

**RIGHTS OF EMPLOYEES TO WAGES: A COMPARATIVE ANALYSIS OF NIGERIA AND UNITED KINGDOM\*****Abstract**

The right of employee to earn wages in every employment relations cannot be overemphasized. Wage or remuneration is the motivating factor for the contract of employment. Wage is what the employee gets from the employer in exchange of his labour. When an employee is well remunerated there is a tendency that the employee will be encouraged to optimally perform and vice versa. The right of employees to earn wage is a global phenomenon as a good wage is the driving force for industrial peace and harmony in any employment relationship. The question is whether the Nigeria worker has a right to earn wages. This work conducts an appraisal of the right of employee to wages in Nigeria in comparative analysis with United Kingdom. From the analytical survey of the available literature, it became crystal clear that there are legal frameworks embodying the right of employees to wages in Nigeria, but these legal frameworks does not adequately protect the rights of employees to wages in Nigeria when compared with other jurisdiction. This is the reason why there is mass exodus of Nigerian professional to other countries of the world. This paper contends that there is an urgent need to amend the current legislations on the right of employees to wages in Nigeria to bring employees in Nigeria at par with its counterparts in other jurisdictions on the right to wages especially living wage.

**Keywords:** Rights to wages, Employees, Nigeria, United Kingdom

**1. Introduction**

Every employee has the right to receive wages or remuneration from his employer. This right is provided for both in Nigeria legislations and in international convention and treaties. In Nigeria, there have been attempts made at institutionalizing some safeguards to protect the worker's entitlement to his wages. The government plays a dual role of the highest employer of labour and the regulator of employment relations.<sup>1</sup> Wage is defined<sup>2</sup> as "total emolument paid every month to a worker for performing services on the basis of a forty-hour week howsoever the emolument designated." It is the money payable by an employer to an employee in respect of services at, usually, weekly intervals.<sup>3</sup> The Labour Act<sup>4</sup> defined wages as remuneration or earnings (however designated or calculated) capable of being expressed in terms of money and fixed by mutual agreement or by law which are payable by virtue of a contract by an employer to a worker for work done or to be done or for services rendered or to be rendered. The Labour Act<sup>5</sup>, the National Minimum Wages (Amendment) Act<sup>6</sup> and a host of other legislations contain provisions to secure this protection, regulation and control of wages. The Labour Act<sup>7</sup> contains specific protection for payment of wages.<sup>8</sup> It is therefore the duty of the employer to pay wages to the employee, arising from their contract of employment or fixed by law, while the employee has the duty to earn that wage by keeping to his part of the bargain. However, even where work is uncompleted, the worker may still be entitled, at least, to a reasonable payment for work done on the doctrine of *quantum meruit*.<sup>9</sup> The rights of employees' to wages in Nigeria are also provided in International Conventions and Treaties. This right is provided for in international convention and treaties such as the United Nation Declaration of Human Rights<sup>10</sup> which states that everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity and supplemented, if necessary, by other means of social protection; this article also provides that everyone without any discrimination has the right to equal pay for equal work. This means that in as far as more than one person perform the same work, the employer is expected to pay them equal amount of remuneration.<sup>11</sup> Another source of the right to wages or remuneration is in Article 7 of International Covenant of Economic, Social and Culture (ICESC) which provides to include; the right of everyone to just and favourable working condition, defined as fair wages with equal pay for equal work sufficient to provide a decent living for workers and their dependants.<sup>12</sup> The International Labour Organization protects wages by providing for regular payment of wages, fixing minimum wage level and the settlement of unpaid wages in case of employer's insolvency.<sup>13</sup>

It is the duty of every employer to pay wages to the employee and it is the right of the employee to be paid his wages. In the case *Browning v Crumlin Valley Collieries Ltd.*,<sup>14</sup> Greer J. had stated that consideration for work is wages and consideration for wages is work. In *Mobil Producing (Nig.) Unlimited & Anor. v Udo*,<sup>15</sup> Omokri JCA, rightly observed that it is well settled in the contract of employment that service and wages are the twin pillars upon which a contract rest. It should be noted that the essence of the contract of service is service, and since service is not the same thing as work, the servant is obliged to serve not to work. So the employee is entitled to wages during temporary incapacitation once willing to work. Therefore by extension, even in the case of absenteeism, it appears the employer is obliged to give the employee benefit of the situation to be heard to explain or defend himself before dismissal.<sup>16</sup> In

