



DO EMPLOYEE REFERENCE FORMS AMOUNT TO
GUARANTIES AND INDEMNITIES?



When Adanna Ukatu (“*Adanna*”) arrived home two weeks ago, she had no idea that the next couple of weeks were going to be a horrific experience for her. It was beyond shocking when she found herself handcuffed and being escorted by policemen to the infamous van commonly called *Black Maria*. Never in her wildest dreams did Adanna think the invitation she received from the Police asking her to come to the station would be taken seriously. Adanna had read the Employee Reference Form she executed in favour of an old sorority sister back in college, Maya Olatunji (“*Maya*”) when Maya was switching jobs two years back, and thought the terms were so clear, anyone with the most basic analytical skills would decipher what it says.

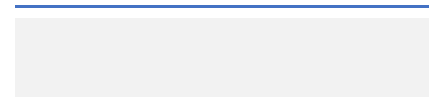
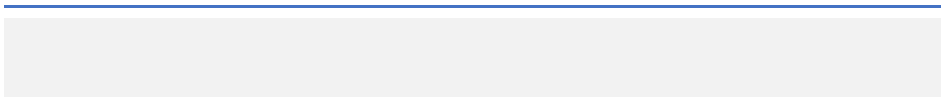
So when the investigating police officer drilled her for hours, insisting she was liable to repay ₦50,000,000.00 (fifty million Naira) allegedly stolen by Maya, all she could muster was, “*you must be joking!*” And indeed, she thought she was being pranked by some unknown persons, and kept looking out for hidden cameras, but found none, except the one being used by the Police to take her statement. Adanna was interrogated for days, being asked to be physically present at the police station every other day. The situation quickly degenerated into harassment, intimidation, unlawful arrest, and a breach of Adanna’s fundamental human rights.

Seeing that the Police only seemed to be working for the benefit of Maya’s employer, Adanna sought the services of the law firm of Onyx LLP for advice.

A similar scenario was considered in the recent case of *Mrs. Adebomi Motunrayo Orogun v. Heritage Bank Plc & Inspector General of Police*, Suit No. NICN/LA/502/2019, the judgment of which was delivered by the National Industrial Court of Nigeria (NICN), per Hon. Justice Elizabeth A. Oji, PhD, on March 23, 2022. In this case, the Court examined an employee reference form and held that by its contents, it does not amount to a guarantee or indemnity in respect of which the party executing it can be held liable for any conduct of the referred employee.

FACTS AND FINDINGS

Sometime in 2014, Mrs. Adebomi Motunrayo Orogun (“*Mrs Orogun*”) was approached by one Chukwunenye Esther Nkechi (Nee Arinze) (“*Esther*”), a staff of Heritage Bank Plc. (“*the Bank*”), needing a reference to be submitted to the Bank for the purpose of her confirmation as a staff of the Bank. Mrs. Orogun knew Esther since 2010, being members of the same church. At the material time, Esther was the leader of the Good Women’s Fellowship in the church. The duo were not particularly close but were cordial as church members.



Based on this relationship, Mrs. Orogun filled the Bank's Employee Reference Form stating that Esther Nkechi was known to her as a "good and well-behaved individual, humble, intelligent, accommodating, and carries out duties assigned to her diligently and is proactive."

In September 2019, Mrs. Orogun received an invitation from the Nigeria Police Force requesting her attendance for interrogation. She honoured the invitation in company of her counsel. At the police station, she was shown a copy of the petition lodged by the Bank stating that Esther had fraudulently diverted the sum of about ₦33,400,000.00 (thirty-three million, four hundred thousand Naira) belonging to customers of the Bank sometime in 2018 and was now at large. The Police sought to pin liability for Esther's misdeeds on Mrs. Orogun, but she denied responsibility, insisting that she merely signed a reference form and did not give any guarantee or indemnity.



