Curbing the Incidence of Unfair Dismissal in Nigeria: 
Lesson from Other Jurisdictions

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ABSTRACT
The incidence of unfair dismissal in Nigeria has become so alarming that it has prompted a desire in the minds of stakeholders in the field of labour and industrial relations to look for a way out. This is notwithstanding the International Labour Organisation Convention on unfair dismissal. The incidence ranges from dismissal without notice, termination without reason, irrelevance of motive of termination, termination consequent upon union activities, absence of right to fair hearing, absence of order of reinstatement in a private sector employment and so on. The researchers undertake the study of the meaning of unfair dismissal, the incidence of unfair dismissal in Nigeria and how to curb the incidence of unfair dismissal in Nigeria learning from other jurisdictions. The researchers employed an analytical comparison of Nigerian laws and practice as well as laws of some countries as they relate to unfair dismissal. Also, the researchers adopted construction of statutes and case law as part of their methodology. At the end, the researchers found that the incidence of unfair dismissal in Nigeria has gotten to an alarming level. That virtually every dismissal and termination situations in Nigeria amounts to unfair dismissal when tested against ILO Convention on unfair dismissal. The researchers then recommended that Nigeria needs to adopt ILO Convention on unfair dismissal with modifications where necessary as the case in the countries under review. The judicial arm of the Government of Nigeria needs to be proactive in order to take advantage of the provisions of the Constitution of Federal Republic of Nigeria (Third Alteration) Act, 2010 and thus apply the ILO Convention on unfair dismissal in the absence of domestication. It was further recommended every legal and institutional impediment that hinders the application of ILO Convention on unfair dismissal should be removed by the concerted efforts of the three arms of Government of Nigeria. The application of these recommendations would surely curb for purposes of curbing the incidence unfair dismissal in Nigeria.

Keywords: unfair dismissal, employee, employer, ILO Convention, labour and industrial law, Nigeria

INTRODUCTION
1.0 Meaning of Unfair Dismissal
The concept of unfair dismissal though a novel idea in Nigeria labour jurisprudence1 has not lent itself to a precise definition as there is scarcity of academic work on the concept in the world over, particularly in Nigeria where the concept has not really been given recognition. However, a reasonable inference can be taken from Osborn’s Concise law Dictionary2 which attempts to explain and not to define the concept.

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The dictionary citing English Employment Rights Act\(^3\) states that when an employee can prove that he has been dismissed, the burden of proving the reason for the dismissal is on the employer.\(^4\) The determination of whether the dismissal was fair or unfair depends on whether, having regard to the reason shown by the employer, the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee.\(^5\) Certain reasons for dismissal are automatically unfair, including those related to membership or non-membership of a trade union, pregnancy, exercising rights under working time regulations or a statutory right.\(^6\)

2.0 RELEVANT ILO CONVENTION ON UNFAIR DISMISSAL

There is absence of statutory protection against unfair dismissal in Nigeria. However, the International Labour Organisation in its efforts to set standards of practice in the work place particularly as it relates to security of tenure of employment fashioned out recommendations concerning termination of employment\(^7\) and Convention on Termination of Employment\(^8\). The organisation was influenced in its decision to fashion out the above recommendation and convention as a panacea to the ugly situation where an employer could dismiss his employee without any reason or motive. Such a situation is described as a violation of all things fair and just. It is also said that such a situation amounts to violation of Article 4 of ILO Convention 158 of 1982 which provides that:

> The employment of a worker shall not be terminated unless there is valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service.\(^9\)

The employer is required to give a valid reason for dismissal or termination. A reason is valid if and only if it is connected with the capacity or conduct of the employee. The relevant Convention on unfair dismissal is therefore the ILO Termination of Employment Convention 158 of 1982 which was adopted by the organisation as a result of changes and developments in different countries on the subject of termination of employment. Article 2 of the Convention\(^10\) provides that: “the Convention applies to all branches of economic activities and to all employed persons”.

By the provisions of Article 2 stated above, the provisions of the Convention apply to employees in purely master /servant relationship and to employees whose contract of employment is backed by statutes without any discrimination. This is unlike the position of in Nigeria labour and industrial law jurisprudence.\(^11\) This implies that since no distinction exists in ILO standards which are embedded in the ILO Termination of Employment Convention, the distinction with respect to the available remedies to those distinctive categories of contract of employment in Nigeria becomes non-sequitor. The appropriate authority to determine the fairness or otherwise of the termination can make any order that is appropriate in the light of the facts and circumstances of a particular case. This is made manifest in the provision of Article 8 and 9 of the Convention.\(^12\) The provisions of these articles are set out seriatim. Article 8(1) provides that:

> A worker who considers that his employment has been unjustifiably terminated shall be entitled to appeal against that termination to an impartial body such as a court, labour tribunal, arbitration committee or arbitrator at the place where termination occurred.

