] 17 NWLR (Pt. 954) 364; *Araromi Rubber Estates Limited v. Orogun* [1999] 1 NWLR (Pt. 586) 302; *U.B.N Plc v. Soares* [2012] 1 NWLR (Pt. 1312) 550. See also, Section 11(1) of the Labour Act, CAP L1 LFN 2004.

² See *Atanda H v. Saffeidddine Transport Limited* [2007] LPELR-8303 (CA).

³ *Mr. Abimbola Olufemi Ogunjobi v. Intercon Partnership Limited & Anor.*, unreported Suit No. NICN/LKJ/11/2020, judgment delivered on January 13, 2023 per Hon. Justice O.O. Oyewumi.

⁴ See *Udegbunam v. F.C.D.A* [1999] 5 NWLR (Pt. 449) 474 p. 485 Paras E-F; *Akinbola v. Ministry for FCT & Anor.* [2018] LPELR-45848 CA.

⁵ *Mohammed Hamza v. Dangote Flour Mills Plc. & Anor.*, unreported Suit No. NICN/ABJ/281/2020, judgment delivered on February 22, 2022, per Hon. Justice O.O. Oyewumi.

The best way to terminate an employee's employment is to serve the letter of termination personally on that employee, i.e., hand over the letter of termination to the affected employee in person. Where the employee has absconded from duty and remains incommunicado, the termination letter should be sent to that employee's physical address. And in this age where things can easily be done electronically, the termination letter can be sent via the employee's personal email.



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