

Trade Union Laws and Labour Relations in Nigeria: A Critical Examination

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Abstract

Trade unions in Nigeria, no doubt, play essential roles in promoting industrial peace and harmony. They act as buffers in maintaining equilibrium in the bargaining powers between employers and workers. Without trade unions, employers' natural exploitative tendencies of employees will be heightened without any hindrance. Given the importance attached to trade unions in fostering industrial peace and harmony, the laws relating to trade unions in Nigeria should be such that registered trade unions are not only compulsorily recognized by employers but adequately equipped to maintain an equilibrium in the bargaining process with a view to promoting industrial peace and harmony. Adopting the doctrinal methodology of research, this Article examined the Nigerian Trade Union Laws and found that even though, there is no express provision in the Nigerian Trade Union Laws currently requiring employers to compulsorily recognize a registered trade union, in practice, the National Industrial Court (hereinafter referred to as NIC) has, in several decisions, held that recognition of a registered trade union by an employer is obligatory. Even though this position by NIC is salutary, it is recommended that there should be further amendment to the Trade Unions (Amendment) Act, 2005 by providing express provisions in that regard thereby backing up the position of NIC with statutory provisions.

Key Words: Trade union, labour relations, National Industrial Court, recognition of trade unions and membership of trade unions.

Introduction

Trade unions in Nigeria and elsewhere represent important institutions through which collective labour relation is practiced. They regulate relations between employers on one hand and employees (through their elected representatives) on the other. Since the two parties to a contract of employment do not operate at arms-length i.e. the employee being the weaker of the parties, the only way through which the interests of the employees can be collectively and adequately protected is through vibrant trade unions which are the umbrella bodies of workers in particular organizations. This underscores the reason why trade unionism is very important particularly, to employees, as the union acts as a catalyst for checking the excesses of employers thereby curtailing their exploitative tendencies.

Given the importance attached to trade unions in fostering industrial peace and harmony, the laws relating to trade unions should be such that registered trade unions are not only compulsorily recognized by employers but adequately equipped to maintain an equilibrium between employers and employees with a view to promoting industrial peace and harmony. The question is: Has Nigerian trade union laws been able to address this knotty issue of recognition of trade unions by employers? This and other pertinent issues relating to trade union laws will be critically examined in this article.

Meaning of Trade Union

This has been statutorily defined. According to section 1(1) of the Trade Unions Act¹, a trade union means:

Any combination of workers or employers, whether temporary or permanent, the purpose of which is to regulate the terms and conditions of employment of workers, whether the combination in question would or would not, apart from this Act, be an unlawful combination by reason of any of its purposes being in restraint of trade, and

¹ Cap T14 LFN 2004 as updated to 31st December, 2010

whether its purposes do or do not include the provision of benefits for its members.

Sub section 2 further provides:

The fact that a combination of workers or employers has purposes or powers other than the purpose of regulating the terms and conditions of employment of workers shall not prevent it from being registered under this Act; and accordingly, subject to the provisions of this Act, as to the application of funds for political purposes, a trade union may apply its funds for any lawful purpose for the time being authorized by its rules, including in particular, if so authorized, that of providing benefits for its members.

From the above definition, the following salient elements may be considered in determining whether a combination qualifies as a trade union.

(a) Structure and Composition:

The combination must either be of workers or employers. 'Worker' has been defined by section 54 of the Trade Unions Act,² section 91 of the Labour Act³ and section 73 of the Employees' Compensation Act⁴. The Trade Unions Act for example defines a 'worker' to mean:

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

² Ibid

³ Ibid

⁴ Cap E7A LFN 2004 as updated to 31st December, 2010. Note that 'employee' and 'worker' may be used interchangeably

personally to execute any work or labour
or a contract of apprenticeship⁵

(b) Purpose or Principal Object:

The purpose or the principal object of the combination should be to regulate the terms and conditions of employment of workers. It appears this is the predominant purpose but it need not be the only purpose of the union since section 1(2) of the Act permits a trade union to apply its funds for any lawful purpose authorized by its rules.

(c) Purpose ‘being in restraint of trade’

The above clause stated in section 1(1) of the Act merely takes care of the problem that use to exist at common law when combinations at common law were declared unlawful by reason of any of its purposes being in restraint of trade. This has now been statutorily taken care of.

History of Trade Union Laws in Nigeria.

