

AN APPRAISAL OF MINIMUM WAGE LEGISLATION IN NIGERIA*

Abstract

The paper examines minimum wage legislation in Nigeria with a view to ascertaining their socio-legal implications. The paper found that minimum wage legislation has a checkered history in Nigeria. The first nationally negotiated minimum wage came into effect on 1 May 2000. The last amendment of the Act was in 2011 and has been due for review since 2015 but no such review has taken place. However, the bill to amend the Act has been passed by the two arms of the National Assembly and is currently awaiting presidential assent. The paper found that the National Minimum Wage Act did not address the problem of casualization of skilled workers by Nigerian Banks and multinational companies. The paper further found that disputes over minimum wage are now within the exclusive subject matter jurisdiction of the National Industrial Court. Finally, the paper found that the deterrent provisions of the Act is whittled down by failure of the amendment of 2011 to review the punishment to be meted out to employers who obstructed Authorized Officers in the cause of their monitoring to ensure compliance with the provisions of the Act by employers.

Keywords: Minimum Wage, Amendment, Exclusive Jurisdiction, Authorized Officers, Casualization

1. Introduction

The right to wages is inevitable and implied in every contract of employment. This right is usually entrenched in most labour enactments. For example, the Labour Act in Nigeria provides for a maximum period of three months from the date of engagement for an employer to provide an employee with a written statement of his terms of employment.¹ This written statement must state the amount of wages the employee is to receive and whether such wages are payable in times of sickness and holidays. Under common law, wages continue during sickness or incapacity until an employer terminates an employment.² However, the Nigerian Labour Act has restricted the right to wages as of right, during holidays or sickness to a paltry twelve working days, wages in one calendar year.³ So vexed is the issue of wages that governments of civilized nations across the world have legislated in one way or the other for a minimum wage receivable by workers.

2. Rationale for a Minimum Wage

The question have frequently arisen as to the rationale for fixing minimum wage by legislation when it is supposed to be one of the matters to be agreed upon between employees and their employers in the course of negotiating their contract of employment. The answer is to be found in an examination of the negotiating power of the two sides to a contract of employment. Apart from unionized industries, negotiating a contract of employment is actually the same as negotiating a deal between non-equals. There is a glaring inequality in the negotiating powers of the worker and the employer in a contract of employment. In most cases, the workers' negotiating power is so weak that the employers in the drive towards maximization of profit can actually exploit this vulnerability of the worker to pay starvation wages to them. Karl Marx has theoretically defended this position in his work, *Das Capital*⁴ where he rationalized that the major source of profit for the capitalist in the production equation was the expropriation of the surplus created by the worker through his labour input in the production process. As extreme and utopian as this view may appear, the fact that the means of production is in a few hands while there are thousands of workers willing to work for peanut wages lends a lot of credence to this reasoning. Consequently, civilized nations across the world, irrespective of political ideology, have therefore resorted to legislating for a minimum wage in order to assure a just and egalitarian society.

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¹ Section 7 Labour Act, Cap Laws of the Federation of Nigeria, 2004.

² *Morison v Bell* (1939) 2KB187; (1939) All. ER 745

³ Section 15 Labour Act, Cap , Laws of the Federation of Nigeria, 2004

⁴ K. Marx, *Das Capital*, (Amsterdam: Verlog von Mersner, 1867) Ch. 26

3. Background to Minimum Wage Legislation in Nigeria

Historically, new wages in Nigeria flow with the political tide. There has been a near absence of nationally structured national minimum wage legislation until the threshold of the 21st century. However, there have been wage increases by government beginning from around 1945 during the colonial era.⁵ This was followed by the 1964 wage increase under the Tafawa Belewa led administration wherein the region based and federal minimum wages were raised from N7.50 and N15.17 to N15.17 and N22 respectively following the recommendations of a Commission set up for that purpose.⁶ At the end of the civil war, there was another interim minimum wage award under the Yakubu Gowon led administration to grapple with the post-civil war hyper-inflationary trends.⁷ Another comprehensive wage review took place in 1974 wherein the minimum wage was pegged at N60 per month. The first nationally negotiated minimum wage was however the minimum wage of N125 under the Shehu Shagari Administration.⁸ The new wage was fixed after a national strike, which led to a protracted negotiation between the Alhaji Hassan Summonu, led Nigerian Labour Congress (NLC) and the Alhaji Shehu Shagari civilian administration, which took over the reins of power from the military on 1st October, 1979. This was the first nationally negotiated minimum wage. It was however after the country returned to civil rule in May 1999 that a new minimum wage of N5, 500 per month which took effect from May 1, 2000 came in existence. This became enacted as Cap 61, Laws of the Federation of Nigeria, 2004, which was later amended by the National Minimum Wage (Amendment) Act, 2011. Currently, a new bill to amend the 2011 Act which provides for a minimum wage of N30,000 has been approved by the senate of the federal republic of Nigeria and is awaiting presidential assent.

