

INTEGRATING JUDICIAL PROTECTION FOR ENHANCED FEMALE WORKERS' FUNDAMENTAL RIGHTS IN THE NIGERIAN WORKPLACE ENVIRONMENT

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Abstract: *The current discourse on the conception of equality by diverse global social and political forces have impacted the current world focus on the necessity to offer legal protection to those considered vulnerable in the workplace. Matching side by side – almost to a hitherto unmatched degree in labour law, are the models of judicial backing and transnational labour standards established in many foreign jurisdictions. All over the world - Nigeria inclusive - female workers are considered as part of the vulnerable person in the society requiring greater protection, especially in the workplace. In Nigeria, this category of workers, on account of their multiple natural and societal responsibilities as wives/mothers, are often exposed to various human rights breaches, which inevitably gives rise to the need for legislative and judicial guarantees against derogation of rights and diverse forms of abuses in the workplace. This paper, adopts desk-based method in examining various forms of female employees' rights that are often violated at the workplace, the precipitants of the violation and as well as assess the adequacy or otherwise of statutory protection provided. The paper primarily focuses on the adequacy of judicial efforts directed at the reduction in the violation of female employees' rights in workplaces in Nigeria this is achieved through an evaluation of selected decisions of Nigerian courts particularly, the National Industrial Court of Nigeria (NICN) and the Court of Appeal (CA) on the matter. The study discovered that, surprisingly, some of female employees' workplace fundamental rights violations are provided statutory fillip as well as cultural nourishments. Further, that Nigerian courts, particularly the NICN and the CA have frowned at such violation and have provided judicial solatium in the form of award of damages to identified victims, even though, oftentimes the damages awarded do not have deterrent effects on account of their paltry nature. The paper makes some vital recommendations which are both immediate and futuristic. The immediate recommendation is the award of punitive damages by the court to achieve deterrence while for the future, a review of obsolete law for an egalitarian and comprehensive protection should be considered.*

Keyword: *Fundamental right, Equality, Female Employees rights, Nigeria, National Industrial Court of Nigeria*

1. Introduction

All over the world, children and women are generally regarded as persons numbered among the vulnerable in every society. This implies that women and children are in serious need of intentional judicial and legislative protection and guarantees against derogations from

their fundamental rights in the workplace, far more than other members of the society (Daudu 2004, P. 38). The phenomenon of sex discrimination against women in employment environment is of antiquated origin which goes back well into the nineteenth century through the unrelenting efforts of civil rights groups whose agitations in the statutory protection provided by the US Civil Rights Act of 1964 as well as other legislative interventions directed at tempering the intensity of sex discrimination, sprang up also in European Union law. Sex discrimination in the workplace has precipitated campaigns by civil rights advocacy groups for equal pay and equal access of men and women to employment opportunities, as well as agitations for reduction in discrimination on grounds of sexual orientation, religion or belief and age (Deakin and Morris, 2012 p. 602). However, unlike what obtained in the US, the pace of the legislation against discrimination in employment was relatively slow in taking off in Europe. Both the Equal Pay Act which was enacted in 1970 but only came into effect in 1975 as well as the Sex Discrimination Act which was enacted in 1975 have both endured frequent amendment without any noticeable remedying effect on the endemic sex discrimination in employment (Anderman, 1993 p. 201). In Nigeria, even though sex discrimination is present in the workplace, yet, the situation has not witnessed any appreciable progress in favour of women despite the fact that female workers constitute a significant number of employees both in the public and private sectors. Although female employees enjoy various rights ranging from freedom from sex discrimination in employment and are oftentimes shielded from sexual exploitation and harassment in the workplace, they have access to maternity leave with pay, freedom from sexual exploitation/harassment, equal pay for equal work, and so on, yet, despite all the foregoing seeming reprieves enjoyed by women have been seriously undermined by their exposure to various forms of abuses of their basic fundamental rights even though there are in existence, laws which offer womenfolk protection in the workplace (Ajayi & Eyongndi 2018, P. 209). Various factors are responsible for the abuse of the labour and employment rights of female employees in Nigeria ranging from socio-cultural, economic, weak regulatory/legal frameworks, chauvinism, and high level of unemployment which has affected Nigeria very adversely (Adejo & Leigh 2016, Pp. 75-90).