Before discussing the history of trade union laws in Nigeria, it is necessary to mention here that the first trade union in Nigeria was the Southern Nigerian Civil Service Union which was formed in 1912. Thereafter, there were Railway Workers Union and Nigeria Union of Teachers formed in 1931⁶.

As for the trade union laws, the first trade union statute in Nigeria was the Trade Union Ordinance No 44 of 1938. This Ordinance allowed a minimum of five workers to form a trade union. The Railway Workers’ Union was the first union to register under the 1938 Ordinance. Thereafter, there was the Trade Union Ordinance Cap 200 Laws of the Federation and Lagos, 1958.

In 1973, the Trade Unions Decree No. 31 of 1973 was promulgated which repealed the Trade Union Ordinance of 1938. The 1973 Decree provided for more stringent requirements for registration of trade unions.

⁵ For the definition of ‘employer’, see as given by section 73 of Employees’ Compensation Act, to include any individual, body corporate, federal, state or local government or any of the government agencies who has entered into a contract of employment to employ any other person as an employee or apprentice.

⁶ EE Uvieghara, *The Historical and Legal Framework of Trade Unionism* 1

In 1976, as a result of the proliferation of trade unions which were over 1000, an Administrator was appointed to re-structure the existing trade unions of over 1000. This culminated into the Promulgation of the Trade Unions (Amendment) Act No. 21 of 1978.

Under the Trade Unions (Amendment) Act of 1978, the existing trade unions were reduced and re-structured into 70 trade unions. The Third Schedule to the Act had two parts: Part 'A' contained the list of 42 trade unions of junior staff while Part 'B' contained the list of 19 senior staff unions and 9 employers' associations respectively. Trade Unions in Part 'B' were prohibited from affiliating with Nigeria Labour Congress (NLC)⁷. One of the decisions in which the 1978 Act was challenged as being unconstitutional was the celebrated case of *Osawe v Registrar of Trade Unions*⁸. The appellants applied for the registration of their trade union which was rejected by the Registrar of Trade Unions. They sought the writ of mandamus at the High Court which was granted. The Registrar appealed to the Court of Appeal which set aside the High Court order and on further appeal to the Supreme Court, the Court of Appeal decision was upheld. One of the issues for determination was whether section 3(2) of the Trade Unions (Amendment) Act, 1978 which provided that '...no trade union shall be registered to represent workers or employers in a place where there already exists a trade union' was an infringement on section 37 (now section 40) of the 1979 constitution which guaranteed freedom of association. It was held inter alia: (i) The right of association guaranteed in section 37 of the 1979 Constitution like other rights in chapter iv was not an absolute right but qualified which could be derogated from in accordance with section 41 (now 45) of the 1979 Constitution. (ii) The Trade Unions Act 1978 was a law passed in the interest of public order. It was necessary to ensure order in the chaotic proliferation of trade unions which was the practice before the promulgation of the law. The legislation was therefore not unconstitutional. Accordingly, the appeal was dismissed.

⁷ CA Agomo, *Nigerian Employment and Labour Relations Law & Practice* (Concept Publications Ltd. 2012) 268 - 269

⁸ [1985] 4 NWLR (Pt. 4) 755

In 1990, when the laws of the federation were reviewed, the Trade Unions Act became known as Cap 437, Laws of the Federation of Nigeria, 1990. The Act had as its objective, to make provisions with respect to the formation, registration and organization of trade unions. The 1990 Act later went through series of amendments.

The first amendment was the Trade Unions (Amendments) Decree No. 4 of 1996 whose main objective was to amend the Trade Unions Act, and to provide for the restructuring of trade unions in Nigeria from 41 to 29⁹.

The second amendment was the Trade Unions (Amendment) Decree No. 26 of 1996. The objective of this was to amend the Trade Unions Act as amended by the Trade Unions Decree No. 4 of 1996. One of the important provisions of the Decree was that deductions from the wages of union members and the remittance of the sum so deducted to the registered office of the trade union shall be subject to a 'no strike' clause in the relevant collective bargaining agreement between the workers and their employers. It may be remarked here that despite this provision, strikes continued unabated.

The third amendment was the Trade Unions (International Affiliation) Decree No. 29 of 1996. The objective of the amendment was to prohibit international affiliation by any trade union except as provided in the Act. By this amendment, the Central Labour Organisation could affiliate only to two international associations to wit: the Organisation of African Trade Union Unity (OATUU) and The Organisation of Trade Unions of West Africa (OTUWA). It may be remarked here that this was a direct violation of Article 5 of ILO Convention No. 87 of 1948 concerning Freedom of Association and Protection of the Right to Organize Convention which Nigeria had ratified. Article 5 provides that "...workers' and employers' organizations shall have the right to establish and join federations and confederations and any such organization, federation or confederation shall have the right to affiliate with international organizations of workers and employers".

