

EMPLOYEES' RIGHT TO LEGAL STRIKE IN NIGERIA

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Abstract:

It is crystal clear from the nature of the relationship between an employer and his employees that the employer (master) has a higher bargaining power than an individual employee (servant). An individual employee can do little or nothing concerning his working conditions hence, the need for employee's association (Trade Union). Generally, employees have realized that bargaining collectively is the only medium of having a relative equal bargaining strength with their employer and that strike is a major weapon in the armory of Trade Unions (employee's association) in demanding for an improvement of the working conditions of its members. This article is aimed at ex-raying employees' right to legal strike in Nigeria.

Introduction

It is practically impossible to discuss the concept of strike without making reference to Freedom of Association and membership of Trade Unions owing to the fact that cessation of work by one man (an individual) cannot be referred to as strike action. Freedom of association in Nigeria no doubt is a fundamental right and is regarded as a means for safeguarding the rights and civil liberties of the citizens. Although people may be free to do whatever they want to do in so far as their actions or inactions cause no harm to their neighbours but yet there is no freedom without restriction. Therefore, people are free to form, join or belong to an organization and to act in association with others for the protection of their personal interest as a group. Following this principle of freedom of association, workers in Nigeria also have the right to form, join or belong to a trade union of their choice for the protection of their interest. However, there is no express statutory provision either by states or federal (Law/Act) which empowers

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employees or their associations (Trade Unions) to freely embark on a strike action in Nigeria. This is mainly so, because the government; federal, state and local government are the biggest employer of labour and are thus spurned intricate rules of civil service regulations on tenure and pensions in Nigeria. As the largest single employer of labour, the government plays the conflicting role of employing the largest labour as well as prescribing policies to guide labour-management relations. For this reason, our laws does not really encourage the rights of employees to embark on a strike action; the onerous, conditions that are required to be met before employees in Nigeria can lawfully embark on a legal strike action operates to cripple the right of workers to legal strike.

According to Professor OVC Okene¹, the concept of freedom of association in labour relations means that workers can form, join or belong to a trade union and engage in collective bargaining. It also implies that the workers are entitled to go on strike whenever necessary. Members thus enjoy the right to associate for union purposes and the right to participate in all union activities. These rights are recognized both in international law and in all civilized countries of the world. If, without justification, the public authorities threaten the life and limb of the unionist to prevent them from taking part in union activities, freedom of association is violated.

Workers' right to freedom of association in Nigeria no doubt is a Human Right since it deals with the core value of employment as regards the relationship between the employee and employer. An employee works under a contract of service whereby an employer has the right to direct what work must be done as well as how the work must be done². Therefore, the person who controls and directs a worker under an express or implied contract of hire and who pays the worker's salary or wages is an employer³.

¹ OVC Okene, 'Curbing State Interference in Workers Freedom of Association in Nigeria' 10(4) *International Journal of Non-profit Law* (2006) Pp.86-96; also available on <<http://icnl.org/research/journal/vol8iss4/art-2.htm>>accessed 01-03-2018

² OVC Okene, *Labour Law in Nigeria: The Law of Work* (3rd Edn., Claxton and Derrick Ltd, Ph. 2012) p. 43

³ Black's Law Dictionary, 9th Edn., p. 604

The employment Rights Act 1996⁴ defines a worker as an individual who has entered into or works under: a contract of employment; or any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform work personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual.

Workers also means any employee (whether a public officer or an individual) who has entered into or works under a contract with an employer, whether the contract is for manual labour, clerical work or otherwise, express or implied, oral or in writing and whether is a contract of service of apprenticeship.

Black's Law Dictionary⁵ defines worker as one who labours to attain an end; especially, a person employed to do work for another. Webster's Comprehensive Dictionary⁶ defines worker as one who or that which performs work; specially, a labourer as distinguished from a capitalist.

Strike:

Adopting the definition giving by the redactors of the Trade Disputes Act 2004 in *Section 48*, a strike simply means the cessation of work by a body of persons employed acting in combination, or a concerted refusal or a 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, or to aid other workers in compelling their employer or any persons or body of persons employed, to accept or not to accept terms of employment and physical conditions of work; and in this definition:

- (a) 'Cessation of work' includes deliberately working at less than usual speed or with usual efficiency; and
- (b) 'Refusal to continue to work' includes a refusal to work at usual speed or with usual efficiency'.

