

A CRITICAL LEGAL EXAMINATION OF CONTRACT OF RESTRAINTS OF TRADE IN NIGERIA
LABOUR RELATIONS*

Abstract

This paper critically examines the contract of restraints of trade in Nigeria labour relations by interrogating its nuances and matters arising therefrom. The contract of restraints of trade in Nigeria labour relations refers to an agreement between an employer and an employee that restricts the employee's ability to engage in certain activities after leaving their employment. This paper assesses the legal framework governing restraints of trade, using relevant cases to determine how the law has been applied in practice. This seminar research will focus more on exploring the legality and enforceability of restraints of trade, the permissible scope and duration, and the consequences of breaching such contracts. By analyzing and quoting notable case precedents and statutory provisions, this seminar aims to provide a comprehensive understanding of the contract of restraints of trade in Nigeria and its implications for both employers and employees. Finally, this seminar will propose comparative analysis between Nigeria and other country, recommendations for the reform of the contract of restraints of trade in Nigeria, aiming to strike a fair balance between protecting employers' legitimate interests and ensuring employees' rights, freedom of mobility, and fair competition within the labor market.

Keywords: Contract of Restraints of Trade, Nigeria Labour Law, Employment Contracts, *Locus standi*

1. Introduction

It is standard for any serious employment contract to contain a restraint of trade clause. An organization exists at the instance of the efforts of both the employer and the employees who are the prime movers of the operational activities of the entity. The two parties therefore, co-exist and interact in the course of the day-to-day operations of the organization. Restraints of trade, in Nigeria's labour legislation, refer to contractual provisions or clauses that restrict an individual's ability to engage in specific trade or business activities after the termination of their employment. These clauses are typically included or spelt out in employment contracts which aim to protect the legitimate interests of employers, such as their trade secrets, confidential information, client relationships, and market position. The Nigerian labour legislation does not provide a specific definition of restraints of trade. However, it establishes the legal framework that governs employment relationships and provides guidance on contractual obligations between employers and employees. Under the Nigerian Labour Act¹ and other relevant labour legislation, restraints of trade clauses are subject to the general principles of contract law, which is reasonable and contrary public to policy which was explicitly stated in *Adetayo & Ors v. Mobil Producing Nigeria Unlimited*² the Supreme Court of Nigeria ruled that non-compete clauses should only be enforceable if they meet the test of reasonableness, including duration, geographical scope, and legitimate business interests as stipulated by *Basson*³ and they asserted argues that a contract in restraint of trade is one that prevents an employee from exercising his/her trade, profession or calling, or engaging in the same business venture as the employer, for a specified period, and within a specified area after leaving employment. It was pronounced that a contract in restraint of trade is one in which a party agrees with any other party to restrict his/her liberty in the future to carry on trade with other persons not party to the contract in such manner as he/she chooses⁴. The court emphasized the need to protect employees' rights to livelihood while balancing the interests of employers. It is important to note that Nigerian labour laws prioritize the protection of employees' right to work and pursue their livelihoods. Hence, restraints of trade clauses that unreasonably restrict an individual's employment opportunities or significantly limit their rights may be deemed unenforceable or contrary to public policy.

2. Historical Background of Contract of Restraint in Nigeria

The historical background of the restraint of trade contract in Nigeria unfolds through the evolution of legal principles and the progression of the legal system. Although rooted in English common law, restraint of trade clauses in the Nigerian legal context have developed distinct characteristics. Before the colonization of Nigeria, the legal systems were diverse, shaped by indigenous customs. The concept of restraint of trade, as conceived in Western legal traditions, may not have had a direct counterpart in pre-colonial Nigeria. The advent of British colonial rule in the late 19th and early 20th centuries left a lasting impact on Nigeria's legal landscape. English common law principles were gradually assimilated into the Nigerian legal system, marking the initial stages of recognizing and incorporating Western legal concepts⁵. However, the application of restraint of trade clauses during this colonial period was likely limited. Nigeria's attainment of independence in 1960 marked a significant turning point. The post-independence era witnessed deliberate efforts to amalgamate English common law with indigenous legal traditions. The latter half of the 20th century saw a pronounced development of labor laws in Nigeria, with the enactment of the Labour Act in 1974, a pivotal legislation governing

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¹ Labour Act, Cap L1, LFN 2004.

² (2001) SC.

³ *Basson et al. Essential Labour Law*, p. 46.

⁴ *Petrofina (Great Britain) Ltd v Martin* 1996 Ch 146.