⁹ See the new Third Schedule which contained 29 re-structured unions.

In 2004, the laws of the federation 1990, were further reviewed and the Trade Union laws were not left out. The current laws on trade unions are to be found in the 2004 laws of the federation and the subsequent amendments.

The first TUA under the 2004 laws is the Trade Unions Act¹⁰ Cap T14 Laws of the Federation of Nigeria, 2004, the objective of which is to make provisions with respect to the formation, registration and organization of trade unions, federation of trade unions and the central labour organization.

The second is the Trade Unions (International Affiliation) Act¹¹. The objective of this Act is to provide the procedure for application for affiliation to international organizations by trade unions or central labour organizations. The difference between the provisions of this Act and those of Decree No. 29 of 1996 is that while in the Decree, there was outright prohibition for affiliation to international organizations except OATUU and OTUWA, under the current Act, there is no such prohibition but the Minister of Labour may refuse an application to affiliate with any international organization. However, an appeal against such refusal shall lie to the National Industrial Court whose decision shall be final¹². It is also submitted that the provisions under the Act are not entirely satisfactory having regards to the provisions of Article 5 of ILO Convention¹³.

In 2005, there was a further amendment to the Trade Unions Act. This Act is referred to as Trade Unions (Amendment) Act, 2005. The objective of this Act was to amend the Principal Act which was Trade Unions Act¹⁴, Cap 437, Curiously, this Act amended the 1990 Trade Unions Act while the 2004 laws were in existence but not yet operational. It was much later that the 2004 laws became operational and reference ceased to be made to the 1990 laws of the federation. This explains the confusion with

¹⁰ Cap T14 Laws of the Federation of Nigeria, 2004

¹¹ Cap T15 Laws of the Federation of Nigeria, 2004

¹² Section 1(5) of Trade Unions (International Affiliation) Act Cap T15 LFN 2004 as updated to 31st December, 2010

¹³ ILO Convention No 48 of 1948

¹⁴ Laws of the Federation of Nigeria, 1990

regards to the provisions of the law on recognition of trade unions as may be discussed later.¹⁵

In 2010, the 2004 Laws of the Federation were further updated to 31st December, 2010. Trade union laws were not exceptions. The Trade Unions Act was also updated to incorporate all the amendments in the Trade Unions (Amendment) Act, 2005.

Recognition of Trade Unions.

The first step towards collective bargaining between employers and employees is for an employer to recognize a trade union of which persons in the employment of an employer are members. This is very important because such recognition will lead to collective bargaining by the parties thereby paving way for industrial peace and harmony. Recognition of a trade union involves the acceptance by the employer that the union has negotiating rights over certain issues i.e bilateral agreement is substituted for unilateral decision-making by the employer in respect of the issues covered by the recognition agreement. The issue here is whether Nigerian labour statutes have been able to address this issue of recognition adequately and satisfactorily. In addressing this issue, it may perhaps be necessary to look at the issue from the historical perspective, culminating into the current position of the law on the issue with a view to ascertaining whether the extant provisions of the law on the issue are adequate.

Between 1938 and 1973, employers were free to decide whether or not they would recognize trade unions and where employers refused to recognize trade unions, that was the end of the matter unless the trade unions were numerically strong enough to win recognition by force of industrial action, actual or threatened.¹⁶ The Trade Unions Act, 1973 sought to come to the rescue of the workers and trade unions by making elaborate provisions in sections 22 and 23 thereof, specifying the conditions under which a

¹⁵ For a fuller discussion on the Trade Unions (Amendment) Act 2005, See EA Kenen. 'A Critical Appraisal of the Trade Unions (Amendment) Act, 2005' [2005] (4) *Benue State University Law Journal* 90 – 99.

¹⁶ AA Adeogun, 'The Legal Framework of Collective Bargaining in Nigeria' in *Essays in Honour of Justice Elias* 18 at 184

compulsory recognition order could be given in favour of a union against an employer. The gist of these two sections is that where an employer refused to recognize a union, the Federal Commissioner (now Minister) in charge of labour matters could make a compulsory recognition order.

