

**TRAINING BONDS: PROTECTING EMPLOYERS
INVESTMENT**



INTRODUCTION



Chika Ewenu is a distinguished engineer, who has built a remarkable career, setting herself apart from her peers. In her role at Aquatic Engineers, one of the country's leading engineering firms, she was highly dedicated to her profession and this got the attention of the management. To reward her hard work, the company reached a unanimous decision to make her a manager. However, because of her lack of managerial experience, she was sent on a one year specialized (all-expense paid) managerial training to the United States

to adequately prepare for the role.

Extremely aware of the growing need for talent in their industry, and Chika's value, the firm executed a training bond requiring Chika to return and work with the company for at least five years upon completion of the training; they impressed upon her the cost of the training which was ***USD\$48,000 (Forty-Eight Thousand United States Dollars)***. Eager to advance her career, Chika accepted the offer, putting all other plans on hold and focused on the training. However, shortly before the end of her training, she had to get married as her partner was to leave the country on an extended official assignment.

The firm granted her leave to attend the wedding, with a condition that she would not abandon the training, however, in a pre-emptive move after rumours of a lavish celebration, they cut the training short and instructed her to return to work.

Upon her return, Chika was reassigned to manage one of the company's subsidiaries. She performed outstandingly as usual but quickly became dissatisfied with her new work environment, due to the way the fumes used to maintain the engineering equipment affected her health. Despite raising complaints, the management took no action. Frustrated and unable to tolerate the conditions any longer, Chika submitted her resignation after only ten months at the new work



location. Aggrieved at this premature exit, Aquatic Engineers sued Chika for breach of the training bond.

The above scenario bears similarity to the facts in *Dangote Oil Refining Company Limited v. Oyinkansola Olayinka Johnson & Ors, NICN/LA/255/2019, Judgement delivered by Hon. Justice M. N. Esowe on September 18, 2024* which was recently decided by the National Industrial Court of Nigeria (NICN).

FACTS AND FINDINGS

Dangote Oil Refining Company Ltd (*“the Company/Dangote”*) offered Ms. Oyinkansola Johnson (*“Ms Johnson”*) employment as a management trainee through a letter dated February 4, 2016. She accepted the offer, with two individuals (*the 2nd and 3rd defendants*) standing as her guarantors for a training bond she signed with the company. Under this bond, the company agreed to train Ms. Johnson in design and detailed engineering at Engineers India Limited in New Delhi for one year. In return, Ms. Johnson committed to working for the company for five years following the completion of her training.



However, the company abruptly ended her training after nine months on the grounds that she went on an extended leave even though her request for leave to attend her wedding was granted by the Human Resource Manager. Upon Ms. Johnson’s return to Nigeria, she was assigned to work for one of the company’s subsidiaries, which negatively impacted her health. Dissatisfied with the work environment, she ultimately resigned from the company. In response, Dangote filed a complaint before the National Industrial Court (NICN), seeking to enforce the terms of the training bond. The company claimed that Ms. Johnson had breached the bond and sought to hold both her and the guarantors liable. It demanded repayment of the costs incurred for her training, including course fees, visa processing, travel expenses, accommodation, transportation, feeding, and the consolidated training stipend of \$300 per month, among other related costs.

In her defence, Ms. Johnson argued that the company’s premature termination of her training and re-assignment to a subsidiary frustrated her performance under the bond and her employment contract. She contended that the company had breached these agreements, making it unjust for them to seek the damages they claimed.



In deciding the case, the court acknowledged that Ms. Johnson had signed a bond obligating her to remain with the company for five years after her training. The court re-emphasised the legal principle that a person who signs a document is bound by its terms, unless there is evidence of fraud, duress, or a claim of *non-est factum* (where a person signs a document mistakenly without understanding its nature). Citing the case ***Otti v Excel-C Medical Centre Ltd (2019) LPELR-47699(CA)***, the court noted that Ms. Johnson’s signature on the bond confirmed her agreement to its terms, including the five-year commitment. Her resignation within a year of returning from the training thus constituted a breach of the bond.

