

# Kidnapping Employees for Ransom in Nigeria: An Analysis of the Liability of Employers under Nigerian Law

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## Abstract

*Kidnapping involves the act of unlawfully taking a person by force and detaining the person against his will. There could be different reasons for the kidnap. The reasons could range from subjection of a victim to servitude to obtaining ransom from family and friends of the victim. The victim of a kidnap could be an employee and an employer could be contacted directly by the kidnappers to pay ransom for the release of the employee or the family of the kidnapped employee may contact the employer seeking for financial support to aid the kidnapped employee's release from unlawful abduction. This research analyses the Nigerian law to ascertain the liability of employers with regard to kidnapping of employees. The doctrinal research was adopted to conduct the research. It was found that employees will likely not have a compensation where employers fail to register the employees under the Employee Compensation Act (ECA). Also, some employees and employers do not know of the existence of ECA. The penalties under ECA are inadequate in ensuring compliance with the law. It was recommended that an Uninsured Employee Compensation Fund should be established to provide compensation to employees who are not registered under ECA. In addition, the Nigeria Social Insurance Trust Fund Management Board should conduct an awareness campaign on ECA to enlighten people on the existence of the law. Lastly, section 46 and 39(4) should be amended to provide stringent sanctions for non-compliance with the law.*

**Keywords:** Kidnap, Employee, Ransom, Employer, Employment.

## 1. Introduction

In Nigeria, kidnapping for ransom has gradually become a means to get money. Globally, Nigeria accounts for a quarter of

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reported cases.<sup>1</sup> The unlawful abduction and detention of the victims can lead to trauma and financial losses to the victim, family, friends and business associates. Kidnapping for ransom is known as economic kidnapping.<sup>2</sup> It is different from political kidnapping. Political kidnapping is done in most cases to get the government's attention to the group's cause, to call for the release of prisoners or to seek for the review or change in a law.<sup>3</sup> The focus here is however on kidnapping for ransom.

Kidnapping for ransom is a criminal act in Nigeria. It started in 1999 when the military handed over power to civilians.<sup>4</sup> Today, it is one of the biggest security challenges in Nigeria. Any category of worker can be a victim, be it local (national) or international employees. Expatriates who were oil company employees in the Niger Delta region were kidnapped in 2006. It is likely that they were attacked due to their wages, nationality, employer or the employer's firm or the nature of work.

Kidnapping of employees could be in two forms. First is an employee who was sent for an assignment and was never seen again. It was later discovered that he was kidnapped and the kidnappers are demanding for ransom. The second is a situation where an employee is kidnapped in a bar and it has no connection with his work. Though, it can be arguable that since the second form did not arise in the course of work, an employer should not have any business with it, however, the kidnapping could be done because the employee works for that organization.

One will wonder if ransom should be paid for the release of a kidnapped employee or not. There are rationales behind each line of thought. On the one hand, there will not be any kidnapping of employees if kidnappers are aware that no ransom will be paid. Payment of ransoms motivates the criminals and others to further

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<sup>1</sup> UC Chinweze, 'Policy Flaws and Kidnapping for Ransom in Nigeria' *Journal of Law and Judicial System* (2019)(2)(2) 23 <https://sryahwapublications.com/journal-of-law-and-judicial-system/pdf/v2-i2/3.pdf> Accessed 23 September 2023.

<sup>2</sup> R Briggs, 'The Kidnapping Business' 26 [https://www.files.ethz.ch/isn/20940/Kidnapping\\_Business.pdf](https://www.files.ethz.ch/isn/20940/Kidnapping_Business.pdf) Accessed 24 September 2023.

<sup>3</sup> *Ibid* 27.

<sup>4</sup> IO Albert, N Danjibo and O Albert, 'Back to the Past: Evolution of Kidnapping and Hostage taking in the Niger Delta, Niger Delta, Nigeria' *Beijing Law Review* (2020) (11) 214 <https://doi.org/10.4236/blr.2020.111015> Accessed 21 September 2023.

engage in the lucrative business of kidnapping for ransom. In other words, payment of ransom does more harm than good. On the other hand, people want to protect the lives of the kidnapped employees and do all that is required to ensure that the victims return safely without any harm. As such, payment of ransom will be necessary where the outcome of non- payment is a gruesome murder of the victim.

The kidnapping of employees has raised concerns about the safety of employees in Nigeria. Does an employer have an obligation to ensure that an employee is not kidnapped in the course of employment? What is the liability of employers in this regard? These are the posers this article sets out resolve.