4. Appraising the Provisions of the Nigerian National Minimum Wage Act

The National Minimum Wage (Amendment) Act, 2011, states as follows:

As from the commencement of this Act, it shall be the duty of every employer (except as provided for under the principal Act as amended) to pay a wage not less than the national minimum wage of N18,000.00 per month to every worker under his establishment.

2. Any agreement for the payment of wages less than the national minimum wage as prescribed in subsection (1) of this section shall be void and of no effect whatever.⁹

The immediate fall-out from the above provisions is that once a minimum wage is paid, the requirement of the law has been complied with. Thus, it does not cater for a situation where a skilled worker is employed and paid a wage far below his status. As long as what such a worker is paid is not less than the minimum wage, the employer is acting within the law. In Nigeria where the employment of University and Polytechnic graduates by Banks as “casual or “contract” or “out sourced” staff and paid starvation wages, far below their status, this provision of the minimum wage act will not be of much value. Thus, it is not a solution to the problem of casualization of labour. Furthermore, there are exemptions, which also appear to derogate from the right to protect workers from starvation wages. Section 2(1)(a) of the Act for instance exempts establishments with less than fifty workers from the application of the Act. In view of the fact that most workers in organizations with fifty and above employees are usually not unionized, they may be able to ensure a fair wage for themselves through collective bargaining between them and their employers and in other cases, they could resort to industrial action to ensure that they obtain a fair remuneration from their employers. This is not the case for individuals who are employed in small organizations with two, ten or fifteen workers. By excluding these categories of workers, the very critical sectors targeted for protection by the Act are excluded from its application. The new Amendment Act also provides for a fine not exceeding N20,000 to be awarded against any employer who fails to pay the minimum wage as contained in the Act.¹⁰ This amendment is commendable as it appears to have increased the deterrent value of this provision as against the provision for a fine not exceeding N100 under the old Act for a default in the payment of the minimum wage. In addition to payment of a penalty of N20, 000 upon conviction for failure to pay the minimum wage, and a

⁵ This was occasioned by the economic depression that heralded the end of the 2nd world war

⁶ Justice Morgan Commission

⁷ Award by the Chief Simeon Adebayo Wages Committee.

⁸ The Udoji Awards of 1974

⁹ Sections 1 and 2 National Minimum Wage (Amendment) Act, 2011

¹⁰ Section 3(2) *ibid*

continuing fine of N1000 for each day of default, the employer shall also pay such sum as appears to the court to be due to the worker on account of wages, the wages being calculated on the basis of the national minimum wage. This does not also diminish the right of the worker to recover wages due to him by any other proceedings in a court of competent jurisdiction.¹¹

The Act is however vague on how the fine is to be computed in case of serial violations by an employer involving several workers under his employment. Is the N20,000 fine to be calculated per worker underpaid by the employer or is it a generalized fine against a single employer who may be paying several workers a wage that is less than the national minimum wage? Section 5 of the Act provides for the keeping of records of wages or condition of employment evidencing compliance with the Act by employers in respect of whom the Act applies. The Act also empowers the minister of labour to authorize any civil servant of the federation to act for the purposes of the Act and any labour officer within the meaning of the Labour Act is deemed to have been so authorized.¹² The Minimum Wage Act deems offences committed by agents or officers of an employer to have been committed by them personally.¹³ An employer charged with the commission of the offence may however plead that the offence was committed by another person by giving three clear days notice in writing to the prosecutor. Where he is able to establish his innocence, the person who is responsible shall be charged with offence. Section 8 of the old Act prescribes a punishment of a fine not exceeding the sum of #500 or an imprisonment not exceeding three months for anyone who obstruct or hinders an authorized officer in the performance of his duty of entering into premises to monitor and observe the compliance with the provisions of the Act. Surprisingly, the Amendment Act of 2011 did not expand this punishment as it did with the punishment for failure to pay the minimum wage. Finally, the Third Alteration Act to the constitution of the federal republic of Nigerian (CFRN) 1999 (as amended provides a follows:

Notwithstanding the provisions of the sections 251, 257, 272 and anything contained in this constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of National Assembly...