The courts are established to adjudicate over disputes in order to ensure that there is no resort to self-help. The Courts in Nigeria, particularly the National Industrial Court of Nigeria (NICN) which from the 2010 when the Constitution of the Federal Republic of Nigeria, 1999 (Third Alteration) Act, 2010 came into force, was bequeathed exclusive original civil jurisdiction over labour, employment and ancillary matters, has made commendable strides towards reducing the menace of violations of female employees' rights in Nigeria although, with certain reservations. This paper, adopts desk-based method in interrogating various forms of female employees' rights that are often violated at the workplace, the precipitants of the violation and as well as assess the adequacy or otherwise of statutory protection accorded. It also focused on examining judicial strides towards emasculating the menace of violation of female employees labour and employment rights in Nigeria zeroing on the question of how adequate or otherwise is the quantum of damages that these courts have awarded in getting these ugly tides to ebb away?

The paper was written relying on primary data such as the Constitution of the Federal Republic of Nigeria, 1999, the National Industrial Court Act, 2006, Case law, and secondary data such as articles published in learned journals, standard textbooks on labour and

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employment law, online materials, newspapers articles, policy documents, etc. these data was subjected to rigorous content and jurisprudential analysis whereof findings were made and conclusions drawn. The paper also discusses the role of stakeholders in curbing this menace. For the purpose of structure, the paper is divided into four sections. Section one contains the introduction. Section two focuses on the different kinds of female employees’ rights in Nigeria by highlighting various labour and employment rights which inure to this category of employees, for expounding the legal/regulatory frameworks of these rights, and the patterns of their abuses. Section three examines judicial strides towards curbing this menace with particular focus on the adequacy or otherwise of this effort. Section four contains the conclusion and recommendations.

2. Clarifying the different types of Female Employees’ Rights under Nigerian Law

This section of the paper highlights female employees’ rights under Nigerian law, and examines the types of abuse female employees are predisposed to. At this juncture, it worthy to note that while there are general employment rights inuring to all categories of employees (including females), there are certain rights that are female specific. Section 34(1) of the Constitution of the Federal Republic of Nigeria, 1999 (hereinafter simply referred to as CFRN, 1999) generally prohibits forced labour against all category of employees with special emphasis on womenfolk in employment. Also, section 17(3) of the CFRN, 1999 guarantee female employees’ equal pay for equal work done. Section 54(1) of the Labour Act gives female employees’ right to maternity leave with pay. This right exists for the benefit of female employees who are expectant mothers, adopted mothers. The point needs be made at this point however, that recent developments in Nigeria have culminated in the extension of paternity leave to the male workers whenever their wives gave birth to new offspring. The right to maternity leave is enjoyed by the female employee upon producing a certificate by a certified medical practitioner that her confinement – for a new birth delivery - is fast approaching. Section 15 of the Labour Act gives every female employee right to regular payment of salary and wages by the employer which must be paid within intervals not exceeding one month. Thus, The Nigeria Court of Appeal in the case of *D. U. Tamti v. Nigerian Customs Service Board & 2 Ors* (2009) gave judicial approval to an employee’s right to receive salary by concluding that an employee’s salary becomes due and his/her right to it is vested at the end of each month and not later even where the parties agree to the contrary. The effect of the foregoing is that an employer is barred from terminating the employment of an employee with retrospective effect to extinguish remuneration already earned as was clearly, affirmative and authoritatively stated by the Supreme Court of Nigeria in *Underwater Engineering Co. Ltd. & Anor. v. Darusha Debefon* (1995). Hence, the practice of non-payment of salary and wages by employers whether private or public, is a derogation from this right. The National Industrial Court of Nigeria (NICN) in *Chemical & Non-Metallic Products Senior Staff Association v. Benue Cement Co. Plc.* (2006) upheld the sanctity of this duty as fundamental to the continuity of the employment relationship, a breach of which will strike at the core of the relationship to undermine it and render same ineffective and inexorably destroyed.

The female workers are also entitled to right to freedom from sexual related discrimination. The point must be made at this juncture that sexual harassment/discrimination

is experienced both by male and female employees with the female employees, more on the receiving end than their male counterpart as argued by Eyongndi & Okongwu (2021, Pp. 122-146). Thus, Atilola (2017, Pp. 50-51) while expressing dismay at the prevalence of sexual harassment in the workplace and its various ways of manifestation in Nigeria opined as follows:

Sexual harassment may take diverse and varied forms. It is not limited to demand for sexual favours made under threats of adverse job consequences but also includes any unwanted conduct of sexual nature or other conduct based on sex, which violates the dignity of a person, and in particular when it creates an intimidating, hostile, degrading, humiliating or offensive work environment for the recipient. Sexual harassment is a serious and real problem for various working women in Nigeria. It has been viewed as one of the most egregious forms of violence against women in the workplace and has increasingly become a subject of concern to working women, trade unions and human rights organizations.

