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UNILATERAL VARIATION OF CONTRACTS OF EMPLOYMENT AND  
TERMINATION OF EMPLOYMENT WITH “*IMMEDIATE EFFECT*”;  
IMPLICATIONS

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Mr. Peter Ogunde was employed as a Senior Consultant at the Monroe Research Institute of Technology, Abeokuta (*MRIT/the Institute*). He served the Institute for over seven (7) years and received several meritorious awards for his contributions to the Institute. Recently, he received a letter transferring him from his position as a Senior Consultant to a Senior Researcher in the Institute on contract basis. This did not sit well with Mr. Ogunde as he perceived the position of Senior Researcher as a lesser position and several steps back in his career advancement. Aggrieved by this transfer, Mr. Ogunde wrote the Managing

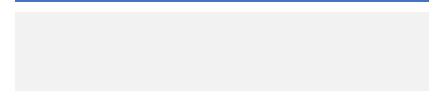
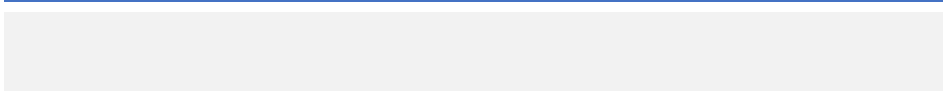
Director of the Institute complaining about the transfer as he did not request for such transfer. He also indicated that whilst he is not against carrying research on occasional basis, that was not his calling and that was not the reason the Institute hired him in the first place; moreover, his employment as a Senior Consultant was on a permanent basis and not on contract as entailed in the letter of transfer. In response, the Management of the Institute issued a termination letter to Mr. Ogunde and directed him to step down as a Senior Consultant in the Institute and take on a new role as Senior Researcher. Mr. Ogunde responded with a letter of protest expressing his displeasure at the sudden change in the terms of his employment without any discussion with him to that effect. Further to this, the Management of the Institute issued another termination letter stating that Mr. Ogunde’s contract of employment was terminated with immediate effect. Displeased with the Institute’s decision to terminate his employment and confused as to the manner in which his employment was terminated, Mr. Ogunde has consulted the law firm of Bristol & City LP for their legal advice as to remedies available to him.

Remarkably, the foregoing factual scenario is similar with the facts of the case in the recently decided case of ***Dr. Adekunle Oyeyemi v. Covenant University Suit No.: NICN/LA/758/2016***, judgment of National Industrial Court of Nigeria (NICN) delivered by Hon. Justice O.A. Obaseki-Osaghae on September 28, 2021. In that case, the NICN considered amongst other issues the question of whether the unilateral change/variation of a contract of employment constituted constructive dismissal as well as the implication of terminating an employee’s employment with “*immediate effect*”.

### **Facts and Findings**

Dr. Adekunle Oyeyemi, a Canadian resident, was employed/appointed as a full-time Director of Covenant University’s Counseling Centre on the October 1, 2007. Dr. Adekunle was in the employment of Covenant

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University for over eight (8) years as the Director of the University's counselling center. However, his employment was terminated by the University with "immediate effect" vide a termination letter dated November 14, 2016 and a subsequent termination letter dated November 15, 2016, without accusing him of any misconduct.



Prior to his termination, Dr. Oyeyemi had sent an internal memo to the Secretary of the University's Board of Regents to state his position against the Board's resolution on the issue of tenure of Principal Officers and Directors in the University. The University wrote him a letter dated October 25, 2016 informing him that his tenure as the Director of the Counselling Centre has come to an end, and redeployed him to the Department of Psychology as a Senior Lecturer. Dr. Oyeyemi received yet another letter dated November 7, 2016 from the University informing him that the new tenure appointment had been reviewed to a contract appointment and he was directed by another letter dated November 10, 2016 to hand over his office to an incoming Acting Director. In response, Dr. Oyeyemi sent an internal memo registering his displeasure at the unilateral change of his contract of employment. Aggrieved by the circumstances surrounding his termination, Dr. Oyeyemi instituted the instant action claiming amongst other things that his termination was wrongful.

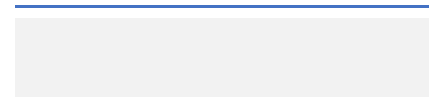
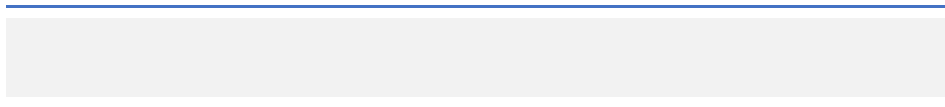
The court in holding that the termination of Dr. Oyeyemi was wrongful stated that the University established no wrongdoing to necessitate the termination of Dr. Oyeyemi's appointment with immediate effect after 8 years, 9 months and 29 days of service. The court also held that the termination of Dr. Oyeyemi's employment with immediate effect suggests wrongdoing that the University must justify because of the stigma attached to the words '*immediate effect*' in the disengagement of an employee.

The court further held that the University's unilateral review of Dr. Oyeyemi's employment contract to Senior Lecturer (Contract) was unsolicited and designed to make the workplace intolerable for him and to force his exit, thereby amounting to a constructive dismissal.

### **Our Comments**

The decision of the court in *Oyeyemi's Case (Supra)* brings to fore certain principles of labour law which every employer and their respective Human Resources Department are expected to advert their minds to:

1. **Constructive Dismissal:** Constructive Dismissal is used to describe a situation where an employee voluntarily leaves the employment due to intolerable conditions of work or hostility at the work place. Although the employee in the case under review did not resign his employment, he registered his displeasure at the unilateral change of his contract of employment. By this singular action, the alteration of the employee's condition/nature of employment was designed to make the workplace intolerable for him as the employee would not find the new role professionally fulfilling. From the judgment of the court in this case, it can be deduced that resignation is not a necessary element for the court to hold a termination a constructive dismissal. What is paramount in holding that a termination amounts to



constructive dismissal is the fact that the actions/inactions of the employer makes the workplace intolerable to the employee and capable of forcing the exit of the employee.

2. **Employment with Statutory Flavour:** It is worthy of note to mention that the mere fact that an employer is set up by law does not mean the employee's employment is one with statutory flavor. Dr. Oyeyemi had argued that his employment was one with statutory flavour (*therefore entitling him to reinstatement*) because the Ogun State House of Assembly enacted the Covenant University Law in 2001 and that the staff handbook and conditions of service of the University were made pursuant to the provisions of section 24(1)(c) of the law setting up the University. However, the court held that being a private University established by World Mission Agency (WMA) and not established or financed by the Ogun State Government, the appointment could not be said to be one with statutory flavour.
3. **Termination with “with immediate effect”:** While drafting letters of termination, employers and their respective Human Resources departments should exercise caution in their use of language. The court in the case under review construed the words ‘*immediate effect*’ to have the effect of stigmatization, therefore constituting unfair labour practice.
4. **Unilateral Variation of Contract:** The position of the law is that employers can no longer unilaterally make material changes to an employment contract without recourse to their employees. Accordingly, where the change of the conditions of service envisaged by the employer is such that operates to reduce the economic/contractual benefit of the employee, the law requires that such change be communicated, negotiated, and agreed upon with the employee concerned. Such changes must adequately reflect the interplay of rights and economic perspectives, otherwise, it may be considered an unfair labour practice and thus, unenforceable.



**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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