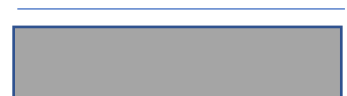
However, the court also found that the company was in breach of a material term of the bond by ending her training three months early. The premature termination of the training amounted to negligence on the part of the company, which failed to uphold a key provision of the contract. Ultimately, the court ruled that the company’s claims for damages could not succeed. Since the company itself had first breached the bond, it could not seek compensation for Ms. Johnson’s breach. The court invoked the legal maxim *ex turpi causa non oritur actio*—meaning no legal action can arise from a dishonourable cause—asserting that a party cannot claim damages when they were the first to act wrongfully.

COMMENTARY



A training bond, also known as an employment bond, is an agreement that seeks to compel an employee who has been sponsored for a training by the employer to work for an agreed number of years for the benefit of the employer’s investment on the staff. Alternatively put, it is the service compulsorily rendered by an employee for training sponsored by his employer. See ***Dr. Victor Balogun & Ors. v. Federal University of Technology, Akure & Anor (Unreported Suit No. NICN/AK/49/2015, Judgement delivered on November 15, 2018 by Honourable Justice O.O Oyewumi-***

This concept is increasingly used as a tool by companies to secure their investment in employee development and reduce premature attrition. However, while training bonds seek to protect companies, compensation for cost of training is not always granted to the company as a matter of course. This is because the general outlook of the courts is that restrictive covenants which includes training bonds are generally unenforceable, due to the restraint they pose to trade, unless they are adjudged reasonable and fair. In ***Koumoulis v. Leventis Motors Limited [1973] LPELR-1710[SC] 11-12***, Udoma, J.S.C., held that covenants in restraint of trade are enforceable only if they are reasonable with reference to the interest of the



parties and the public. This means that such covenants must pass the test of reasonability and fairness set by the relevant statutes and the courts. The **Constitution of the Federal Republic of Nigeria 1999 (3rd Alteration Act)**¹ prohibits forced labour in Nigeria and provides that individuals should have adequate opportunity to secure a means of livelihood without discrimination². This is echoed by the **International Labour Organization (ILO)**³, to which Nigeria is a signatory.

It is equally settled law that an employer cannot protect itself from competition from a former employee or from the employee's exercise of his skill simply because such skill was acquired when the employee was in the employer's business⁴. The ILO also prohibits (save for certain exceptions), any form of involuntary work by individuals or work that is carried out under the menace of penalty⁵. Notwithstanding this, there are situations in which the courts will declare a training bond valid and enforceable; and even mandate payment of compensation for breach to the employer. The primary ingredient is reasonability of the training bond and in determining this, the courts look at the bond duration. See ***Overland Airways Ltd v. Captain Raymond Jam NICN/LA/597/2012 judgment delivered on April 15, 2015 by Honourable Justice B.B Kanyip*** -In this case, the court held that the cumulative 4-year training bond was reasonable for protection of the company's business interest. In arriving at its decision, the Honourable Justice held that the reasonability of a training bond is determined by the duration of the bonding period, how slavish or restrictive the covenants are, and the amount required to be paid in the event of breach or exit from the employment. From this case, it can be concluded that the enforceability of a training bond, and indeed compensation to accrue to the employer, is assessed based on the (i) *duration of the training bond* (iii) *cost of training/amount fixed as penalty for breach and;* (iii) *additional considerations in favour of the employee.*

With respect to the *penalty* to be paid by the employee upon breach, penalties must accurately reflect training costs without additional charges or interest, as training bonds are investments in employee suitability rather than loan transactions. Excessive penalties make the bond punitive. See ***Overland Airways Ltd v. Captain Raymond Jam (Supra)***.

The Indian case of ***Sicpa India Limited v. Shri Manas Pratim Deb, MANU/DE/6554/2011***, in which the court relied heavily on in ***Overland Airways Ltd v. Captain Raymond Jam (supra)*** gives a better analysis. Here, the plaintiff had incurred expenses of INR 67,595 towards training the defendant. and an employment bond was executed, obligating the defendant to remain in the service of the plaintiff company for a period of three years or pay the company the sum of INR 200,000. However, the employee left the employment two years to the expiration of the bond period. To enforce the bond agreement, the employer sued the employee and was awarded a sum of INR 22,532 as compensation for breach of contract by the employee. It is crucial to note that although the bond stipulated a payment of INR 200,000 as compensation for breach of contract,

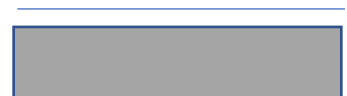
¹ Section 17(3) of the Constitution of the Federal Republic of Nigeria 1999 (3rd Alteration)

² Section 34(1) of the Constitution of the Federal Republic of Nigeria 1999 (3rd Alteration)

³ See Article 1 of the Employment Policy Convention, 1964 (No. 22) of the International Labour Organization

⁴ See *Employment & Labour Law in Nigeria* by Elizabeth A. Oji and Offornze D. Amucheazigbo page 88.