These elaborate and laudable provisions were repealed and replaced by a new section ie section 24 of Trade Unions Act¹⁷ which provided as follows:

- (1) Subject to the provisions of this section, where there is a trade union of which persons in the employment of an employer are members, that trade union shall, without further assurance, on registration in accordance with the provisions of this Act, be entitled to recognition by the employer.
- (2) If an employer deliberately fails to recognize any trade union registered pursuant to the provision of sub-section (1) of this section, he shall be guilty of an offence and be liable on summary conviction to a fine of ₦1,000.

Several issues arose under the above provisions. For example, could a union achieve recognition where an employer was unwilling and continued to be recalcitrant in according it recognition under those provisions? An employer who had been found guilty of refusal to recognize a union and who had paid the fine of ₦1,000 nevertheless had the duty to still recognize the union? Even though a notable writer¹⁸ had opined that the offence would continue until recognition was granted, it is submitted that the express wordings of the Act do not point in that direction. Since the payment of fine is the only remedy provided by the statute, there may be no further duty upon the convicted employer to recognize the union.¹⁹ Be that as it may, it may be argued in a court of law, and on behalf of the union that quite apart from the payment of the fine of ₦1,000, the court still has an inherent power to make consequential orders which may have the effect of compelling the employer to still recognize the union. It

¹⁷ Cap 437 LFN1990.

¹⁸ EE Uvieghara, *Labour Law in Nigeria* (Malthouse Law Books 2001) 339

¹⁹ Adeogun (n, 12), 185

had therefore, been suggested that there was the need to amend the section to make it abundantly clear that quite apart from the imposition of a fine, the employer who had not purged himself of the offence, still remained liable to recognize the union.²⁰

In 2004, the 1990 laws of the federation were revised and became 2004 Laws of the Federation. The provisions relating to recognition of trade unions under the 2004 Laws of the Federation were however, the same with those under the 1990 laws except that under the 2004 laws, the section on recognition became section 25(1) & (2). The issues, argument and recommendations made under section 24(1) & (2) of the 1990 laws are equally applicable under section 25(1) & (2) of the 2004 laws.

In 2005, the Trade Unions Act²¹ was amended and the provisions on recognition under the amended Act became radically different from those of the previous Act. It should be noted that while the Trade Unions (Amendment) Act, 2005 amended the Principal Act which was Trade Unions Act Cap 437, LFN, 1990, the 1990 Act had already been revised and became Trade Unions Act, Cap T14 LFN, 2004. At the time, even though the 2004 Laws were in existence, they were not yet operational hence the 2005 Amendment Act amended Cap 437 LFN, 1990 and not Cap T14 LFN, 2004. It is, however, submitted that since the 2004 Laws replaced the 1990 Laws, reference to the Trade Unions Act, Cap 437, LFN, 1990 should be construed today as Trade Unions Act, Cap T14 LFN, 2004. This is consistent with the provisions of the Interpretation Act²². Section 4(2)(b) of the Act provides:

Where an enactment is repealed and another enactment is substituted for it, any reference to the repealed enactment shall, after the substituted enactment comes into force, be construed as a reference to the substituted enactment.

²⁰ (n, 15)

²¹ Cap 437 LFN 1990

²² Cap 123 LFN 2004.

From the above provision, therefore, reference to section 24 of the Trade Unions Act Cap 437 LFN 1990 should be construed as reference to section 25 of the Trade Unions Act Cap T14 LFN 2004.

Having made the above remarks, the current provisions on recognition of trade unions are found in section 5 of the Trade Unions (Amendment) Act, 2005. The section has amended section 24(1) and (2) of the Principal Act i.e Cap 437 as follows:

- 24(1) for the purposes of collective bargaining all registered unions in the employment of an employer shall constitute an electoral college to elect members who will represent them in negotiations with the employer.

- (2) for the purposes of representation at Tripartite Bodies or any other body the registered Federations of Trade unions shall constitute an electoral college taking into account the size of each registered federation, for the purpose of electing members who will represent them.

It can be seen that section 5 of the Trade Unions (Amendment) Act, 2005 which substituted a new section 24(1) & (2) for the Principal Act is completely silent on the issue of recognition. The law is now more concerned with trade unions constituting electoral colleges for purposes of negotiation with employers rather than placing obligations on employers to first recognize such unions.

