

TERMINATION OF CONTRACT OF EMPLOYMENT DURING PROBATIONARY PERIOD: NEED FOR JUDICIAL REVIEW*

Abstract

In Nigeria, the probationary employment contract is a fairly contentious subject for human resource. In both private and public institutions in the world, probation is a typical employment practice used to evaluate the competence, stability and suitability of employees for confirmed employment. It is common for many employers to stipulate that the employment contract begins with probation and during the probationary period, more flexible standard is given to review unfair termination. The paper examines the concept of probationary employment and the length of termination notice in the light of employees' quest for security of employment in Nigeria. In adopting doctrinal method of research the paper reveals probation is a period used to ascertain the suitability or otherwise of an employee but employers have used it to enslave workers. To analyse the outlook of Nigerian labour law in regards to the philosophical basis, procedure for determination of probationary employment and implication of promotion on probationary employment and analysis of case law reveals that there is no procedure for termination of probationary employment. Hence, the paper recommends that there is need for judicial review and the labour Act be amended to peck the period of probation in Nigeria and define its incidences.

Keywords: Employment, Probationary, Termination, Judicial, Review and Amendment.

1. Introduction

As in some other parts of the world, employment relationship in Nigeria today is typically based on probationary contract, employers being desirous to understudy an employee with the intention of ascertaining his or her skills, suitability, comportment, dedication to work, fidelity and other qualities a prospective employee should possess, usually employ on probationary basis. Probationary period is a trial period for the new recruits to learn and to be evaluated. The Supreme Court of Nigeria has over the years reiterated the common law principle that in employment contract, an employer need not give reason for termination of employment, employers could terminate employment for good, bad or no reason at all this was established in the case of *Chukwuma v Shell Petroleum Development Company Nigeria Ltd*¹. Most countries including Nigeria includes probationary period in employment contract for both skilled and unskilled workers. For unskilled workers probationary period might not be stipulated in the contract of employment however there are instances where the employer give two weeks or a month probationary period for such employee. This period of probation unlike in the francophone African countries where their colonial French labour code is in existence with the effect that probationary employment cannot exceed six (6) months². In Nigeria the period is at the discretion of the employer. This notwithstanding, it is not uncommon to see employers adopting a uniform system of probation period.³ The employer reserves the right to confirm or terminate the employment at any time throughout the probationary period. The continuation of the employer-employee relationship is inevitably left up to the employer's whim. As a result, probationary employment is currently a hot topic in Nigerian labour law. This labour practice has raised significant concerns. The employer may occasionally give the probationer a promotion during the trial period. This promotion by the employer creates a strong presumption of professionalism or worthiness in the probationer's favour, which begs the question of whether promotion during the probationary period converts the probationer's employment to a confirmed employment or whether a promoted probationer can legitimately be kept on probation. The research seeks to critically analyze the need for judicial review of the position that employers could terminate employee appointment during probationary period for good, bad or no reason at all even before the expiration of probationary period.

2. Meaning of Worker

A worker is a person employed in an industry or business who has no responsibility for managing it⁴. According to the Oxford Advanced Learner's Dictionary a worker is; 'a person who works, especially one who does a particular kind of work; farm/factory/officer workers/rescue/aid/research workers, temporary/part-time/casual workers/ manual/ skilled/unskilled workers; a person who is employed to do physical work rather than organizing things or managing people'⁵. The Black's Law Dictionary defines a worker as 'one who labors to attain an end; especially a person employed to do work for another; a person who offers to perform services for compensation in the employ of another, whether or not the person is so employed at a given time'⁶.

From the above definition it is clear that a worker is a person engaged or employed to do a work or render services to another person for compensation in a form of wages or salaries rather than managing people. Furthermore, the various

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¹(1993) 4 NWLR (Pt 289) 512

² E Chianu, *Employment Law*, Akure, Bemcov Publishers (Nigeria) Ltd, 2006 (Reprint) page 116 – 167.

³ The expertise, skill and knowledge required by an accountant is not the same as that of a cleaner, hence, it will not be ideal to place them on the same probation period to ascertain their suitability.

⁴ B.B.C English Dictionary (1st Ed)

⁵ 6thEd, New York, Oxford University Press, 2000.

