IN THE NATIONAL INDUSTRIAL COURT OF NIGERIA

Suit No: NIC/21/2002

Petitioner: Gabriel Erapi and anor
And
Respondent: CONCORD PRESS OF NIGERIA LIMITED

Date Delivered: 2010-03-30

Judge(s): Hon. Justice M. N. Esowe - Presiding Judge, Hon. Justice F. I. Kola-Olalere - Judge, Hon. Justice J

Judgment Delivered

BEFORE T IEIR LORDSH1PS
Hon. Justice M. N. Esowe - Presiding Judge
Hon. Justice F. I. Kola-Olalere - Judge
Hon. Justice J. T. Aghadu-Fishim - Judge

DATE: MARCH 30, 2011 SUIT NO. NIC/21/2002

BETWEEN
1. Gabriel Erapi
2. John Osadolor
3. Ayo Gheoba (M.rs.)
4. Adebayo Fasakin
5. Nigerian Union of Journalists
(Lagos State Council)
(Suing for themselves and on behalf of other
members of the Nigeria Union of Journalists
(Concord NUJ Chapel) and also Non-members
all of whom re staff/employees of the Concord
Press of Nigeria Limited) - Claimants/Applicant

AND
CONCORD PRESS OF NIGERIA LIMITED - Claimants/Applicant
Claimants/Applicants

REPRESENTATION
Fred Aghaje, Orukpe Ighinigie, Prince Kennedy Osunwa U., Adeniyi Pokanu and Faith Lawani, for the claimants/ applicants
Shina Fashuga, H. O. Adamu, Yusuf Shitta, M. U. Faruq and Caroline Ovawah, for the defendant/respondent.

JUDGMENT
The claimants/applicants (herein after referred to as the applicants) initially commenced this matter on October 28, 2002 by way of an application pursuant to section 15(l) and (2) of the
Trade Dispute Act (TDA) (Cap. 432) LFN 1990. In that process, only the first four claimants before us sued for themselves and on behalf of other members of the 'Nigeria Union of Journalist (Concord NUJ Chapel) and also for Non-members all of whom are staff/employees of the Concord Press of Nigeria Limited'. There were two respondents then as well the second being Mr. Kola Abiola. While the case was going on, the National Industrial Court (NIC) Act2006 was passed, which Act added to the jurisdiction of this court, among other things. On 7th of October 2008, this matter came up for hearing regarding a motion dated and filed 7th October 2004 for striking out of the name of the second defendant/respondent as a party. The motion in question was Field under the TDA and the 1979 Rules of this Court.

Therefore, the matter was adjourned to enable the applicants re-file and argue the application under the NIC Rules 2007 as made pursuant to the NIC Act 2006.

The applicant eventually was moved, it succeed and Mr. Kola Abiola's name was struck out as the 2nd defendant/respondent in this case. The applicant were then allowed to amend their statement of fact in accordance with the provisions of the NIC Act 2006 and the NIC Rules 2007 which they did. The applicants field their amended claim by way of complaint in form
Of Complaint (Order 3 Rules 1) of the NIC Rules 2007. It was dated and field 4th June 2010. Together with this complaint 'witness' statement on oath and list of documents they are relying on. They attached seven exhibits to their statement of facts and claim thus:
i. A DECLARATION that the defendant/respondent acted contrary to the terms/conditions of service binding on the 'claimant/defendants (sic) having refused, neglected an (or) omitted to pay the claimants' salary arrears/final disengagement entitlement is unjust, unlawful and unconstitutional.
ii. A DECLARATION that the defendant/respondent Management having unilaterally shut down the activities of the defendant's company without making any arrangement as to the fate of the entire workers is entitled to settle the 1st – 4th claimants/colleagues' salary arrears from the February 1999 till judgment is delivered in this suit.
iii. AN ORDER of Court compelling the defendant/respondent to pay the
sum of N72,000,000.00 (Seventy-two Million Naira) salary arrears for 43 months
from February 1999 and to further be responsible for the claimants salary till
judgment is delivered in this suit.
v. Interest on the salary arrears at the prevailing Bank rate.
iv. Cost of ligation to be determined by the Court.