## **2. Liability of an Employer with Regards to Kidnap of An Employee**

An employer has an obligation to ensure the safety of an employee at work. The safety of an employee covers safety from harm arising from security threats such as kidnapping. To prevent such kidnappings in a place of work (location) and in the course of work whether in the workplace or at any other location work is to be done, an employer has to take necessary steps to prevent kidnapping. This includes; assessment of risk and educating/ training of employees.

Assessment of risk is an important step among safety processes to protect employees.<sup>5</sup> In assessing risk, it covers activities such as; identification of hazard (a procedure of identifying hazardous factors in a work environment), determination of the level of the hazard, assessment of the connection between the data collated and the occurrence of diseases and harm to the health and safety of the employees and characterization of the actual risk from the assessment of the data.<sup>6</sup> Training of employees involves providing employees with the requisite knowledge and skill to identify threats of kidnapping and how to respond by taking appropriate actions.

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<sup>5</sup> E Stikova, N Milevska- Kostova and D Donev, 'Workplace Risk Assessment' [https://www.researchgate.net/publication/231315785\\_Workplace\\_Risk\\_Assessment/link/54bcea990cf253b50a/download?\\_tp=eyJjb250ZXh0XZpb3VzUGFnZSI6bnVsbH19](https://www.researchgate.net/publication/231315785_Workplace_Risk_Assessment/link/54bcea990cf253b50a/download?_tp=eyJjb250ZXh0XZpb3VzUGFnZSI6bnVsbH19) Accessed 24 September 2023.

<sup>6</sup> Ibid.

It is however understood that it is impossible for an employer to eliminate the risk of kidnapping or holding employee hostage. The above stated steps are to minimize the risk of the abduction especially in conflict and high- risk areas and where the risk of kidnapping is foreseeable from an assessment of risk, an employer has a duty to protect the employee from the risk of kidnapping by implementing mitigating measures to reduce and avert the risk. Failure to apply measures to mitigate the risk of kidnapping after identifying same can be a ground for legal claims rooted on negligence; the employer's duty of care.

To understand the claims for negligence with regards to kidnapping of employees, the case of *Dennis v Norwegian Refugee Council*<sup>7</sup> will be analysed. In the case, the claimant, an employee of the defendant and other co-employees were in a car convoy during a VIP visit to the IFO II refugee camp in Dadaab, Kenya near Somali border. They were attacked while leaving the camp. One of drivers was killed. The claimant and three others were kidnapped. They were rescued by an armed rescue operation carried out by the Kenyan authorities and local militia. The claimant sued the defendant seeking for compensation for economic and non- economic losses arising from the kidnapping. The court found that the defendant had insufficient knowledge of the security situation of the risk of kidnapping and had failed to provide security escort. The court held that the defendants were negligent and were liable for compensation which amounted to 4.4 million Norwegian Krone (equivalent to 465, 000 Euros).

The lesson from *Dennis's* case is that poor security management can result to negligence on the part of the employer. The poor security management relate to non- assessment of risk and non- implementation of mitigating measures. The lapse was redressed by the common law tort of negligence. What amounts to negligence is a question of fact and the claimant must plead and prove the following;<sup>8</sup>

a) The defendant owed him (the claimant) a duty of care.

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<sup>7</sup> (15-032886TVI-OTI R/05, Oslo District Court Norway, 25 November 2015).

<sup>8</sup> *Osigwe v Unipetrol* [2005] 5 NWLR (918) 261.

- b) The defendant failed to exercise the due care or there was a breach of the duty of care.
- c) The claimant suffered a damage as a result of the breach.

A claim for negligence will only succeed if the claimant proves the aforementioned elements. The implication here is that where an employer takes the necessary steps to mitigate kidnapping attacks in an area where the risk is identified, then it would be said that the employer exercised due care but where the employer fails to take any measure to mitigate the risk or does not even carry out a risk assessment to recognize if there is a risk, then there will be a breach of the duty if its employees are kidnapped.

It is noteworthy that the issue of duty of care of an employer will arise where the kidnapping took place in the course of work. Where an employee was kidnapped while visiting her friends is out of the employee's own volition and an employer would be under no obligation to ensure her safety. No legal action for damages arising from kidnapping and payment of ransom will be successful against the employer.

It is clear that an action will lie in tort in this regard. The question that will arise here is whether a kidnapped employee can be compensated under the Employee Compensation Act (ECA).<sup>9</sup> ECA was enacted to provide an open and fair system of guaranteed and adequate compensation for employees or their dependents for injury, diseases or death arising out of or in the course of employment.<sup>10</sup> Thus, the law provides an exclusive remedy for any injury, occupational disease or death arising from the performance of work. 'Arising out of' entails a link between the injury, death or disease to a work-related risk. 'In the course of employment' on the other hand relates to the time, place and circumstances the injury or death occurred. In so far as the kidnapping of an employee arose out of or in the course of work, the employee or his dependents can get compensation under the Act.