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<sup>1</sup> OVC, Okene, *Labour and Industrial Relations in Nigeria* (Port Harcourt, Faculty of Law, Rivers State University, Rivers State) 104

<sup>2</sup> Section 19 (1) National Minimum Wage Act, 2019

<sup>3</sup> L Rutherford & S Bone, *Osborn's Concise Law Dictionary* (8<sup>th</sup> edn, London, Sweet & Maxwell, 1993) 343

<sup>4</sup> S. 91 of the Labour Act Cap L1, 2004.

<sup>5</sup> Cap.L1 LFN 2004

<sup>6</sup> 2019

<sup>7</sup> Cap L1 LFN 2004

<sup>8</sup> Ibid S. 1, 2,3,4,5 and 7

<sup>9</sup>OVC, Okene, *Labour Law and Industrial Relation in Nigeria* (4th edn, Port Harcourt: Faculty of Law, Rivers State University, Port Harcourt, 2019) 101

<sup>10</sup> Article 23 of United Nation Universal Declaration of Human Rights 1945

<sup>11</sup> Oginni Yemi and Adesanya Segun, 'The Workers' Rights in Nigeria: Myth or Reality?' [2013] (2) (1) *International Journal of Business and Management Invention*; Adewunmi Funmi and Adenugba Adebimpe, *The State of Workers' Rights in Nigeria: An Examination of the Banking, Oil and Gas and Telecommunication Sector* (Friedrich-Ebert-Stiftung Publishers 2010) 65

<sup>12</sup> Ibid.

<sup>13</sup> International Labour Standards on Wages <http://www.ilo.org.standard/wages/lang-eng> accessed 15 June 2023.

<sup>14</sup> (1922) 1 KB 522

<sup>15</sup> (2008) 3 WRN 53

<sup>16</sup> *Amadu Bello University v Molokwu* (2003) 9 NWLR (Pt. 825) 625. See also Articles 7, 6(1) and 5(c)(e) of ILO Termination of Employment Convention No. 158

*Underwater Engineering Co. Ltd. v Dubefon*,<sup>17</sup> the respondent, Plaintiff at the High Court, was employed by the appellants as Chief Driver. Following allegation of theft of the appellant company's property the respondent was arrested and arraigned before a Magistrate Court and for that did not go to work between May 1982 and 12<sup>th</sup> October, 1982 after his discharge and acquittal. On 12<sup>th</sup> October 1982 when the respondent asked to know the fate of his employment, he was orally informed that his services were no longer required. It was held that the employee was entitled to his salary from May till October when he was told that his services were no longer required as his employment subsisted till then. The court further observed that the employee's salary became due and his right to it was vested at the end of each month, hence the employer cannot dismiss or terminate his employee's employment with retrospective effect with a view to denying him his vested right to his salary.

It is argued that the *Underwater* case is also authority to assert that absent from duty as a result of arrest, detention and prosecution may not be a breach, since it cannot be said that the employee voluntarily absented himself from work.<sup>18</sup> The learned author further contended that it is settled too that the worker is also entitled to the agreed wages for period of temporary incapacitation due to illness.<sup>19</sup> In *Marrison v Bell*<sup>20</sup> Scott, L.J stated under a contract of service irrespective of the question of the length of notice provided by the contract, wages continue through sickness...until the contract is terminated.

It is argued by the researcher that the position in the *Marrison case* represent the common law position which may not be the general position. The issue of entitlement to wages in cases of temporary incapacitation through sickness or other causes will depend on the terms of the employment. The right to payment of wages pay wages may be implied, express or by statute. Barring any such term to the contrary, the right ought to be implied.