The National industrial Court shall have and exercise jurisdiction to the exclusion of any other Court in civil causes or matters relating or connected with any labour, employment, trade unions, industrial relations and matters arising from the work places, the conditions of services, including health, safety, welfare of labour, employee, worker and matters incidental thereto or connected therewith relating or connected with any dispute arising from national minimum wage for the Federation or any part thereof or matters connected therewith or arising therefrom.¹⁴

According to the foregoing provisions, the National Industrial Court shall have jurisdiction to the exclusion of every other court to entertain civil causes and matters that are connected with the Minimum Wage Act. The Court has also been vested with powers in criminal causes and matters arising from labour, employment and national minimum wage matters. The legal implication of the foregoing provision is that an authorized officer under the Minimum Wage Act would have to bring charges for violation of the provisions of the National Minimum Wage Act before the National Industrial Court and not the regular Magistrate or High Courts.

5. Conclusion and Recommendations

Minimum wage legislation has come a long way in the Nigeria generally arising from tripartite negotiations between workers, governments and employers. Enforcement of compliance with minimum wage legislation by employers is an important step towards the attainment of an egalitarian society. In this period of recession and economical downturn among the comity of nations, government must ensure and expand the application of the National Minimum Wage Act. Contrary to erroneous views that a strict enforcement of the Act will fuel employment, the truth is that in a time where there is an excess supply of labour, exploitation of workers becomes the order of the day. At such times, the bargaining power of an individual worker in the course of negotiating a contract of employment is very low thus necessitating legislative intervention and strict enforcement of existing

¹¹ Section 6 *ibid*

¹² Section 7(1) *ibid*

¹³ Section 7(2) *ibid*

¹⁴ Section 254C (1)(d)(e) of CFRN, 1999, amended by the Third Alteration Act, No.3 2010

labour laws. The Act was however unable to deal with the problem of casualization of skilled and professional workers.¹⁵

The application of the Act should be extended to organizations and workplaces that employ less than fifty workers. These are the most vulnerable group of workers and have no one to fight for them as they seldom belong to trade unions. Since the law does not mandate employers employing less than fifty workers to allow the existence of trade unions in their workplaces, they frustrate every effort by their employees to belong to trade unions. Second, the punishment of employers for non-payment of the minimum wage should be clearly expressed to apply to every individual violation of a worker's wage by an employer. In view of the paltry nature of the amount involved in most cases of minimum wage violation, it will amount to killing a fly with a sledge hammer to restrict proceedings arising from minimum wage violations to the jurisdiction of the National Industrial Court. The Magistrate and Divisional Courts established by most states and the Federal Capital Territory (FCT) have general jurisdictions over civil and criminal causes. Sometimes, financial jurisdiction in civil causes extend to as much as #10,000,000.00 while they have power to punish for simple offences, misdemeanors and even felonies. None of the sanctions provided for under the Minimum Wage Act amounts to punishment for a felony. In this wise, it is recommended that the Magistrate and Divisional Courts should still take minimum wage matters that fall within their monetary and criminal jurisdictions while those that are beyond their financial jurisdiction or for which punishment falls beyond their jurisdiction should go to the National Industrial Court. Appeals should be from decisions of the Magistrate and Divisional Courts on labour, employment and minimum wage matters to the National Industrial Court. Finally, there is a need to increase the punishment for the obstruction of authorized officers in the course of their duties of ensuring compliance with the Act by employers. Contrary to the popularly held belief, that insisting on the application of the minimum wage Act, will find. It is finally recommended that the minimum wage for different categories of workers should be specified under the Act. Workers should be classified into unskilled, semi skilled, skilled and professionals and a minimum wage prescribed under the Act for each category. This will check the abuse of the intendment of the Act by Nigerian Banks and other multinationals who employ Nigerian professionals as casual staff while hiding under the Minimum Wage Act.

¹⁵ T. C. Eze & Amaka G. Eze, 'A Cross National Survey of the Legal Framework for the Protection of Casual Work Arrangements in Some Selected Countries, in *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, 2013.