⁴ Section 230 (3) of Employment Rights Act 1986 (ERA 1996) UK

⁵ Black's Law Dictionary 9th edn, P. 1744

⁶ The New International Webster's Comprehensive Dictionary of the English Language; Encyclopedic edn, 2010, P. 1450

Constitution:

According to Legal Dictionary⁷ constitution is the fundamental law, written or unwritten, that establishes the character of a government by defining the basic principles to which a society must conform; by describing the organization of the government and regulation, distribution, and limitation of the functions of different government departments; and by prescribing the extent and manner of the exercise of its sovereign powers.

Black's Law Dictionary⁸ defines constitution as the fundamental and organic law of a nation or state that establishes the institutions and apparatus of government, defines the scope of governmental sovereign powers, and guarantees individual civil rights and civil liberties.

Freedom of Association:

Freedom of association is the right to form societies, clubs and other groups of people, and to meet with people individually, without interferences by the government⁹. Black's Law Dictionary¹⁰ defines freedom of association as the right to join with others in a common undertaking that would be lawful if pursued individually. According to Cambridge Advanced Learners Dictionary¹¹ as the condition or right of being able or allowed to do, say, think, etc. Whatever you want to, without being controlled or limited.

The Constitution of the Federal Republic of Nigeria did not defined freedom of association but recognizes and guaranteed freedom of association to the citizens via section 40 which stipulates: 'Every person shall be entitled to assembly freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interest'.¹²

⁷ Available on <<http://legaldictionary.thefreedictionary.com/constitution>> accessed 03-03-2018

⁸ Black's Law Dictionary 9th edn, p. 353

⁹ Available on < <http://dictionary.com/browse/freedom-of-association>> accessed 03-03-2018

¹⁰ Black's Law Dictionary 9th edn, 735

¹¹ Cambridge Advanced Learners Dictionary 3rd edn, Cambridge Press

¹² Constitution of the Federal Republic of Nigeria 1999 (as amended) Section 40

Fundamental Rights:

Fundamental rights are those rights that are thought to be inherent to man and are protected by law in any Nation guided by the rule of law¹³

The rights and duties flowing from this relationship is usually one of the causes of strike action. An employee owes to the employer the duty to render personal service, duty of cooperation, duty of obedience to reasonable and legitimate orders, duty to exercise reasonable care and skill, duty not to accept bribes or secret commission whereas the duties of an employer to an employee are; payment of remuneration¹⁴, an employee is entitled to remuneration even during illness. A sick worker shall be entitled to be paid wages up to twelve working days in any one calendar year during an absence from work due to temporary illness certified by a doctor¹⁵. It is the duty of an employer also to provide work for an employee. Duty of indemnity and duty to ensure the safety of employees¹⁶, it is clear that from the rights and duties appertain to both parties there are bound to be dispute. So, it is because of the apparent imbalance of power between employees and employers that has necessitated the desire of workers to come together. Workers have generally realized that bargaining collectively is their only chance of having a semblance of an equal relationship with their employer. They realize that against the power of an employer, an individual worker has almost no bargaining power and that the chances of improving his conditions of work are slim¹⁷.

Workers have resorted to collective action because by banding together they are able to consolidate their strength far more effectively than they could as individuals¹⁸. Here, power stand against power¹⁹. Without worker's freedom of association in Nigeria, there can be no bargaining power on the part of an individual employee. According to *Sir Abubakar Tafawa Balewa*, the then Prime Minister of Nigeria, at the opening of the first International Labour Organization of African Regional Conference in Lagos, Nigeria, in 1960 said Freedom of association is one of the

¹³ Available on <<http://thelawyerschronicle.com/fundamental-rights-enforcement-in-Nigeria-Courts-the-jurisdictional-question> > accessed 09-03-2018.

¹⁴ Okene, (n2) pp. 80- 97

¹⁵ Section 16 of the Labour Act 2004

¹⁶ Okene (n2)

¹⁷ Okene (n2)

¹⁸ Okene (n2)

¹⁹ Okene (n2)

foundations on which we build our free nations²⁰. In the same vein; Harold Laski, also posit that without freedom of the mind and association, a man has no means to self-protection in our social order²¹.

