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Circumscription of the Rights of Workers Union to Embark on Strike

Introduction

Organized labour has brought the Nigerian economy to a total shutdown over failure to reach an agreement with the Government of Nigeria on a new national minimum wage and reversal of the hike in electricity tariff. According to media reports, there has been a shutdown of; the unions, the courts, the airports, the banks, schools, fuel supply, government offices, and the National Grid thereby cutting electricity supply throughout the nation and throwing the country into total blackout. Though the Federal Government claims that the strike is premature and illegal for failure to follow due process, the organised labour assert that they are acting within their rights to embark on an industrial action guaranteed by the Nigerian Constitution, the Trade Unions Act¹ and other applicable laws.

Against this backdrop, the critical question is, whether the right to strike is not inviolable, sacrosanct, at large, under extant Nigerian labour laws and not without statutory and judicial control. The amplitude of the workers right to embark on an industrial action and the extent to which such rights are circumscribed by law, shall be put in its proper legal perspective anon.

The Workers Right to Strike

The workers right to strike is a derivative right from the workers right to unionise conferred under by section 40 of the Nigerian Constitution² which guarantees every person (worker and their unions) the right to join, form or belong to any trade union of his choice in order to promote and protect his interests without any form of hinderance.³ Therefore, the right of workers to strike are an essential aspect of trade union rights.

To restrict workers from exercising their right to embark on industrial action would constitute an infraction and an affront on the Constitution unless the right is circumscribed in any of the circumstances recognised by law as discussed below.

¹ See Section 43 (1) of the Trade Unions Act, cap T14 LFN 2004

² Constitution of the Federal Republic of Nigeria 1999 (as amended)

³ **N.A.P.P.S & Ors v. N.U.T** (2012) 28 N.L.L.R. (pt 81) page 483 NIC; See also RE: Union of Ifelodun Timber Dealers and Allied Workmen, (1964) 2 ALL N.I.R.

62. See also ILO Convention No. 87 of 1948 and Article 2 of ILO convention 87 of 1948.

Circumscription of the Right to Strike

A. Circumscription under the CBA and TDA

Every union existing in any organisation would usually have in place a collective bargaining agreement (CBA) signed between the union and the organisation.

All standard CBAs typically provide for the dispute resolution mechanism for resolution of any trade dispute⁴ between the parties. Such dispute resolution mechanism typically involves direct negotiation between the union and the organisation, or mediation through a third-party mediator agreed by the union and the organisation or referring the dispute to the Minister of Labour & Employment under the dispute resolution process of the Trade Disputes Act (TDA).

The spirit and letter of the CBA and TDA circumscribes the right of the workers to embark on industrial action until the dispute resolution process have been exhausted. Otherwise, the industrial action may be declared unlawful.

Specifically, section 18⁵ of the TDA places a mandatory restriction on employers, trade unions and or employees from embarking on strike actions where the dispute resolution procedure stipulated in Sections 4⁶, 5⁷ and 6⁸ of the TDA⁹ have not been exhausted. The position of the Government of Nigeria that the current strike is illegal is founded on the failure of the unions to exhaust the dispute resolution process under the TDA before embarking on strike.

B. Circumscription under the TDESA

The right of workers to embark on industrial action is not available to persons rendering essential services by the operative effect of the Trade Disputes (Essential Services) Act¹⁰ (TDESA).

Essential services under the TDESA are services rendered by both public and private institutions which are of such nature that their disruption or withdrawal would affect the lives of members of the public and the economy. The list of essential services under the TDESA are broad and include:

- (a). *the public service of the Federation and State; or the armed forces, or an undertaking (corporate or unincorporate) which deals or is connected with the manufacture or production of materials for use in the armed forces;*
- (b). *the supply of electricity, power or water, or of fuel of any kind; sound broadcasting or postal, telegraphic, cable, wireless or telephonic communications; ports, harbours, docks or aerodromes, in connection with transportation of persons, goods, livestock by road, rail, sea, river or air; the burial of the dead, hospitals, the treatment of the sick, the prevention of disease, or any of the following public health matters, namely, sanitation, road cleansing and the disposal of night soil and rubbish; dealing with outbreaks of fire; teaching or the provision of educational services at primary, secondary or tertiary institutions;*
- (c). *the Central Bank of Nigeria; the Nigerian Security Printing and Minting Company Limited; anybody corporate licensed to carry on banking business under the Banks and Financial Institutions Act.*

It is interesting to note that the unions participating in the current strike cut across various essential services which is contrary to the letter and spirit of the TDESA.¹¹

Such unions providing essential services who disregard the dispute resolution mechanism under the TDA to participate in the strike with the aim of disrupting the economy or the smooth running of any essential service risk being proscribed by the President in addition to criminal sanctions.

