

Unveiling the Spectrum of Protection Under the Nigerian Labour Act

Introduction

"But the provisions of that section are made applicable only to a 'worker' as defined in section 91(1) of the same Act. 'Worker' is defined in the section as follows:

"'Worker' means any person who has entered into or works under a contract with an employer, whether the contract is for manual labour clerical work or is expressed or implied or oral or written, and whether it is a contract of service or a contract personally to execute any work or labour, but does not include –

(a) any person employed otherwise than for the purposes of the employer's business, or

(b) persons exercising administrative, executive, technical or professional functions as public officers or otherwise, ..."

The respondent was employed as a senior editor in 1985 and as at the time his appointment was terminated by the company, he was the company's controller of publications. He was therefore throughout his stay with the company a person exercising administrative/executive or technical functions. I therefore hold that the provisions of section 20(1) (a) of the Labour Act are not applicable to him." – **Evans Bros (Nig.) Pub. Ltd v. Falaiye (2003) 13 NWLR (Pt. 838) 564 at 588 paras B – F.**

For decades, the Nigerian Labour Act, 1971 (the "**Act**") has been widely perceived as a legislative safeguard protecting the interests of only low cadre staff, given the interpretation of a 'worker' under section 91 of the Act¹ and a plethora of judicial pronouncements on the applicability of the Act to the workforce in Nigeria.²

However, a deep dive into the Act reveals that its protective reach extends beyond factory floors and construction sites. From the high-powered executives in corner offices, to the women and young persons eking out a living within Nigeria's economic landscape, the rights and protections available under the Labour Act also apply to specific categories of persons, regardless of their job descriptions and the positions they hold in an organization.

This challenges long-held assumptions as to the applicability of the Act and urges us to a closer look at how this pivotal piece of legislation, protects and supports a wider range of the Nigerian workforce.

¹ Under Section 91 of the Labour Act, a "worker" means "any person who has entered into or works under a contract with an employer, whether the contract is for manual labour or clerical work or is expressed or implied or oral or written, and whether it is a contract of service or a contract personally to execute any work or labour, but does not include –

(a) any person employed otherwise than for the purposes of the employer's business, or

(b) persons exercising administrative, executive, technical or professional functions as public officers or otherwise, or

(c) members of the employer's family, or

(d) representatives, agents and commercial travellers in so far as their work is carried on outside the permanent workplace of the employer's establishment; or

(e) any person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, repaired or adapted for sale in his own home or on other premises not under the control or management of the person who gave out the articles or the material; or

(f) any person employed in a vessel or aircraft to which the laws regulating merchant shipping or civil aviation apply;"

² *Ovieve v. Delta Steel Co. Ltd* (2023) 14 NWLR (Pt. 1904) 203.

Apprentices³

Identified as one of the “***special classes of workers***” under the Act,⁴ apprentices are protected by the provisions of the Act, notwithstanding the kind of undertaking that they are training in or the position they hold in that undertaking for the period of their training.

Under the Act, it is essential that a contract of apprenticeship is signed between the young person (who must be older than twelve years of age) and his/her employer, under the guidance of his/her parent, guardian or an authorized labour officer, where he or she is under the age of sixteen. The apprenticeship which is usually for the purpose of having the person systematically trained for a trade or employment in which art or skill is required, or as a domestic servant, must be for a term not exceeding five years.⁵

Other protections afforded to an apprentice under the Act include:

- i. The contract of apprenticeship must be in writing, attested to by an authorized labour officer,⁶
- ii. The apprentice must be physically and mentally fit to be employed and trained in the employment specified in the contract,⁷
- iii. The apprentice must have fully understood the terms of the contract before signing or indicating consent to it, and⁸
- iv. The apprentice must be paid a remuneration in cash (which shall be subject to increase) during the course of apprenticeship.⁹

Children/Young Persons¹⁰

A child is defined under the Act as “*a young person under the age of twelve years*”, while a young person is defined under the Act as “*a person under the age of eighteen years*”.¹¹ Again, these descriptions are peculiar to a category of persons, who irrespective of the positions they work in, are afforded protections under the Labour Act.