⁶ 9thEd, United States of America, Thomson Reuters, 2009

statutes profile a definition of a worker. The Trade Dispute Act defines a ‘worker’ to mean any employee, that is to say any public officer or any individual (other than a public officer) 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 it is a contract of service or of apprenticeship⁷. Similarly, section 54 of the Trade Unions Act⁸ also defines a worker to mean;

any employee, that is to say any member of the public service of the federation or of a state or any individual (other than a member of any such public service) who has enter into or works under a contract with an employer, whether the contract is for manual Labour, clerical work or otherwise, expressed or implied, oral or in writing, and whether it is a contract personally to execute any work or Labour or a contract of apprenticeship.

Also, section 91(1) of the Labour Act⁹ clearly defined a worker as;

any person who has entered into or work under a contract with an employer, whether the contract is for manual labour or clerical work or is expressed or implied or oral or written, and whether it is a contract of service or a contract personally to execute any work labour, but does not include:

- a) any person employed otherwise than for the purposes of the employer’s business, or
- b) person exercising administrative, executive, technical or professional functions as public officers or otherwise , or
- c) members of the employer’s family or
- d) representatives, agents and commercial travelers in so far as their work is carried on outside the permanent workplace of the employer’s establishment; or
- e) any person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished repaired or adapted for sale in his own home or onother premises not under the control or management of the person who gave out the articles or the material; or
- f) any person employed in a vessel or aircraft to which the laws regulating merchant shipping or civil aviation apply.

From the above definitions of the term ‘worker’ it is obviously clear that amongst others, persons exercising administrative, executive, technical and professional functions as public officers or otherwise is excluded and cannot assert a right to the protection of the Act. Section 27 (2) of the Wages Boards and Industrial Council Act¹⁰, provides that; ‘section 91 of Labour Act shall apply for the interpretation of this Act as it applies for the interpretation of the said Labour Act.’ Hence, in *Olaja v Kaduna Textile Co. Ltd*¹¹ the court held that a manager was not a worker for the purpose of the Labour Act Section 73 of the Employee’s Compensation Act 2010¹² however, defined Employee to means;

A person employed by an employer under oral or written contract of employment whether on a continuous, part-time, temporary, apprenticeship or casual basis and includes a domestic servant who is not a member of the family of the employer including any person employed in the Federal, State and Local Government, and any of the government agencies and in the formal and informal sectors of the economy.

Section 91 (1) of the Labour Act¹³ defined industrial worker to include;

any artificer, Journeyman, handicraftsman, Canoe man, carrier, messenger, clerk, shop assistant, storekeeper, agricultural Labourer, hotel or catering worker or apprentice and any person or class of persons gainfully employed or normally seeking a livelihood by gainfully employment declared to be such by the minister by order.

A worker includes any employee and employees include any member of the public service of the federation or of a state and any individual. Public services include ‘the civil service, the teaching service, the public corporations, the state-owned companies, the local government, the Nigeria police, the judiciary and university staff. The words ‘servant’, ‘employee’, ‘worker’ and ‘workman’ can be used interchangeably.

3. Definition of Probationary Employment

Probationary employment is simply an agreed trial period for employee to demonstrate his worth on the job, evaluate the value of the position to himself and his company. Probation cannot be on presumption; it must be included in an employment contract prior to the employee's start date. In *Baba v. C.A.T.C*¹⁴, the Court of Appeals defined probationary employment as the initial period of employment during which a newly transferred or promoted employee must demonstrate

⁷ See Sec. 47 (1) of Trade Dispute Act Cap. T 8, Laws of the Federation of Nigeria, 2004.

⁸ Cap. T14 Laws of the Federation of Nigeria, 2004

⁹ Cap. L 1 Laws of the Federation of Nigeria, 2004

¹⁰ Cap. WI Laws of the Federation of Nigeria, 2004

¹¹(1970) N.N.L.R. 42

¹² Laws of the Federation of Nigeria, 2010.