Circumscription by the Courts

The courts have always played a crucial constitutional role not only in resolving trade disputes between workers, workers unions and employers but also making appropriate restraining orders to prevent any impending or stop any on-going industrial action.¹² Any union against whom a court of competent jurisdiction has issued an order has an unqualified obligation to obey that order even where they believe it to be irregular or even void.¹³

The courts generally ensure that industrial actions are based on genuine grievances arising from a trade dispute as defined by law and not merely arbitrary and whimsical display of union's power to the detriment and expense of the employer or the

⁴ Under **Section 48 of the TDA** "trade dispute": "means any dispute between employers and workers or between workers and workers, which is connected with the employment or non-employment, or the terms of employment and physical conditions of work of any person".

⁵ **Section 18 of the Trade Dispute Act** provides that: **(1)** "An employer shall not declare or take part in a lock-out and a worker shall not take part in a strike in a lock-out and a worker shall not take part in a strike connection with any trade dispute where - **(a)** The procedure specified in section 4 or 6 of this Act has not been complied with in relation to the dispute; **(b)** A conciliator has been appointed under section 8 of this Act for the purpose of effecting a settlement of dispute; **(c)** or The dispute has been referred for settlement to the Industrial Arbitration Panel under section 9 of this Act; **(d)** or An award by an arbitral tribunal has become binding under section 13 (3) of this Act; or **(e)** The dispute has subsequently been referred to the National Industrial Court under section 13 (3) of this Act; **(f)** or The National Industrial Court has issued an award and on the reference.

⁶ **Section 4 of the Trade Dispute Act** provides thus: **(1)** If there exists agreed means for settlement for the dispute apart from this Act, whether by virtue of the provisions of any agreement between organisations representing the interests of employers and organisations of workers or any other agreement, the parties to the dispute shall first attempt to settle it by that means. **(2)** If the attempt to settle the dispute as provided in subsection **(1)** of this section fails, or if no such agreed means of settlement as are mentioned in that subsection exists, the parties shall within seven days of failure (or if no such means exists, within seven days of the date on which the dispute arises or is first apprehended) meet together by themselves or their representatives, under the presidency of a mediator mutually agreed upon and appointed by or on behalf of the parties, with a view to the amicable settlement of the dispute.

⁷ **Section 5 of the Trade Dispute Act** provides that: **(1)** Notwithstanding the foregoing provisions of this Act, where a trade dispute is apprehended by the Minister he may in writing inform the parties or their representatives of his apprehension and of the steps he proposes to take for the purposes of resolving the dispute. **(2)** Such steps as the Minister may, pursuant to this section, take may include - **(i)** The appointment of a conciliator under section 8 of this Act; or **(ii)** A reference of the dispute or any matter relating thereto for settlement to the Industrial Arbitration panel under section 9 of this Act; or **(iii)** A reference of the dispute to a board of inquiry under section 33 of this Act.

⁸ **Section 6 of the Trade Dispute Act** provides that: **(1)** If within seven days of the date on which a mediator is appointed in accordance with Section 4 **(2)** of this Act the dispute is not settled, the dispute shall be reported to the Minister by or on behalf of either of the parties within three days of the end of the seven days. **(2)** A report under this section shall be in writing and shall record the points on which the parties disagree and describe the steps already taken by the parties to reach a settlement.

⁹ Cap T8 LFN, 2004

¹⁰ Cap. T9, Laws of the Federation of Nigeria ("LFN"), 2004

¹¹ The participating unions are; the Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN), Association of Senior Civil Servants of Nigeria (ASCSN), Senior Staff Association of Nigerian Universities (SSANU), National Union of Banks, Insurance and Financial Institutions Employees (NUBIFIE), Judiciary Staff Union of Nigeria (JUSUN), Nigeria Union of Railway Workers (NURW), National Union of Electricity Employees (NUEE), Nigeria Union of Petroleum and Natural Gas Workers (NUPENG), Medical and Health Workers Union of Nigeria (MHWUN), Nigeria Civil Service Union (NCSU), National Union of Civil Engineering Construction, Furniture and Wood Workers (NUCECFWW), Association of Nigerian Aviation Professionals (ANAP), Amalgamated Union of Public Corporation, Civil Service Technical and Recreation Services Employees (AUPCTRE), Senior Staff Association of Electricity and Allied Companies (SSAEAC).

¹² The National Industrial Court of Nigeria have and exercises jurisdiction to the exclusion of other courts in civil causes and matters relating to or connected with - **(a)** any labor, employment, trade unions, industrial relations and matters arising from workplace, the conditions of service, including health, safety, welfare of labor, employee, worker and matters; **(c)** the grant of any order restraining any person or body from taking part in any strike, lock-out or any industrial action, or any conduct in contemplation or in furtherance of a strike, lock-out or any industrial action; **(e)** national minimum wage for the Federation or any part thereof. See Section 7 **(1)(a)(b)(c)** of the National Industrial Court Act 2006; Section 254**(C)(1)(f)(h)(2)** of the 1999 Constitution (as amended).