## **2. Legal Framework for Protection of Rights of Employees to Wages in Nigeria**

### **National Minimum Wage Act**

The National Minimum Wage Act<sup>21</sup> made provision for the payment of minimum wage to all employees in Nigeria. The national minimum wage is the amount every employer of labour is expected not to pay below to every of his employee. The national minimum wage is usually regulated by law. The National Minimum wage Act, 2019 repealed the National Minimum Wage Act, 2004 which was actually amended by the National Minimum Wage (Amendment) Act 2011. The philosophy behind the Act is to regulate and control the minimum wage payable in the country by all employers. Fixing of minimum wage is under the Exclusive Legislative List and by virtue of that within the legislative competence of the National Assembly.<sup>22</sup> According to learned authors, the concept behind the minimum wages hinges on three ideas, viz:

- a) It is considered sufficient to satisfy the vital necessities of food, clothing, housing, education and recreation of the worker, taking into account the economic and cultural development of the country.
- b) It represents the lowest level of remuneration permitted, in law and in fact, whatever the method of remuneration or qualification of the worker;
- c) It has the force of law, and is enforceable under the threat of penal or other appropriate sanctions.<sup>23</sup>

Minimum wage is therefore no doubt an important step in addressing the right to human dignity at the workplace.<sup>24</sup> The Act enjoins every employer to pay a minimum wage not less than the national minimum wage of N30, 000.00 per month to every employee in his establishment.<sup>25</sup> It must be noted that National Minimum Wage in Nigeria under the 2011 Act prior to coming into effect of the 2019 Act was N18, 000.00.<sup>26</sup> Prior to 2011, the minimum wage was N5,000.00 per month.<sup>27</sup> The national minimum wage shall be the minimum total amount of money an employer of labour is required to pay the lowest paid worker or employee monthly in his employment.<sup>28</sup> Any agreement for the payment of wages less than the national minimum wage as prescribed by the Act is void.<sup>29</sup> The Act exempts some categories of employers from the payment of the national minimum wage.<sup>30</sup>

### **Labour Act**

The Labour Act<sup>31</sup> provides specifics provisions for the protection of the right of employees to wages. They includes: protection against payment in kind; protection against interference with worker's freedom to dispose of wages as he deems fit; and protection against unreasonable or unfair deduction of wages. This study shall examine the provisions of the Act to see how the Act provides protection for the employees.

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<sup>17</sup>. (1995) 6 NWLR (Pt 400) 56, the Supreme Court contrasted the case of *Browning v Crumlin Valley* (*supra*)

<sup>18</sup>. S Erugo, *Introduction to Nigerian Labour Law: Contract of Employment and Labour Practice* (Lagos: Princeton & Associates Publishing Co. Ltd., 2019) 138

<sup>19</sup>. *Ibid*

<sup>20</sup>. (1939) 2 KB 187

<sup>21</sup>. National Minimum Wage Act, 2019

<sup>22</sup>. See item 34, 2nd schedule, Constitution of Federal Republic of Nigeria, 1999

<sup>23</sup>. EA, Oji and OD Amucheazi, *Employment and Labour Law in Nigeria* (Lagos: Mbeyi & Associates (Nig) Ltd., 2015)319

<sup>24</sup>. HC Onuegbu, 'The New Minimum Wage: Strategies for Effective Public/Private Sector Management', Paper delivered at 2021 annual conference of the Chartered Institute of Personnel Management of Nigeria (CIPMN) on 23/9/2010 at Port Harcourt, Rivers State, Nigeria.

<sup>25</sup>. Section 3(1) National Minimum Wage Act, 2019

<sup>26</sup>. See section 2(1) National Minimum Wage Act, 2011

<sup>27</sup>. National Minimum Wage Act Cap N61 LFN 2004.

<sup>28</sup>. Section 3(2) National Minimum Wage Act 2019.