¹³ Cap. L 1 Laws of the Federation of Nigeria, 2004

¹⁴ (1985) 5 NWLR (Pt. 42) 514 at 527.

his or her ability to carry out the job's essential functions before being deemed permanently employed in such positions. To put it another way, it is a period of 'trial' or 'test.' This is a timeframe or a certain kind of job that may result in a confirmation or termination. Being on probation does not imply that a person ceases to be an employee of an organization. Where an employer 'employs' an employee with the understanding that the employment is subject to either confirmation or termination or further extension with the aim of ascertaining the employee's ability, capacity, skills, knowledge, fidelity and any other criteria which are usually known to the employer but unknown to the employee as a pre-condition for permanent or confirmed employment, it is a period of test or probationary period. The probationer is entitled to remuneration like a confirmed employee but his name in the employer's list of employees can be described as 'written on sand or with pencil which can be erased or blown off by the wind of incompetence.' The probationer does not enjoy the benefit of employment security like an employee in a confirmed employment. The National Industrial Court of Nigeria (NICN) affirmed this in *Bishak v. National Productivity Centre & Anor*¹⁵ when in determining the nature of probationary employment it held that an officer on probation does not enjoy the same condition of service with an officer whose appointment has been confirmed. His status in the establishment is more or less temporal during the period of probation hence the process of his removal is not subject to strict adherence to Rules as is the case with a confirmed officer. In regards to making an employer vicariously liable, his actions or omissions can make his employer just a liable as confirmed staff member in this regard. Thus, an employer cannot shield themselves from responsibility by hiding behind probation¹⁶.

4. Termination of Probationary Employment

The Nigerian employment law has been discriminating towards probationer employees because of the defect in common law that allows an employer to hire and fire at will, for good, bad or no reason at all¹⁷. Over the years probationary employment contract has become an hot topic amongst human resources practitioners and some employment lawyers, as there is constant debate around the powers conferred on an employer, undoubtedly, irrespective of the employers' right to hire and fire at will, employers are not always right.¹⁸ Sometimes they can act unreasonably toward their workers for personal reasons not pertaining to performance, operation and conduct.¹⁹ In such situations, they can act and take awkward decisions of dismissing employees without considering the required formal procedures and policies.²⁰ Indeed, this right can easily be abused because the intention could be to avoid some genuine obligations implied or expressly stated in the contract of employment.²¹ In Nigeria there are no express statutory provisions guaranteeing the right against unfair termination or dismissal. The Nigerian Constitution does not guarantee workers such rights even though job security should be seemingly indirectly deduced from the fundamental objectives and directive principles of the Constitution, even though the African charter, which has been domesticated in Nigeria,²² provides for right to work, A critical examination of these rights mentioned showed that there is no express provision for the right to fair dismissal. A third amendment²³ however introduced to the Nigerian Constitution²⁴ brought about some significant changes to Nigerian labour jurisprudence. Approximately of the principal changes are the exclusive jurisdiction given to the National Industrial Court with respect to its extensive powers and the introduction of the concept of unfair labour practice. Section 254C(1)(f) provides that: 'notwithstanding anything contained in the Constitution ... the National Industrial Court shall have and exercise jurisdiction to the exclusion of any other Court in civil cause and matters relating to or connected with unfair labour practice or international best practice in labour, employment and industrial relations matters.'²⁵

Through juridification²⁶, the National Industrial Court (NICN) has interpreted section 254C(1)(f) to mean that the NICN can apply international best practices on labour and industrial related matters even though such international best practice does not form part of our laws.²⁷ Recognized international best practice on labour and industrial related matters can be found in international labour treaties, foreign labour laws, or conventions. Before the enactment of the 1999 Constitution Third Alteration Act of the Federal Republic of Nigeria, international treaties were not enforceable directly as part of the

¹⁵ (2015) 57 NLLR (Pt. 194) 1.

¹⁶ Section 73 of Employee Compensation Act, 2010 defined an employee to include a personal employed on temporal basis. See also D. T Eyoungdi, 'An Analysis of Casualization of Labour under Nigerian Law' Vol. 7, No. 4 (December) *The Gravitas Review of Business and Property Law*, 2016, P. 109.

¹⁷ *Ajuzi v. FBN Plc* [2016] LPELR-40459(CA); *Oniga v. Government of Cross River State & anor* [2016] LPELR-40112(CA); *National Electric Power Authority v. John Ojo Adeyemi* (2007) 3 NWLR (pt. 1021) 315; *Longe v. First Bank of Nigeria Plc* [2010] 2 CLRN 21 at 54; *Arinze V. First Bank* (2004) 12 NWLR (pt.888) at 663.

¹⁸ *Aloysius v. Diamond Bank Plc* [2015] 58 NLLR (Pt. 199) 92 at 134.

¹⁹ *Olu Ibiroga v. The Council, the Federal Polytechnic Yaba* [2015] 63 NLLR (Pt. 223) 343.