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3 1996 section 98(1)
6 Ibid.
8 ILO Convention 158 on Termination of Employment Replaced ILO Recommendation of 1963 Ibid.
Article 9(1)

The bodies referred to in Article 8 of the convention shall be empowered to examine the reasons given for the termination and the other circumstances relating to the case and to render a decision on whether the termination was justified.

In doing so, the body will shift the burden of proving the reasons for termination to the employer.\(^{13}\) The court shall also have regards to evidence produced by parties and procedures provided by national laws.\(^{14}\) The body shall then decide whether the reasons adduced for the termination were valid reasons recognized by Article 4 of the Convention.

The implication of the above is that any determination of contract of employment in any manner without reason amounts to unfair dismissal. Still on valid reasons for determination of contract of employment, Article 6 of the Convention\(^{15}\) provides that temporary absence from work because of illness or injury shall not constitute a valid reason for termination. Also Article 7 of the Convention\(^{16}\) provides that the employment of a worker shall not be terminated for reasons related to the workers conduct or performance before he is provided an opportunity to defend himself against the allegations made, unless the employer cannot be reasonably expected to provide this opportunity.\(^{17}\) The provision of the Article reiterates the fundamental principles of fair hearing in the determination of contract of employment.\(^{18}\) This is contrary to the common law position of termination at will.

3.0 INCIDENCE OF UNFAIR DISMISSAL IN NIGERIA

A careful perusal and painstaking review of the International Labour Organisation standards on unfair dismissal deducible from the Convention on Termination of Contract of Employment shows that certain dismissal and/or termination of contract of employment in Nigeria amounts to unfair dismissal when tested against the International Labour Organisation convention on unfair dismissal. An attempt is made hereunder to highlight some of such situations.

3.1 Termination without Reason

The position of the law in Nigeria seems settled that an employer is not obligated to furnish an employee with reasons for the termination of the employee’s contract of employment provided the employer terminates the contract by complying with the terms and conditions of the contract of employment in the case of master servant relationship. In the case of contracts of employment with statutory flavour, the employer is only required to comply with the statutorily prescribed procedure for terminating a contract of employment backed by statute or regulation made pursuant to the statute. In Momoh v CBN,\(^{19}\) the Court held:

Ordinarily at common law, a master is entitled to dismiss his servant from his employment for good or bad reason or for no reason at all.

A master can terminate a contract of employment of his servant at any time with good or bad reason or no reason at.\(^{20}\) From the above treatise, it is evident that purported exercise of right of termination or dismissal which exists in Nigeria at present without the requirements of reasons amounts to unfair dismissal when tested against the ILO standards on unfair dismissal which is contained in ILO Termination of Employment Convention\(^{21}\) particularly Articles 2 and 4 of the Convention.\(^{22}\)

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\(^{13}\) ILO Termination Employment Convention, *op cit*, Article 9(2) 9.

\(^{14}\) *Ibid* Article 9(2) b.

\(^{15}\) *Ibid*.

\(^{16}\) *Ibid*.

\(^{17}\) *Ibid*; However, this convention did not highlight circumstances under which the employer cannot be reasonably expected to provide an opportunity to an employee who is to be removed from employment.

\(^{18}\) *Ibid* Article 7.

\(^{19}\) [2007]14 NWLR (pt 1055) 508


\(^{21}\) *Op cit*.

\(^{22}\) *Ibid*, see also Article 4. Article requires that all disengagement should be with valid reasons which must be justified by the employer.
3.2 Dismissal in Consequence of Union Activities

Employees usually embark on union activities to force on the employer the conditions and terms which are favourable to them. Such union activities include strikes, lock out, work-to-rule, picketing, Go slow and so on. But of major interest in this work is strike because of its recurrence in labour relations in Nigeria. Strike is defined in section 48 of the Trade Disputes Act\(^{23}\) as:

the cessation of work by a body of persons employed acting in combination or, a concerted refusal or refusal under a common understanding of any number of persons employed to continue to work for an employer in consequence of a dispute, done as a means of compelling their employer or any person or body of persons employed, to accept or not to accept terms of employment and physical conditions of work.\(^{24}\)