The facts of this case, as stated in the applicants statement of facts, are that the 1st to4th and other applicants represented are employees of the defendant/respondent (otherwise known as the respondent). The 5th applicant is a trade union to which some of the other applicants belong. The applicants stated further that since February 1999, the respondent failed to pay their salaries and allowances without giving any reasons. By February 2001, the respondent's management unilaterally shut down and stopped production in the company without notice to and prior discussions with the applicants or with their union (5th applicant), to which some of the other applicants belong contrary to the provisions of the respondent Company's Terms and Conditions of Service (Exhibit G).

The applicant stated further that the respondent did not pay their arrears of salaries and allowance till date. The applicants are all together one hundred and seventy - two (172)
In number who were staff/employees of the respondent. The applicants are, therefore, claiming tie sum of seventy-two million naira only (N72M) as their salary arrears and allowance for forty-three (43) months as at October 2002 when they filed this matter under the TDA. The applicants are also asking for payment of their salaries and allowance until judgment in given in this case and with interest at the prevailing Bank rate.

In his written address on behalf of the applicants, their counsel, Mr. Adeniyi Pokanu, strongly contended that as at February 2001, the respondent owed the applicants salary respect of their 24 months' salary arrears and their terminal benefits. As a result, the applicants instructed their solicitors, Fred Agbaje & Co. to write to the respondent company, demanding for the applicant's arrears and final disengagement entitlements, which their counsel did, referring to Exhibits D and F as copies of their counsel's letters of demands. Still, the respondent company refused and or/ neglected to accede to the demands of the applicants.

It is also the case of the applicants that the entire disengaged workers of the respondent and members of their families have suffered untold hardship, trauma and serious adverse effect for this neglect. The applicants field their witness' Statement on Oat dated 4th June, 2010 and deposed to by Gabriel Erapi, the 1st applicant and an executive member of the 5th applicant, on behalf of all the applicants. The applicants adopted the said Statement on Oath as their evidence and relied on the same in proving their claims against the respondent in this matter. The applicants further relied on all the seven (7) exhibits A – G attached to their statement of facts in establishing their claims against the respondent.

To the applicants, the only issue for determination is whether the respondent has complied with the requisite provisions

of the Terms and Conditions of Service of the company Exhibit C) in retrenching and terminating their appointments. Their learned counsel, isicarry, answered this question in the negative and argued that Exhibit C forms the basis of the contract of employment between the respondent and each of the applicants except the S /applicant, Learned counsel reproduced chapter one section one of the Te- ins and Conditions of Service in Exhibit G and submitted that b shutting down its operations without due notice to or consultation with its workers or an workers' body such as the 5th applicant, the respondent is in clear breach of the its own Terms and. Conditions of Service.

The applicants' position is that the shutting down of its operations without providing any work for its workers is an act of derogation of duty by the respondent (an employer) to provide work for its employees in line with section 17(1) of the Labour Act. Learned counsel reproduced section 17(1) of the Labour Act and submitted that the applicants are statutorily entitled to be paid salaries for such period of months that the respondent failed to provide work for them. He submitted further that the respondent's action of not making any arrangements for the payment of salaries and terminal benefits of the applicants after unilaterally shutting down the company runs counter to paragraph (g) of section 17(1) of Labour Law and section 6 Chapter VI of the Terms and Conditions of service in Exhibit G. He urged the court to so hold and also to hold that the applicants are entitled to ex gratia for their redundancy as provided for in Exhibit G.

The applicants contended that it is trite law that a party such as the respondent cannot deviate from the provisions of the Terms and Conditions of Service in Exhibit G, same being an agreement it entered into of its own accord with each and every member of the applicants. Learned counsel submitted that parties are bound by the terms of contract or agreement which they have freely and voluntarily entered into. He referred to Arta industries Ltd v. Nigeria Bank for Commerce and industries [1997] 1 NWLR (Pt. 482) 574 Ratio 10 at 385. Learned counsel argued that in an application of the principle of "bindingness" of an agreement to terms and conditions of service Amaizu, JCA of the Court of appeal stated this clearly in Texaco (Nig.) Plc v. Kehinde [2001] 6 NWLR (Pt. 708) 224 at paragraph B thus: 'Our law recognizes and respects the sanctity of contract.

Where parties have reduced the terms and conditions of service into an agreement, the conditions must be observed.'