⁵ *Nordenfelt v Maxim Nordenfelt Guns and Ammunition Co Ltd* [1894] AC 535.

employment relationships. Restraint of trade clauses gained explicit prominence in the Nigerian legal landscape through the evolution of employment contracts and the interpretation of legal principles. Courts began recognizing and enforcing these clauses, particularly in employment contracts⁶. Legal precedents over the years have played a crucial role in shaping the understanding and enforcement of restraint of trade clauses, with landmark cases contributing to establishing principles that balance the protection of legitimate business interests and ensuring fairness in employment agreements. As of the present day, the legal framework for restraint of trade in Nigeria is a blend of English common law and indigenous legal traditions. The Nigerian legal system continues to evolve, considering the complexities of modern employment relationships. Recent years have seen an increase in disputes and litigation surrounding restraint of trade in Nigeria. Employers incorporate such provisions in employment contracts to prevent competitive activities post-employment, while employees argue that these restrictions unduly limit their career prospects. In response to these dynamics, the Federal Competition and Consumer Protection Act⁷ has introduced a paradigm shift in the legal principles governing restraint of trade in Nigeria. The Act acknowledges certain circumstances where contracts in restraint of trade may be enforceable, provided they are necessary to protect an employer's legitimate competitive interest, are not unreasonably burdensome to the employee, and do not harm the public interest. The legal landscape continues to evolve, with recent legal decisions contributing to the nuanced understanding of the enforceability of restraint of trade clauses in Nigeria.

A contract in restraint of trade has been defined as one in which a party covenants to restrict his future liberty to exercise his trade, business or profession in such a manner and with such persons as he chooses⁸. It is a practice whereby an employer and his employee enter into a covenant for the purpose of restricting the right of the employee to engage in particular or specific types of business activities within a given area or locality and/or within a stipulated period of time⁹. Restraint of trade is where an employee agrees to restrict his right to engage in a similar business of his employer for a specific period of time after the termination or end of his employment contract¹⁰. Lord Justice Diplock defined contract of restraint trade as: A contract in restraint of trade is one in which a party (the covenantor) agrees with the other party (the covenantee) to restrict his liberty in the future to carry on trade with other persons, not parties to the contract in such manner as he chooses¹¹. It is a restrictive clause found in employment contracts that limits the liberty of the employee with respect to future employment. Restraint of trade clauses are mostly post-employment contracts. This means it mostly arises immediately after the termination of an employment relationship. A restraint of trade clause seeks to prohibit an employee from engaging in a similar business of his employer, whether on his own or in the employ of another.

3. Theoretical Foundation of Restraint of Trade

The theoretical underpinnings of restraint of trade in Nigeria's labor relations draw from legal and economic perspectives, emphasizing the delicate balance between protecting employers' legitimate interests and preserving employees' rights. The Two primary theoretical frameworks which contributed to the understanding of restraint of trade are the legal doctrine which comprises of the Common Law Principles, In a recent judgment, it was reiterated that the common law principle by stating that an employer must show that the restraint seeks to protect his business interest and it is not contrary to public policy¹², the legal doctrine surrounding restraint of trade in Nigeria initially adhered to the principle that such clauses are void as they are contrary to public policy. This principle, articulated in cases like *Nordenfelt v Maxim Nordenfelt*¹³, reflects the notion that contracts restricting trade are inherently unenforceable unless exceptional circumstances justify their enforcement. The Evolution of the Common Law as the theoretical foundation evolved, especially with the Federal Competition and Consumer Protection Act (FCCPA), recognizing circumstances where restraint of trade may be enforceable. The legal framework now integrates common law principles with modern regulatory considerations. The second theoretical frameworks is the economic rationality which involves the Efficiency and Competition From an economic standpoint, restraint of trade clauses can be analyzed through the lens of efficiency and competition. Proponents argue that these clauses can enhance market efficiency by protecting employers' investments in human capital and intellectual property. Conversely, critics posit that overly restrictive clauses can stifle competition and hinder economic growth. An also the Market Dynamics of the Economic theories with guide to the examination of market dynamics influenced by restraint of trade. Balancing the interests of employers and employees within the broader economic landscape requires a nuanced understanding of how these clauses impact market competition, innovation, and overall economic welfare.

4. Legal Framework of Restraints of Trade in Nigeria Labour Relation

The legal framework governing restraints of trade draws its foundation from contractual agreements, labor legislation, and case laws. While often perceived as a clause with more bark than bite, it can have profound implications for future

⁶ *Herbert Morris Ltd v Saxelby* [1916] 1 AC 688

⁷ (FCCPA) 2019.

⁸ Furmston, (ed.), *International Journal of Advanced Legal Studies and Governance*, Vol. 4, No. 2, August 2013.