One of the many ways this fundamental right is violated is where the employment of a female employee is terminated upon discovery that the employee is pregnant (Animashaun 2007, P. 4). There are also other illustrations of violation where companies' especially private ones have an unwritten policy requiring female employees to be unmarried during probation period or if married, not to become pregnant within a particular period of time or risk being terminated in the event that they become pregnant (Ajayi 2015, P. 46). This discriminative practice is averse to the connotation of Article 5 (d) of the International Labour Organization (ILO) Termination of Employment Convention No. 159 of 1982 which requires that pregnancy shall not be a ground for termination of employment of an employee. To ensure the protection of this right, (Eyongndi & Okpara 2022, Pp. 432-455) have opined that every workplace must put in place a sexual harassment policy and an effective whistleblowing mechanism through which victims can safely report culprits for necessary disciplinary action. It is noteworthy that while statutory provisions such as section 34(1) of the Labour Act, avails a male worker employed in the public service in Nigeria the opportunity to be accompanied to their places of primary assignment by such members of his family (not exceeding two wives and such of his children as are under the age of sixteen years) as he wishes to take with him, no such statutory cover is extended to a female employee unlike her male counterpart. Section 55 of the Labour Act protect female employees from night and underground work in mines except they are working in managerial position in such an undertaking. On its face value, this looks like a protective provision to ensure that females are not allowed to work underground particularly in mines and in other undertakings, at night. When one considers the argument of the weak physiological make up of women to males, the restriction is justified. However, it is discriminatory rather than protective. We are not oblivious of the fact that in this current modern dispensation, there is a radical shift from the orthodox work engagement ethos to whittle down the dichotomy between male and female jobs. This is on account of an ever-increasing parity in the number of females taking up roles that were once considered male jobs and vice versa (Ekhaton 2015, 289). The possibility exists in today's Nigeria for a female employee to voluntarily opt to work in an underground undertaking in a non-managerial position or to elect a preference for night work. Where such a desire exists, the female worker who is incapable of actualising the desire will suffer a discrimination at the workplace, as to

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do so would be in clear violation of the prohibitive discriminatory provisions of the Labour Act (Eyongndi 2020, P. 116). This provision of the Labour Act is contrary to the provisions of Article 13(d) of the Protocol to the African Charter on Human and Peoples Rights Right on the Rights of Women in Africa (1988) which enjoin member States to ensure with diligence, the guarantee of the freedom of choice to womenfolk in respect of their occupation, and protect them from exploitation by their employers who are predisposed to violating and exploiting the fundamental rights of female employees when the former recognise and uphold the conventions, laws and regulations in force in their various national jurisdictions in favour of the womenfolk (Tinuoye 2015, P. 99). These discriminatory trends are also manifest in pre-employment situations whereby there have been employment advertisements engineered against female applicants especially in law firms by excluding them from applying for jobs in such establishments (Animashaun 2007, P. 5).

In furtherance of the rights of female workers in the workplace, they are also entitled to favourable and friendly work environment. Both the work environment as well as the mental and physical conditions of work are expected to be both conducive as well as proximate. Where a nursing mother is employed, the employer has a duty to provide suitable place or facility within or nearby to her workplace to enable her attend to her baby. The employer must put in place policies and regulations that promote gender equality and equity. Despite the foregoing rights, there is an avalanche of cases where employers have flagrantly violated these rights especially on discrimination and maternity leave. Some of these scenarios are examined in the succeeding section of this paper.

3. The position of NICN and the Court of Appeal on Female Employees' Rights Protection

As earlier stated above that the court are vanguards for the safeguard of rights and liberties, they exist as an institutionalised medium for the settlement of disputes and prevention of potentially calamitous situation of resort to self-help. Over the years, the issues of female employees' rights abuses have been adjudicated upon by the National Industrial Court of Nigeria and the Court of Appeal. This section of the paper, is dedicated to the appraisal of some of the cases which these courts have decided with the aim of clarifying the position taken by them to proffer solutions to this problem. The study further proposes to evaluate the adequacy or otherwise of the remedies extended to the victims of this malaise against the backdrop of instilling and achieving deterrence.