¹³ *Oshiomhole v. F.G.N.* (2005) 1 NWLR (Pt. 907) 414 (CA); *National Union of Hotels and Personal Services Workers (NUHPSW) v. National Union of Air Transport Employees (NUATE) & anor* unreported Suit No. NICN/ABJ/207/2018, the judgment of which was delivered on 4 July 2019; *FGN & anor v. NLC & anor* unreported Suit No. NICN/ABJ/179/2016, the judgment of which was delivered on 15th July 2016.

government. The Court of Appeal in a recent judgment¹⁴ in a blunt and reprehensible language condemned the arbitrary use of power by trade unions as follows:

“The appellants abundantly abandoned their objects, as reproduced earlier, and decided to engage the respondents in an unholy ‘war’ thereby trying to prevent the respondents from pursuing their lawful business as they, being Nigerians, are entitled to carry out. Trade Unions, particularly those for workers ought not and must not engage in activities oppressive of other people more or less the same exploitative activities of their employers and for which such unions were formed and registered to prevent...Trade unions up to a certain point have been recognized now as organs for good. They are the only means by which workmen can protect themselves from the tyranny of those who employ them. But the moment that trade unions become tyrants in their turn, they are engines for evil”

The jurisdiction and powers of the courts to prevent, arrest or intervene in an industrial action have been exercised in several ways, some of which are highlighted below:

- The courts have helped to limit the grounds for embarking on industrial action in trade disputes. Accordingly, an appellate court held in a popular case consideration, opposition to government policy, are not trade disputes upon which organised labour have a right to protest as they had nothing to do with the terms and conditions of employment of the workers and do not constitute trade dispute.¹⁵
- In a recent case, the National Industrial Court of Nigeria used the judicial process to compel a popular union to suspend their strike action and ventilate their grievances in court. When the union failed to take advantage of the opportunity to present their case in court, the Court foreclosed the union with appropriate orders. The Court further foreclosed the union from filing a defence to the action filed by the Federal Government of Nigeria after failing to do so within the time prescribed by the Rules of the Court and after several opportunities had been given by the Court to do so out of time. Consequently, judgment was entered against the Union based on the evidence and submissions of the Federal Government of Nigeria.¹⁶ The Court further foreclosed the union from relitigating the suit.¹⁷
- The courts have helped to define what constitutes essential services and expanded on the jurisprudence relating to the rights of workers providing essential services to strike. In this regard, the Courts have given judicial nod to the proposition that workers in essential services cannot embark on strike and this restriction does not violate their fundamental rights under the Constitution.¹⁸

¹⁴ **Registered Trustees of Association of Tippers and Quarry owners of Nigeria v. Yusuf & Ors** (2011) LPELR 5024 CA

¹⁵ **Oshiomhole v FGN** (2006) LPELR-7570 (CA); (2007) 8 NWLR (Pt. 1035) 58 (CA)

¹⁶ **Federal Government of Nigeria v. Academic Staff Union of Universities** Unreported Suit No. NICN/ABJ/270/2022, the judgment on which was delivered on 30 May 2023.

¹⁷ **Academic Staff Union of Universities v. Minister of Labour and Employment** Unreported Suit No. NICN/ABJ/152/2023, the ruling of which was delivered on 22 November 2023.

¹⁸ **National Union of Electricity Employees v. Bureau of Public Enterprises** [2010] 7 NWLR (Pt. 1194) 538. At page 574 D – C, and at page 575 C – F per Chukwuma-Eneh, JSC. Here the Supreme Court held that by a combined reading of the provisions of sections 40 and 45 of the 1999 Constitution, the provisions of the Trade Disputes (Essential Services) Act is a piece of legislation reasonably justifiable in a democratic society and made to protect the interest of public safety and order and therefore not inconsistent with section 40 of the 1999 Constitution. This decision has been applied by the National Industrial Court of Nigeria in the case of **Hon. Attorney-General of Enugu State v. National Association of Government General Medical and Dental Practitioners (N.A.G.G.M.D.P)** Unreported Suit No. NIC EN/16/2010

However, the National Industrial Court has held that pilots are not within the definition of essential services under the TDESA.¹⁹

- The courts have declared the industrial actions of the unions to be illegal and unlawful for failure to comply with the dispute resolution procedure set out in the Trade Disputes Act before embarking on strike.²⁰

Conclusion

The Supreme Court of Nigeria has laid down a marker in ***National Union of Electricity Employees v. Bureau of Public Enterprises***²¹ when it held that the fundamental right to strike guaranteed under section 40 as well as other rights under sections 37, 38, 39 and 41 of the 1999 Constitution, has to be read subject to what is reasonable within a democratic society. That is to say, the union's right under section 40, amongst other fundamental rights under the 1999 Constitution, are not absolute. They have to be exercised within the limits of the ambit of section 45 of the 1999 Constitution. Against this backdrop, the rights of trade unions to organise strike actions must always be subject to extant laws, failing which they will be declared unlawful and illegal.

¹⁹ ***Aero Contractors of Nigeria Ltd v. National Association of Aircrafts Pilots and Engineers (N.A.A.P.E) & Ors*** (2014) 42 NLLR

²⁰ ***Murphy Shipping & Commercial Services Ltd v. Maritime Workers Union of Nigeria (MWUN)*** [2012] 26 NLLR (Pt. 75) 385 (NIC) @ pages 404C-407B.

²¹ [2010] 7 NWLR (Pt. 1194) 538. At page 574 D – C