The position of law on the effect of strike on a contract of employment in Nigeria can be seen in the dictum of Brett J.S.C in *Anene v Allen & Co Ltd*\(^{25}\) wherein his Lordship stated:

*Prima facie*, a striker intends to return to work once the objects of the strike have been attained and although this may involve a fresh contract of service, an intention to repudiate the existing contract is not necessarily to be presumed…,

This represents the common law suspension theory. Also under the common law, a refusal to work in consequence of a strike could be treated as a breach of contract voidable at the instance of the employer. The employer then has the option either to ignore the breach or to accept such breach as a repudiation of the workers obligation under the contract. This has also been given vent by the case of *Anene v Allen & Co Ltd*\(^{26}\) wherein his Lordship Brett J.S.C (as he then was) said:

A servant who deliberately absents himself from work commits a breach of contract sufficient to justify his dismissal and does not necessarily by so doing terminate the contract.

The last theory is that a strike notice is a notice to terminate a contract of employment and it will be left for the employer to accept the notice or negotiate. The above theories are common law theories on the effect of strike on a contract of employment.

However, section 43 of the Trade Disputes Act\(^ {27}\) provides that: Notwithstanding anything contained in this Act, or in any other law –

Where any worker takes part in a strike, he shall not be entitled to any wages or other remuneration for the period of the strike, and any such period shall not count for the purpose of reckoning the period of continuous employment and all rights dependent on continuity of employment shall be judicially affected accordingly.

This position of the law was sanctioned by the Court in the case of *Abdulraheem v. Olufeagba*.\(^ {28}\) The position in Nigeria contrasts sharply with the position under the International Labour Organisation standards on unfair dismissal entrenched in the ILO Termination of Employment Convention\(^ {29}\) which provides *inter alia* that union membership or participation in union activities outside working hours, or with the consent of the employer within working hours shall not be valid reason for termination. It should


\(^{24}\) Ibid.

\(^{25}\) (1975)5 UILR 404; see also G G, Otuturu, ‘Legal Consequences of Strike on the Contracts of Employment of Workers in Nigeria’ *NJLIR*, vol. 5 No 2 (2011) p. 84.

\(^{26}\) Supra.

\(^{27}\) Op cit.


\(^{29}\) Op. cit
be noted here that the employer is most likely to refuse given his employee his consent to embark on union activities within working hours. Consequently any dismissal or termination in consequence of a union activity amounts to an unfair dismissal.

### 3.3 Dismissal without Notice

It is a notorious principle of law in the Nigerian labour and employment jurisprudence that an employer can dismiss his employee without notice. Any employee who is guilty of misconduct which is weighty and of such a character as to undermine the relationship of confidence and trust which should exist between the employer and the employee could be summarily dismissed. It is also worth mentioning here that a statutory recognition of right of an employer to dismiss without notice exist in section 11(5) of Nigerian Labour Act. The section provides that:

> Nothing in this section affects any right of either party to a contract to treat the contract as terminable without notice by reason of such conduct by the other party as would have enabled him so to treat it before the making of this Act.

The vital point here is that there exists a difference in Nigeria law on requirement of notice in termination and dismissal. Whereas dismissal dispenses with notice, termination stricto sensu requires notice or payment of salary in lieu of notice.

### 3.4 Irrelevance of Motive for Terminating a Contract of Employment

The position of law in Nigeria is that the motive for terminating a contract of employment is irrelevant provided the employer complies with the terms of the contract of employment or statutory provisions regulating the contract of employment. What this means is that an employer who is actuated by malice or bad faith can just comply with the provisions of a statute regulating an employment in the case of employments with statutory flavour or terms of the contract of employment in the case of contract of employment without statutory protection. This is supported by Nwagbara when he states:

> It is now settled that where an employer gives the required notice to terminate, the validity of the termination cannot be challenged on the grounds that the employer was actuated by ill will or malice or any other improper motive.

Another erudite author of repute states that:

> The reason or motive for termination is immaterial at common law. It may be spiteful, punitive or petty. The question is whether the termination is wrongful or not.

