

**RESIGNATION WITHOUT COMPLIANCE WITH  
THE CONTRACT OF EMPLOYMENT - DOES  
THE EMPLOYER HAVE A REMEDY IN LAW?**



Mr. Tony Kante (“Tony”) a professional software development engineer, was employed by MuskyTech Bros Limited (“MuskyTech”/ “the Company”), a private company in Nigeria, as the Director of Operations of the Company. At the time of his interview and recruitment process, Tony was resident in Japan, and after a successful recruitment process, he was offered an employment in the company as the head of operations, which he accepted.

After securing all relevant regulatory permits for Tony to enter and work with MuskyTech in Nigeria, he was issued a formal contract of employment which designated him as Director of Operations and same was validly executed. The executed contract was for a renewable term of 12 months commencing from May 8, 2022, to lapse on May 7, 2023.

According to the terms of contract between Tony and MuskyTech, either party can terminate the employment relationship by giving a month’s notice to the other party or pay a month’s salary in lieu of such notice. Tony resigned his employment with MuskyTech on May 10, 2023, and contrary to his contract of employment, he did not give the required notice nor made any payment in lieu as required.

Interestingly, similar set of facts arising from employee’s wrongful resignation was determined by the National Industrial Court of Nigeria (NICN), Abuja Judicial Division per Hon. Justice O. O Oyewumi in ***Westlink Airlines Nigeria Limited v. Stavros Theodoropoulos (Unreported) - Suit No; NICN/ABJ/267/2019 Judgement of which was delivered on January 18, 2023.***

**FACTS AND FINDINGS**

Westlink Airlines Nigeria Limited (“Westlink”/ “the company”) offered employment to Stavros Theodoropoulos (“Stavros”) as an Aircraft Maintenance Engineer and Head of Engineering vide a contract of employment and same was validly accepted.

According to the contract between the parties, the agreement was for an initial period of 12 months beginning from 10<sup>th</sup> April 2018 to lapse on 9<sup>th</sup> April 2019 subject to renewal by the mutual consent of



the parties. It was also agreed that in the case of termination, either party is required to give a sixty-day notice to the other, or the equivalent pay in lieu of such notice. After the expiration of the initial contract executed by parties, Westlink sent an e-mail to Stavros stating that his contract is renewed.

Westlink, an airline operator, holds an Air Operator Certificate (AOC), which is required to be renewed at intervals. One of the requirements for renewal is presentation of a maintenance engineer to the Nigerian Civil Aviation Authority (*NCAA/the Authority*) for evaluation. Westlink presented Stavros as its Director of Maintenance to the authority for

the purpose of renewing its AOC on May 14, 2019, and upon his assessment, he was recognized and approved by the authority. On May 20, 2019, a day before the base inspection of Westlink facility by the NCAA, Stavros resigned without giving the required notice, or payment in lieu of notice. Westlink instituted a suit against Stavros for breach of contract.

At trial, Stavros contended that his employment with Westlink lapsed since the April 9, 2019, and has not been mutually renewed as asserted by Westlink. More so, he was employed as Aircraft Maintenance Engineer and Head of Engineering. He also contended that he was not the Director of Maintenance, and he accepted the offer made to him as an Aircraft Maintenance Engineer, but the company had cunningly included the position of Director of Maintenance in the formal agreements executed by parties. Since he had left Greece for Nigeria, he was compelled to resume employment with Westlink after he found out that his designation had been changed to Director of Maintenance. Stavros claimed he had requested that the error be corrected to his agreed position as Aircraft Maintenance Engineer. He claimed that although he attended the May 14 interview with NCAA as the company's Director of Maintenance because he was pressured to do so, he refused to attend the base inspection process, which took place on May 21-24, 2019, because his demands to regularize his position was not met by the company.

Notwithstanding the fact that the company did not meet his demands, Stavros continued working for the company, and attended the AOC renewal debriefing meetings of the company on May 28, 2019, and routinely worked for Westlink as its Director of Maintenance till June 30, 2019.