In 2010, the Trade Unions Act 2004 was updated to incorporate the said amendments of 2005. The current provisions on recognition of trade unions are to be found in section 25 of the Trade Unions Act²³. The provisions are the same with those under the Trade Unions Amendment Act 2005 provided earlier. It should be noted that even though the heading or title to section 25 is worded “Recognition of registered trade union obligatory”, what is contained in the main provisions is radically different and has nothing to do with recognition. It is therefore submitted that there are no

²³ Cap T14 LFN 2004 as updated to 31st December, 2010.

provisions on recognition of trade unions under the extant provisions of the law. This is not entirely satisfactory at all.

In practice however, despite the unsatisfactory provisions of the law on the issue, the National Industrial Court has continued to hold that recognition of trade unions by employers is obligatory once registered trade unions exhibit enough intention to be recognized by an employer. In *Management of Tuyil Nig. Ltd. v National Union of Chemical, Footwear, Rubber, Leather and Non-Metallic Products Employees*²⁴, the court held:

Once any of the trade unions listed in the Third Schedule of the Trade Unions Act exhibits enough intention to be recognized by an employer by indicating its willingness to unionize workers who are eligible to be its members, an employer is obliged to accord recognition and not pose obstacle in the way of such unionization.

Furthermore, in *Golden Silk Industry Nig. Ltd. v Steel and Engineering Workers Union of Nigeria*²⁵ NIC again held:

A community reading of section 5(3) of the Labour Act and section 5(7) and 24(1) of the Trade Unions Act gives ample opportunity to employers to recognize trade unions in an unfettered manner by allowing its workers access to their trade unions in terms of membership.

Section 5(3) of the Labour Act mentioned above merely stipulates that upon the registration and recognition of any of the trade unions specified in Part 'A' of Schedule 3 to the Trade Unions Act, the employer shall deduct the check-off dues and remit such to the trade union except where a worker opts out of the check-off system in writing. The above provision, it is submitted with the greatest respect to the court, does not make recognition obligatory.

Section 5(7) of the Trade Unions Act mentioned above, specifies that on coming into effect of this section of the Act, the

²⁴ [2009] 14 NLLR (Pt.37) at 109

²⁵ Unreported Suit No NICN/ABJ/413/2015. Judgment of which was delivered on 16/12/2016 on referral from IAP, p.11

Registrar of trade unions shall register the trade unions specified in Part A and Part C of the Third Schedule to the Act and upon such registration, the said trade unions shall have all the powers and duties of a trade union registered under the Act. Again, it is submitted with the greatest respect that the section has nothing to do with recognition of trade unions.

Section 24(1) of the Trade Unions Act mentioned above merely prohibits actions in tort against trade unions. Even section 25(1) & (2) of the Trade Unions Act which is more relevant and which the court may perhaps be referring to, even though has as its heading 'Recognition of registered trade union obligatory' does not contain any provision on recognition in its main body or provision. It can therefore be seen that even though the court's pronouncements on the issue of recognition of trade unions by employers are salutary, the pronouncements are not backed by any express statutory provisions on the issue.

It is recommended that an all embracing amendment may be to return to the provisions under sections 22 & 23 of the Trade Unions Act, 1973 where the Minister in charge of labour matters could make a compulsory recognition order where an employer refused to recognize a trade union or the Trade Unions Act should be further amended by providing express provisions making recognition obligatory thereby enabling the NIC to make compulsory recognition orders which may then be backed by express statutory provisions on the issue.

Application of Union Funds.

An attempt shall be made here to look at the provisions of the Constitution of the Federal Republic of Nigeria, 1999 on the issue of application of union funds to the furtherance of any political objective vis-à-vis the provisions of the Trade Unions Act on the same issue with a view to determining whether there may be inconsistencies in the two provisions and the way forward.

Section 221 of the Constitution²⁶ provides: 'No association, other than a political party shall ...contribute to the funds of any

²⁶ Constitution of the Federal Republic of Nigeria, 1999 as (amended)

political party or to the election expenses of any candidate at an election'. The above section does not define what is meant by 'association'. An 'association' may be described as a combination of persons or any organization of persons by whatever name it is called. An 'association' may therefore include a trade union by necessary interpretation. The above section therefore prohibits a trade union from contributing its funds to the furtherance of any political objective. As for a political party, this is defined by section 229 of the Constitution.

Section 15(1) of the Trade Unions Act²⁷ on the same issue provides:

Unless the rules of a trade union otherwise provide, ... the funds of a trade union shall not be applied to the furtherance of any political objective.