⁵ See Article 2 of the Forced Labour Convention, 1930 (No. 29) of the International Labour Organization.



the judge considered the total expenses incurred by the employer, as well as the employee's period of service in arriving at the compensation amount. Since the defendant had already completed two years of service out of the agreed three years period, the judge divided the total expenses of INR 67,595 incurred by the plaintiff into three equal parts for three years period and awarded a sum of INR 22,532 as reasonable compensation for leaving the employment a year before the agreed time period. This is a very practical example of the attitude of the courts in weighing the penalty for breach of the employment bond.

With respect to duration of the training bond, the courts will ensure that the time an employee is required to remain in the company's service post completion of training must be reasonable and proportionate to the cost of the training. Although this issue never came up in ***Dangote Oil Refining Company Ltd (Supra)***, the court has held that onerously long duration in a bond agreement is contrary to public policy and international best practices. This was the case in ***ATB Techsoft Solutions Limited v Eniola Grace Ake NICN/LA/100/2020 judgment delivered by Honourable Justice I.G Nweneka***; where the NICN invalidated a bond requiring three years of service from an employee or a payment of **N1,419,840 (One Million Four Hundred and Nineteen Thousand Eight Hundred and Forty Naira)** for breach of the bond deeming it unreasonable. A prolonged duration will also be contrary to the provisions of ***Section 34(1)(c) of the Constitution of the Federal Republic of Nigeria, 1999 as Amended***, which prohibits forced or compulsory labour. Albeit the reasonability of the duration period of a training bond is subject to the circumstance of each case. See ***Dr. Victor Balogun & Ors. v. Federal University of Technology, Akure & Anor (Supra)***.

Once executed, the bond is binding on parties to it. Employers must cover training costs, pay employee salaries and allowances during training, and must not withdraw the employee from training prematurely; such breaches render the bond unenforceable, as seen in ***Dangote Oil Refining Company Ltd v Oyinkansola Olayinka Johnson & Ors (Supra)***. Essentially, companies should ensure that the bond is executed before the training takes place as training bonds cannot be enforced retrospectively. If the agreement is signed after the training is completed, it may not be enforceable because at the time the contract was signed nothing of value was exchanged, See ***Overland Airways Ltd v. Captain Raymond Jam (Supra)***.

Another primary challenge employers constantly face in executing training bonds, (even after ensuring bond fairness and reasonability), is recovery of training costs without pursuing legal action. Often times, legal actions affect the company's reputation and employee morale if such action is perceived as overly harsh or punitive. To mitigate these challenges, employers should consider including a guarantor in the bond agreement to provide an additional layer of security for recovering training costs. Employers may also explore amicable solutions to resolve breach of bond agreement, such as negotiations for prorated repayments, and other forms of Alternative Dispute Resolution (ADR) mechanisms, before resorting to litigation. In addition to this, regularly reviewing bond agreements to ensure that they meet the indices of fairness and reasonability will also mitigate legal challenges.



Additionally, there may be instances of underperformance or frustration exhibited by employees who know that termination of their contract automatically determines the bond agreement and as such they won't be liable for breach of the bond, See ***Dr. Victor Balogun & Ors. v. Federal University of Technology, Akure & Anor (Supra)***. To address underperformance, employers should implement a task schedule or performance monitoring scheme that outlines specific expectations and deliverables for employees after returning from training. The bond agreement should also clearly state the consequences of underperformance, ensuring that employees understand their individual obligations.

In conclusion, training bonds are an effective tool for employers to safeguard their investment in employee development, but they must be carefully drafted to minimize legal risks and avoid employee dissatisfaction. To ensure enforceability, the bond must be executed by employees before training commenced, as past consideration is not valid. Employers should strive for a balanced approach by including reasonable timeframes, proportional repayment terms, and ensuring that the bond is fair and non-oppressive; this is necessary to ensure compliance with international best practice as highlighted in the ILO Conventions. Additionally, creating a positive work environment that promotes retention beyond the bond's obligations is crucial for long-term success.

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