⁹ A Emiola, *Nigerian Labour Law* (Emiola Publishers Ltd, 2000) 39.

¹⁰ Furmston, (ed.), *Law of Contract* 13th ed. (London: Butterworths, 1996).

¹¹ *Ibid.*

¹² *7th Heaven Bistro Ltd v. Amit Desphande* (NICN/LA/396/2015).

¹³ *Ibid.*

employment. Typically included in employment contracts, a restraint of trade clause serves to empower an employer to safeguard their business from competition by former employees. Under a restraint of trade agreement, an employee is prohibited from initiating a business in competition with their employer. Additionally, the employee is barred from working for competitors within a specified period and geographical area following the termination of their employment contract. The examination of these legal frameworks will be conducted as follows. The foundational common law principle opposing restraint of trade was established in the landmark case of *Nordenfelt v Maxim Nordenfelt*.¹⁴ In this case, the Court asserted that all clauses in restraint of trade are inherently against public policy and, consequently, deemed void from the outset unless there are specific justifications. Nevertheless, the legal landscape seems to undergo a paradigm shift with the introduction of the Federal Competition and Consumer Protection Act in 2019. The ensuing analysis below delves into these altered legal principles governing restraint of trade in Nigeria.

The position of the law under common law was laid down in the case of *Nordenfelt v. Maxim Nordenfelt*¹⁵ where a Swedish arms inventor promised upon sale of his business to an American gun maker that he would not make guns or ammunition anywhere in the world, and would not compete with Maxim in any way. The Court stated that such a restriction was justified only if it is reasonable, that is, in reference to the interest of the parties concerned and reasonable in reference to the interest of the public, so framed and so guarded as to afford adequate protection to the party in whose favour it is imposed, while at the same time it is in no way injurious to the public. This position was prevalent until the decision in *Herbert Morris Limited v. Saxelby*¹⁶ where the Court held that there could exist certain circumstances where contract in restraint of trade were enforceable which includes where such contracts are necessary to protect an employer's legitimate competitive interest; Where the enforcement of such contract was neither unreasonably burdensome to the employee nor harmful to the public interest; and Where the time and geographical scope of the restriction is reasonable.

The Nigerian Courts subsequently followed the Common Law principle. In the case of *Andreas I Koumoulis v. Leventis Motors Ltd*¹⁷, the Supreme Court stated that all covenants in restraints of trade are prima facie unenforceable and that they are only enforceable if they are reasonable with reference to the interest of the parties concerned and the public at large. It further held that it is trite that any restraint by an employer, even with the consent of the employee considered by the court to be wider than is reasonably necessary to protect his business interest will be void. The Court in this instance however observed that on the facts of the case, it was satisfied that, the covenant which is the subject of the complaint was reasonably necessary for the protection of the business interest of the respondent and, therefore valid and enforceable in law. Flowing from the above, it can therefore be correctly stated that any contract in restraint of trade is prima facie unenforceable except they are reasonable with reference to the interest of the parties concerned and the public.

Section 59 of the FCCP Act prohibits agreements in restraint of competition. This provision states that any agreement among undertakings or a decision of an association of undertakings that has the purpose of actual or likely effect of preventing, restricting or distorting competition in any market is unlawful and, subject to Section 61 of this Act, void and of no legal effect. Some of the prohibited acts include direct or indirect fixing of purchase and selling price of goods and services, dividing markets, limiting and controlling production or distribution of any goods or services. Section 60 outlines the exceptions to restrictive agreements in form of authorized agreements which are allowed by the Commission such as agreements that improve the production or distribution of goods and services while allowing consumers a fair share of the resulting benefits. Section 68 however lists out the exceptions to restrictive agreements as follows: a) Combinations or activities of employees for the reasonable protection of employees; b) Arrangements for collective bargaining on behalf of employers and employees for the purpose of fixing minimum terms and conditions of employment; c) Activities of professional associations designed to develop or enforce standards of professional qualifications; d) A contract or an arrangement amongst partners in so far as it contains provisions in relation to the terms or conduct of the partnership or in relation to competition between the partnership and a party to the Contract; e) A contract of service in so far as it contains provisions by which a person agrees to accept restrictions as to work whether as an employee or otherwise in which that person may engage during or after the termination of the contract and this period shall not be more than two (2) years; f) A contract for the sale of a business or shares in the capital of a body corporate carrying on business in so far as it contains a provision that solely for the protection of the purchases in respect of the goodwill of the body corporate. Thus, the implication of Section 68(e) of the FCCPA is that a contract in restraint of trade insofar as it does not exceed 2 years will be enforceable. This signifies a significant departure from previous case law authorities that prioritized the reasonableness of the clause. With the enactment of the FCCPA in 2019, a restraint of trade clause is poised to be enforceable without the need to establish its reasonability, as long as it does not extend beyond two years. Additionally, it implies that any restraint of trade clause specifying a duration exceeding two years will be rendered unenforceable, irrespective of its reasonableness in the given context.