Section 15(2) provides:

If any of the funds of a trade union are applied to the furtherance of political objective in contravention of subsection 1 of this section, the trade union and every official thereof shall be guilty of an offence under this Act.

Section 15(3) enumerates what constitutes political objectives.

From the provisions of section 15(1) above, it can be seen that trade unions are prohibited from applying their funds to the furtherance of any political objective except where the rules of the union otherwise provide. The issue that arises here is where a trade union rules book expressly permits it to contribute its funds to the furtherance of a political objective in accordance with section 15(1) of the Trade Unions Act, will this be in breach of section 221 of the Constitution of the Federal Republic of Nigeria? It is submitted that while such action may not violate the Trade Unions Act, it may be inconsistent with section 221 of the Constitution and having regards to the provision of section 1(3) of the Constitution which provides

²⁷ Cap T14 LFN 2004 as updated to 31st December, 2010

that any law that is inconsistent with the provisions of the Constitution shall, to the extent of the inconsistency be void, such provisions of the trade union rules made pursuant to section 15(1) of the Trade Unions Act shall be null and void.

Membership of Trade Unions.

An attempt will be made here to discuss some salient elements such as: who may be a member of the trade union, how junior and senior staff may become members of a trade union, certain restrictions placed on union membership, the legal status of the union rules book, expulsion from union membership and the remedies for wrongful expulsion from a trade union.

Who may be a Member of a Trade Union?

Any person who is 16 years and above may be a member of a trade union.²⁸ As for union officials, a person must be 21 years and above before he will be capable of being an official of a trade union²⁹. However, a person who is 16 years and above but below the age of 21 may be precluded from being a member of a trade union where the union rules so provide³⁰. Any staff recognized as a projection of management is prohibited from being a member of a trade union or holding office in a trade union if such membership or holding of office in the trade union will lead to a conflict of loyalties to either the union or to management³¹.

How may Junior Staff and Senior Staff Become Members of a Union?

The law regarding unionization of junior staff was succinctly put by the National Industrial Court in *Nest Oil Plc v NUPENG*³² thus:

²⁸ TUA section 20(1)

²⁹ TUA section 20(1)

³⁰ TUA section 20(2)

³¹ TUA section 3(3) See also the case of *Basil Mbanefo & Ors v Judicial Service Commission of Anambra State* [2011] 26 NLLR (Pt. 73) 122 at 155. It was held that Deputy Directors in the Judiciary of Anambra State were projections of management for purpose of S 3(3) & (4) of TUA 2004

³² [2012] 29 NLLR (Pt. 82) 90

....As far as our law is concerned, junior staff are deemed to be members of a union until they individually and in writing opt not to be... This means that if in truth the defendant is the proper union to unionize junior staff of the defendant, the question of them having to agree and express their interest before they can join the defendant's union will not arise. All that will be required of them is that if they do not want to be members, they can opt out. See generally the cases of *CAC v AUPCTRE* [2004] 1NLLR (Pt.1)1; *Mix & Bake v NUFBTE* [2004] 1NLLR (Pt.2)247; *TIB Plc v NUBIFIE* [2008] 10 NLLR (Pt.27) 322 and *Mgt of Tuyil Nig. Ltd v NULFRIL & NMPE* [2009] 14 NLLR (Pt.37) 109 which establish that the law is that registration is deemed, recognition automatic and deduction of check off dues compulsory, being based on mere eligibility to be a member of the union in question...

It can, therefore, be seen from the above pronouncement that for junior workers, membership of a trade union is based on eligibility. Thus, deduction of check-off dues is not based on membership but on eligibility. They are deemed to be members of their relevant trade unions and can only opt out. They can therefore benefit from a collective agreement in the absence of evidence of 'opting out' of the union. The rationale for deeming junior staff to be members of their respective trade unions was succinctly captured by Kanyip, J (as he then was) in *Eyiaromi Oladele v Attorney General, Lagos State*³³ thus:

The orthodox view is that labour law itself is meant to protect workers who are more vulnerable. Even at this, some workers are certainly more vulnerable than others (the reason why the law has been couched in this way – presuming membership of trade unions for junior staff to enable them to be protected by the union

³³ Unreported Suit No NICN/LA/102/2013 Judgment of which was delivered on 6th June, 2017 para 43

thereby allowing them to 'opt out' for those who do not want to be members and senior employees/staff who the law does not deem to be members of any trade union unless they specifically opt to be members thereby allowing them to 'opt in').