Particularly, the protections afforded to children and young persons under the Act include:

- i. No child is to work or be employed in any capacity or be required to lift carry or move anything so heavy as to be likely to injure his physical development, except for light work under the employment of his family member to do tasks of an agricultural, horticultural or domestic character, as may be approved by the Minister of Labour.¹²

³ Sections 49 – 53 of the Act.

⁴ Part III of the Act.

⁵ Section 49 of the Act.

⁶ Section 50 (1) of the Act.

⁷ Section 50 (2) (b) (i) of the Act.

⁸ Section 50 (2) (b) (ii) of the Act.

⁹ Section 50 (2) (b) (iii) of the Act.

¹⁰ Sections 59 – 64 of the Act.

¹¹ Section 91 of the Act.

¹² Section 59 (1) of the Act.

- ii. A young person under fifteen years is not to be employed in any vessel or industrial undertaking except (i) where the vessel is a school or training vessel, or (ii) as it relates to those in technical schools or similar institutions, whose courses require such experience, but their work on the vessel or industrial undertaking must be (i) in the case of a vessel worker - approved by the Minister, or (ii) supervised by a public officer or a public department, and (iii) in the case of an industrial worker – approved and supervised by the Ministry of Education of a state.¹³
- iii. Further, no young person under sixteen years is to be employed to work underground, on a machine, on a public holiday, in a vessel as a trimmer or stoker, or in any place which is injurious to his health, dangerous or immoral.¹⁴
- iv. All young persons under the age of sixteen are generally expected to, if employed, return home on each day of work and to not be required to work during the night, except in given circumstances which are specifically set out under the Act.¹⁵

Women¹⁶

Under the Act, a woman is defined to mean “*any member of the female sex whatever her age or status*”.¹⁷ This definition of a woman is significantly different from that of a worker which is qualified under the Act as excluding any person exercising administrative, executive, technical or professional functions as public officers or otherwise, amongst other exceptions.

Particularly, the Labour Act in setting out its protections for women does not refer to them as “*women workers*” but simply as “*women*”, and it goes on to further specify under section 54 that the protections offered therein apply to a woman “***in any public or private industrial or commercial undertaking or any branch thereof, or in any agricultural undertaking or any branch thereof.***” A wholesome reading of these sections does not seem to restrict the applicability of the protections afforded under the Labour Act to only women who do not occupy administrative, executive, technical or professional positions, but rather, the sections appear to extend to every woman across all tiers of employment in Nigeria.

The protections afforded to women under the Act include (i) maternity protections,¹⁸ (ii) the right to not be employed on night work,¹⁹ except she is employed in the health and welfare services e.g., as a nurse or she holds a responsible management position by which she is not ordinarily engaged in manual labour,²⁰ and (iii) the right to not be employed on underground work in any mine to do manual labour, except it constitutes a part of her training as is required for her course of study.²¹ ***Again, it is clear from these provisions that the Act envisages the protection of women even in management positions.***

¹³ Section 59 (2) and 61 (1) of the Act.

¹⁴ Section 59 (5), (6) and 61 (2) of the Act.

¹⁵ Section 60 of the Act.

¹⁶ Sections 54 – 58 of the Act.

¹⁷ Section 91 of the Act.

¹⁸ Section 54 of the Act.

¹⁹ Section 55 (3) of the Act defines “night” to mean –

(a) in respect of industrial undertakings, a period of at least eleven (11) consecutive hours, including the interval between 10pm and 5am, and

(b) in respect of agricultural undertakings, a period of at least nine (9) consecutive hours, including the interval between 9pm and 4am.

²⁰ Section 55 of the Act.

²¹ Section 56 of the Act. In our view, these sections do not prohibit women from being employed to do underground work in a mine or to do night work but rather, the sections give women the right to refuse to take on such roles, except as may be required for their coursework.