The applicants then urged this court to hold that the respondent is bound by the terms and Condition of Service in Exhibit G. They further urged this court to grant all reliefs sought by them in their originating processes before this court as the applicants have suffered untold hardship as a result of the non-payment of their 24 months' salary arrears entitlement benefits by the respondent.

The respondent did not file any statement of defense to the amended claims. As a matter of fact the respondent stopped coming to court together with its counsel shortly after the name of the 2nd respondent was struck out for non-disclosure of any cause of action against. him in this matter and as a result of which the applicants filed their amended claims. Several adjournments were granted to enable the respondent appear in court and defend this matter with proof of hearing notices issued and properly served but the respondent still failed to avail itself of these opportunities. Bearing in mind the provision of Order 19 Rule 2 of the National Industrial Court Rules 2007, this court allowed the applicants to prove their claims, which they did on record as encapsulated above.

Having carefully considered the applicants' case, and by way of remarks, we hereby state that, in the NIC Rules 2007, there is no provision for written statement on oath of party's witness whenever parties are arguing their matters on record before this court. What he court looks at in such situations are: the initiating processes. Statements of facts and defence, attached documents to the statements and the written briefs of the parties including their cited authorities. Therefore, the written statement on oath of the applicants' witness was not considered in arriving at our decision in this matter. Again while arguing their case on record, we note that the applicants abandoned their claims for arrears of salaries and allowances from February 2001 until judgment is given. The said clams are, therefore, struck out.

The last of our observations and preliminary comments is that the applicants apparently abandon their third claim for "an order of Court compelling the respondent to pay the sum o N72,000.000.00 (Seventy-two Million Naira) salary arrears for 43 months from February 1999 and to further be responsible for Claimants salary till judgment is delivered in this suit". This is because there was no argument conversed on how the applicants arrived at the amount of money so claimed. As a result the third claim of the applicants is hereby struck out.

In our considered view, the way and manner in which the respondent summarily disengaged all its one hundred and seventy-two employees by its management merely shutting down the company without any notice or letter to that effect is contrary to the Labour Act. It is in the uncontroverted evidence of the applicants that the respondent owed the applicants' salaries and allowances for two years prior to the closure of the company; yet its management did not deem it fit to discuss the payment and the closure with the applicants. The applicants' appointments were not terminated neither were they dismissed. In our humble view, the respondent has tactfully shirked away from its responsibility by abruptly shutting down of the company.

In Footwear, Leather and Rubber Products Workers Union of Nigeria v. Management of Wadai Leather Industries Ltd [2009] 16 NLLR 431 at 451 para D – H, this court held that "where and employer deliberately closes down work without compliance with conditions of declaring the workers and employers, such closure of work will amount to redundancy".

The respondent has clearly not complied with chapter 10 of the company's terms and conditions of service titled of Appointment," which it agreed with the applic.nts arid which said agreement is binding between the parties because they voluntarily entered into it. The respondent has also contravened the provision of section 20 of the Labour Act on redundancy. Therefore, in line with the previous decision of this court in Foot wear v. Wadai Leather Industries Ltd, supra, the abrupt disengagement of the applicants' employment from the respondent company is hereby held to amount to redundancy.

Since is in evidence that the one hundred and seventy-two applicants is worked for the respondent from February 1999 to February 2001 and for which they has not been paid before the company was closed down, we heard that the applicants are entitled to their arrears is of salaries and allowances from February 1999 to February 2001.

The applicants' counsel made a claim for ex gratia payment in his written address. The Terms and Conditions of Service for Junior and Senior Staff of the respondent company (Exhibit G) stipulates, in relation to ex gratia award at page 36 as follows -
Employees leaving Company service other than by reason of redundancy, termination or dismissal shall be entitled to ex gratia award as follows: one month's basic salary for every year spent with the company.

This ex gratia award shall be deleted when the retirement scheme is ready.

From this provision, it cannot be that the applicants are entitled to any ex gratia payment as canvassed by their counsel. We consequently cannot grant any award in that regard.

Judgment it is entered accordingly. We make no order as to cost.

Hon. Justice M. N. Esowe
President Judge

Hon. Justice F. I Kola-Olalere Hon. Justice J.T Agbadu Fishim
Judge Judge.