<sup>29</sup>. Section 39(3) *Ibid*

<sup>30</sup>. Section 4(1)(a-d) *Ibid*

<sup>31</sup>. Cap L1 LFN, 2004

### Protection against Payment in Kind

Payment in kind is a system where workers are forced or compelled to accept payment for work done in a manner than a legal tender. This is called trucking system.<sup>32</sup> To avoid or minimize the trucking system, the Act<sup>33</sup> made it compulsory for the wage of a worker to be paid in legal tender. Payment made to a worker in any manner other than as prescribed by the Act makes the contract illegal, null and void.<sup>34</sup> However, they posit that payment may be made by cheque or postal order with the prior consent of the worker.<sup>35</sup> It is submitted that a contract of employment is a contract between the employer and the employee with is clearly regulated by the agreement of the parties. If a worker has agreed expressly with his employer to be paid by any other means other than legal tender, will such agreement be contrary to the provision of the Act as to make it void? It does appear that such agreement such agreement will still be void as it is a trite law that parties must contract within the confines of the law. Any agreement of parties that contravenes the provision of the law will be null and void. The above notwithstanding, the Act provides an exception that the employer may provide food, dwelling place, allowance or other privileges prescribed by law collective agreement or an award as it is customary or desirable considering the nature of the industry or occupation. These provisions are in tandem with the ILO prescriptions on payment of wages. The question of the mode of payment under the Act did not contemplate payment via electronic transfer. It is argued that proactive interpretation can in fact extend consent or permission granted to pay through cheque as enough authority to pay through mobile or electronic banking, as the object remains to achieve the transfer of the wage to the worker's account or to draw the employer's mandate satisfying the wage.<sup>36</sup>

### Protection against interference with the Worker's Freedom to dispose of Wages as he deems fit

The Act<sup>37</sup> prohibits the imposition on any worker, any terms as to place at which, or the manner in which, or the person with whom any wages paid to the worker are to be expended; and every contract between an employer and a worker containing any such terms shall be illegal, null and void. The rationale behind this is that a worker who has been paid wages must be left to spend it in whatever manner he likes. However, by section 6 of the same Act, the Minister of Labour and Productivity may, after consultation with the State Authority, give approval to an employer to establish a shop for the sale of provisions to his workers, but no worker shall be compelled by any contract or agreement, written or oral, to purchase provision at any such shop. No employer shall in any place of employment establish a shop for the sale of provisions to his workers (or permit such a shop to be established or kept otherwise than in accordance with subsection (1) of this section. Also wages shall not be paid to a worker in premises used for the sale of intoxicating liquor or for the retail sale of goods, except in the case of a worker employed on the premises.<sup>38</sup> These provisions it is submitted are intended to protect a worker from expending his/her wages on such intoxicating substances.

### Protection against Unreasonable and Unfair Deduction of Wages

By virtue of section 5(1) of the Act<sup>39</sup> except where it is expressly permitted by the Act or any other law, no employer shall make any deduction or make any agreement or contract with a worker for any deduction from the wages to be paid by the employer to the worker, or for any payment to the employer by the worker, for or in respect of any fines; Provided that, with the prior consent in written of an authorized labour officer, a reasonable deduction may be made in respect of injury or loss caused to the employer by the willful misconduct or neglect of the worker. However, an employer may with the consent of a worker make deductions from the wages of the worker and pay to the appropriate person any contributions to provident or pension funds or other schemes agreed to by the worker and approved by the State Authority.<sup>40</sup> Also, the Act<sup>41</sup> provides for the deduction from wages of worker to trade union check-off dues upon the registration and recognition of any the trade union specified in Part A of Schedule 3 to the Trade Unions Act.<sup>42</sup> The employer's duty to pay wages does not permit unreasonable or unilateral deduction in wages howsoever. This position accords with good and international best practice in labour and covered by the ILO Protection of Wages Convention.<sup>43</sup> In *Adebusola Adedayo Omole v Mainstreet Bank Microfinance Bank Ltd.*<sup>44</sup>, the court held that the reduction of the salary of the Claimant by the defendant violates the spirit of both the Labour Act and the ILO Convention No, 95. The court observed that at the global level a unilateral reduction in the wages and salaries of workers is not acceptable, observing the need to ensure that the Nigerian labour jurisprudence is in tandem with what is obtainable at the international scene found reflection in the National Industrial Court, 2006. Thus, the Act in section 7(6) empowers the court to ensure observance of such international practices. In the case of *Chemical and Non-Metallic Product Senior Staff Association v Benue Cement Company Plc*<sup>45</sup> the National Industrial Court stated the position of the law regarding deductions from salary to wit:

The law treats the issue of salaries with such sacredness that except expressly permitted by law or the workers, no employer is permitted by law to make any deduction from a worker's salary. So when a deduction is made from worker's salary, it must be applied for the intended purpose.