Upon careful examination of the facts before the Court, it was discovered that Stavros executed the contract even after observing a different designation other than what he claimed was originally agreed. The Court considered this action to be a clear indication that Stavros intended to be bound by the contract as was executed, and as such, his defence that he was never employed as Director of Maintenance failed. The Court also considered established overt acts of Stavros in addition to the fact that Stavros continued to work for Westlink, held himself out as the Director of Maintenance for Westlink at an assessment for the position with the NCAA after the expiration of the agreement, and determined that these acts constituted implied consent to the renewal offer from Westlink. In fact, the act of his resignation was determined to be a presumption of a validly renewed contract and he was therefore estopped from claiming that no contract existed at the time of resignation.



Consequently, the Court found Stavros's resignation from Westlink on May 20, 2019, without the required notice or payment in lieu as wrongful and in breach of contract of employment. The Court awarded damages in the sum of \$14,000 (Fourteen Thousand Dollars) to Westlink being the equivalent of sixty-days (60) salary in lieu of notice.

## COMMENTARY

The peculiar fact of this case is that it discloses an uncommon action before the labour Courts, where an employer institutes an action against an employee, and therefore highlights the options available to an employer when an employee resigns without following set down procedures in his contract of employment.



Generally, there are two ways of bringing an employment relation to an end. This could be by the employer invoking its power to terminate or dismiss, or when the employee decides to bring the relationship to an end, by resigning. Being a contract, either party could bring the relationship to an end, and this is based on the principle that a willing employee cannot be forced on an unwilling employer, and vice versa. However, where the party terminating fails to comply with the stated procedure in the contract, the option of legal action for the Court to remedy same can be exercised. Along this line, the common cause of

action is to find the Court awarding damages against the employer for failing to comply with employment contract and wrongful termination. **What then becomes of an employer when an employee resigns without complying with the laid down procedure?**

Employment contracts under Nigerian law are recognized to be terminated with notice, and in the alternative, payment in lieu of notice, subject to the contract between parties<sup>1</sup>. Where the employer exercises the right without complying, it is usually visited with a common action in Court, but where the employee fails to, there exists rare cases, where the Court has demonstrated what the employee could be found wanting of. It is now established that where an employee abruptly ends the employment relationship and makes no payment in lieu of notice, where required, an employer is likely to secure judgment in damages against the employee for wrongful resignation and breach of contract.

It is noteworthy that the right of an employee to tender his resignation at will is inviolable<sup>2</sup> and an employer has no other option than to accept same, with such resignation becoming effective and valid the moment it is received by the employer or the authority to whom it is addressed to<sup>3</sup>. The right of resignation or termination from an employment relationship is therefore always preserved, even when

<sup>1</sup> See Section 7 and 11 of the Labour Act, 1971

<sup>2</sup> WAEC v. Oshionebo (2006) 12 NWLR (Pt. 994) 258 CA

<sup>3</sup> See Yesufu v. Gov. of Edo State (2001) 13 NWLR (Pt. 731) 517 SC; W.A.E.C v. Oshionebo (2006) 12 NWLR (Pt. 994) 258 CA

it is activated in breach of the agreement between parties. In **Jombo v. PEFMB**<sup>4</sup> it was held that an employee who resigns cannot be subjected to any administrative or further operations of the employer even where the resignation notice falls short of the required period.

In the light of the decision of the Court in the **Westlink's** case, where an employee abruptly ends the contract relationship and makes no payment in lieu of notice as stipulated in the employment contract, an employer could be remedied in damages for wrongful resignation and breach of contract, and the employee may also, forfeit his or her post-employment benefits<sup>5</sup>.

Lagos: I, 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](mailto:counsel@perchstoneandgraeys.com)

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<sup>4</sup> (2005) 14 NWLR (Pt. 945) 443 SC

<sup>5</sup> See Dr (Mrs.) Ebele Felix v. Nigerian Institutes of Management (Unreported) Suit No. NICN/LA/321/2014, Judgement of which was delivered on July 4, 2017