¹⁴ *Ibid.*

¹⁵ *ibid*

¹⁶ *ibid*

¹⁷ *Andreas I Koumoulis v. Leventis Motors Ltd* (1973) 11 S.C.

The National Industrial Court is conferred with the exercise of jurisdiction to the exclusion of any other Court in civil causes and matters relating to or connected with unfair labour practice or international best practice in labour, employment and industrial relation matters. It was held in the more recent case that for a claimant to succeed and be entitled to its claim, it must discharge the burden of proof placed on it. It is for the Claimant to prove his case by adducing credible, cogent and admissible evidence that it has an interest which is capable of being protected; that the restraint on the Defendant is reasonable and that it is not contrary to public policy or interest. In that case, the covenant which stated that the employee shall not accept employment with any other employer in Nigeria or in the same line of business as the company and/or its shareholders outside of Nigeria for a period of three years from the date of termination or resignation as the case may be was held to be restrictive and unenforceable.¹⁸ The above position of the Court on trade restraint can however, be rebutted by proving that the restraint is reasonable, both as between the parties and in relation to the public interest or that the employee has either acquired trade secrets, or has gained influence over the employer's customers, either because they rely on the employee's skill and judgment, or because they have dealt exclusively with that employee. It is not sufficient that the employee may compete with the former employer, or use skill and knowledge acquired by the employee in his employer's business. In *Studio Press Plc v. Kadoor & Anor*¹⁹ the National Industrial Court upheld the agreement of parties which stated that for a period of two years immediately following the termination for whatever reason of this agreement, the employee agrees not to work in the same or similar capacity in any company whose business is the same or similar to that of the employer in Nigeria except with the prior written permission of the employer to do so, which permission will not be unreasonably withheld though it will normally be withheld if the employee intends to work in the same or similar business to that carried out by the company.

5. Validity of Reasonableness Test

The reasonableness of restraint of trade clauses is a critical factor. To be enforceable, these clauses must be reasonable in terms of scope, duration, and geographical limitations. This is often determined on a case-by-case basis. The test for the validity of restrictive covenants is not without limitations. Although considered prima facie void under common law, certain external factors may justify their enforceability. These factors also play a role in determining the reasonableness of a restraint clause in an employment contract concerning the parties involved and the public. The court looks at the geographical coverage of the restraint of trade. Where the area which the restraint seeks to cover is too wide, the court will not enforce it. This means that a restrictive covenant should not cover an area wider than the scope of the employer's business. For example, a company that operates in 2 states out of the 36 states in Nigeria but seeks to restrain an employee from engaging in a similar business anywhere in Nigeria, will be held unreasonable and therefore, unenforceable. This is because the operational scope of the employer's business is small and the restraint is wider than necessary to protect his business interest. An employer who runs a small business in a village cannot generally impose a nationwide restraint on a former employee.²⁰ The distinction between reasonableness concerning the parties and the public appears blurred, as highlighted in the case of *Esso Petroleum Ltd. v. Harper's Garage (Stourport) Ltd*²¹ In this case, the court emphasized a unified perspective, stating that the question of reasonableness revolves around whether the restraint, as between the parties, is in the interest of the community and is reasonable and enforceable. The interests are consolidated, recognizing that public policy aligns with the collective interests of individuals in the community. Another condition for enforcing a restraint covenant is that the employer must demonstrate an exceptional proprietary interest deserving protection, as articulated by the Supreme Court of Nigeria in *Andreas I. Koumoulis v. Leventis Motors Ltd*²² The significance of the court's stance is evident as it establishes that all covenants in restraint of trade are generally unenforceable unless they are reasonable concerning the interests of the involved parties and the public. The court's statement underscores the potential impact on both employment and the broader public. In *Nordenfeld v. Nordenfeld Co*²³, the court emphasized the public's interest in individuals conducting their trade freely, highlighting that any interference or restraint, without more, is contrary to public policy and therefore void. The idea that the interests of the parties and the public are inseparable is affirmed; attempting to sever them would be both unreasonable and absurd. Courts, when faced with a contract in restraint of trade, employ the doctrine of severance, facilitated by the blue pencil rule. This allows the court to strike out unreasonable clauses while upholding valid and reasonable ones separately. The wrongful termination of an employee by the employer can render void an otherwise valid and enforceable restraint of trade agreement. An employer engaging in wrongful termination cannot simultaneously benefit from the restrictive covenant, as the entire contract is repudiated. The agreement may act as a restraint on trade and free movement of labor against a third party, even if not expressly stated. The affected third party, without being privy to the contract, may succeed in obtaining an order to set aside such an agreement, as demonstrated in the case of *Eastham v. Newcastle Football Club Ltd*²⁴