The concept of freedom of association in labour relations simply means that workers can form, join, or belong to a trade union and engage in collective bargain. Workers thus enjoy the right to associate for union purposes and the right to participate in all union activities. These rights are recognized both in international law and in all civilized countries of the world.

The constitution of the Federal Republic of Nigeria 1999 (as amended) guarantee the freedom of an individual to associate with other persons and to form or belong to any association of his choice. It provides that:

Every person shall be entitled to assembly freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interest²².

It is crystal clear from the letter and spirit of this constitutional provision that workers are not only entitled to belong to a particular association but may form or join an existing association that they feel will protect their interest. It is not the duty of an employer to choose a particular association for an employee. In *Anigboro v. Sea Trucks (Nigeria) Ltd*²³, Where workers decided to join a trade union known as the National Union of Petroleum and Natural Gas Workers (NUPENG) against the wish of their employers who wanted them to join the Nigeria Union of Seamen and Transport Workers (NUSTW). The employers try to persuade the workers but the workers remained adamant as to their choice of a trade union, they were summarily dismissed. The Court of Appeal held that this constituted a violation of the right of freedom of association of the workers, as it is not for the employer to choose a trade union for his employees.

Furthermore, an employee cannot be dismissed on account of trade union membership or non-membership²⁴. This is another pointer to the fact that workers are guaranteed the right to associate for the protection of their

²⁰ Johnston, G. A., *'The International Labour Organization'* (London: Europa Publications), 1970, P. 150

²¹ Liberty in the Modern State (London: George Allen & Union Ltd, 1948). P. 195

²² Constitution of The Federal Republic of Nigeria 1999 (as amended) section 40

²³ (1995) 6 NWLR (Pt. 399), P. 35

²⁴ (n15) Section 9 (6)

economic and other interest without fear of any sanctions. The court is therefore given the constitutional power to annul and invalidate any governmental/employers action(s) that violates the right of association in Nigeria. In *Zakari v. Alhassan*²⁵, the Supreme Court held inter alia that 'In a democratic society of ours where law prevails, the court is the hope of the common men. It plays an important role to protect the rights of its citizens from encroachment by any arm of government'.

In other words, where the rights of employees are encroached whether by the government or group of employers, it is the court that will redress the situation. The constitutional right to freely associate with or belong to a union of one's choice is qualified and not an absolute right. The goal keeper section in a way provides for derogation of the right to associate where it may be reasonable to do so in the interest of defense, public safety, public order, public morality or public health, or for the purpose of protecting the rights and freedoms of other persons²⁶. Freedom of association as a fundamental right is accorded recognition at the international level.

The Universal Declaration of Human Right (UDHR) adopted by the United Nations General Assembly in 1948, proclaims that Everyone has the right to freedom of peaceful assembly and association and no one may be compelled to belong to an association²⁷.

It also provides that everyone has the right to form and join trade unions for the protection of his interest²⁸. Freedom of association is also recognized by the International Labour Organization (ILO). Apart from these, the right to associate, form and join a trade union is also recognized in the African Charter on Human and Peoples' Rights 1981, which also provides that Every individual shall have a right to association provided that he abides by the law²⁹.

The apparent imbalance of power between the employers and the employees gave rise to the formation of trade unions which unarguably came into existence for the purpose of protecting and improving the working conditions of employees. Trade union as an organization that represents employee at work, have extended the concept of democracy

²⁵ (2002) 14 NWLR (Pt. 786) 52

²⁶ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 45.

²⁷ UDHR 1948 Article 20(1) and (2)

²⁸ UDHR 1948 art 23(4)

²⁹ ACHPR 1981 art 10

from political rights to economic rights. Rights such as the freedom to choose and engage in an occupation and to be fairly remunerated, and the right to improved living conditions, as well as instrumental right which workers need to achieve these substantive right; the right to freedom of association, collective bargaining and the right to strike. Similarly, the right to associate and belong to trade union is open to all regardless of ethnicity, religion, or political affiliation; workers are free to participate in trade union without any discrimination whatsoever³⁰.