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<sup>9</sup> Cap E7A LFN, 2004 (as updated).

<sup>10</sup> ECA 2004 s 1(a).

The compensation is paid from the Employee Compensation Fund.<sup>11</sup> The fund is managed by the Nigeria Social Insurance Trust Fund Management Board (hereinafter referred to as the board).<sup>12</sup> The money in the fund is partly credited by the employer.<sup>13</sup> The requirement of the law is that, an employer is obligated to make a minimum monthly contribution of one percent (1%) of the total monthly payroll.<sup>14</sup> Where an employer defaults in making the contribution, the board may assess a penalty that equivalent to ten percent (10%) of the unpaid amount.<sup>15</sup> Apart from the contribution to the fund, employers are to furnish the board with the address of the employer, complete and accurate particulars of the employer's payroll.<sup>16</sup> The penalty for non-compliance is a percentage of the assessment that will be determined by the board.<sup>17</sup>

Where the information furnished by the employer to the board is incorrect, for an individual, the penalty is imprisonment for a term not exceeding one year or fine of not less than One Hundred Thousand Naira (N100, 000) or both.<sup>18</sup> For a body corporate, the penalty is a fine of not less than One Million Naira (N1, 000, 000) and each director, manager or officer of the body corporate shall be deemed to have committed the offence and shall be liable to imprisonment for a term not exceeding one year or fine of not less than One Hundred Thousand Naira (N100, 000) or both.<sup>19</sup>

In some situations, the effects of the kidnapping may not be injury or death but a psychological harm. A psychological harm means an acute psychological damage that has arisen from a violent crime that may subside with time after administration of appropriate psychological treatment.<sup>20</sup> The question is, can the employee be compensated for the psychological harm? The law provides that an

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<sup>11</sup> ECA s 58(a).

<sup>12</sup> ECA s 57.

<sup>13</sup> ECA s 56(b).

<sup>14</sup> ECA s 33(1).

<sup>15</sup> ECA s 46.

<sup>16</sup> ECA s 39(1).

<sup>17</sup> ECA s 39(2).

<sup>18</sup> ECAs 39(4).

<sup>19</sup> ECA s 39(4).

<sup>20</sup> NC Abamara and AA Dike, 'Psychological Impact of Kidnapping: A Case Study of a Victim in Anambra State [https://www.researchgate.net/publication/327301236\\_Psychological\\_Impact\\_of\\_Kidnapping\\_A\\_case\\_Study\\_of\\_A\\_Victim\\_in\\_Anambra\\_State\\_Nigeria/link/5b874423299bf1d5a7311ace/download](https://www.researchgate.net/publication/327301236_Psychological_Impact_of_Kidnapping_A_case_Study_of_A_Victim_in_Anambra_State_Nigeria/link/5b874423299bf1d5a7311ace/download) Accessed 26 September 2023.

employee will be compensated for mental stress that results from an acute reaction to a sudden and unexpected traumatic event arising out of or in the course of employment.<sup>21</sup> From the provision of section 8(1)(a) of ECA, a psychological harm that an employee suffered in hostage or after the employee's release is compensable.

The two routes to get compensation for injuries or death arising from kidnapping of an employee in the course of employment as discussed above include an action for compensation under common law and a claim for compensation under ECA. However, if an employee chose to pursue his claim for compensation under common law basing his claim on negligence, such employee can no longer claim compensation under ECA.<sup>22</sup> Though the position of the law with regards to payment of compensation looks promising, what if the employer does not make the minimum contribution of 1% of the total monthly payroll in the National Social Insurance Trust Fund (NSITF) or register its employees? What are the chances of compensation for the employee who was kidnapped in the course of employment and has suffered injuries, trauma or died while in hostage? At most, the employee will rely on the common law action for damages. The disadvantage is that if an employee cannot prove the elements of negligence, the employee cannot succeed. This is in contrast with the ECA that does not require such proof. The law operates on no fault principle.<sup>23</sup> No fault principle entails that an injured employee or dependents of deceased employees will be compensated regardless of their fault.<sup>24</sup>

Another pertinent question that will arise is whether the kidnapped employee or dependents of the deceased employees who suffered injuries or emotional trauma or died while in hostage of kidnappers can sue an employer for violating ECA. This is with regard to circumstances in which there is no negligent acts on the part of the employer that led to an employee's kidnapping yet the kidnapping arose out of or in the course of employment. In this instance, the employee cannot get compensation under ECA and an

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<sup>21</sup> ECA s 8(1)(a)

<sup>22</sup> ECA s 12(1); *Lawrence v Rock View Hotel Festac & Ors* [2020] JELR 87525 (NICN).