²⁰ *Ikehhide v. Lagos University Teaching Hospital Management Board*, CCHCJ/6/74, 715; *Maiza v. Taylor Woodrow of Nig. Ltd*, CCHCJ/12/72, 52; *Olaniyonu v. British American Insurance Co. Ltd*, [1974] 1 NMLR, 56

²¹ *Abayomi Adesunbo Adetoro v. Access Bank Plc* unreported Suit No. NICN/LA/293/2013, the judgment of which was delivered on 23rd February 2016.

²² . See African Charter on Human and Peoples Rights (Ratification and Enforcement) Act Cap A10 LFN 2004. See also *Ogugu v. The State* (1994) 9 NWLC (Part 366) 1 at 26-27; *Abacha v. Fawehinmi* (2000) 6 NWLR (Part 660) 228.

²³ The Constitution of the Federal Republic of Nigeria 1999 as amended by the Third Alteration Act.

²⁴ Constitution of the Federal Republic of Nigeria 1999 as amended.

²⁵ Section 254C (1) (f) of the Constitution of the Federal Republic of Nigeria 1999 as amended by the Third Alteration Act.

²⁶ It is a process through which law comes to regulate an increasing number of different activities. The Constitution of the Federal Republic of Nigeria (Third Alteration Act) 2010.

²⁷ *Aloysius v. Diamond Bank Plc* [2015] 58 NLLR (Pt. 199) 92 at 134.

domestic law until they are ratified and domesticated by an Act of the National Assembly, which is the federal legislature or the legislative arm.²⁸ The enactment of the 1999 Constitution Third Alteration Act and the interpretation of section 254C (1)(f) by the NICN, however paves the way for an unhindered application of international best practices in labour related matters. Thus, international labour treaties and international labour laws are directly applicable but the Act is silent on the provision of giving a valid reason and the judiciary is still reluctant to give strict interpretation to a contract of employment in terminating probationary contract of employment, thereby allowing probationary period to expired before termination is possible.

Over the years the Supreme Court of Nigeria has reiterated the common law principle that in an employment contract, an employer has right to hire and fire an employee and need not give any reason to justify such termination as stated in the case of *Babatunde Ajayi v. Texaco Nigeria Limited & Ors*²⁹, the Supreme Court held that in an ordinary case of master and servant relationship, a master can terminate the contract with the servant at any time with or without reasons at all, provided the termination is in accordance with the terms of the contract. An employer always deserves the right to terminate the claimant's employment under the law once the conditions in the terms of employment are met. Also, in the case of *Fakuade v. O.A.U.T.H*³⁰, the Supreme Court held that: I think the trial court was right. But generally speaking, a master can terminate the contract of employment with his servant at any time and for any reason or for no reason at all, provided the terms of the contract of service between them are complied with. The motive which led an employer to lawfully terminate his servant's employment is not normally a relevant factor and the court will have no business with such motive but only to give effect to the contract of service between the parties.

It is a fundamental labour law principle that an employer cannot be compelled to retain an employee if he is dissatisfied with just as an employee cannot be compelled to remain with an employer he is no longer willing and ready to work for.³¹ The mere fact that an employee is placed on a probationary appointment does not mean nor could it be implied that, his appointment cannot be fully terminated within the probationary period on reasonable notice as the purpose of putting the employee on probation is to give the employer an assurance that the employee is a fit and proper person to be placed on permanent/confirmed employment.³² In *Ihezuekwu v. UNIJOS*³³ the Supreme Court held that, the essence of probationary appointment is that, the employer retains the right not to confirm the appointment after a specified period while the contract of employment provides that the appointment is subject to a probationary period of a certain length of time, this does not give the employee a legal right to be employed for that length of time and the employer may lawfully dismiss him before the expiry of that date. Thus, a probationary employee has a legitimate expectation of confirmation at the end of the probation but this expectation is not laden with a right to complete the probation period as he who has the power to hire also has the power to fire whenever the situation arises.