Since the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides for freedom of association and Nigeria has also ratified and incorporated freedom of association contained in international covenants and treaties into its municipal law, the right to associate, form and to belong to trade union should be respected without any interference from any authorities and persons throughout the Federal Republic of Nigeria.

Purpose and Formation of Trade Union

The trade union like any other association is entitled to have more than one purpose but the core purpose of any or every trade union must be to regulate the terms and conditions of the employment of workers since a trade union is a combination of workers or a combination of employers. A trade union is permitted to have other purpose apart from the core purpose. It must be said here that any other purpose of the combination of employer(s) or employee(s) must be ancillary to the purpose of regulating the terms and conditions of employment of workers. Whatever other lawful purposes a trade union allows itself under its rules book or constitution, its principal or overriding purpose must be the regulation of terms and conditions of employment of workers.

Where the principal purpose for which trade union is being carried on has ceased to be that of regulating the terms and conditions of the employment of workers. The Registrar of trade unions is empowered to cancel the registration of such a union. While a trade union can alter its rules by any method provided in its rule book, it is obligatory for the Registrar not to register the altered rules, if the alteration has eliminated the principal purpose. This statutory provision has been justified by the court in the case of *Re Union of Ifelodun Timber Dealers and Allied Workmen*³¹

³⁰ Trade Unions Act 2004 s 12(2)

³¹ (1964) 2 ALL NLR 63

where an application to register a combination of persons, calling itself the Union of Ifelodun Timber Dealers and Allied Workmen as a trade union was refused by the Registrar of Trade Unions on the ground that 'it is a combination of traders and not registrable as a trade union under the law'. The court held inter alia that whether a combination is a trade union or not, does not depend on its constituents but on its principal purposes under the Trade Unions Act, and that since the present association does not come within the definition of trade unions, the appeal was dismissed because its objects are for protection and expansion of the timber trade and welfare of all persons, whether they be workmen or employers, as against the purpose provided by the Act.

This does not preclude a trade union to have other complementary purposes. Section 1(2) of the Trade Unions Act 2004 provides that a trade union might as well have other reasons of formation apart from the principal purpose as being specified in section 7 (1) (d) and Section 29 (2) (b).

The Concept of Strike

It is an incontrovertible fact to posit that it has not being easy with employees in Nigeria right from the genesis of trade unions. Employees continue to struggle in the hands of successive administration from federal, state down to the local government. Honestly, it is difficult to state that the abuses on labour unions were grave during the military era because government interference continues even under this democratic dispensation. Industrial relations all over the world are functions of miscellany of factors coloured by political, economic and legal considerations amongst others. The relationship between the employers and employees continues to be a turbulent one and a source of unending litigation in Nigeria. This situation is further exacerbated by the fact that the government at all levels continues to remain the biggest employer of labour and had thus spurned intricate rules of civil service regulations on tenure and pensions. Thus, as the largest single employer of labour, the government plays the conflicting role of employing the largest labour as well as prescribing policies to guide labour-management relations. The average Nigeria worker is therefore, in a quagmire; he is to contend with his employer on one hand to ensure that obnoxious policies that have the capacity to stymie his welfare are not made. When this bleak situation is juxtaposed with the legal principle of 'hire and fire' which allow an employer of labour to terminate the relationship he has with an employee

at will, even for no good reason, excepting those employments with statutory flavour³², the conundrum of the Nigerian workers is obvious. With the need to earn a living and meet personal and civil responsibilities, an employee must strike a balance between keeping his job allowing himself to be swayed by the whims of his employer. With the unequal bargaining power between employers of labour and the suppliers of labour which is always in issue, it appears that the latter is vulnerable.

Generally, right to strike is a potent tool that employees use to bring about the balance; their only medium/method to coerce their employer into accepting their demands for better conditions of service through the mechanism of collective bargaining and is one that is crucial in a democratic society like ours³³, it is a generic form used to represent concerted efforts which employees may take in order to exert pressure on the employers so as to persuade or compel them (the employers) to accede to their demands or claims.

