Allowance or Loan? What the Court's Approach Means for Recovery After Termination

Introduction

An employer hands a senior hire a car grant, a housing allowance, and relocation support - all on the understanding they'll be earned back over a few years of service. Then employment ends early. Who keeps the money? That question lands in front of the National Industrial Court of Nigeria (NICN) more often than most employers expect, and the answer turns on a single distinction: was the payment a service-based allowance, or a genuine loan? The court has drawn that line consistently - and the difference can decide a claim worth tens of millions.

The NICN has consistently distinguished between service-based allowances and genuine loan obligations, with important implications for employment litigation, contract drafting, and termination strategy.

Key Highlights

- **Recovery is not automatic:**
Whether an employer can recover an unamortized payment depends on the nature of the payment and the circumstances of the employee's exit.

- **Employer-driven termination matters:**
Where the employer terminates the relationship without employee misconduct, recovery of service-based allowances is generally unlikely to be enforceable.

- **Allowances and loans are treated differently:**
An allowance linked to continued service may fall away when employment ends, but a properly documented loan usually remains repayable after termination.

- **Contract drafting remains critical:**
How an employment benefit is structured, documented,

and treated on termination may determine whether it can be recovered.

The NICN's Approach

The NICN has consistently distinguished service-based allowances from independent loan obligations.

- **Employer-driven termination limits recovery:**

In James Adekunle Owulade v. Nigerian Agip Oil Company Limited, the NICN dismissed the employer's counterclaim for over ₦38 million in unamortized allowances following involuntary retirement, holding that service-based allowances should not generally become post-employment liabilities where termination is employer-driven and not attributable to employee misconduct.

- **The principle has been reaffirmed:**

In Mrs Vivien Folayemi Asana v. First Bank of Nigeria Limited, the NICN again held that recovery of unamortized allowances following an employer-driven exit was generally unenforceable, particularly where it would unfairly benefit/enrich the employer.

- **Loans remain recoverable:**

In Adepoju v. Coscharis Group and Iyamah v. First Bank of Nigeria Plc, the NICN confirmed that genuine loan obligations survive termination because they exist independently of the employment relationship.

What This Means for Stakeholders

- **For employers:**

Employment contracts should clearly distinguish between allowances and loans. Where repayment is intended regardless of how employment ends, employers should consider structuring the payment as a loan. Clear repayment provisions and termination clauses will reduce litigation risk.

- **For employees:**

Employees should understand whether payments are employment benefits or repayable loans. Exit documentation and proposed deductions from terminal benefits should be reviewed carefully.

- **For HR and in-house legal teams:**

Employment contracts, remuneration policies, and templates should be reviewed to ensure employee benefits are properly classified and aligned with current NICN approach.

- **For parties involved in employment disputes:**

Courts are likely to look beyond the label attached to a payment and examine its substance, the contractual documentation, and the circumstances surrounding the termination before determining whether recovery is permitted.

The Road Forward

The NICN's approach highlights an important principle:

not every payment made during employment remains recoverable after termination. As employment disputes continue to evolve, the distinction between an allowance and a loan may determine the outcome of a recovery claim.

Employers should review employment contracts, remuneration structures, and termination provisions to ensure that employee benefits are clearly classified and documented. Employees, in turn, should understand the terms governing workplace benefits before accepting them or signing exit documentation.

For guidance on employment disputes, workplace investigations, employment contracts, labour law compliance, and employment litigation, contact info@scp-law.com or visit www.scp-law.com.