It is important to note that where a worker is over paid, the law allows the employer to make deductions to cover this over payment provided the over payment was discovered within 3 months preceding it.<sup>46</sup> On the whole, the permission rate of deductions from a worker's salary or wages should not exceed one-third of his wages for the month.<sup>47</sup> There other statutory provisions where other statutes

<sup>32</sup>. EA Oji and OD Amucheazi, *Employment and Labour Law in Nigeria. Op cit*,400

<sup>33</sup>. Section 1(1)(a) Labour Act, 2004Cap L1 LFN 2004

<sup>34</sup>. *Ibid*, S. 1 (3)

<sup>35</sup>. *Ibid*, S. 1(2)

<sup>36</sup>. OVC Okene, *Labour Law and Industrial Relations in Nigeria, op cit.*, 106

<sup>37</sup>. Section 2 Labour Act *op cit*.

<sup>38</sup>. *Ibid* section 2(3)

<sup>39</sup>. *Ibid*

<sup>40</sup>. *Ibid* section 5(2)

<sup>41</sup>. *Ibid* section 5(3)

<sup>42</sup>. Cap T14 LFN 2004

<sup>43</sup>. 1949 No. 95

<sup>44</sup>. (Unrep.) Suit No. NICN/LA/341/2012, Judgment delivered on 4th March 2014 by Hon. Justice J. D Peters

<sup>45</sup>. (2005) 2 NLLR (Pt. 6) 466 @ 470 paras C-D. See also on the issue of deduction the case of *Dolphine Fisheries Limited v Agricultural and Allied Workers Union of Nigeria* (2008) 12 NLLR (Pt. 33) 427; *NURTW v Ogbodo* (1998) 2 NWLR (Pt. 537) 189

<sup>46</sup>. Section 5(7) Labour Act 2004

<sup>47</sup>. *Ibid* Section 16

give permission to the employer to make certain taxation related deductions. The Value Added Tax Act and various Personal Income Tax Laws for various states in Nigeria, authorize employers to make certain tax deduction at source and remit to the appropriate authorities.

### **3. Inadequate Wages and Protection of Wages in Nigeria**

The issue of wages and its inadequacy has been a contending issue in Nigeria. The organized labour has continuously maintained that workers in Nigeria are poorly remunerated when compared with their counterparts in other jurisdictions. Indeed, it is said “that the war between the employer and wage earner is always with us.”<sup>48</sup> There has to be a balance between the employer’s drive to maximize profit and the worker’s quest for improved wages and welfare. The position of government as both the largest employer of labour and the regulator of industrial relations has been lackluster in the realization of a living wage fight in Nigeria. The basic conception of a fair wage is postulated by Frederick Engels in the following words:

A fair day’s under normal conditions, is the sum required to procure to the labourer the means of existence necessary, according to the standard of life of his station and country, to keep himself in working order and to propagate his race.

The actual rate of wages, with the fluctuation of trade, may be sometimes above, sometimes below this rate; but, under fair conditions-that rate ought to be the average of all oscillations.<sup>49</sup>

Given the high inflationary rate and the interplay of other economic forces in Nigeria, which has occasioned corresponding sustained astronomic rise in the prices of goods and services and living generally, the question has always arisen as to whether the ‘workers take home pay can actually take him home in Nigeria’?<sup>50</sup> Academic Staff Union of Universities<sup>51</sup> answered this rhetorical question in the following words: “but my take home pay cannot take me home.’

### **4. International Labour Organization’s Standard for Protection of Wages**

International Labour Organization Standards protects wages by providing for regular wages, fixing minimum wage level and the settlement of unpaid wages in cases of employer’s insolvency.<sup>52</sup> Some of the instruments used to achieve these are discussed seriatim.