Formal definitions of strike had been given both by legislations and through various decisions of the courts, and through the basic understanding of the phenomenon of strike is similar worldwide, the definitions given to represent the concept will certainly be coloured by the peculiarities of the jurisdiction. In the case of *Tram Shipping Corporation v Greenwich marine incorporation*³⁴, Lord Denning. MR. explained that a strike is:

A concerted stoppage of work by men, done with a view to improving their wages or conditions of employment, or giving vent to a grievance or making a protest about something or sympathizing with other workmen in such endeavor. It is distinct from stoppage brought by an external event such as a bomb scare or by apprehension of danger.

³² *Iderina v Rivers State Civil Service Commission* (2006) 7 WRN 11; *United Bank of Nigeria v Ogboh* (1995) 2 NWLR (pt. 380) 647 at 669, *University of Nigeria Teaching Hospital Management Board V Hope Chinyelu Nnoli* (1994) 8 NWLR (Pr. 363) 376; *Olurntoba Oju & Ors. v Abdul-Raheem & Ors* (2009) 26 WRN1; *Olufeagba v Abdul-Raheem* (2010) 17 WRN 23.

³³ *Crofter Hand Woven Harris Tween Co. v Veitch* (1942) 1 ALL ER 142; (1942) ac, 435, p. 453

³⁴ (1975) ALL ER 898, p. 990; SEE, ALSO *Miles v Wakefield Metropolitan District Council* (1987) 2 ALL ER. 1081, P. 1097

Under Nigeria law, section 48 of the Trade Disputes Act³⁵ provides that:

Strike means the cessation of work by a body of persons employed acting in combination, or a concerted refusal or a 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 persons or body of persons employed, or to aid other workers in compelling their employer or any persons or body of persons employed, to accept or not to accept terms of employment and physical conditions of works.

The Act further defined cessation of work to include deliberately working at less than usual speed or with less than usual efficiency; and refusal to continue to work includes a refusal to work at usual speed or with usual efficiency. Four elements in the definitions of a strike which are deemed to be essential are as follows:

That there must be cessation of work and that the cessation of work must be as a result of a concerted effort brought about by a combination of persons. The strike must be against an employer and the goal for which the tool of strike is employed must be in connection with a dispute³⁶ involving the terms of employment and physical conditions of work.

It is also important to note here that the current state of our laws in Nigeria does not really encourage the rights of workers to embark on a legal strike action; the onerous conditions that are required to be met before workers in Nigeria can lawfully embark on a strike action operates to cripple the right of workers to strike. For instance, *Section 6 (d) of the Trade Unions (Amendment) Act, 2005* which provides that before workers can embark on a strike action in Nigeria; they must have exhausted the statutory procedure for settlement of trade disputes under the Trade Disputes Act. The procedures are outlined in Sections 18 and 43 of the Trade Disputes Act. The provisions of the *Trade Disputes Act* introduced both voluntary and compulsory settlement procedures. The situation is that in summary, the right to legal strike is allowed in theory whereas it is disallowed in practice.

³⁵ Cap. T8, Laws of the Federation of Nigeria, 2004

³⁶ *National Union of Road Transport Workers v Ogbodo & Ors* (1998) 2 NWLR (Pt. 537) 189

Local Sources of Right to Strike in Nigeria

Generally, in Nigeria, there is no express statutory provision which empowers workers to freely embark on a legal strike action. However, there are various statutory provisions restraining trade unions or workers from embarking on a strike action, and also the categories of persons that are qualified to embark on a strike actions and the condition precedent to a strike action in Nigeria even though the right to strike is an integral part of the right ingrained in the personal status of a citizen to choose whom he will serve, which distinguish him from a slave.

The Nigerian experience regarding the exercise of the right to strike by Nigerian workers is not a laudable one; employers of labour (in which the Nigerian government is the major employer of labour) usually do not leave any stone unturned in the bid to frustrate the exercise of the right of workers to legal strike; they result to both physical abuse and legal restrictions to deter workers from embarking on a strike action. Technically the right to strike in Nigeria is derived from workers and trade unions immunities from civil and criminal liabilities whenever they embark on industrial action. This right is accorded workers under the common law and local legislations³⁸. The local legislations relied on here do not expressly provide for the right to strike but however, their provisions are referential.

For instance, Nigerian workers can rely on section 518A (1) of the Criminal Code³⁹ which provides that:

The provisions of sections 516 to 518 shall not apply to an agreement combination of two or more persons to do or produce to be done any act in contemplation of furtherance of a trade dispute of such act contributed by one person would not be punishable as an offence...