The current position in Nigeria is that an employment will terminate at the end of the notice period given even where the termination is prompted by improper motive. The researchers opine that the law that motive of termination or dismissal is irrelevant provided an employer complies with the notice period or the statute regulating the employment is no longer tenable particularly in the light of the ILO standards on unfair dismissal. Nigerian courts have continued to insist on this common law position that motive of termination and dismissal is of no moment. The origin of the doctrine of irrelevancy of motive in
termination and dismissal is traceable to the House of Lord’s decisions at the end of the 19th century\textsuperscript{38}. There is a widespread agitation over the injustice of this rule of irrelevancy of motive in termination and dismissal. According to Chianu\textsuperscript{39}, it is a great pity that in cases of unjustifiable dismissal including outright victimization, the Courts allowed the issue to degenerate into the payment of small sums of money, for this allows employers ‘buy out undesirables cheaply’. This shows that Nigerian labour and industrial law experts are no longer comfortable with the common law position on irrelevancy of motive of termination and dismissal. The National Industrial Court is also making effort towards a move away from the common law position. In \textit{Petroleum and Natural Gas Senior Staff Association of Nigeria v Schlumberger Anadrill Nigeria Ltd}\textsuperscript{40}, the National Industrial Court presided over by the President the Court Honourable Justice Adejumo said:

The respondent also argued that it has the right to terminate the employment of any of its employees for reasons or no reason at all. While we do not have any problem with this at all, the point may be made that globally it is no longer fashionable in industrial relations and practice to terminate an employment without adducing any reason for such a termination.

Appraising the above dictum, Agomo\textsuperscript{41} states that:

A careful reading of this opinion clearly shows that the employment at will is still the law, but a caveat that it is no longer in keeping with global best practices. The fact that the National Industrial Court made this observation is a pointer to the direction of the law. The National Industrial Court ginning to do for the private sector what the Supreme Court did in the 1980s for the public sector, which changed the face of individual employment law in Nigeria\textsuperscript{42}. This is a welcomed development particularly in the light of article 4 of ILO Convention\textsuperscript{43}. From these provisions of the Convention, the courts can question any determination of contract of employment actuated by motive that is outside the recognized reasons in Article 4 of the Convention on termination of employment.\textsuperscript{44}

\textbf{4.0 LESSON FROM SOME JURISDICTION}

The effort here will reveal the extent of variations in Nigeria Laws on determination of contract of employment with the laws of some countries and the extent of conformity of the Laws of these countries with ILO Termination of Employment Convention\textsuperscript{45}. The major focus will be on the justification of termination of employment, dismissal from employment, the right of an employee to an opportunity to defend himself and the available remedies to an employee whose dismissal or termination of employment is declared unfair by a Court.

\textbf{4.1 South Africa}

South Africa’s Labour Relations Act\textsuperscript{46} provides that a dismissal is automatically unfair if the reason for the dismissal is that the employer discriminates against the employee, directly or indirectly on arbitrary grounds, or if the reason for the dismissal is one, that amounts to an infringement of the fundamental rights of the employee and trade unions, or if the reason is one of those listed in Labour Relations Act. Although South Africa has not ratified ILO Convention 158 on Termination of Employment, the

\begin{footnotesize}
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\item \textsuperscript{38} Mayor of Bradford v Pickles (1895) AC 587; Allen v Flood (1898)1 AC.
\item \textsuperscript{39} E, Chianu, \textit{Employment Law, Op cit}, P. 301.
\item \textsuperscript{40} (2008)11 NLLR (pt. 29) 164.
\item \textsuperscript{41} C K, Agomo, \textit{Nigeria Employment and Labour Relation, Law and Practice, op.cit}, p. 169
\item \textsuperscript{43} Termination of Employment Convention, \textit{op. cit}.
\item \textsuperscript{44} Ibid.
\item \textsuperscript{45} Ibid
\item \textsuperscript{46} Labour Relations Act, 1996, S. 187
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justification for application of ILO Standards on unfair dismissal is found in Section 23 of South African Constitution\(^47\) which includes the right to fair labour practice and the right not to be unfairly dismissed. Section 39 (1) of the South African Constitution\(^48\) requires the Court to have recourse to International Law when interpreting the Bills of Rights. It should be noted that the Labour Relations Act covers both employer in private and public Sector. The law also requires an employer to give valid reason for the dismissal or termination of the employment of his employee. This differs in a very great extent with the position of law in Nigeria where the employer is not bound to give reason for the termination of employment of his employee save in cases of employment in public sector regulated by statute. This analysis shows that the grounds for justification of dismissal in South Africa are consistent with those in most other jurisdictions. Article 4 of the ILO Convention is more rigorously applied in South Africa because of the wide scope of who is an employee under the Act\(^49\).