#### **Protection of Wage Convention, No. 95 of 1949**

Nigeria as a member of ILO ratified this convention on 17<sup>th</sup> October, 1960 and was domesticated and is provided in section 1 of the Labour Act, 2004. The convention provides that wages should be paid in legal tender, at regular intervals, in cases where partial payment is in kind, the value of such allowances should be reasonable. Workers should be free to spend their wages as they choose. Where an employer becomes insolvent, in the distribution of liquidated assets, workers shall enjoy priority.

#### **Minimum Wage Fixing Convention, No. 131 of 1970**

This convention was passed to monitor the fixing of wages by member countries. However, the ILO has observed as follows: “Unfortunately, in many countries, labour inspection services are understaffed and penalties are too weak. As a result, minimum wages too often remain a ‘paper tiger’ rather than an effective policy.”<sup>53</sup> In order to forestall this, it require ratifying States to establish a minimum wage fixing machinery capable of determining and periodically reviewing and adjusting minimum wage rates having the force of law.<sup>54</sup>

#### **Equal Remuneration Convention, No. 100 of 1951**

This convention was ratified by Nigeria on the 8<sup>th</sup> of May, 1974. The convention basically lays down the principle of equal remuneration for male and female workers for work of equal value without discrimination.

### **5. Employees’ Right to Payment of Wages United Kingdom**

Nigeria was a colony of United Kingdom for about a period of 100 years. With this historical background, it will be proper to consider the state of workers in the UK alongside that of Nigeria for the purpose of comparative analysis. The consideration of workers’ rights in the UK will begin with the examination of the laws that seeks to protect the rights of workers and that begins with the Employment Rights Act of 1996. The Employment Rights Act sets out the rights of employees in the United Kingdom including Scotland and Northern Ireland. The Employment Rights Act is an amalgamation and an update on much earlier labour laws in the United Kingdom. Such labour laws includes: the Contract of Employment Act 1963; the Redundancy Payment Act 1965; the Employment Protection Act 1975; and the Wages Act 1986. The law was introduced by the conservative government to consolidate existing law and to extend the personal rights of workers. It is now easier for both businesses and individuals to understand what their rights employees have in one Act. Employees may have been given these rights contractually, either within a business employment policies or its employment contracts with employees. The Employees Rights Act now enshrines those rights in statutory law for all workers. Some of these rights are as hereunder discussed.

In the United Kingdom, every worker has a right to earn wages. The National Minimum Wage Act<sup>55</sup> provides for the minimum wage a worker in the United Kingdom is entitled to receive at the end of every month. The main object of the Act is to make sure that a worker is paid at least the national minimum wage. According to the Act, a person qualifies for the national minimum wage if he is an individual who is a worker, is working or ordinarily works, in the United Kingdom under his contract and has ceased to be of compulsory school

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<sup>48</sup>. P Davies and M Freeland, *Kahn-Freund’s Labour and the Law* (London: Stevens and Sons 1983) 15

<sup>49</sup>. *Infra* in note 58

<sup>50</sup>. OVC Okene, *Labour Law and Industrial Relations in Nigeria, op cit*, 113

<sup>51</sup>. ASUU cited in INE Woruji, *Introduction to Individual Employment Law in Nigeria* (1st ed. Adorable Press Calabar 1999) Preliminary page.

<sup>52</sup>. International Labour Standard on Wages <http://www.ilo.org/standard/wages/lang-eng> accessed 1<sup>st</sup> November, 2023.

<sup>53</sup>. *Ibid*

<sup>54</sup>. OVC, Okene, *Labour Law and Industrial Relation in Nigeria* ( 4th edn, Port Harcourt: Faculty of Law, Rivers State University, 2019) 114