In *Standard Chartered Bank Nig. Ltd. v. Ndidi Adegbite* (2019), the Court of Appeal had the opportunity to adjudicate over a matter dealing with alleged violation of the rights of the respondent. The Appellant employed the Respondent as an Account Relationship Officer. While working, she applied for maternity leave which she was granted for the period of 7th February to 6th May 2005. Upon the expiration of the leave, she applied for an extension as the health of her baby required it and she was granted. On the 3rd day of February 2006, she had s meetings with her supervisors and one of the Appellant's Executive Directors where she was informed that her performance appraisal was appalling. As a result of these meeting and the appraisal reports, on the 8th day of February 2006, the Respondent resigned from the Appellant's employment and filed a suit against the Appellant contending that consequent upon

the information received from the Appellant that appraisal of the Respondent was poor and therefore unfavourable to her continuous employment with the Appellant, Respondent was constrained to resign her appointment thereby rendering the resignation involuntary and constituting a constructive dismissal of the Respondent from employment by the Appellant. It was the further contention of the Respondent that in appraisal exercise, the Appellant discriminated against her on the basis of her sex and the fact that she was a nursing mother and the Appellant wrongfully debited her account with the sum of ₦ 1, 628, 209. 64. She therefore sought for several reliefs including a declaration that her dismissal from the Appellant's employment was both discriminatory and unconstitutional and that the sacking was done in bad faith on the basis of her sex and status as a nursing mother and therefore asked the court to direct the Appellant to pay monetary compensations to the Respondent in the sum of fifty million naira (₦ 50,000,000), and a further refund of the money wrongfully deducted by the Appellant from the account of the Respondent etc. Appellant denied all the claims contending that the Respondent resigned voluntarily and her appraisal was not hinged on the basis of her sex nor the fact that she was a nursing mother. In its judgment, the trial court granted her some relief awarding her the sum ₦ 5, 000, 000, 00 as damages for wrongful termination. The Appellant appealed to the Court of Appeal while the Respondent cross appealed contending that the damages awarded by the trial court did not take into consideration the depravity and ill treatment suffered by the Cross-Appellant. The Court of Appeal in its judgment, dismissed the appeal and affirmed the decision of the trial court. This decision shows that the Court of Appeal will readily confirm the award of damages awarded against an employer who violates the employment right of a female employee.

Similarly, in the case of *Mrs. Folarin Oreka Maiya v. The Incorporated Trustees of Clinton Health Access Initiative, Nigeria & 2 Ors.* (2012) the NICN awarded the Claimant compensation to the tune of her one-year gross pay which is the sum of ₦ 5, 576, 670 (Five Million, Five Hundred and Seventy-Six Thousand, Six Hundred and Seventy Naira) only. The facts of the case as revealed in court were that, claimant became pregnant in the course of her employment and subsequently informed her immediate boss. The defendant was displeased about the pregnancy and had her employment terminated leading to the law suit initiated by the Claimant for wrongful termination of her employment on account of being pregnant. The defendant could not put up a formidable defence and at the end of the trial, the NICN found that "the action of the Respondent amounts to inhuman, malicious, oppressive and degrading treatment and that the Respondent in their action held themselves out as abhorring the humanity of a woman on account of her pregnancy."

Another instance of the court's safeguarding of a victim's rights against sex discrimination was in *Ejike Maduka v. Microsoft Nigeria Ltd. & 3 Ors.* (2014). In this case, during the employment of the Claimant with the 1st Defendant, the 3rd defendant who was a co-employee with the Claimant, was consistent harassing the Claimant sexually as well as other female employees of the 1st Defendant, by tickling them on their waist and making other sexual gestures. The claimant repeatedly warned him to desist from sexually harassing her and other female employees as this unsolicited act from the 3rd Defendant was both a sexual harassment and a trespass to her persons as well as a gross violation and infringement of her and other affected female workers' fundamental rights to their privacy, but all to no avail. Despite the warnings and resistance taken by the Claimant, to the 3rd Defendant's objectionable acts, the

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harassment persisted and Claimant had to inform her husband, who came to her office and sternly warned 3rd defendant to steer clear of his wife. The 3rd and 4th defendants were infuriated by this act and promised to deal with the Claimant. Subsequently, they framed her up and got her employment terminated after making the workplace extremely uncomfortable for her by forcing her to collect a termination letter which she refused, but same was delivered at her house. She sued the defendants contending that the termination amounted to an act of intimidation, sexual discrimination, and vindictiveness which constitute direct and flagrant infringement of her fundamental rights. The defendants expectedly denied all the allegations of the claimant, but the NICN, based on the evidence adduced by the parties, found that the claimant was sexually harassed, intimidated and her employment maliciously terminated and awarded damages to the Claimant in sum of ₦ 13, 225, 000, 000 (Thirteen Million, Two Hundred and Twenty-Five Thousand Naira) against the defendants.