\section*{4.2 Ghana}

Though Ghana has not ratified this ILO convention on unfair dismissal, yet the Labour Act\(^50\) of Ghana makes provisions which are in line with the ILO Standards on unfair dismissal. Section 63 of the Labour Act\(^51\) of Ghana provides that the employment of an employee shall not be unfairly terminated by the employer. What amounts to an unfair termination is then provided in subsection 2 of section 63\(^52\). The foregoing shows that Labour Act of Ghana is in line with ILO standards on unfair dismissal as can be found in article 4 of ILO Convention 158 of 1982. This is notwithstanding the fact that Ghana has not ratified the said Convention. This shows that Ghana saw the negative consequences of unfair dismissal and acted promptly in addressing them by enacting a Labour Legislation which incorporated the ILO standards on unfair dismissal.

The Labour Act of Ghana went further by regarding constructive dismissal as unfair dismissal in subsection 3 of section 63 of the Act\(^53\). This is to say that even in cases where the employee himself terminates the contract of employment between him and the employer, the law says that the employer could still be held to have unfairly dismissed the employee from employment. The subsection provides thus:

\begin{quote}
A worker’s employment is deemed to be unfairly terminated if with or without notice to the employer, the worker terminates the contract of employment:
\begin{itemize}
\item[a.] because of ill treatment of the worker by the employer, having regard to the circumstances of the case; or
\item[b.] because the employer has failed to take action on repeated complaints of sexual harassment of the worker at the work place.
\end{itemize}
\end{quote}

In such circumstances, even though the worker gives notice of termination of the contract of employment, the law regards the termination as unfair and the employer will be held liable. Fair reasons for termination are set out in section 62 of Labour Act of Ghana\(^54\). The section provides that termination of a worker’s employment is fair if the contract of employment is terminated by the employer on grounds that the worker is incompetent or lacks the qualification in relation to the work for which the worker is employed; on grounds of proven misconduct by the employee; on grounds of redundancy under section 65 of Labour Act\(^55\). It is explicit that the extant law regulating determination of contract of employment in Ghana does not differentiate between termination and dismissal as it is the case in Nigeria. The law does not also

\(^{47}\) The Constitution Republic of South Africa, 1996.
\(^{48}\) Ibid.
\(^{49}\) Labour Relation Act,(South Africa) op cit. S. 213 defines an employer as any person excluding an independent contractor, who works for another or for the state and who receives or is entitled to any remuneration.
\(^{50}\) Labour Act No. 651 of 2003
\(^{51}\) Ibid
\(^{52}\) Ibid
\(^{53}\) Ibid
\(^{54}\) Ibid
\(^{55}\) Ibid
discriminate between employees in the public sector and employees in the private sector rather the Labour Act imposes an obligation on every employer to justify the termination of the contract of employment with his employee by showing that the contract was terminated with fair reasons. The law goes beyond the provisions of Article 4 of ILO Convention on termination of employment by saying that the employer does not just give reason for termination but must also show that the reason is fair.56

Another area of the extant labour law in Ghana which accords with ILO standards on unfair dismissal and differs with the state of labour laws in Nigeria is the remedy available to an employee whose contract of employment is unfairly terminated. Unlike Nigeria, an employee in Ghana whether in private or public sector whose contract of employment is unfairly terminated may present a complaint to the National Labour Commission. If upon investigation of the complaint, the Commission finds that the termination of the employment is unfair, it may order the employer to be re-instated, re-employed or order the employer to pay adequate compensation to the worker. This is the provision of section 64 of the Labour Act of Ghana.57 This shows that Labour Act of Ghana is also in tandem with ILO Convention by empowering the Commission to make orders of reinstatement, re-employment or compensation as the circumstances may dictate. This is unlike the Nigeria Law which views the order of reinstatement in the private sector employment as a taboo save in certain circumstances where the employment in the private sector is statutorily protected.58

4.3 Lesotho

Lesotho ratified ILO Convention on Termination of Employment on the 14th day of June, 2001. Before ratification of the Convention in 2001, the law of Lesotho had been in compliance with the provisions of the Convention since 1992. Section 66 of the Labour Code59 makes provision on termination which is in tandem with Article 4 of ILO Convention on Termination of Employment. The said section provides that:

An employee shall not be dismissed, whether adequate notice is given or not, unless there is a valid reason for termination of employment, which reason must be connected to the:

a. Capacity of the employee;
b. Conduct of the employee; or
c. Operational requirement of the undertaking or establishment.