Again Section 24(1) of the Trade Union Act⁴⁰ provides that:

An action against union (whether of workers or employers) in respect of any tortuous act alleged to have been committed by or on behalf of the trade union in contemplation of or in furtherance of a trade dispute shall not be entertained by any court in Nigeria.

³⁸ See promotion, Protection and Restoration of Human Rights (Guidelines for National Periodic Reports) ACHPR Doc. AFR/COM/HRP.5 (iv) (Oct. 1988), Section 11 (10) – (16), reprinted

³⁹ Cap. C38, Laws of the Federation of Nigeria, 2004

⁴⁰ Cap. T14, Laws of the Federation of Nigeria, 2004

The *Ipsissima Verba* of Section 44(1) of the Trade Unions Act also reflect the right to strike:

An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable in tort on any one or more of the following:

- (a) That it induces some other person to break a contract of employment; or
- (b) That it is an interference with the trade, business or with the right of some other person to dispose of his capital or his labour as he wishes; or
- (c) That it consists in his threatening that a contract of employment (whether one to which is a party or not) will be broken; or
- (d) That it consists in his threatening that he will induce some other person to break a contract of employment to which that other person is a party,

When this provision is juxtaposed with paragraph 14 of the first schedule of the Trade Unions Act, which is to the effect that the Rules Book of trade unions must contain a provision that no member of a trade union shall take part in a strike unless a majority of the members has in a secret ballot voted in favour of the strike it becomes obvious that the right to strike is one known to law but there is no express provision for workers to embark on a strike action. Just like the Trade Unions Act, the Trade Dispute Act⁴¹ does not expressly provide for the right to strike but certain provisions of the law acknowledge the existence of the right to strike

The Banks and other Financial Institutions Act, 2020⁴³ expressly recognized the right of bank workers to go on strike and at the same time accorded protection to the banks from incurring liability by reason of their inability to open to customers due to strike action by their employees⁴⁴. The Nigerian courts have been called upon to determine the legality of strike embarked upon by trade unions and the courts have been fair in its judgments. In the case of *Adams Oshiomole v Federal Government of Nigeria*⁴⁵ the court of appeal held that the strike action embarked upon by the Nigeria Labour Congress to protest incessant fuel hike was illegal as the

⁴¹ (n35)

⁴³ BOFIA 2020

⁴⁴ BOFIA 2020 s 45

⁴⁵ (2007) 21 WRN 100; (2007) 8 NWLR (Pt. 1035) 58

right of Nigerian workers to free assembly and freedom of association cannot be exercised outside the purview of the Trade Dispute Act. Also more revealing is the position of the court of Appeal in the case of *Union Bank of Nigeria Plc v Edet* where Uwaifo, JCA, held that:

The failure to act in strict compliance with collective labour agreement is not a justifiable reason to embark on a strike. Its enforcement lies in negotiations between the union and the employer and ultimately in strike action should the need arise and it be appropriate.

From the decisions of the court of Appeal in the cases of *Adams Oshiomole v Federal Government of Nigeria* and *Union Bank of Nigeria v Edet* cited above, it can be deduced that though the right to freedom of assembly and association are fundamental rights by virtue of Section 40 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), the right to strike is not a right; it is indeed seen as a privilege. Pitt distinguished between a right and a privilege when he summarized: it is important to distinguish between a liberty to embark on strike action, and a right to do so. If you have a right to do something, not only you are legally able to do it, but others are under a duty not to interfere without action. If you have only a liberty to do something, then, all it means is that you are not under a duty to refrain from such action. It does not mean that other people are necessarily wrong in tempting to stop you; they have no duty to let you behave in this way. Thus, a liberty is more precarious than a right would be.

The right to strike is not one exercised by employees based on hunches; it is one known to law. Although at the international level, the International Labour Organization Conventions and Recommendations, the African Charter on Human and Peoples Rights which had been domesticated as required by Section 12 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) amongst others provide forth right to strike. It is important to state here that at the domestic level, the Trade Unions Act, the Trade Disputes Act and the 1999 Constitution, amongst others, provides only the source of the right to strike. Therefore, the right to strike is more of a privilege; there is no domestic legislation that expressly provide for strike as a right. According to Chianu, whereas employers pretend to be deaf to labours' hues and cries, they suddenly develop the hearing instincts of dogs, when strike language is spoken.