<sup>23</sup> M Dugeri, 'The Employee's Compensation Act, 2010: Issues, Prospects and Challenges' 6 [www.mikedugeri.wordpress.com](http://www.mikedugeri.wordpress.com) Accessed 30 September 2023.

<sup>24</sup> *Ibid.*

action under the tort of negligence will fail. An employee cannot sue an employer for violating ECA. It can be easily stated that the injured employee or the dependents of the deceased employees could be compensated under an insurance cover in the workplace or the dependents will receive death benefits that usually accrue to employees who died in the course of employment. What if there is no insurance cover? An employee who got injured in hostage of kidnappers or the dependents of an employee who died in hostage can bring a personal injury claim against the employer. The basis will be that the employer failed to comply with ECA in registering its employees under the scheme.

In other jurisdiction, the government establish an Uninsured Employers Benefits Trust Fund (UEBTF). The fund pay compensation to injured employees who do not have a compensation scheme coverage. The government then recovers the sum paid to the injured employee from the uninsured employer. In California for instance, employers are mandated to provide employee compensation coverage to their employees.<sup>25</sup> It is illegal for an employer to be uninsured. The State of California took cognizance of a possibility of non-compliance by employers and to ensure that injured employees are compensated, UEBTF was established. The fund is administered by the director of the Department of Industrial Relations and it is funded from assessments paid by employers, fines from erring employers and money recovered from uninsured employers to refund same paid to injured employees.<sup>26</sup> If the Californians approach is adopted in Nigeria, it will do good to employees who are not registered under ECA. The affected employees or dependents of deceased employees will be compensated despite the lapse on the part of their employers.

### **3. Enforcement and Implementation of ECA**

The board is charged with the responsibility of enforcing and implementing ECA. It has been reported that out of fifty million working population in Nigeria, barely over seven million employees

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<sup>25</sup> California Labour Code s 3700 (a) & (b).

<sup>26</sup> California Labour Code s 56, 62(5), 3701(7) & 3717



have been registered under the scheme.<sup>27</sup> The General Manager, Corporate Affairs, Mrs Ijeoma Oji- Okoronkwo was reported to have stated that the penalty for non- compliance with provisions of ECA was weak and that the solution to the problem of non- registration of employees under the scheme was an amendment to ECA to provide more stringent sanctions.<sup>28</sup> She further stated that the board has instituted matters in court against sixty one (61) recalcitrant employers and served one thousand seven hundred and eighty six (1786) pre- action notices on erring employers.<sup>29</sup>

It was stated that the issue of non- compliance with ECA could be the issue of weak penalties but it is beyond weak penalties. The issue relates to weak implementation and enforcement. This does not in any way disregard the efforts of the board in enforcing the law by taking the erring employers to court or serving pre- legal notices as reported. The effort of the board so far is a step out of many steps to be taken for the law to be complied with. Till date some employers and employees in Nigeria do not know if a law known as ECA exist. Some employees do not know if they have any right to compensation if they sustain injuries or die in the course of employment. While the approach of the board is in the right direction and applaudable, more is to be done to enlighten the populace of the existence of the law and the rights and obligations under the law. Also, the recommendation of an amendment of the law to provide more stringent sanctions is a good one.

#### **4. Is Payment of Ransom for Kidnapped Employees Legal in Nigeria?**

Kidnapping of any sort is prohibited in Nigeria. Though there are sanctions for the crime of kidnapping, it is prevalent in Nigeria. Some criminals have continued to kidnap people and in some cases the kidnapping is done to generate money. The money is generated through demand for ransom in exchange for the release of the victim.

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<sup>27</sup> V Ahiuma-Young, 'ECS: NSITF Takes Tough Action Against Recalcitrant Employers' *Vanguard* (Lagos, 17 August 2023) <https://www.google.com/amp/s/www.vanguardngr.com/2023/08/ecs-nsitf-takes-tough-action-against-recacitrant-employers/amp/> Accessed 30 August 2023.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

The issue is whether payment of ransom for the release of abducted employees is illegal in Nigeria.