Interestingly, in recent times, the National Industrial Court of Nigeria (NICN) seems to be departing from the old laid down position of the Supreme Court, In the case of *Ebere Onyekachi Aloysius v. Diamond Bank plc*³⁴ the court held 'Flowing from the above, I find that it is now contrary to international labour standard and international best practice and, therefore, unfair for an employer to terminate the employment of its employee without any reason or justifiable reason that is connected with the performance of the employee's work. I further hold that the reason given by the Defendant for determining the Claimant's employment in the instant case, which is 'service was no longer required' is not a valid one connected with the capacity or conduct of the claimant's duties in the Defendant Bank. In addition, I hold that it is no longer conventional in this twenty-first-century labour law practice and industrial relations for an employer to terminate the employment of its employee without any reason even in private employment'. The court made quite a bold move considering the principle of the judicial precedent wherein a court in Nigeria is bound by the decisions of a higher court in justifying its decisions the National Industrial Court stated that:

However, the Termination of Employment Convention, 1982 (No. 158) and the Recommendation No. 166 regulates termination of employment at the initiative of the employer. Article 4 of this Convention requires that the employment of an employee shall not be terminated unless there is a valid reason for such termination connected with his capacity or conduct or based on the operational requirements of the undertaking, establishment or service. The Committee of Experts has frequently recalled in its comments that; the need to base termination of employment on a valid reason is the cornerstone of the Convention's provisions. This is the global position on employment relationship now. It is the current International Labour Standard and

28. Section 12 (1) of the Federal Republic of Nigeria 1999 Constitution (as Amended). Abugu J. 2009; *Abacha v. Fawehinmi* (2000) 6 NWLR (pt. 660) 228 at 288; *The Registered Trustees of National Association of Community Health Practitioners of Nigeria and 2 ors v. Medical and Health Workers Union of Nigeria* [2008] 2 NWLR (Pt. 1072) 575. See also Lordship Ogundare JCA, as he then was in the case of *Osheviri v. British Caledonian Airways Ltd* (1990) 7 NWLR pt. 163 at 507, Section 254C of the 1999 Constitution Third Alteration Act 2010.

³¹ (1987) All N.L.R. 471

²³ (1993) 5 NWLR (PT.291) 47; see also *Taiwo v. Kingsway Stores Ltd*, (1950)NLR 122; *Nwanguu v.Nzekwu* (1957)SCNLR 61; *Amode v. Amode &Anor* (1990) 5 NWLR(pt150) 356.

³¹*Ogbaji v. Arewa Textile Plc.* [2000] 11 NWLR (Pt. 678)326; *Shell Petroleum Co. Ltd. v. Ifeta* [2001] FWLR (Pt. 80) 1617.

³²*Kusamotu v. Wemabod Estate* (1976) 11 S.C. 279; *Ihezuekwu v. University of Jos* [1990] 4 NWLR (Pt. 146) 598 at 615 Para. D.

³³ (1990) 4 NWLR (Pt. 146) 598 at 609 Para. H.

³⁴ (1991) 5 NWLR (pt. 193) 549

International Best Practice. Although this convention is not ratified by Nigeria; but since March 4, 2011 when the Constitution of the Federal Republic of Nigeria, 1999 (Third Alteration) Act, 2010 came into effect, this Court has the power under the Constitution to apply International Best Practice and International Labour Standard to matters like this by virtue of section 254C (1) (f) and (h) of the constitution as amended, this Court can now move away from the harsh and rigid Common Law posture of allowing an employer to terminate its employee for bad or no reason at all.

Similarly in the case of *Obafemi Awolowo University Onabanjo*,³⁵ in which an employee was kept on the job for four (4) months following probation the court held that:

The Appellant had delayed unnecessarily in making up their mind whether to terminate or confirm respondent probationary appointment. By keeping him for four months after the probationary period of three years had expired, they would be deemed by operation of the law to have confirmed his appointment, and the doctrine of 'estoppel by conduct' would operate to prevent the appellant from alleging and treating him as if he was still on probation. Delay defeats equity.

Also, in the case *Amanze v. Union Bank*³⁶, the employee was employed on 9th of May 2014 on a 6-month probationary contract and disengaged on 14th July 2017, with two-week salary in lieu of notice, as unconfirmed employee. In a case delivered on 29th June 2021 by Hon. Justice I. J. Essien of the National Industrial Court, Lagos Division held that the Claimant's service had been impliedly confirmed:

I must add that where the terms of an employment contract such as the one under consideration in this judgment stipulates for confirmation after a period of probation, unless there are reasons to extend the probation period which must be in writing and duly notified to the employee, the defendant is under a duty to confirm the employee after the period of probation. It would be a breach of contract by the defendant for failing to confirm the claimant in this action. The claimant was employed on the 9th may 2014. The confirmation of the claimant was due on the 8th November 2014. The defendant failed to confirm the claimant or terminate her appointment. The defendant continued to keep the claimant in his employment up to 13th June 2017 when they terminated the claimant vide exhibit D5. The claimant is deemed to have been confirmed by operation of the law.