Subsection 2 of section 66 of the Labour Code60 provides that any other dismissal will be unfair unless, having regard to all the circumstances, the employer can sustain the burden of proof to show that he or she acted reasonably in treating the reason for dismissal as sufficient grounds for terminating the employment. Courts in Lesotho are also empowered to apply the Convention of the ILO by the authority of section 4 of the Labour Code of Lesotho61 which provides that the following principles shall be used in the interpretation and administration of the Code inter alia:

a. No provision of the Code or of rules and regulations made there under shall be interpreted or applied in such a way as to derogate from the provisions of any international labour convention which has entered into force for the kingdom of Lesotho.

A Court in Lesotho therefore considered ILO Convention on Termination of Employment when faced with the issue of fairness of retrenchment in the case of Macholo v Lesotho Bakery (Blue Ribbon) Pty Ltd.62 The foregoing analysis shows that the Labour Law of Lesotho has moved away from the common

57 Op cit
60 Ibid
61 Ibid
law principle of termination of employment at the will of the employer whereby the employer can terminate employment of his worker for good, bad or for no reason at all. In the country, an employer must now justify the reason for terminating a contract of employment otherwise the termination will be void whether in public or private sector employment.

4.4 Zambia

It is noteworthy that quite a number of common law countries have moved away from the concept of termination at will to the position of law prohibiting unfair dismissal or insisting on termination with justification. Zambia is one of the members of the ILO that have ratified the ILO Convention on Termination of Employment. Although Zambia has ratified the Convention, it is yet to domesticate it as the country is one of those dualist states whose municipal law requires domestication before international law can be applied domestically. A Court in Zambia maintained this position in a case. However, by the Employment (Amendment) Act of Zambia, it can be said that the amendment of the section was an attempt by the legislature to bring the Employment (Amendment) Act in conformity with ILO standards on unfair dismissal as regards the right to be heard in cases of dismissal in Zambia. The relevant Articles of the ILO Convention are Articles 4, 7 and 11 of the ILO Convention on Termination of Employment. Article 4 makes it mandatory for an employer to furnish reasons for terminating the employment of his employee. Article 7 provides the procedure for observance of rules of natural justice in effecting termination of contract of employment. Section 26A of Zambia Employment (Amendment) Act provides that:

An employer shall not terminate the services of an employee on grounds related to the conduct or performance of an employee without affording the employee an opportunity to be heard on the charges laid against him.

This provision of Zambia Employment (Amendment) Act is similar to the provision of Article 11 of the ILO Termination of Employment Convention dealing with notice of termination and payment of salary in lieu of notice. Section 26A of the Employment (Amendment) Act of Zambia is also similar to Article 7 the ILO Convention. Article 7 of the Convention and section 26A of Employment (Amendment) Act of Zambia bring the relationship of master-servant into the realm of cases requiring the application of rules of natural justice. However, the courts in Zambia are not consistent in their reliance on section 26A of the Employment Act in addressing matters of termination provided by the Act which relate to parties terminating their contract of employment by notice or salary in lieu of notice.

In Gerald Musonda Lumpa v Maamba Collieries, the appellant was employed in the accounts department of the respondent’s company. He had a difference of opinion with his superior as to who should be sent to collect money for the company which was his duty. There was evidence that he had used abusive language towards his superior. The appellant’s employment was terminated and he was paid terminal benefits. When the appellant instituted proceedings against the termination, it was held that a party terminating employment has no obligation to give reason. This decision which is in conformity with the position in Nigeria to the effect that there is no obligation on the part of an employer to give reasons when terminating an employee’s contract of service makes it easy for employers to evade being

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64 Op cit
65 Standard chartered Bank (2) Ltd v Zulu & ors, unreported, S.C.A. No. 59 delivered by the Supreme Court of Zambia in 1996
66 Cap 268 Laws of Zambia 1997, Section 26A
67 Ibid
68 Ibid, sections 20 and 21
69 Ibid
70 Ibid
71 (1988 – 89) ZR 217 (SC)
challenged in court by simply effecting lawful termination. However, in other instances, the courts have also moved beyond the lawful termination and applied the rules of natural justice as enshrined in section 26A of the Employment Act to establish the actual reason behind the lawful termination. This was the case in *Atlas Copco (Zambia) Ltd v Mambwe* wherein the Court held that failure to afford the respondent an opportunity to be heard breached not only section 26A of the Employment Act, but also the rules of natural justice. It is pertinent to point out here that, this case was on a contract of personal service in the private sector which if it were to be in Nigeria the right to be heard would ordinarily become *non-sequitur*. It is important also to state that the remedy of reinstatement is also available once unfair dismissal is established.

