

Hired, Fired, and Outsourced: Nigeria's Employment Maze

- By Dayo Bello

Introduction

The impact of globalization and trade liberalization on Nigeria's employment practices cannot be overstated. With the drive for increased profitability and competitiveness, a significant shift is occurring as businesses increasingly turn to labour outsourcing. This model, facilitated by specialized third-party labour contractors,¹ is reshaping traditional employment dynamics.² At the heart of these changes are complex legal considerations, particularly how the National Industrial Court of Nigeria (NICN) and the Court of Appeal view manpower outsourcing arrangements. This article delves into these legal nuances, offering insights into recent judicial decisions, international labour standards, regulations, and legal principles that could redefine the terrain for employers and outsourced workers alike.

Evolving Legal Perspectives on Labour Outsourcing in Nigeria

Traditionally, the National Industrial Court of Nigeria (NICN) has viewed companies using labour outsourcing as actual or joint employers, often overlooking the initial contractual agreements to categorize these relationships as either "triangular employment" or "co-employment." In the case of **Captain Yahaya Zamdai Wambai v. Bourbon-Interoil (Nigeria) Limited & Anor**,³ the labour contractor agreed to provide crew management services and be the employer of any crew supplied to the end-user company's vessels. However, the court deemed the end-user a co-employer despite the explicit terms of the Crew Management Agreements.

This perspective, influenced by international standards and local practices, has placed shared liabilities on both the outsourcing firm and the end-user company.⁴ The NICN's approach to labour outsourcing arrangements as a "triangular employment" model is influenced by

¹ In some instances, the labour contractors are entities established by ex-employees, seeking contractual engagements to provide services akin to those they performed while in the employ of the end user companies.

² See Rosemary Owens & Joellen Riley on *'The Law of Work'* 1st edn. (2007), 146 – 149.

³ Captain Yahaya Zamdai Wambai v. Bourbon-Interoil (Nigeria) Limited & Anor (Suit No. NICN/OW/11/2017 unreported judgment of NICN, Owerri Judicial Division, delivered by Hon. Justice I. S. Galadima, J on January 31, 2019)

⁴ For example, see the cases of: Oyewumi Oyetayo v. Zenith Bank Plc [2012] 29 NLLR (Pt. 84) 370 (NIC); Ejieke Maduka v. Microsoft Nigeria Ltd (Suit No. NICN/LA/492/2012 unreported judgment of Hon. Justice O. A. Obaseki-Osaghae, J.) delivered on December 19, 2013; Olalekan Kehinde & Anor v. Airtel Nigeria Ltd & Anor (Suit No: NICN/LA/453/2012: unreported judgment of Hon. Justice B. B. Kanyip, Phd delivered on December 13, 2016; Mr. Morrison Owupele Inimgba v. Integrated Corporate Services Ltd & Anor [2015] 57 NLLR (Part 195) 268 (NIC).

principles from the International Labour Organization (ILO)'s standards, and global best practices. The ILO recognizes scenarios where employment relationships **may** involve three parties or entities, referred to as a "triangular employment relationship," or a situation that might appear as a "disguised or intrinsically unclear triangular employment relationship."⁵

Landmark cases such as, **Aero Contractors Co. Nigeria Ltd vs. National Association of Aircraft Pilots and Engineers**,⁶ highlight the NICN's application of international labour treaties directly to local disputes, skirting the need for national legislative endorsement.

A New Legal Chapter for Labour Outsourcing

The Court of Appeal's decision in **Appeal No. CA/A/1061/2020 – Luck Guard Limited v. Mr. Felix Adariku & 5 Ors** however marks a significant shift in the legal thinking around labour outsourcing. This case challenged the NICN's traditional view of labour outsourcing as either a triangular or co-employment model and proposed a fresh legal perspective.

Total E&P Nigeria Limited ("**TotalEnergies**") chose to subcontract its ancillary operations to third-party service providers. These providers, in turn, employed Mr. Felix Adariku and 257 others (the "Claimants") to perform specific tasks for TotalEnergies. Following the termination of their contracts by these service providers, the Claimants filed a lawsuit at the NICN against both TotalEnergies and the service providers,⁷ claiming that they were wrongfully terminated and subjected to unfair labour practices. They argued that they were essentially employees of TotalEnergies, which had not formalized their employment status with official letters. The NICN ruled largely in favor of the Claimants, stating that TotalEnergies and the service providers were jointly responsible as their employers under the Labour Act.

The Court of Appeal reversed the NICN's decision in a unanimous verdict. The Court of Appeal concluded that:

- There was no direct employment or contractual relationship between the Claimants and TotalEnergies, clearing TotalEnergies of any employer obligations towards the Claimants. This was based on evidence showing that it was the service providers who

⁵ ILO The Scope of the Employment Relationship (ILO Report V) International Labour Conference 91st Session Geneva 2003 @ pg. 38.

⁶ (2014) 42 NLLR (Pt. 13) 664.

⁷ In Suit No. NICN/ABJ/110/2016 - Mr. Felix Adariku (suing for himself and 257 disengaged service contract personnel of Total E&P Nigeria Limited) v. Total E&P Nigeria Limited & 5Ors – NICN, Abuja Judicial Division (Coram E.N. Agbakoba, J.).

had contractual agreements with TotalEnergies to supply labour, including the Claimants, for TotalEnergies' operational needs.