5. Procedure for Termination of Probationary Employment

The traditional common law rule in Nigeria had been that an employer needs not give reason for terminating a contract of employment; he only needs to comply with the procedure for termination in the contract of employment. This was the basis of the common law rule that employers could validly terminate private employments for good reason, bad reason, or no reason at all, so long as they complied with the termination procedure specified in the employment contract. There are two types of employment relationships, the simple master- servant employment and the statutory employment³⁷. To validly terminate a statutory employment, the employer must have regards to the procedure provided in the statute regulating the employment contract.³⁸ For an employment relationship of master-servant, based on the contract, the parties are free to provide a procedure for termination of the employment and are bound to follow such a procedure in order for the employment contract to be validly determined free of liability.³⁹ It is apposite to note that under the master servant employment relationship, an employer is not bound to give reasons for the termination of the employment of an employee but where he gives any, he is duty bound to substantiate it to the satisfaction of the court and an affected employee is allowed to contest the reason so given.⁴⁰ Thus, the question is, whether statutory or not, is an employer under a duty to subject a probationer to procedural fairness in the event of termination of his employment or he can treat him as disposable waste? Generally, there are firm answers to this issue, whether an employee is confirmed or on probation, the employer is under a duty to comply with the terms of contract in regards to termination of employment, there are no laid down procedure for termination of probationary employment or rules other than what is stipulated in the contract of employment, usually employments could be terminated by giving a month notice or salary in lieu of such notice. Just as the employment of a confirmed employee however could be terminated in disregard of the express procedure for its termination on the basis of gross misconduct, the employment of a probationary worker could be terminated in like manner and for the same reason.

³⁵ (2015) 58 N.L.L.R 92

³⁶ (2018) NICN/LA/424/2018

³⁷ *Olaniyan v. University of Lagos (No. 2)* [1985] 2 NWLR (Pt. 9) 599; *Iderima v Rivers State Civil Service Commission* [2015] 58 N.L.L.R. (Pt. 199) 1; *Union Bank of Nigeria Limited v. Chukwuelo Charles Ogboh* [1995] 2 NWLR (Pt. 380) 647 at 653; *Eperokun v. University of Lagos* [1986] 4 NWLR (Pt. 34) 162; *National Electricity Power Authority v. Adesaaji* [2015] 58 N.L.L.R. (Pt. 202) 498; *Egbe v. union Bank Plc & Anor* [2015] 58 N.L.L.R. (Pt. 200) 192; *Udo v. Cross Rivers State Newspaper Corporation & Anor.* [2015] 59 N.L.L.R. (Pt. 203) 1.

³⁸ *New Nigerian Bank v. Oniovosa* [1995] 9 NWLR (Pt. 419) 327; *Attorney General of Kwara State v. Abolaji* [2009] 7 NWLR (Pt. 1139) 199.

³⁹ *C.B.N. v Dinneh* [2010] 17 NWLR (Pt. 1221) 125.

⁴⁰ *Olatunbosun v. NISER* [1988] 3 NWLR (Pt. 80) 25; *Samuel Isheno v. Julius Berger Nigeria Plc.* [2014] 43 NLLR (Pt. 136) 320.

In the case of *Benjamin Iorember Wayo v. Judicial Service Commission Benue State*⁴¹, the plaintiff / appellant sued the defendants/respondents, challenging the termination of his probationary appointment as a Magistrate II by the 1st respondent. The 1st respondent offered the appellant a temporary appointment, which the appellant accepted and signed an undertaking of honour to be of good behavior. He also undertook to abide by the rules of conduct relating to judicial officers of the 1st respondent. During the probationary period, the 1st respondent received series of allegations against the appellant from members of the public, which included demanding and receiving bribes, conducting mobile court without the authority of the Chief Judge of Benue State, arbitrary use of judicial powers by issuing orders, sealing petrol stations and unlawfully approaching a judge of the Benue State High Court with a view of influencing him on behalf of appellant's friend who was standing trial in the High Court. The appellant was requested to make in writing his representation to the Chief Registrar of the Benue State High Court, which he did. The Chief Registrar wrote to the appellant on the allegations, and of his intention to recommend to the 1st respondent not to confirm the appellant's appointment but to terminate in on the grounds of doubtful integrity. The appellant in his final representation admitted his faults and pleaded to be given one more chance. The 1st respondent, on the recommendation of the chief registrar, terminated the appointment of the appellant, and refused appellant's plea to review the case on compassionate ground. The trial court after hearing arguments of counsel for both parties dismissed the case of the appellant. The appellant appealed to the Court of Appeal. The Court of Appeal held that 'in the termination of the appointment of an officer on probation, on procedure is provided for and none need be followed once the employer is satisfied that there is good case for the termination. No hearing is necessary'. Also in the case of *Teryima Annam v. Benue State Judicial Service Commission*⁴² the Court held that in the termination of the appointment of an officer on probation, no procedure is provided for and none need be followed once the master /principal/employer is satisfied that there is a good case for the termination and the dismissal. It should be noted that the judiciary has not been fair enough in the termination of probationary contract of employment in term of strictly interpretation of stipulated terms in the contract of employment.