In assessing the reasonableness of a restraint, the courts consider factors such as the bargaining strength of the parties, the nature of the restraint, and whether the restrained party's actions align with the terms of the restraint. It has been

¹⁸ *7th Heaven Bistro Ltd v. Amit Desphande* (NICN/LA/396/2015)

¹⁹ NICN/LA/144/2015.

²⁰ *Forster and Sons v Sugget* (1918) 35 TUR 87.

²¹ *Esso Petroleum Co Ltd v Harper's Garage (Stourport) Ltd* [1968] AC 269.

²² *Ibid.*

²³ *Ibid.*

²⁴ *Eastham v Newcastle United Football Club Ltd* [1964] Ch 413.

established that a restraint may be upheld even if classified as in restraint of trade, provided it is reasonable in the interests of the public and the parties involved. The courts have also endorsed the practice of severing excessively wide portions of a restraint, enforcing only what remains reasonable, provided clear identification in the contract allows for such severance. Additionally, the geographical scope and duration of a restraint must be scrutinized to ensure reasonableness. The effectiveness of restraint of trade clauses hinges on the careful negotiation and drafting of employment contracts. Precision and clarity in language play a pivotal role in ensuring the validity and enforceability of such restraints. Courts assess the necessity of the restraint to safeguard the employer's legitimate competitive interests. If the scope of the restraint is determined to be broader than reasonably required, it might be rendered void. It's essential to acknowledge that the legal landscape is subject to change, with potential influences from new legislation or judicial decisions that could impact the legal framework governing restraint of trade in Nigeria. Consequently, staying informed through consultation with up-to-date legal sources or seeking professional legal advice is recommended for the latest insights into this matter.

6. The importance of contracts in restraint of trade in Nigerian and its Challenges

Employers invest considerable resources in training their employees, building client relationships, and developing proprietary information. Restraint clauses can protect businesses from former employees who might otherwise use the knowledge and contacts they acquired to compete unfairly with their former employer. Through the courts' interpretation of these clauses, there is also a protection mechanism for employees, ensuring that restriction clauses are not excessively onerous or unfair, which might limit their ability to find future employment. Courts in Nigeria rely on precedent when determining the enforceability of restraint clauses in employment contracts. One vital case in this aspect is the case of *Niger Chemists Limited v. Nigeria Chemists and Pharmacists*²⁵. In this case, the court held that a restraint clause was enforceable because it was reasonable to both parties and did not provide an undue hardship on the employee or harm the public interest. It is also recognized that restrictions on trade must not harm the public interest. For example, if a restraint prevents the service of a highly skilled professional in an area where such services are scarce, a court may deem the restraint as against the public interest.

One of the main challenges is assessing what constitutes a 'reasonable' restraint. Nigerian courts have followed the principle laid down in the English case of *Nordenfelt v Maxim Nordenfelt Guns and Ammunition Co Ltd*²⁶, but translating this into a Nigerian context requires careful evaluation of local economic conditions, trading practices, and the specific circumstances of each case. The party seeking to enforce a restraint must demonstrate that it has a legitimate proprietary interest to protect, such as trade secrets, business connections, or goodwill. A mere desire to eliminate competition is not a legitimate interest. Nigeria's competition law framework, particularly with the introduction of the Federal Competition and Consumer Protection Act, is relatively new. Therefore, there may be uncertainty in the approach taken by courts and regulators until a body of jurisprudence develops. There is a continuous debate surrounding the balance between an employer's right to protect its business interests and a former employee's right to earn a living. Critics of restraint of trade clauses argue that they infringe on constitutional rights to freedom of trade and occupation enshrined in the Nigerian Constitution.²⁷

Employers may draft restraints that are too wide in scope or duration, which could lead to disputes. Overbroad and onerous clauses are more likely to be struck down by courts as they could be seen as preventing fair and reasonable competition. As with many areas of law, there may be inconsistencies in how different courts interpret and apply the principles related to restraints of trade. This lack of predictability can be a source of controversy for businesses and individuals alike. Given the above, it is evident that while Nigerian law provides avenues for the enforcement of restraints of trade, there remain significant challenges and uncertainties in ensuring such provisions are not overly restrictive and are applied in a manner consistent with both common law principles and Nigerian public policy. The development of a robust body of case law and clearer guidelines from regulators will be essential for alleviating some of these challenges and resolving the controversies in this area of law.

