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THE NIGERIAN FOOTBALL LEAGUE, PLAYERS' WORK HEALTH & SAFETY AND THE CIVIL LIABILITY OF SPORTS ORGANIZATIONS

The liability of employers for industrial injuries or disease caused to employees continues to be one of the most litigated areas of the tort of negligence. [i] The Pension Reform Act, 2014 mandates employers of three and above to have in place employer's liability, (group life) insurance for employees. Employer's liability insurance in Nigeria provides compensation for the family of employees, in case of untimely death, disappearance, or disability while in service. It is one of the six compulsory insurances in Nigeria. One hastens to point out that the existing legislative framework in Nigeria is rather weak to cater for all the conceivable situations under employers' liability especially as regards the ambit of protection as you have in other jurisdictions such as the UK. One would therefore expect that the scope of protection should only cover situations arising during the employee's course of employment. Thus, the insurable risks must refer to risks 'arising out of and in the course of the players' employment. This principle is in tandem with the common law principle on the point. For example, in ***Moore v Manchester Liners Ltd***[ii], Lord Loreburn defined the course of employment to mean '*that the event, normally an accident, giving rise to the employee's claim must arise when the employee is doing what a man so employed might reasonably do during which he was employed and at a place where he may reasonably be during that time to do that thing*". [iii]

Three Nigerian Football clubs, in the last couple of months, experienced an unprecedented spate of accidents on their way to prosecute league matches for their respective teams. First was Adamawa United (kidnapping), Wikki Tourists FC, and Kwara United of Ilorin of Bauchi (accidents) have all experienced misfortunes on the road.

Undoubtedly, this development raises a number of legal issues from an employment standpoint. Put differently, the work health and safety obligations of a professional football club. This article is in two parts; first, we take a look at Employers' liability insurance in general while the second part delves into insurance and risk management in sports and the ancillary issues of workplace health and safety.

As a general rule, an employee's journey to and from his or her place of work is not ordinarily in the course of employment unless the journey is so closely connected with the employee's work that the general principle ceases to apply. [iv] In ***Smith v Stages***[v] an employee, a peripatetic lagger had been instructed to work away from his usual place to undertake urgent work at Pembroke power station in Wales. As soon as the work was completed, the employee was driven back to his home in Staffordshire on a Bank Holiday Monday by a colleague so that he could resume work at his usual place of employment the next day. During the journey, the car skidded off the road and crashed into a brick wall. Both men were seriously injured. The plaintiff was paid by his employers for the day he

needed to travel back on the same basis as any normal working day. The House of Lords held that at the time of the accident, the plaintiff was acting in the course of his employment.

On the other hand, in ***Vandyke v Fender***[xvi], V & F, who were both employed by the same company, were provided with a car by their employer so that F could drive himself and V to their place of work. They were involved in an accident caused by F's negligence. One of the issues before the court was whether the employers' liability policy covered this risk or whether the claim should be directed to the relevant motor insurer. It was held that the employers' liability insurer was not liable as the accident did not occur during the course of V and F's employment. The court further held that driving to work is not the same as driving at work and, in any case, V was under no obligation to travel in the car.

Whether or not an employee was acting in the course of his employment is a question of facts which as shown by the foregoing cases, is amenable to a number of tests devised by the individual judges. The judge as arbiter is therefore under an enormous duty to take cognizance of the peculiar facts of each case in applying the law.

From the foregoing analysis, it is clear that the playing and coaching staff of these clubs suffered these mishaps on their way to prosecuting an important game for the club. By the terms of their contract, they are obliged to obey lawful instructions from their employers, the clubs. Part of these lawful instructions is to travel in the team buses provided by the employers to prosecute matches for the club. Refusal by any employee to travel in the team's buses would clearly be interpreted as insubordination by the employee and could be a ground for misconduct. The playing and coaching staff are obliged by the terms of their contract to travel in those buses and by road. Accordingly, any resultant injury or loss incurred by the playing and coaching staff would be deemed to have been suffered in the course of employment. Under the Nigerian Professional Football League Framework Rules, clause 12.12 of the Commercial Framework of the Rules only obliges the clubs to ensure that they maintain a medical insurance scheme approved by the LMC and comply with all relevant Pension laws and or special bridging Players pension approved by the LMC. Curiously, clause 6.1.3 of the Framework Rules suggests that this provision is not obligatory when it provides in part **that where the club's medical insurance does not cover medical and dental examinations for a player who is injured or ill, then the club is obliged to maintain a policy upon normal industry terms commonly available within professional football clubs**. What is deemed *normal industry terms* is not defined in the Rules and understandably gives the clubs a leeway to circumvent the existing regulations. Admittedly, the Employer's Liability Insurance Provisions under the Pension Reforms Act are inadequate to meet the demands of global best practices.

Professional sport is work and therefore, an aspect of the law that needs to be accorded serious attention is work health and safety. Even though there is an implied term at common law that obliges an employer to exercise a duty of care to ensure the safety of its employees, there needs to be bespoke legislation that would expressly provide that those conducting a business owe a duty of care to ensure the safety of its workers and to exercise due diligence

in taking reasonable steps to comply with work health safety obligations. One renowned author posits that *sport does not enjoy any privileges when it comes to work health and safety law as there is no broad exception for sport, and suggests policies for extreme heat conditions, pitch inspections, padding on posts etc as examples of what can be implemented as reasonable and practical.* [vii]

In commending this to the regulators in the Nigerian sports industry, it is clear that people participating in professional sports are classified as employees working under a contract of service and accordingly, entitled to employee insurance protection. The standard practice globally is to enact laws that provide elaborate protection for sportspeople in respect of sports injuries. Australia for instance, enacted the Sporting Injuries Insurance Act to provide compensation for participants in all sports. It establishes the Sporting Injuries Compensation Authority which is tasked with creating a fund called the "Sporting Injuries Fund" and determining the premiums for each sporting organization. Premiums should cover both the playing and coaching staff as well as sports umpires. Sports clubs should be made to pay their premiums at the beginning of every season to ensure that compensation is paid to deserving persons. Sports teams and organizations should be mandated by the regulators to create a work health safety policy in their organizations with a special Committee created to ensure compliance. These steps would no doubt ensure that sports organizations and their employees are not embroiled in protracted insurance litigation. The club licensing regulations should be amended to incorporate stringent penalties for non-compliance.

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END NOTES

[i] M. Brazier and J. Murphy, Street on Torts (London, Butterworths, 1999) chapter 13
[ii] (1910) AC 498
[iii] Ibid, at 500-1
[iv] In Smith v Stages, Lord Lowry stated that: "the paramount rule is that an employee travelling on the highway will be acting in the course of his employment if, and only if, he is at the material time going about his employer's business. One must not confuse the duty to turn up for one's work with the concept of already being on duty while travelling to it.
[v] (1989) AC 928 at 955, see also Elleanor and Cavendish Woodhouse Ltd v Comerford (1973) 1 Lloyds Rep 313.
[vi] (1970)2 QB 292
[vii] Eric Windholz, Professional Sport, Work Health and Safety Law and Reluctant Regulators (2015) Bond E-sports law journal.

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