The law regarding unionization of senior staff was succinctly put in *Aghata Onuorah v Access Bank Plc*³⁴ thus:

As a senior staff, the law is (and the defendant cited a number of authorities in that regard) that the employee is not assumed to be a member of the trade union. He/she has to 'opt in' individually and in writing. The claimant in the instant case is a senior staff. She must show membership of ASSBIFI in order to benefit from Exhibit 'E' the collective agreement. Actual proof of membership is the key to recovery under a collective agreement. Proof of that membership of a trade union has to be by direct documentary evidence. It is in this sense that *Habu v NUT Taraba State* [2005] 4 FWLR (Pt.283) 646 must be understood when it held that the deduction of check-off dues from salaries and wages of a worker and the remittance of same to a trade union is an incidence of membership of the worker. Even at this, the worker must, by direct documentary evidence prove that such deduction of check-off dues and remittance of same to the trade union was done if his fact of membership of the trade union is to be held as established by a court of law.

As can be seen from the above pronouncement, for senior staff, they are not deemed to be members of a trade union unless they 'opt in' individually and in writing. Finally, it may be stated that whether it is 'opting out' for junior employees/staff or 'opting in' for

³⁴ Unreported Suit No NICN/ABJ/30/2011 judgment of which was delivered on 15th December, 2014)

senior staff, the employee concerned must do so individually and in writing.

Restrictions Placed on Union Membership:

Any person who is under the age of 16 years shall not be capable of being a member of a trade union³⁵. By section 11 of the Trade Unions Act, members of armed forces, police etc are prohibited from forming or joining trade union. What is the constitutionality or otherwise of the said provision? While it may be argued that section 40 of the Constitution of the Federal Republic of Nigeria guarantees freedom of association, and therefore section 11 of the Trade Unions Act is inconsistent with it, it may also be submitted that section 40 of the Constitution is subject to section 45 of the same constitution and therefore the provisions of section 11 of the Act may be constitutional³⁶. Furthermore, International Labour Organisation Convention No. 87 of 1948 concerning Freedom of Association and Protection of the Right to Organize Convention while guaranteeing the right of workers to establish and join organizations of their choice in Article 2, Article 9 of the same Convention provides that the extent to which the guarantees provided by the Convention shall apply to the armed forces and the police shall be determined by national laws or regulations. It can therefore be seen that section 11 of the Trade Unions Act is in conformity with International Labour Standard and therefore permissible.

Where a worker is refused membership of a trade union what right or remedy has he against the trade union? Can he compel the union to admit him? This may be dependent on whether the said union is a closed-shop union or not³⁷. Where it is a closed-shop union, he may be deprived of employment and his right to work must have been infringed. Where it is not a closed-shop union, his rights have not been infringed since there is no contractual relationship between him and the union and so there is no theoretical basis for

³⁵ TUA Section 20(1)

³⁶ See the Supreme Court decisions in this regard in *Osawe v Registrar of Trade Unions* (supra); *Nigerian Nurses Association v Registrar of Trade Union* (1981) 11-12 SC5

³⁷ Closed-shop unions are found mostly in Britain where employment of a worker is dependent on his being a member of a particular trade union.

intervention by the courts. He is, at most, deprived of acquiring a right but he has not been deprived of any right. Even the International Labour Organisation Convention provides that his right to establish and join organization is subject to the rules of the organization concerned³⁸.

Union Rules Book

Members of a trade union are governed through their union rules book or constitution. The Supreme Court in *Elufioye v Halilu*³⁹ held that the union rules book constitutes a contract between the members and the union on one hand and the members inter se⁴⁰.

Expulsion from Union Membership

One of the disciplinary measures that may be meted out to an erring member of a trade union is expulsion from membership of such a union. This may be a severe form of disciplinary measure. Such expulsion may be lawful or wrongful. If it is lawful i.e having complied with the procedure, it will be allowed to take its full course. However, if it is wrongful, the court may intervene to provide the required remedy for such a wrongful expulsion. It is this wrongful expulsion that this article is more concerned with.

What constitutes wrongful expulsion?