7. Consequences of Breaching Contract of Restraints of Trade

The specific consequences of breaching a contract of restraints of trade in Nigeria may vary depending on the details of the case and the relevant statutory authorities and case laws. It is advisable to seek legal advice if you are facing or considering taking action related to a breach of restraints of trade in labor relations in Nigeria. The consequences of breaching a contract of restraints of trade in Nigeria's labour relations can include. The employer may take legal action against the employee for breaching the contract, seeking damages and potentially injunctive relief to prevent the employee from engaging in activities that violate the terms of the restraint of trade. If the employer can prove that they have suffered financial losses as a result of the employee's breach of the contract, the employee may be required to pay damages to compensate the employer for these losses. The employer may seek an injunction to prevent the employee from engaging in activities that violate the terms of the restraint of trade. This can include preventing the employee from working for a

²⁵ [1961] All NLR 171.

²⁶ *Supra*.

²⁷ Section 40(as amended) 2011.

competitor or using confidential information for their own benefit. If the breach is serious enough, the employer may have the right to terminate the employment of the employee. Breaching a contract of restraints of trade can damage the employee's reputation and make it harder for them to find future employment in their industry. The statutory authorities may take action to enforce the restraints of trade clause and ensure that the breaching party complies with the terms of the contract. This may involve imposing penalties or sanctions on the breaching party.

The inclusion of restraint of trade clauses may appear straightforward, and new employees might be inclined to consent without fully understanding their implications. It is crucial for employees to recognize that they are assumed to comprehend the profound implications of such clauses. In essence, these clauses typically limit an employee's ability to engage in specific types of work within a defined geographical area for a set duration following the conclusion of the employment contract. The consequences of enforcing this clause may be perceived as detrimental or potentially harmful to an employee's future opportunities or business potential. The regulation of restraint of trade, aimed at preventing employees from engaging in competition with their employer's rivals, is not mandated by legislation. In other words, unless explicitly specified as a mutually agreed-upon term in the employment contract, an employer lacks the legal authority to insist that an employee be prohibited, through statutory means, from working or conducting business with a direct competitor following the conclusion of the employment agreement. For an employer to effectively rely on provisions that restrain its employees, the wording of such provisions must be meticulously crafted, clearly outlining the confines of the restraint. In a delicate balancing act of competing interests, a court will scrutinize the language and implications of a restraint of trade clause. On one hand, the court considers the employee's interest in avoiding unfair prejudice in trade; while on the other hand, it acknowledges the employer's interest in safeguarding against unfair trade practices. The impact of restraint clauses on an employee's career prospects and professional development can be significant. When employees are bound by such clauses, their capacity to pursue specific types of work or opportunities may be curtailed, typically within a defined geographical area and for a specified duration. This restriction can hinder their career progression, limiting access to new job opportunities, industry connections, and skill development avenues. Furthermore, the enforcement of restraint clauses may lead to a compromised professional reputation, as potential employers may perceive such restrictions as obstacles to an individual's adaptability and flexibility. These restrictions may hinder an employee's ability to leverage their expertise and experience, potentially limiting their contribution to their chosen field. Over time, the cumulative effect of restraint clauses could hinder career advancement, hinder the pursuit of new challenges, and limit exposure to diverse professional experiences. As a result, employees should carefully consider the implications of such clauses and negotiate terms that strike a fair balance between protecting employer interests and preserving their own professional development opportunities.