### 4.5 United Kingdom

In the United Kingdom, the legal framework for unfair dismissal is the Employment Rights Act. This Act provides a statutory framework for job security by specifying grounds upon which any act of dismissal may be anchored. This statutory framework is as provided in section 94 of Employment Rights Act. It is automatically unfair for an employer to dismiss an employee, regardless of length of service, for reasons related to discrimination as protected by the Equality Act. the woman employee becoming pregnant, or having previously asserted certain specified employment rights. Assuming the employee has proven dismissal, the employer will carry the burden of proving whether the dismissal was potentially fair or automatically unfair. This burden rests squarely on the employer. Where the tribunal finds a claim of unfair dismissal proved in the United Kingdom, the tribunal can order reinstatement of the employee which means that the employee will go back to his old job. The tribunal is also competent to order re-engagement of the employee which means re-employment of the employee in a new job or compensation.

### 4.6 Slovenia

In Slovenia, international norms relating to termination of employment are important sources of law. According to Article 8 of Slovenian Constitution, ratified and published international agreements are incorporated into Slovenian laws and they apply directly. Slovenia is a member of the International Labour Organisation and ratified ILO Convention on Termination of Employment on the 29th day of May, 1992. The major statutory framework in Slovenia on Termination of Employment is the Employment Relationships Act. Unfair grounds for dismissal which are similar to Article 4 of ILO Convention on Termination of Employment are copiously provided for in Article 89 of Employment Relationships Act. If a claim of an employee for unfair dismissal is successful, the court may order reinstatement or compensation. Reinstatement may not be ordered if the court establishes that the continuation of the employment relationship would no longer be possible.

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73. *Op Cit*

74. Unreported, S.C. A No. 137 delivered by the Supreme Court of Appeal of Zambia in 2001

75. *Op Cit*

76. *Henry Million Mulenga v Refined Oils Products Limited* unreported, compliant No. 40 delivered in the Court in Zambia, 1983

77. (UK) 1996

78. *Ibid*

79. 2010


82. *Op cit*

83. 2002 (Slovenia).


85. *Op cit*

86. *Op cit*
The above analysis of the law of Slovenia shows that Slovenia having ratified ILO Termination of Employment Convention and being a monist country applies the provisions of the Convention on Termination of Employment. It is also found out that the law of Slovenia is in conformity with the provisions of the Articles of ILO Convention on Termination of Employment which embodies the ILO Standards on unfair dismissal.

4.7 The Republic Of Ireland

Unfair dismissal in Ireland is governed by the Unfair Dismissal Act\(^8^7\). The Act covers people who have been in employment for at least 52 weeks of continuous service and who have not reached the normal retirement age for the employment in question.\(^8^8\) Section 6 of the Unfair Dismissal Act\(^8^9\) of Ireland imposes an obligation on an employer to show that dismissal of his employee was can be justified on substantial grounds. This implies that an employer who seeks to dismiss his employee must show reason for such dismissal. The remedies available for a successful claim of unfair dismissal are re-instatement, re-engagement or compensation.

The Unfair Dismissal (Amendment) Act of 1993 imposes an obligation on the tribunal to specify the reason for its adoption of a particular remedy as against another. Also the application of the principles of natural justice was shown in the Ireland case of *Gleeson v Minister of Defence*\(^9^0\) where Mr. Gleeson was not given an opportunity to be heard. The Supreme Court of Ireland stated that, the opportunity to respond to a complaint however serious is a fundamental right which ought not to be overlooked regardless of the circumstances. In *Al Mutari v Midland Health Board*,\(^9^1\) the Court granted a declaration that the dismissal was null and void as there was failure by the Health Board to comply with the principles of natural justice before dismissing the employee.