Likewise, in *Pastor (Mrs.) Abimbola Patricia Yakubu v Financial Reporting Council of Nigeria & Anor* (2016), the NICN awarded damages of the sum of ₦ 5, 000, 000 (five Million Naira) only for sexual harassment against the Defendant. The claimant was an employee of the Defendant and a co-worker with the 2nd Defendant who had been making sexual overture towards her unceasingly. All appeals and warnings to him to cease and desist were not heeded even though, the 2nd defendant was aware that the claimant was married and pregnant. The claimant suffered psychological and emotional disturbance from this incessant and unsolicited immoral overture and annoyances from her colleague and filed a suit against the parties. The 2nd defendant denied the claim but the claimant's overwhelming evidence, showed that she was relentlessly harassed sexually by the 2nd defendant, her immediate boss without reprimand from the 1st defendant, her employer.

From the foregoing, it is crystal clear that the NICN and Court of appeal sternly frown at violation of female employees' employment rights. Despite this laudable stance of these court, it is easy to notice that the quantum of damages awarded in the cases above, is usually inadequate and oftentimes incapable of instilling deterrence in the culprits as well as potential offenders. In some of the cases, the claimants claim for monetary damages will be in the range of about ₦ 30, 000, 000, 00 (Thirty million naira) and more, but what usually result, is that the courts will – in virtually all the cases appraised, except perhaps with the exception of one – award a paltry sum of monetary compensation in the range of ₦ 5, 000, 000. One would expect that considering the pervasive nature of sexual harassment and its attendant negative effect on the physical and mental health of the victim, where the same is proven, punitive damages would be awarded. In order therefore to achieve the taming of this this menace which is growing in geometric progression and making the many workplaces unsafe and insecure for female employees from continuing to thrive, the courts should award punitive or exemplary damages.

While the courts have frowned at this malaise, rights groups, especially women rights, such as National Association of Women Journalist (NAWOJ), Nigerian BAR Association Women Forum, etc. can undertake awareness exercises through massive sensitisation on the deleterious effect that this malaise have on the health and safety of the workplace. By their collective efforts, female employees should be made to be aware of their fundamental rights to freedom from sex discriminations in the workplace and avenues should be created for female employees whose rights are infracted, to ventilate their grievances. Those female victims but

who may not have the wherewithal to litigate should also be granted access to *pro bono* legal services and professional counselling as argued by Leigh (2022, P. 99). The government as regulator of employment and in the quickening of its paternalistic status, has the responsibility to ensure that the obsolete labour and employment laws are reviewed in order to expand the scope of statutory laws to victims for an enhanced protective regime through a consistent and rigorous application and enforcement thereof.

4. Conclusions and Recommendations

From the analysis above, it is clear that the labour laws of Nigeria accord female employees certain rights. Despite this recognition, female employees are often victims of various rights violations from their colleagues and sometimes from their employers. Some of the several factors that are responsible for this unpleasant state of affairs include but are not limited to economic, socio-cultural, weak enforcement of existing laws and high rate of unemployment. In fact, Leigh (2014, 650-678) has argued that high rate of unemployment has led to the increase and acceptance of precarious forms of employment in Nigeria such as casualisation wherein the rights of employees are flagrantly breached. There are also laws that are sometimes intended to protect female employees, but instead end up discriminating against them. Fortunately, Nigeria courts, particularly the National Industrial Court of Nigeria and the Court of Appeal have frowned at this malaise and have awarded damages in such instances. While the award of damages is laudable, the quantum of damages awarded is oftentimes insignificant and therefore unable to instil deterrence. To address the issue, human rights organisations needs to sensitise female employees of their rights, provide enabling environment for complaints and also offer *pro bono* legal services to victims who might not have the means to institute and sustain court actions against potential offenders.

Based on the findings above, it is recommended that where a case of right violation is established by a claimant, especially dealing with sexual harassment and intimidation, to serve as deterrence, the courts, particularly the NICN should grant exemplary damages instead of the usual nominal damages.

Also, the government as regulator should ensure that the existing obsolete and inadequate framework which provide to female employees' certain rights is reviewed to become compliant with minimum global standard and international best practice in this sensitive area of sex discriminations. In the same breath, one of the identified precipitants of this menace is the high level of unemployment which is at present, a very huge challenge confronting Nigeria. The government needs to create more jobs and an enabling environment where those desirous of working can access decent and gainful employment.

Employers should be compelled by legislative instrument to put in place sexual harassment policy and programme to ensure that all staff are orientated and enlightened regularly. This will help sensitise the workforce and prevent the festering and geometrical progression of sexual harassment by entrenching attitudinal change. Employers will also be relieved of their perennial accusation of their condonation, collusion and connivance of sex discrimination offences within their respective provincial domains.

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