International Sources of the Right to Strike in Nigeria

The foremost international source of the right to strike originates from the International Labour Organization (ILO) which is the United Nations Agency responsible for upholding international labour standards. The ILO convention is the most important source of all international labour law and has a reputation for an established labour tradition and jurisprudence.

Although the right to strike is not expressly provided for in any of the organization's international labour conventions and recommendations, the absence of such express provisions does not mean that the ILO have no regard for the right to strike or refuses to deal with the appropriate means of safeguarding its protection. In fact, in its regards for workers' right to strike, the ILO has passed two (2) resolutions which provided guidelines for ILO policy on the right to strike in member states.

1. The Resolution concerning the Abolition of Anti-Trade Unions Legislation in the member states of the International Labour Organization which enjoys member states to adopt international laws and instruments that will ensure the effective and unrestricted exercise of trade union's rights, including the right to strike by workers.
2. The Resolution Concerning Trade Union Rights and their relation to civil liberties' which called on member states to take necessary action to ensure full and universal respect for trade union's right their broadest sense, including the right to strike⁴⁶.

Apart from these resolutions, the decisions of the ILO supervisory bodies, especially those of the committee on the Freedom of Association (CFA) and the Committee of Experts on the Application of Conventions and Recommendations (CEACR) provided evidences that shows that the ILO acknowledges the existence of workers' right to industrial action; the CFA has ruled and proclaimed that strikes are part and parcel of trade union activities and the right to strike as one of the essential means available for workers and their organization for the promotion and protection of their

⁴⁶ ILO, 1970 pp. 735-736; see also B Gernigon, A. Odero, and H. Guido, *ILO Principles Concerning the Right to strike* 137(4) *International Labour Review* (1996) P. 1; J. Hodegs Aeber and O. Odero, *Principles of the Committee on Freedom of Association Concerning Strikes* 126 (5) *International Labour Review*, (1987) 543535 cited by OVC Okene

economic and social interests⁴⁷. The CEACR defined right to strike to include not only interests that have to do with better working conditions and pursuing collective demands of an occupational nature, but also with seeking solutions to economic and social policy questions and to labour problems of any kind which are of direct concern to workers⁴⁸. However, the ILO does not regard the right to strike as an absolute right; in fact, the ILO supervisory bodies have always referred to the right to strike when they have considered applications of Article 3 and 8 of the freedom of Association and Protection of the Right to Organize Convention 1948 (No. 87) by the various member states as rights subject only to the reasonable restrictions that might be imposed by the law. For this reason, three (3) exceptions had been created, outside of which any prohibition or restriction of the right to strike is considered contrary to international labour law. The first exception borders on the right of members of the police and armed forces to strike; the persons affected herein are excluded from the ambit of convention No. 87 from which the right derives and so can be denied the right to strike. In the second exception, public servants “exercising authority in the name of the state” may be prohibited or restricted from exercising the right to strike. The third exception relates to employees in ‘essential services’, which are restrictively defined as service ‘whose interruption would endanger the life, personal safety or health of the whole or part of the population’. As laudable as the ILO’s conventions are; their applicability to Nigeria is uncertain in the light of Section 12 (1) of the Constitution⁵¹ which demands that international treaties be domesticated into laws before they become applicable as laws in Nigeria. In the case of *African Reinsurance Corporation v Fatoye*⁵², the Supreme Court while interpreting section 12 of the 1979 Constitution which has been re-enacted as section 12(1) of the 1999 Constitution held that a treaty that has been ratified by Nigeria, has no force of law until it has been enacted into law by the national legislature. Thus an international treaty does not

⁴⁷ ILO Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee Fifth (Revised) Edition, Geneva: *International Labour Office* (2006) , paras. 521-522 cited by OVC Okene

⁴⁸ ILO Freedom of Association and Collective Bargaining: General Survey by the Committee of Experts on the Application of Conventions and Recommendations Report in (4B), *International Labour Conference 69th Session* , Geneva 1983, para. 200 also cited by OVC Okene

⁵¹ CFRN1999 (as amended)

⁵² (1986) 3 NWLR (pt. 32) 811

become enforceable within Nigeria's domestic jurisdiction unless incorporated into the municipal law by legislation.