<sup>55</sup>. National Minimum Wage Act, 1998 UK

age.<sup>56</sup> By virtue of section 1 (1) of the Act<sup>57</sup>, A person who qualifies for the national minimum wage shall be remunerated by his employer in respect of his work in any pay reference period at a rate which is not less than the national minimum wage. According to a learned author<sup>58</sup>, the national minimum wage in United Kingdom fluctuates so as to keep income in congruence with inflation. He posited that the national minimum wage in United Kingdom as April 2020 is as follows: Ages 25 years and Above earns 8.72 Pounds; 21 to 24 years earns 8.20 pounds; 18 to 20 years earns 6.45 pounds, under 18 years earns 4.5 pounds, and apprentice earns 4.15 pounds per hour respectively. The minimum wage rates are reviewed annually and usually change in the month of April in case of rise in them.<sup>59</sup> In UK, there is a distinction between National Minimum Wage for those aged 23 years and above and the National Minimum Wage for those of at least school leaving age. This rate changes on April 1 every year. The current pay per hour in UK from April 2023 is as follows: 10.42 pounds for 23 years and above; 10, 18 pounds for ages 21 and 22 years; 7.49 pounds for ages 18 to 20 years; 5.28 pounds for under 18 years; and 5.28 pound for apprentice.<sup>60</sup> Under Regulation 14<sup>61</sup>, the method of determining the national minimum wage is given which is dividing the remuneration for the pay reference period by the number of hours worked. Regulation 38 states: 'that the employer of a worker who qualifies for the national minimum wage shall keep in respect of that worker records sufficient to establish that he is remunerating the worker at a rate at least equal to the national minimum wage'.

Under the Act, the entitlement to a National Minimum Wage is implied by the contract of employment.<sup>62</sup> Thus where the employee is not paid at least the national minimum wage for work done by him then a claim can be filed in the civil courts or employment tribunal for breach of contract or rather more specifically for an unauthorized deduction from wages. If an employer does not pay the national minimum wage, then a complaint can be filed by the employee against the employer for investigation at Her Majesty's Revenue and Customs (HMRC) and could be done anonymously. A notice of arrears and a penalty for not paying the correct rate of pay can be sent by the HMRC to the employer if he has not paid the correct rate. The employers can also be taken to civil court for not paying the National Minimum Wage or National Living Wage. The maximum fine for non-payment is 20, 000 pounds per worker. Employers who fail to pay can be named publicly and banned from being a company director for up to 15 years. In *Annabel's (Berkeley Square) Ltd and Others v Revenue and Customs Commissioners*,<sup>63</sup> the question before the court was whether tips paid at a restaurant (a credit card or cheque) which became the employer's money could count towards the minimum wage when paid on to the employee. It was contended by the Revenue Commissioner that "the money received by the troncmaster was done independently and not on behalf of the employer and thus could not count toward the minimum wage calculation.' Here the employer's appeal failed since the court held that the sum paid by the troncmaster was not the employer's money because, at the point of payment, what was paid to the employee was money forming part of a fund constituting in equity the employees' commonly owned property. The employer could not claim that it paid the relevant money to the employee because it was not its money that was so paid.

## 6. Comparative Analysis of Rights of Employees to Payment of Wages in United Kingdom and Nigeria

Both Nigeria and United Kingdom has legislation on national minimum wage.<sup>64</sup> In UK the wage is on hourly basis on like in Nigeria where wage is on monthly basis. In UK wage is classified base on your age or whether you are an apprentice, and there is a distinction between minimum wage and living wage. Whilst minimum wage is paid to workers of school living age, living wage are given to adults of 23 years old and above. In Nigeria, there is no distinction between minimum wage and living wage. In fact, there is no living wage in Nigeria but there is minimum wage. The current minimum wage for workers in Nigeria is N30, 000 per month. This amount is not nationally paid as some state governors have not been able to pay the N30, 000 minimum wage even when the National Minimum Act made it compulsory in Nigeria. If you take the hourly minimum wage of 5.28 pounds for workers of school living age (leaving out the living wage of 10.42 pounds for ages of 23 and above) and compared with the N30, 000 minimum wage per month in Nigeria, it will be obvious that workers in Nigeria are poorly paid. For example, as at today the 4<sup>th</sup> of November, 2023<sup>65</sup>, the exchange rate of naira to pounds at the black market is 1300( official is 1,050 to 1 naira). The normal working hours in both Nigeria and UK is 8 hours. Therefore  $5.28 \times 8 = 42.24$  pounds per day. If you multiply 42.24 pounds with the current official exchange rate of naira to pounds which is 1,050  $\times 42.24 = 44,352$  Thus, the minimum wage for a school leaver in the United Kingdom for a day in Naira is N44,352. The living wage for workers of 23 years old and above which is 10.42 pounds per hour in UK will be  $10.42 \times 8 = 83.36$  pounds per day. When you multiply 83.36 pound per day with 1,050 you will have N87, 528 per day. A daily pay naira equivalent of a worker's minimum wage in UK is N44, 352, and a daily pay naira equivalent of a worker's living wage in UK N87, 528. Whichever way you look at it, a day wage of a worker in the United Kingdom is higher than the minimum wage of a Nigerian worker. While there is a living wage for a worker in United Kingdom, there is no living wage for a Nigerian worker. The minimum wage in Nigeria is not able to take a worker home at the end of the month even in the midst of economic crises in Nigeria where a litre of fuel which has rising to official price of N6.50 has sparked astronomical increase in the prices of goods and services.