Given the highhandedness, insolence, vindictiveness, and oppressiveness of the Police, Mrs. Orogun instituted an action at the NICN, asking the Court to declare that no part of the Employee Reference Form supports the conclusion that the document was meant to serve as a guarantee or indemnity, to attach to her any liability for Esther's actions, arguing that she never undertook to pay to the Bank any amount adjudged to be owed it by Esther, neither did she guarantee the repayment of any debt, not stood as surety for Esther, thereby creating an obligation to produce Esther whenever the Bank needs her. The Bank's contention was that Mrs. Orogun executed a Reference Form in favour of its ex-staff, Esther and thereby expressed willingness to stand as guarantor to Esther at all times, and it was within its rights to report Mrs. Orogun to the Police for investigation. Having therefore reported Mrs. Orogun to the Police, it was not liable for any threats, intimidation, and other actions taken by the Police.

The NICN, in finding in support of Mrs. Orogun, held that the Bank's Employee Reference Form filled by Mrs. Orogun was clearly both at face and constructive value only a reference form that did not require Mrs. Orogun to stand as guarantor for Esther or indemnify the Bank against losses incurred on account of Esther's employment with the Bank. The Employee Reference Form was therefore not a form of guaranty or indemnity.

OUR COMMENTS

The decision in the case under review is strictly to the effect that the particular Employee Reference Form did not operate as a form of guaranty or indemnity, given its content, and not that an Employee Reference Form generally does not operate as a guaranty or indemnity. It would depend on the content of any particular Employee Reference Form. The general position of the law remains that a guarantor remains liable where the principal debtor defaults.¹

In *Peter Andrew v. United Healthcare International Limited*,² the NICN enforced a guarantor's obligation to repay the balance of the outstanding car loan obtained by the employee upon the employee's default in strict compliance with the terms of the employee's contract of employment. Also, in *Mr. Oluremi Arinola Falola v.*

¹ *Crown Flour Mills Ltd. v. Olokun* [2008] 4 NWLR [Pt. 1077] 254 at 298.

² Suit No. NICN/KD/17/2019, judgment of which was delivered by the NICN on April 4, 2022, per Hon. Justice S.O. Adeniyi, available at <https://nicnadr.gov.ng/judgement/details.php?id=6924>. (Accessed on May 30, 2022)

Yaba College of Technology & 3 Ors,³ the 1st defendant/employer surcharged the employee's guarantors' salary accounts on a supposed breach of the employee's study bond. The right to make the surcharge was contained in the study bond signed by the employee and her guarantors. However, the Court struck down the enforcement of the right to surcharge since the employee never enjoyed sponsorship under the terms of the study bond.

The point being made, is that where a document purporting to be a guaranty or indemnity does not represent itself as such, that document will not impose an obligation on any person who executes it in favour of an employee. Therefore, where an employer determines that it is necessary to mitigate its exposure by way of a guarantee or indemnity on account of an employee's misconduct or negligence which occasions injury or loss to the employer, the document conveying guarantee or indemnity should be couched clearly as being a guarantee and providing indemnity to the employer. In addition, the document should contain clear declarations by the party providing the guarantee or indemnity to the company that the said party would be liable for any action or conduct of the employee that occasions loss to the company.



The case under review has not changed the position of the law on guaranties and indemnities, but shows that where a document purporting to be such guaranty and indemnity is poorly drafted, no additional meaning will be given to the document beyond what it literally states. A case is only an authority for what it decides.⁴

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³ Suit No. NICN/AK/60/2018, judgment of which was delivered by the NICN on February 18, 2022, per Hon. Justice K.D. Damulak, available at <https://nicnadr.gov.ng/judgement/details.php?id=6806>. (Accessed on May 30, 2022)

⁴ *Thomas v. Federal Judicial Service Commission* (2016) LPELR-48124(SC) (P. 5, Paras. C-F); *Clement v. Inuanyanwu* [1989] 3 NWLR (Pt. 107) 39.