6. Recommendations

It is pertinent to state here that the position of Nigeria court in the termination of the appointment of an officer on probation, on procedure is provided for and none need be followed once the employer is satisfied that there is good case for the termination and no hearing is necessary is very unfair and need to be revisited or review in the interest of justice and equity in labour sector. Probationary period of employment is to provide orientation, guidance, on-the-job training, and coaching to the new employee, allowing them the opportunity to learn and fulfil the requirements of their new position. To do this effectively, the supervisor/manager will be required to regularly monitor measure and review the new employee's level of performance during the probationary period. During this period therefore employer should be barred from terminating the employee appointment because it is a period of training and leaning. In a law of contract *simpliciter* parties to a contract are bound by the clear words of the contract and the duty of a court is only to give effect to the contract in the light of the terms agreed upon by the contracting parties and not to make a contract for them⁴³. Since there is time frame provided for the leaning and training in probationary contract of employment, therefore termination of the contract during probationary period would amount to breach of contract of employment. Hence, it is proper and necessary in the interest of justice for Nigeria court to always adopt ordinary meaning or strict interpretation of statute or terms in contract of probationary period of employment to avoid unfair termination of appointment during probationary period.

More so, the constitutional amendment in Nigeria coupled with a genuine attempt to comply with international standards, has allowed a methodical development of dismissal law largely in keeping with ILO standards. Much work although still needs to be done to improve that aspect of the law in Nigeria. The area of improvement bothers on the amendment of section 11 of the Labour Act which provides for the right of the employer to terminate subject only to notice should be amended. The right of the employer to terminate should not be subject to only notice but to a valid reason. The Labour Act should also include a section that stipulates the period for probationary employment and when the employment is deemed to be confirmed. If a dismissal is automatically unfair and the employer fails to prove the reason for dismissal based on issues related to the employee's conduct or capacity the employer should be sanctioned. This will help provide clarity and totally outlaw unfair dismissal in Nigeria. It will also help to introduce procedural steps to be followed by employers to help demystify the concept of unfair dismissal.

In recent time the rules guiding termination of employment evolved by the NICN require employers to ensure that they: (i) strictly comply with the termination procedure in private contracts of employment (including notice period); and (ii) provide valid and justifiable reason(s) for the termination of employment, the tides as it relates to the principle that *he who hires can fire* seems to be changing rapidly and the NICN is at the forefront of the movement as the court is insistent on upholding the principles of good or international best practice in labour and industrial provisions. The termination of employees' appointment therefore without any reason or bad reason may now warrant the sanction of the court in Nigeria in line with recent decisions of the National Industrial Courts of Nigeria upholding the best international labour practices unless some of these recent decisions of the NICN are overturned by the higher court, specifically, the Court of Appeal, which is now the court of final arbiter in respect of labour and employment matters in Nigeria. Despite the absence of a specific reference to unfair dismissal in the Labour Act, workers are nevertheless protected to an extent by juridification of section 245C (1) (f) of the 1999 Constitution as amended by the Third Alteration Act. Thus, as the labour jurisprudence changes, we expect that the legislators react by amending the Labour Act to support and improve labour and industrial relations in Nigeria.

⁴¹ (2006) ALL FWLR, 66 at page 69

⁴² (2006) All FWLR 843 at page 847

⁴³ Delta State Agricultural Development Programme, *Ibusa and Ors v. Mike Iloukwu Ofonye*. (2008) All FWLR (Pt. 402) 1068 at pp. 1087-1088