



**THE CRUCIAL ROLE OF DOCUMENTATION IN NAVIGATING
COMPLEX TRIANGULAR EMPLOYMENT ARRANGEMENTS
AND MITIGATING EMPLOYER LIABILITY**

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The Ministry of Works, Kalakuta Republic recently called for a bid from construction companies for the construction of a new national theatre in honor of the king of juju music. Interested in the contract, Colby Construction Company (CCC/*the Company*), through its Project Manager, approached Mr. Tony Montana (*Mr. Tony*), a renowned surveyor, and entered an agreement with him for the purpose of using his curriculum vitae and his technical expertise to curate an application to meet the bidding requirements.

Colby Construction Company was successfully awarded the construction contract while Mr. Tony remained as the consultant for the construction project. Few months later, CCC engaged the services of Big Seven Limited (*Big 7*) to oversee all its employee engagements. Mr. Tony was issued a contract of employment with Big 7, and he was seconded to work for CCC as a consultant for the construction project. His contract was later on terminated by Big 7, without recourse to the provisions of his contract with Big 7.

Aggrieved with the way and manner upon which his engagement with CCC was terminated, Mr. Tony instituted an action at the labour court against CCC and Big 7, for wrongful termination. Interestingly, the facts of this narrative are similar to those constituted in the recent case of ***Benjamin Oviri v. GOPA International Energy Consultants Ltd & Anor Suit No. NICN/ABJ/279/2021***. The case was decided by the National Industrial Court of Nigeria on October 10, 2023 by His Lordship, Hon. Justice O. Y. Anuwe. The Court considered issues of triangular employment relationships (including the requirements for the creation of a contract of employment) employer liability for documentation of employment relationship or lack thereof, and issues relating to wrongful termination of employment.



FACTS AND FINDINGS IN BENJAMIN OVIRI V. GOPA

Mr. Benjamin Oviri (*Mr. Benjamin*) is a Health Safety and Environment Specialist. GOPA International Energy Consultant Limited (*GOPA*) approached Mr. Benjamin to submit his curriculum vitae, for the purpose of bidding for consultancy services in NETAP TC1, World Bank Project. Following this arrangement, the parties executed a pre-project agreement dated July 31, 2019, to guide their relationship. GOPA won the contract for the consultancy services, and according to Mr. Benjamin, GOPA offered him a contract of employment dated June 5, 2020, which he executed. Subsequently, GOPA contracted VOKE Engineering Services Limited (*VOKE*), a human resources management and logistic services company, to oversee its engagement of professionals. Consequently, Mr. Benjamin was offered a contract of employment dated May 28, 2021, by VOKE, and seconded to work as a consultant for GOPA.



On September 2, 2021, Mr. Benjamin was issued a notice of termination of his employment by VOKE, effective same day. However, he was not paid his monthly salary in lieu of notice as contained in his contract of employment. Dissatisfied, he instituted an action at the National Industrial Court of Nigeria jointly and severally against GOPA and VOKE for wrongful termination. He alleged that his employment contract was with both companies on the basis that he has been in GOPA's employment since the execution of the pre-project contract. His grievance was also based on his contract of employment with GOPA dated June 5, 2020, and that with VOKE dated May 28, 2021. On these bases, he sought damages amongst other reliefs.

GOPA denied that it employed Mr. Benjamin. The Court was therefore to consider who Mr. Benjamin had a contract with upon which the employment dispute crystallized. The Court found and held that neither the Pre-project Agreement of July 31, 2019, between Mr. Benjamin and GOPA nor the June 5, 2020 contract constituted a contract of employment. It is noted that GOPA had maintained that the June 5, 2020 contract only sent to Mr. Benjamin as a guide, and not an offer of employment to be accepted. In fact, it was GOPA's position that it



never executed the draft contract, which implies that the said contract is not a valid or enforceable agreement.