## 7. Conclusion and Recommendations

In conclusion, the Nigerian worker is worst of when compared with his United Kingdom counterpart in wage earnings. No little wonder there is a mass exodus of people from Nigeria to United Kingdom. In Nigeria, there are several laws which seeks to protect employees' wages like every other aspect, what is important is to determine to if wages in Nigeria is adequately protected in reality. It is argued that the Nigerian worker, except in some few sectors such as the financial and oil and sector, where pay is relatively okay, is poorly paid.<sup>66</sup>

<sup>56</sup>. Section 1 (2) National Minimum Wage Act, 1998.

<sup>57</sup>. *Ibid*

<sup>58</sup> A Sathu, *Employment Protection Laws: A Comparative Analysis of Indian Laws Versus UK Laws*, 2020, retrieved from <https://bnwjournals.com/2020/11/05/employment-prtection-laws-a-comparative-analysis-of-indian-laws-versus-uk-laws/> accessed on 20<sup>th</sup> July, 2023

<sup>59</sup>. *Ibid*

<sup>60</sup>. National Minimum and National Living Wage Rates <https://www.gov.uk> accessed on 20/7/2023

<sup>61</sup>. National Minimum Wage Regulation, 1999

<sup>62</sup>. Section 17 of the National Minimum Wage Act, 1998 UK

<sup>63</sup>. CA 7th May 2009, swarb.co.uk, <https://swarb.co.uk/annabels-berkeley-square-ltd-and-others-v-revenue-and-custom-ca-7-may-2009/>. Accessed on 20 June, 2023

<sup>64</sup>. See National Minimum Wage Act, 1998 UK and National Minimum Wage Act, 2019 Nigeria.

<sup>65</sup>. <https://seed.com.ng>pounds-t0-nai...> Accessed on 4<sup>th</sup> of November, 2023.

<sup>66</sup>. FI Jayeoba, 'Wage trend in Nigeria: Historical perspective and Factors' (2012) 6(3) *Labour Law Review NJLIR*, 76

Again, it is mostly the government and the financial and Oil Sector employers that pay above the minimum wage. Most private employers pay below the minimum wage and there is no agency to ensure compliance with these laws. The law had made provision for a National Wage Commission, but this body is non-existing. The non-existence of this body shows the ineffectiveness of our laws in protecting workers wages in Nigeria. Rather than government set up an active standing Wages Commission, there are usually set up ad-hoc Committee to review workers' wages such as the Udoji Award and the Belgore Committee. Akin to the observation of ILO in its Minimum Wage Fixing Convention, 1970, the provision of the law remains a paper tiger in Nigeria. Employees are at the mercy of the employers and it has often taken strikes actions by workers' union to awaken government to its responsibilities. It obvious that with the current economic situation in Nigeria that the Nigerian workers wage is neither protected nor adequate. The N30, 000 minimum wage can no longer sustain an average Nigerian worker who virtually spends all the money in transportation to work considering the hike in transportation fare occasioned by the astronomical increase in fuel price. This research will posit that there is an urgent need to increase the minimum wage in Nigeria and also government must as a matter of urgency put in place machinery to monitor compliance of uniform wage in Nigeria. The policy statement of President Tinubu for a pay rise of N35, 000 for federal government workers is not enough. There is an urgent need for the amendment of the National Minimum Wage Act to provide for a living wage as is the case in United Kingdom instead of minimum wage with a clear enforcement agency.