There were reports of the Senate making and passing a bill to amend the Terrorism (Prevention) (Amendment) Act, 2013 to include a provision prohibiting payment of ransom to kidnappers.<sup>30</sup> The bill was stated to have been passed on the 26<sup>th</sup> of April 2022.<sup>31</sup> The bill if made law would mean that persons or entities that pay any ransom for the release of a victim of kidnapping would face a penalty under the law. The basis of the bill is that the money paid as ransom is used by the terrorists or militants to fund more crimes in the society. The issue that would arise is whether a kidnapped employee can be released without payment of ransom as demanded by the kidnappers. With the state of security in Nigeria where the lives and properties of persons are at stake, there is no guarantee that the employees kidnapped will be released.

It is worth noting that the Terrorism (Prevention and Prohibition) Act, 2022 was enacted on the 12<sup>th</sup> day of May, 2022 to repeal the Terrorism (Prevention) Act, 2011. However, till date, the bill which was reported to be to amend the Terrorism (Prevention) (Amendment) Act, 2013 to prohibit payment of ransom is yet to be signed into law in Nigeria. In so far as there is no law outrightly prohibiting payment of ransom to kidnappers in Nigeria, it is not illegal for an employer to pay ransom for the release of an abducted employee. An employer cannot be sanctioned for making such payment. In developed countries, employers have insurance covers to aid in handling kidnap risk or ransom demands. An example of such insurance is the K& R Insurance Marketplace.<sup>32</sup> The burden of kidnapping attacks is eased by the role played by the insurance companies.<sup>33</sup> Employers in Nigeria can as well have insurance covers to take care of cost incurred by kidnapping.

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<sup>30</sup> H Umoru, 'Senate Amends Terrorism Act, Prohibits Payment of Ransom to Kidnappers' *Vanguard* (Abuja, 27 April 2022) <https://www.google.com/amp/s/www.vanguardngr.com/2022/04/senate-amends-terrorism-act-prohibits-payments-of-ransom-to-kidnappers/amp/> Accessed 30 September 2023.

<sup>31</sup> Ibid.

<sup>32</sup> PL Brockett, LL Golden, S Zapparoli and JM Lum, 'Kidnap and Ransom Insurance: A Strategically Useful, Often Undiscussed, Marketplace Tool for International Operations' *Risk Manag Insur Rev* (2019) 6 <https://doi.org/10.1111/rmir.12134> Accessed 26 September 2023.

<sup>33</sup> Ibid.

## **5. Conclusion**

Kidnapping for ransom is a longstanding problem in Nigeria. Employees in public and private employments in some cases are victims of kidnapping attacks. When the kidnapping of an employee arises out of or in the course of employment, the employer has an obligation to ensure that the employee is released. Such actions could include payment of ransom. In some cases, the employee could be injured or experience stress reactions or die as a result of kidnapping. When such arises, the employee is entitled to compensation.

The compensation may be through a common law action for damages which is based on the tort of negligence or the employee can claim compensation under ECA. An employee claiming that the kidnapping occurred due to the negligent act or omission on the part of the employer must prove the elements of negligence; the duty of care, breach of the duty and damages suffered as a result of the breach of duty. Where an employee who was kidnapped cannot prove these elements, the action will fail.

Under ECA, an employee or his dependents will be compensated for injuries, psychological harm or death which occurred due to kidnapping provided the kidnapping arose or was done in the course of employment. The fault of any of the parties is not taken into consideration under the Act. The only problem that will prevent an employee from getting the compensation is where the employer does not comply with the law in contributing to the fund and providing the required information as provided under the Act. The failure to do so excludes the employees from benefitting under the law. There are penalties for violation of the law yet employers have still failed to comply with law. This points to issues of ignorance of the law, inadequacy of the penalties in deterring erring employers, weak enforcement and implementation of the law.

## **6. Recommendations**

The following recommendations are hereby made;

1. Sections 46 and 39(4) of ECA should be amended to include more stringent sanctions. The 10% sanction under section 46 for an employer's failure to contribute to the fund should be increased to 50%. The fines N100, 000 for individuals and

N1,000,000 for corporate bodies in section 39(4) should be for every 30 days that the default continues. The period of imprisonment should also be increased to two (2) years.

2. A fund known as Nigeria Uninsured Employee Fund (NUEF) should be established to provide compensation to injured employees or dependents of deceased employees whom their employees failed to register under ECA. The amount paid to the injured employees or dependents should be recovered from the employers in question. The funding of NUEF should be from fines imposed on erring employers who failed to register employees and money recovered from the employers as refund for money paid by the fund to the injured employee or dependents.
3. The board should organise awareness campaign on ECA. This would go a long way in enlightening employers and employees about their rights and obligations under the law.

The Board should intensify efforts in implementing and enforcing the law in all workplaces in Nigeria.