Restraints of trade clauses in employment contracts have increasingly come under scrutiny for their potential encroachment on an employee's fundamental right to freedom of association. These clauses, which aim to protect the legitimate business interests of employers, can sometimes restrict employees' ability to freely associate with other companies or engage in competitive activities. However, the general legal principles and aspects related to restraints of trade and freedom of association in Nigeria can provide some insights into how this issue may be addressed in the country. In Nigeria, the constitution guarantees the right to freedom of association under Section 40²⁸ which includes the right to form or belong to trade unions or associations for the protection of the individual's interests. The judiciary has examined the constitutionality of these clauses, typically found in agreements, assessing their reasonableness and conformity with the constitution. In doing so, the courts have applied the common law method of weighing and harmonizing conflicting interests in light of the constraints outlined in section 36(1) – the limitations clause – of the Constitution. The Supreme Court of Appeal has ruled that the common law approach, which involves balancing interests and takes into account that restraints of trade are established under a law of general application, does not substantially differ from the justification analysis conducted under the provisions of section 36 of the Constitution, As it was decided in the case of *Trucks (Nig.) Ltd v. Pyne*²⁹ where The respondent, following his summary dismissal by the appellant, sought redress under the Fundamental Rights (Enforcement Procedure) Rules of 1979. He contended that his dismissal was a consequence of his affiliation with a trade union. The appellant, however, refuted this claim, asserting that the respondent was dismissed due to his failure to fulfill work obligations rather than his union association. The respondent's grievance centered on the alleged wrongful termination of his employment, and as a remedy, he sought reinstatement. In response to this claim, the appellant argued that the respondent should have pursued his case through a Writ of Summons instead of the Fundamental Rights (Enforcement Procedure) Rules. The appellant contended that the respondent's chosen procedure rendered the claim incompetent and, therefore, null and void. This argument was dismissed by both the trial court and the Court of Appeal. Consequently, the appellant company appealed to the Supreme Court. It was determined that when assessing the justiciability of a cause of action, it is inaccurate to assert that the authority to decide lies solely with the trial Judge. The belief that once leave is granted for an application, the justiciability of a cause of action cannot be challenged is flawed. The correct approach involves scrutinizing the relief sought, the grounds for such relief, and the underlying facts. If these elements reveal that the primary grievance is a breach of a fundamental right, recourse may be sought through the Fundamental Rights (Enforcement Procedure) Rules of 1979. However, if the alleged breach of a fundamental right is

²⁸ Constitution of the Federal Republic of Nigeria 1999 (as amended).

²⁹ *Trucks (Nig.) Ltd v Pyne* (1999) 6 NWLR (pt 607).

secondary to the main complaint, pursuing the matter under the Rules is inappropriate. Regarding the nature of the complaint, the respondent's principal grievance was his wrongful dismissal. Any purported violations of his fundamental rights stemmed from this central issue. Consequently, the appropriate recourse for seeking redress was through a Writ of Summons in the High Court rather than an application under the Fundamental Rights (Enforcement Procedure) Rules. The proceedings in the High Court were deemed incompetent and, therefore, null and void. In terms of the proper procedure for addressing wrongful dismissal, it was emphasized that the suitable course of action involves initiating proceedings through a Writ of Summons rather than utilizing the Fundamental Rights (Enforcement Procedure) Rules.

On the other hand, restraints of trade clauses in employment contracts are recognized and enforced by Nigerian courts if they are reasonable and necessary to protect legitimate business interests. Also, in the case of *Phillips v. H D Markwell & Co Ltd*.³⁰ In this case, the court held that a restraint of trade clause in an employment contract was void as it was unreasonable and oppressive, which could be seen as favoring the protection of the employee's right to work and freedom of association. Additionally, the common law principles of reasonableness in restraints of trade also apply in Nigeria. Courts will assess the reasonableness of the restraint in terms of its duration, geographical scope, and the nature of activities prohibited to determine if it unduly infringes on an employee's freedom of association. An unreasonable restraint that excessively restricts an employee's ability to work in a particular industry or with specific competitors may be deemed unenforceable. While there may not be specific cases or statutory authorities directly addressing the violation of freedom of association by an employee due to restraints of trade in Nigeria, the overarching legal principles and the protection of fundamental rights in the country suggest that the courts would likely consider the balance between employer interests and employee rights when evaluating the enforceability of such clauses. It is essential for parties involved in employment contracts to be aware of these considerations and ensure that any restrictions imposed are reasonable and proportionate to protect business interests without unfairly limiting an employee's freedom of association. The enforcement of post-employment restraints on employees, such non-compete clauses, non-solicitation clauses, and confidentiality obligations, can vary depending on the specific circumstances of each case. While there is no specific legislation governing post-employment restraints in Nigeria, courts generally uphold reasonable and enforceable restraints that are necessary to protect legitimate business interests.

8. Prejudicial Nature on the Contract of Restraints

The Prejudicial nature on the contract of restraints by an employer refers to clauses or terms in an employment contract that unfairly restrict an employee's ability to gain future employment or engage in lawful business activities after leaving their current position. These restrictions may harm the employee's career prospects and can be seen as oppressive or unreasonable. Some examples of the prejudicial nature of restraints by an employer include: Clauses that prohibit an employee from working in any industry or with any competitor, regardless of whether the new role would pose a threat to the former employer's interests, can be considered overly broad and prejudicial to the employee. Restraints that prevent an employee from engaging in certain activities for an extended period after leaving the company, without a valid justification, can be seen as prejudicial to the employee's ability to earn a living or pursue their career. If the contract of restraints does not offer any compensation or benefits to the employee in exchange for the restrictions imposed upon them, this can be viewed as a prejudicial aspect of the agreement. If the restrictions imposed by the employer significantly impact the employee's ability to secure alternative employment or earn a living, this can be considered prejudicial and unfair. Employers should be mindful of the potential prejudicial nature of restraints in employment contracts and ensure that any restrictions imposed are reasonable, necessary, and proportionate to protect their legitimate business interests. It is essential to strike a balance between protecting the employer's interests and allowing the employee to pursue their career and livelihood after leaving the company. Employees should also carefully review and understand the terms of the contract before signing to avoid being unfairly restricted in their future endeavors. If there are concerns about the prejudicial nature of restraints in an employment contract, seeking legal advice can help clarify the rights and obligations of both parties.