The court in the case of *Registered Trustees of National Association of Community Health Practitioner of Nigeria v Medical and Health Workers Union of Nigeria*⁵³, where the issue for determination at the Supreme Court was whether the Court of Appeal was right when it held that the provisions of clauses 87 and 89 of the International Labour Convention have no legal force in Nigeria since the Convention has not been ratified by the National Assembly; even though signed by Nigeria, the Supreme Court was required to interpret the provision of Section 12(1) of the 1999 Constitution. Mukhtar, JSC, who delivered the judgment of the Supreme Court, had this to say on the provision of Section 12 (1) of the 1999 Constitution:

*In essence, what the legislature meant or intended is that for a treaty to be valid and enforceable, it must have the force of law behind it, albeit it must be supported by the law enacted by the National Assembly, not bits and pieces of provisions found here and there in the other laws of the land, but not specifically so enacted to domesticate it, to make it a part of our law. To interpret similar provisions as being part of the international labour organization conventions just because they form parts of some other enactments like the African charter on Human and people's Rights etc will not be tolerated*⁵⁴.

In line with the demands of Section 12 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) the charter had been enacted into law as African Charter on Human and People's Rights (Ratification and Enforcement) Act, Cap. A9, Laws of the Federal of Nigeria, 2004.

In summary, in the celebrated case of *Abacha v Fawehinmi*⁵⁶, the Supreme Court held that since the African charter has been incorporated into Nigerian Law, it enjoys a status higher than a mere international convention, it is part of Nigerian *Corpus Juris*. Although the charter did not expressly provide for the right to strike or trade unions rights, a compound reading of Articles 5, 10 and 15 of the Charter provides support and basis for the right to strike and trade unions right. Nevertheless, despite the fact that there is no express provision(s) in the charter on trade unions rights, the commission set up under the charter has provided detailed guidance on the trade unions rights in its guidelines for the submission of state reports where states are obliged to

⁵³ (2008) 2 NWLR (Pt. 1072) 575

⁵⁴ (n16) paras C - E

⁵⁶ (2000) LPELR – 14(SC)17

provide information on laws, regulations to promote, regulate or safeguard trade unions rights, which includes the right of trade unions to function freely, collective bargaining and the right to strike.

Conclusion

According to Chianu, whereas employers pretend to be deaf to labours' hues and cries, they suddenly develop the hearing instincts of dogs, when strike language is spoken. However, as beautiful as this may sound, there is no express statutory provision which confers right to embark on a lawful strike on employees in Nigeria but there are several statutory provisions restraining employees from embarking on a strike action.

This position has been given judicial blessing in the celebrated case of *Adams Oshiomole v. Federal Government of Nigeria* where the Court of Appeal held that the strike action embarked upon by the Nigerian Labour Congress (NLC) under the leadership of Adams Oshomole to protest incessant fuel hike was illegal as the right of Nigeria workers to freely assemble and freedom of association cannot be exercised outside the Trade Dispute Act. It is also important to state that the Trade Dispute Act operates to cripple the rights of workers to strike.

Again, the Court of Appeal in the case of *Union Bank of Nigeria Plc v. Edet*, held that:

Failure to act in strict compliance with collective labour agreement is not a justifiable reason to embark on a strike. Its enforcement lies in negotiations between the union and the employer and ultimately in strike action should the need arise and it be appropriate.

From the decisions of the Court of Appeal cited above, it can be deduced that though the right to freedom of assembly and association are fundamental rights. However, the right to strike is not a right; it is indeed seen as a privilege.

It is high time we do away with the combine effect of Sections 516-518A of the Criminal Code, Sections 23, 24, 43 and 44, of the Trade Unions Act. Employees in Nigeria deserve something similar or better than section 45 of Bank and other Financial Institutions Act, (BOFIA) which expressly recognized the right of bank workers to embark on a strike action and also protect the bank from incurring any liability to any customers by reason only of the failure on the part of the bank to open for business during a strike action.