5.0 SUMMARY CONTRAST

The major focus of this work was on the justification of termination of employment, dismissal from employment, the right of an employee to opportunity to defend himself and the available remedies to an employee whose dismissal or termination of employment is declared unfair by a Court. After the analysis of the incidence of unfair dismissal, we found that many countries such as South Africa, Ghana, Zambia, Lesotho, Republic of Ireland, the United Kingdom and Slovenia have incorporated the requirement reason into their labour Law on termination and dismissal in contrast with the Common Law position of termination and dismissal at the will of the employer. Fair hearing is also made to apply in all cases of determination of contracts of employment in Zambia. We also discovered that in conformity with ILO Convention, the Unfair Dismissal Act\(^9^2\) of Republic of Ireland provides for order of re-instatement and re-engagement upon a successful claim of unfair dismissal. This is in contrast with the position in Nigeria where order of re-instatement is deemed not available except special circumstances are shown. Also contrary to the position in Nigeria where the aggrieved employee bears the burden of proving wrongful or unlawful dismissal, in Ghana, South Africa, Zambia, Republic of Ireland and the United Kingdom the employer bears the burden of proving that the dismissal or termination is with a just cause.

6.0 CONCLUSION

The appraisal of the incidence of unfair dismissal in Nigeria reveals that Nigeria is still living in the past. The position of law is still the common law right of an employer to terminate a contract of employment with good, bad or no reason at all. This is notwithstanding the fact that many countries in the world have moved away from this ugly trend and embraced the ILO standards on unfair dismissal provided in ILO Termination of Employment Convention 158 of 1982 which requires that every termination of contracts

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87 Ireland, 1977 - 2007


89 Op.cit

90 1976 Supreme Court of Ireland.

91 High Court of Ireland, 1988.

92 Op.cit
of employment must be based on valid reasons. However, if the under listed recommendations are adopted, Nigerian workers will be rest assured of an effective of the incidence of unfair dismissal which will lead to a policy of fair dismissal in Nigeria.

7.0 RECOMMENDATIONS
Having appraised the incidence of unfair dismissal in Nigeria, the law and practices of unfair dismissal in some other jurisdiction and the lessons learnt from there, we recommend the following as the way forward to curbing the incidence of unfair dismissal in Nigeria.

**Enactment of an Unfair Dismissal Act:** Nigerian government through the legislative arm should make haste to enact an Act which will check the incidence of unfair dismissal in Nigeria. In this Act, provision should be made to bring all categories of employees within the scope of the application of the Act as it is the case in countries such as Zambia, Slovenia, Ghana and Republic of Ireland. Also the Act should make provisions which will ensure justification for termination of contracts of employment and adopt all the valid and invalid reasons for termination of contract of employment provided in ILO Termination of Employment Convention.

**Entrenchment of Order of Reinstatement and Re-engagement in the Unfair Dismissal Act:** It is imperative to provide reinstatement and re-engagement as remedies for unfair dismissal in the proposed Unfair Dismissal Act irrespective of the nature of the contract of employment involved.

**Removal of the Conceptual Differences between Termination and Dismissal:** The subtle and seeming controversial distinction between termination and dismissal should be removed statutorily in the proposed Unfair Dismissal Act.

**Entrenchment of Right to Fair Hearing in the Unfair Dismissal Act:** The Unfair Dismissal Act to be enacted for purposes of curbing the incidence of unfair dismissal in Nigeria with respect to any kind of determination of contract of employment without reason should also have provision for fair hearing as guaranteed in the constitution.

**Appointment of proactive Judges into the National Industrial Court of Nigeria:** Proactive Judges should be appointed into the National Industrial Court. The Judges should go beyond the mere letters of the Constitution of Federal Republic of Nigeria (Third Alteration) Act, to achieve the utmost aim of the provisions of the Constitution on jurisdiction of the National Industrial Court. With this, the seeming legislative lapse in the provision of the Constitution will be obviated and the implementation of the International Labour Organisation standards on unfair dismissal as well as any other labour treaties and conventions ratified by Nigeria will be achieved without the requirement of domestication.

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93 Ibid. Articles 4 and 5
94 Constitution of Federal Republic of Nigeria, *op cit* section 36 (1)
95 Ibid.
96 The Courts have held that an undomesticated treaty, convention or protocol is not applicable in Nigeria in the cases of *Abacha v Fawehinmi* [2000] 6 NWLR (pt. 660) p. 228; *Oshevirie v British Caledonian Airways Ltd* [1990] 7 NWLR (pt. 163) p. 507; *J.F.S Inv. Ltd v Braval Line Ltd* [2010]18 NWLR (pt, 1225) p. 508; *Ibidapo v Lufthansa Airlines* [1997] 4 NWLR (pt. 498) p. 124