- The Court disregarded the Claimants' verbal testimonies about their employment conditions with TotalEnergies, highlighting the lack of written employment contracts as evidence that they were not TotalEnergies' employees.

Insights from the Appeal

The Court of Appeal's ruling significantly alters how labour outsourcing is viewed under Nigerian employment law, highlighting the privity of contract principle. This principle outlines that contract rights and obligations are exclusively between the parties involved, thereby excluding third parties from claiming benefits or enforcing terms, even if they indirectly benefit from the contract.⁸ The judgment clarifies that in labour outsourcing arrangements, the company using the outsourced labour (the end-user company) is not automatically considered the employer. Instead, the responsibility of the employer falls solely with the labour contractor, in line with the contract's original purpose to establish clear lines of responsibility and liability.

This decision aligns with the **Federal Ministry of Labour and Productivity's 2011 Guidelines on Labour Administration Issues in Contract Staffing/Outsourcing in the Oil and Gas Sector**. The guidelines distinguish between the employees of outsourcing companies and those directly employed by oil and gas companies, aiming to streamline labour outsourcing practices and reduce legal ambiguities in the industry.

Rethinking Evidence in Employment Relationships

However, the court's preference for documentary evidence as the primary means to establish an employment relationship may be seen as restrictive. While written contracts provide a clear basis for employment terms, Section 91 of the Labour Act⁹ recognizes that employment relationships can be established through both oral and written agreements and the conduct of the parties involved. This aspect of the court's decision suggests the need for a more nuanced approach to evaluating employment claims, where substantial, credible evidence beyond written contracts can validate employment relationships.

⁸ See *Ogundare v. Ogunlowo* (1997) LPELR-2326 (SC).

⁹ Cap. L1 Laws of the Federation of Nigeria, 2004.

Legal Framework and Global Trends in Manpower Outsourcing

The Court's decision highlights the acceptance of manpower outsourcing as a viable and legitimate business practice within Nigeria's labour market, reflecting a growing trend among business owners to delegate non-essential operations to third-party labour contractors.¹⁰ This business model is driven by its inherent advantages, notably its cost-efficiency and operational flexibility, allowing companies to readily adjust their workforce needs and focus on core operations. This approach helps to mitigate legal complexities and liabilities typically associated with direct employment.¹¹ It also enhances the allocation of specialized skills and resources to tasks where they are most needed, optimizing operational efficiency for both labour contractors and end-user companies.

The Labour Act, specifically Section 91(1), provides a solid legal framework for manpower outsourcing by clearly defining an **"employer"** and recognizing labour contractors as legitimate employers when they hire workers on behalf of other businesses. This framework aligns with current employment trends that prioritize flexibility and adaptability –which are crucial in today's fast-paced economic environment. Furthermore, the NICN's support for manpower outsourcing, as demonstrated in the case involving the **Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN) and Mobil Producing Nigeria Unlimited**,¹² further validates this practice in Nigeria. This endorsement is significant, with the NICN acknowledging that the ILO does not consider labour outsourcing unfair, invalid or unlawful. This view from the ILO emphasizes the global move towards more flexible labour agreements, allowing businesses to rapidly adjust to market shifts and demands. It also highlights the necessity for labour regulations to evolve, offering a balance between safeguarding workers' rights and promoting economic development.

Practical Advice for Businesses

- *Drafting Clear Agreements:* Ensure outsourcing contracts clearly define the roles, responsibilities, and obligations of all parties. Include specific terms on the relationship, scope of work, and dispute resolution mechanisms to prevent future legal complexities.

¹⁰ For example, transportation and logistics services, security services, information technology (IT) support, human resources services, accounting and finance, facilities management services, payroll processing, cleaning services, etc.

¹¹ See Bimbo Atilola on *'Labour & Employment Law in Nigeria'* Volume 1 (2022), 247 – 248.

¹² (2013) 32 NLLR (Pt. 92) 243.

- *Understanding Legal Implications:* Stay informed about the legal landscape, including significant court decisions and regulatory changes that could impact outsourcing strategies.
- *Risk Management:* Adopt proactive measures to manage potential legal and operational risks associated with outsourcing. This includes conducting due diligence on labour contractors and regularly reviewing compliance with employment laws.

Supporting Businesses in Navigating Current Realities in Employment Practices.

In Nigeria, manpower outsourcing is recognized as both a lawful and ethical business approach. To minimize legal risks and clarify responsibilities, it is essential for businesses to draft clear commercial agreements that outline the roles, rights, and obligations of all parties involved in outsourcing arrangements. For businesses looking to adapt and thrive in Nigeria's evolving employment landscape, understanding and implementing robust legal and operational strategies is key. By prioritizing clear contractual agreements, staying updated on legal developments, and seeking expert advice, companies can navigate the complexities of labour outsourcing with confidence and mitigate potential liabilities, including indirect liability and misconceptions regarding employment status, amongst others.

At SimmonsCooper Partners, we understand the intricacies that businesses, especially end-user companies, encounter when managing outsourced personnel. Our advisory services are designed for individuals, labour contractors, and end-user companies, helping them to navigate the complexities of Nigeria's employment framework.

For further inquiries about labour and employment services, please contact: Dayo Bello at dayo.bello@scp-law.com.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.