Maternity Protections for Women Under the Labour Act

Under section 54 (1) – (3) of the Act, the following protections are afforded to a pregnant woman under the employment of an employer:

- i. She is entitled to maternity leave within 6 weeks of her due date and 6 weeks after delivery,²²
- ii. If she has been employed for 6 months and above, she is entitled to at least 50% of her wages for the period of maternity leave, and
- iii. Following the maternity leave and after resumption from work, she is entitled to 30-minute breaks, twice a day for the purpose of nursing her child.
- iv. However, her employer is not liable to pay any medical expenses incurred by her during or on account of her pregnancy or delivery.

Beyond these protections as set out above, Section 54 (4) of the Act also provides that where a woman is absent from work due to being on maternity leave or where she takes her leave from work due to a pregnancy related illness, **no employer shall give her a notice of dismissal²³ during her absence or a notice of dismissal expiring during her absence**. A reading of this subsection births two interpretations in the absence of any judicial interpretation of same:

- i. The first is that the subsection protects women from *dismissal on account of absenteeism* from work where they are absent because (a) they are on maternity leave, or (b) they have an illness arising from pregnancy or delivery. Thus, the section may be interpreted as meaning that a woman cannot be dismissed for being absent from work *if her reason* for such absence is due to her maternity leave or any illness arising from pregnancy or delivery.

This interpretation seems to align with the right of women to be protected from dismissal on the basis of discrimination against them on account of their status as pregnant women. This protection can also be seen across various laws such as in section 42 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 and other International Labour Organization Conventions relating to maternity protection.²⁴

- ii. The other possible interpretation of section 54 (4) of the Labour Act is that an employer is prohibited from issuing a **notice of dismissal during** a woman's maternity leave or **during** her absence due to any sickness arising from her pregnancy or delivery. This interpretation prescribes a total ban against the employer dismissing a woman, for any reason at all, during maternity leave or a leave taken to treat an illness related to the pregnancy or delivery of the child.

The first interpretation undoubtedly reinforces the global stance against discrimination, particularly against women and reflects international best practice of legislations that protect

²² We note that there are two bills pending at the House of Representatives in the first reading stage seeking to amend this section of the Act for the purposes of – (i) increasing the maternity leave period to 24 weeks, and (ii) granting a two-week paternity leave period to men whose wives have just put to bed.

²³ Taking into account the legal difference in the terms "dismissal" and "termination" as interpreted by the courts under Nigerian labour law, it is our humble opinion that the use of the word "notice of dismissal" under section 54 (4) of the Labour Act also encapsulates a "notice of termination" of the woman's employment during maternity leave for good, bad or no reason at all. To interpret the section strictly will defeat its purpose as employers will only be restrained from dismissing the woman but will be at liberty to terminate the woman's employment.

²⁴ These include the International Labour Organization (the "ILO") Maternity Protection Convention, 2000 (No. 183) and the ILO Workers with Family Responsibilities Convention, 1981 (No. 156).

women even in the workplace. The interpretation however does not provide a fool-proof protection for pregnant women on maternity leave, as employers still have the leeway to under the guise of any random reason or for apparently no reason at all, dismiss pregnant women on the basis of their pregnancy, while citing a different (though untrue) reason.

With the second interpretation, employers are outrightly prohibited from dismissing pregnant women during the period of their maternity leave and this affords a complete protection for women against any form of direct or indirect discrimination at the workplace on this basis. This position may however pose a problem for employers where the reason for the dismissal is the woman's misconduct, breach of the terms of her contract of employment or even an expiration of the term of her employment. In such a situation, the employer will essentially be forced to retain the woman despite whatever wrongdoing she may have committed.

Conclusion

The Nigerian Labour Act offers a protective framework that transcends the traditional boundaries of worker classification. By curating specific provisions that protect all women, apprentices, and young persons, irrespective of their organizational roles, the Act underscores the importance of equitable treatment and safeguards, especially against employees most prone to the maladies of discrimination and exploitation. This inclusive approach not only fosters a fair and just working environment but also highlights the Act's relevance in contemporary employment practices. As Nigeria continues to evolve economically and socially, the Labour Act (although requiring an amendment to suit current employment trends and economic realities) remains a critical tool in ensuring that employees receive the protections they rightfully deserve at the workplace.

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