The following constitutes wrongful expulsion in Nigeria:

(a) Non observance with the rules of natural justice:

An expulsion may be deemed to be wrongful where the rules of natural justice were not observed. These rules are based on the twin-pillar of *audi alteram partem* (hear the other side) and *nemo judex in causa sua* (no one should be a judge in his own cause). These rules are referred to as fair hearing. Once disciplinary measures are meted out to a member of the union without being heard or given an opportunity to defend himself, such

³⁸ See Article 2 of ILO Convention concerning Freedom of Association and Protection of the Right to Organize Convention No. 87 of 1948 ratified by Nigeria [1993] NWLR (Pt 301) 570

⁴⁰ See section 23 of The Trade Unions Act which restricts members of a trade union from going to court with regards to certain agreements.

may be deemed wrongful warranting the court's intervention.

- (b) Power to discipline being exercised by a person or body different from that entitled to exercise.

The person or body who exercises the power to expel must be the person authorized by the rules book in that regard. In *Bonsor v Musicians Union*,⁴¹ the power to expel was vested in the branch committee of the union and the purported expulsion was carried out by the secretary of the union. It was held that the expulsion was wrongful.

- (c) The rule for expulsion being against public policy.

The court may also void a rule under which a member was expelled as being against public policy⁴².

Exhausting Internal or Appeal Machinery before Going to Court

The issue here is whether a member of a trade union who has been wrongfully expelled from the union or disciplinary measures wrongfully meted out to him must exhaust all the internal appeal procedure before going to court to seek redress. The answer may be dependent on whether the requirement of exhausting internal appeal machinery is by statute or by union rules.

If a statute provides that internal appeal procedure must be exhausted before going to court, then this must be complied with by the aggrieved member. Thus, in *Aribisala v Ogunyemi*,⁴³ it was held:

Where a statute prescribes a legal line of action for the determination of an issue, an aggrieved party must exhaust all the remedies in that law before going to court. All the local remedies in the statute on every subject must be exhausted before embarking on actual litigation in court.

However, if it is the union rules that provide for exhausting internal appeal machinery before going to court, this may be

⁴¹ [1956] AC 104

⁴² *Edwards v SOGAT* (1970) 3 All ER 609 CA; *Nagle v Feilder* (1966) QB 633

⁴³ [2005] 6 NWLR (Pt. 921) 12

dispensed with in the following circumstances: where the domestic procedure is irretrievably biased; it involves a serious point of law; if it involves excessive delay or it is cumbersome and so offensive, the claimant/aggrieved member may not be obliged to exhaust. Thus, in *Okuboyejo v National President RATTAWU*,⁴⁴ NIC held that:

Rule vii of the RATTAWU constitution which provides that a member should first complain to his local chapter's general meeting; then if not satisfied to the state council; then the central working committee; then National Executive Council or National Delegates Conference in that order. By the time a member exhausts these processes, the term of office of those he complains about would have been completed rendering the complaint inconsequential.

Remedies for Wrongful Expulsion from Trade Union

A wrongfully expelled member may pursue any or all of the remedies of declaration, injunction and damages in so far as he is not prevented by section 23 of the Trade Unions Act. In the celebrated case of *Bonsor v Musicians Union*⁴⁵ the court of first instance per Upjohn J, held that the expulsion of Bonsor was wrongful as it was done by the branch secretary who was not empowered by the union rules to act in that manner. Consequently, the expulsion was declared null and void and an injunction was granted restraining the union from acting upon it. On further appeal to the House of Lords, it was further held that in addition, Mr. Bonsor was entitled to damages for wrongful expulsion.

Conclusion.

An attempt has been made to analyse some of the salient provisions of the Trade Union Laws and the issues arising therefrom. The areas analysed include: the meaning of trade unions; the history of trade union laws in Nigeria; recognition of trade unions for

⁴⁴ Suit No NICN/LA/623/2012 ruling delivered on 5th June, 2014.

⁴⁵ (n, 37)

purposes of collective bargaining; application of union funds and membership of trade unions. One area of interest is the recognition of trade unions. It has been noted that several statutory amendments in this regard have left the issue in a more confused state and hanging. The current position is that the law is completely silent on this vexed issue as the Trade Unions (Amendment) Act, 2005 was more concerned with trade unions constituting electoral colleges for purposes of negotiation thereby repealing the provisions on recognition contained in the Trade Unions Act, 2004. Be that as it may, the practice is that the National Industrial Court, despite the lacuna in the law, still maintains that recognition by an employer is obligatory. It is recommended that a further amendment of the Trade Unions Act is desirable to address the lacuna created by the Trade Unions (Amendment) Act, 2005 in this regard. This is due to the fact that even though the National Industrial Court's position on recognition of trade unions is salutary, it is bereft of any express statutory provision or backing.