9. Restraint of Trade in some Selected Jurisdictions

The position in Nigeria is similar to that of the United Kingdom and the United States. Ever since the pronouncement in *United States v. Addyston Pipe & Steel Co*,³¹ the United States position to the recognition of restraint of trade has echoed the requirement of reasonability. For as stated by William Taft *we do not think there is any question of reasonableness open to the courts to such a contract*. In *Nordenfelt v Maxim, Nordenfelt Guns and Ammunition Co*,³² Lord Macnaghten ruled that while can promise to *not make guns or ammunition anywhere in the world* it was an unreasonable restraint to *not compete with Maxim in any way*. These cases have cemented the requirement reasonability as a criterion in the United Kingdom and the United States. In the United Kingdom, restraints of trade are analyzed under common law principles and the Competition Act 1998. Non-compete clauses are enforceable if they protect legitimate business interests, are reasonable in scope, duration, and geographic limitation, and do not unduly restrict an individual from earning a living. In the United States, the enforceability of restraints of trade is analyzed under the antitrust laws, primarily the Sherman

³⁰ *Phillips v. H D Markwell & Co Ltd* (1960) 5 FSC 103.

³¹ O. Ogunniyi, *Nigerian Labour and Employment Law in Perspective* (Ikeja, Folio Publishers Ltd, 2004) 69.

³² *Ibid*.

Act and the Clayton Act. The courts apply a rule of reason analysis, assessing whether the restraint has an anti-competitive effect and whether the pro-competitive justifications outweigh the anti-competitive harm. Non-compete agreements are generally enforceable if they are reasonable in scope, duration, and geographical limitation. In Australia, the enforceability of restraints of trade is governed by common law principles and the Competition and Consumer Act 2010. Courts will assess whether the restraint is reasonable to protect legitimate business interests, considering factors such as the geographical scope, duration, and the employee's seniority and access to confidential information. Non-compete clauses are generally enforceable if they are no wider than necessary to protect those interests. In South Africa, restraints of trade contracts are governed by the common law and the Competition Act 89 of 1998. Similar to Nigeria, the enforceability of these contracts depends on reasonableness, and the courts will consider factors such as the nature of the work, the duration of the restraint, and the protection of legitimate interests. The Competition Act also prohibits anti-competitive agreements and practices and provides for penalties for violations.

10. Conclusion and Recommendations

In conclusion, the examination of contracts of restraints trade in Nigeria's labour relations reveals a complex issue with advantages and disadvantages on both sides. Employers argue for the necessity of such contracts to protect their interests, while critics highlight the potential negative effects on employee rights and overall economic growth. Achieving a balance through regulatory measures and fair assessment of restraint clauses may provide a solution that satisfies both parties. However, it requires careful consideration and ongoing evaluation to ensure a fair and competitive labour market in Nigeria. The contract of restraint of trade is an important aspect of Nigerian labour relations that aims to protect employers' legitimate business interests while safeguarding employees' rights to earn a living. Through statutory provisions, decided cases, and laws such as the Labour Act of 2004, the Nigerian legal system provides a framework to assess the reasonableness and enforceability of these contracts. A balanced approach is necessary to strike a fair balance between employers' interests and employees' freedom. To ensure compliance with the legal framework on restraints of trade in Nigeria, employers and employees should consult legal professionals and consider the specific circumstances, industry practices, and potential impact on the respective parties' interests. Also, clear and explicit contractual language, fair provisions, and adherence to reasonable way with essential to strike a balance between protecting employers' legitimate business interests and preserving employees' right to work. It is prudent to keep in mind that each restraint of trade clause is unique and must be analyzed on its own merits. The assessments are highly fact-specific and often require a nuanced balancing of various legal principles. Courts will look at the intention behind such clauses, their practical implications, and their concordance with legal standards of fair practice and competition before making a determination as to their enforceability. It involves a thorough analysis of the contract's terms against established legal principles of reasonableness and public policy considerations, informed by both statute and precedent.