Similarly, in holding that Mr. Benjamin does not have a contract of employment with GOPA, the Court reasoned and found that Mr. Benjamin could not show any evidence of control, or payment of salary to him by GOPA from the date he alleged to have been employed. Therefore, in the absence of any valid contract of employment with GOPA, the mere fact that VOKE seconded Mr. Benjamin to work for GOPA does not create an employment relationship between him and the company. The Court also held that even if a contract had existed with GOPA, it ended when he accepted the employment contract of VOKE. The Court therefore concluded, based on credible facts and documentary evidence, that Mr. Benjamin only had a valid and enforceable contract of employment with VOKE. The employment was evidenced by the supervisory role carried out by VOKE, the payment of his salary, the exercise of disciplinary powers. The effect is that the employer liability lies on VOKE.

In summary, the Court exonerated GOPA as Mr. Benjamin's employer and held VOKE to have exercised employer rights with consequent employer liabilities. Accordingly, the Court ordered VOKE to pay Mr. Benjamin one-month salary in lieu of notice and the sum of ₦3,000,000 (Three Million Naira) being general damages for the wrongful termination of his employment.

COMMENTARY

In the ever-evolving realm of contemporary employment,



the significance of detailed documentation cannot be overstated. In triangular employment arrangements and the new world of work, meticulous documentation plays a crucial role in both managing these complex relationships and mitigating employee liability. With the advent of these modern forms of employment i.e., outsourcing, secondment, subcontracting, etc., the National Industrial Court of Nigeria (NICN), has at

different times, examined these relationships to determine who in fact, exercises employee control and bears employer liability in such arrangements. The NICN has done this by reviewing both the documentation guiding these arrangements, as well as evidence adduced,



showing the control and management of the employee. Liability is accordingly imposed on the party or parties who expressly or impliedly exercise such control.

In *Donatus Onumalobi v. Nigerian National Petroleum Corporation*¹, the NICN held that a co-employer status will arise when it is shown that the companies (the recruiting company, and the user of labour) are for all intent and purposes one, to the extent that if one company can be said to be the agent or employee, or tool or simulacrum of another, the two companies will be treated as one. Thus, where liability arises in respect of the employment relationship, same will be jointly borne by the companies².

While the NICN continues to lean towards the primacy of facts leading sometimes to ‘lifting the veil’ in non-traditional employment models and allocating liability to the actual employer, the Court still advocates for transparency in revealing concealed aspects of employment relationships. This is why even though employment relations and arrangements can arise either expressly or impliedly³, it is a still mandatory requirement for employers to provide employees with a written contract within three months of commencing their service⁴.

Hence, in the absence of documentation that provides clear guidance for these non-traditional arrangements or the presentation of compelling evidence demonstrating *de facto* control and management of the employee, the NICN will abstain from making unwarranted assumptions or inferring the existence of a triangular employment arrangement. This is as exemplified in *Oviri v. GOPA International Energy Consultants Ltd & Anor.*

Undoubtedly, non-traditional employment models carry substantial risks ranging from different interpretation of their roles and responsibilities by employers and employees, to potential financial liabilities, and unclear accountability within co-employment setups. Hence, it is incumbent upon employers to diligently pursue comprehensive documentation for all employment arrangements. This documentation plays a pivotal role in delineating the roles, expectations, work terms, and payment structures of all parties involved, thereby mitigating potential misunderstandings and conflicts. Ultimately, such well-articulated documentations foster the seamless operation of triangular employment arrangements and will remain useful for the NICN in apportioning liability, should a dispute arise.

¹ (1999) 12 NWLR (Pt. 632) 628 (CA) 639F-640D; [2004] 1 NLLR (Pt 2) 304

² See Anthony Agum v. United Cement Company Ltd. (UNICEM) Anor., Suit No: NICN/CA/71/2013 unreported judgment of Hon. Justice E. N. Agbakoba, J., delivered on March 3, 2017; Diamond Bank Plc v. National Union of Banks, Insurance and Financial Institutions Employees Suit No. NICN/ABJ/130/2013: unreported judgment of Hon. Justice B. B. KANYIP, PHD delivered February 6, 2019

³ See Section 91 of the Labour Act, the section defines a contract of employment as an agreement whether oral or written, express or implied whereby one person agrees to employ another as a worker and that person agrees to serve the employer as a worker.

⁴ See Section 7 of the Labour Act



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

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