



## Resignation With Immediate Effect: Consequences for Employers and Employees under Nigerian Law

### Introduction

The National Industrial Court of Nigeria (“the NICN”), the court of first instance for employment disputes in Nigeria, is developing an interesting jurisprudence on the consequences of an employee terminating his employment contract with immediate effect. The court’s position, which appears to be a response to an emerging trend in the employment landscape in Nigeria,<sup>1</sup> sheds light on some silent aspects of existing common law principles governing resignation of employment. But before going further, here we are focusing particularly on a situation where an

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<sup>1</sup> The NICN case law reviewed in this article shows that there has been a growing tendency by employees in Nigeria to resign from their jobs with immediate effect.

employee, in notifying the employer of his decision to leave the employer's business (whether by a letter or email), indicates that he is resigning 'with immediate effect' or even stops work without any notice.

Generally, Nigerian law requires an employee to give his employer prior notice of his decision to bring the employment contract to an end.<sup>2</sup> An employee is also required to work during the notice period as set out in the contract of employment or implied by statute where there is no written contract.<sup>3</sup> However, there are several reasons why an employee may not want to work during his notice period, choosing instead to resign 'on the spot.'<sup>4</sup> This could be where, for example, the employee has received a new job offer with a better compensation package and work conditions but with an immediate or short start date. This article reflects on the case law of the NICN which expounds the legal principles applicable to this kind of scenario with a view to providing some useful insights into the implications of such resignation for both employers and employees under Nigerian law.

### **The law regarding resignation of employment in Nigeria**

There are several ways to bring a contract of employment to an end in Nigeria, one of which is resignation. A resignation is when an employee informs his employer that he is leaving his employment immediately or on a specified future date. Regardless of the reason, where an employee has decided to resign, he is required to give notice to his employer and this can be done verbally or in writing. This is because the law presumes that where there is a contract of employment, there is an implied term that the contractual relationship can be terminated, by either party, on notice.<sup>5</sup> The resigning employee also has the option of making payment in lieu of notice which is usually the amount of money he would have earned had he worked during the notice period.<sup>6</sup>

On the other hand, where an employee decides to resign without notice (i.e. with immediate effect), the employer cannot stand in his way as an employee has an unfettered right to end his employment contract whenever he chooses. Put differently, an employer cannot prevent an employee from resigning (even if the employer is dissatisfied with the resignation) as this would be tantamount to forced labour contrary to Section 34(1)(c) of the Constitution of the Federal

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<sup>2</sup> Labour Act Cap L1, Laws of the Federation of Nigeria 2004, s 9(7)(a) and s 11

<sup>3</sup> Labour Act, s 11

<sup>4</sup> Otherwise referred to in this article as 'resignation with immediate effect' or 'resignation without notice'.

<sup>5</sup> *University of Benin v Andrew Erinmwiooren* (2001) 17 NWLR (Pt. 743) 548 at 563

<sup>6</sup> Labour Act, s 11(6) & (9)

Republic of Nigeria 1999 (as amended), Section 73(1) of the Labour Act and the *ILO Convention Concerning Forced or Compulsory Labour, 1930 (No. 29)* (“the Forced Labour Convention”). This position was emphasized by the Supreme Court in *Yesufu v Governor, Edo State*<sup>7</sup> where the Court pronounced that a notice of resignation becomes effective and valid the moment it is received by the person or authority to whom it is addressed. This is because an employee has an absolute power to resign, and the employer has no discretionary right to refuse to accept; it is not necessary for the person to whom the notice of resignation is addressed to reply that the resignation is accepted.

It should be noted, however, that there are permitted circumstances where an employer can reject an employee’s resignation; for example, where the employer has a reason or reasons either from the employment contract or agreements reached during the employment (e.g. training bond agreements) indicating why the employee cannot resign.<sup>8</sup> In these circumstances, the employer’s remedy lies in an action for breach of contract as an employee who has resigned cannot be forced to return to the employment.

### Consequences of resignation with immediate effect

Resignation with immediate effect has significant implications for both the employer and the employee. For the employer, if he does not want to accept the resignation, there is in effect only one option available to him which is to bring a breach of contract claim in court against the resigning employee. Of course, failure to give the required length of notice as specified in the employment contract or implied by law, or failure to give notice at all, or refusal to work during notice period, or failure to make payment in lieu of notice, or resignation with immediate effect contrary to express terms agreed in an employment contract, constitutes a violation of the terms and conditions of the contract for which the employer may be able to take legal action against the employee for breach of contract.

Where any of the above circumstances exist, whether the employer would want to pursue an action for breach of contract against the employee is something to be considered painstakingly as the employer would be required to prove that he has suffered financial losses as result of the employee’s immediate effect resignation. For example, the employer would need clear evidence showing that, due to the employee’s resignation, he incurred unnecessary cost to hire temporary replacement to complete ongoing client contracts. In practice, it is always tricky to establish a causal link between the employee’s resignation with immediate effect and any financial losses

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<sup>7</sup> (2001) 13 NWLR (Pt. 731) 517 SC

<sup>8</sup> *Dr. Fatimat Bakare v Lagos State University* (Unreported Suit No NICN/LA/115/2018, judgment delivered on 29 September 2020)

alleged to be sustained by the employer. As such, a suit against the employee for breach of contract would be an empty suit which the employee may choose to ignore.

The fact that the employer may not be able to successfully pursue a claim for breach of contract does not altogether make resignation with immediate effect a profitable exit route for the employee as this comes with some serious consequences. In *Dr. (Mrs) Ebele Felix v. Nigerian Institute of Management*,<sup>9</sup> the NICN held as follows:

*[t]he claimant resigned her appointment with immediate effect on 19th May 2014 vide Exhibit C25 of same date, which was received by the defendant on same 19th May 2014. What is the legal effect of this resignation with immediate effect? ...*

*Resignation with immediate effect by an employee carries with [it] three legal effects: the right to leave service automatically; the employee's forfeiture of any benefit; and the employee paying any indebtedness to his employer.*

As can be seen from the above excerpt, resignation with immediate effect has three (3) legal implications for the employee. Each of these implications will be discussed in turn in the succeeding paragraphs.

#### *The employee's right to leave service automatically and immediately*

Immediate effect resignation gives the employee the right to leave the employment immediately and automatically as the law does not require anything more, either from the employee or the employer, to activate the employee's right to exit the employment. As already mentioned, the employer cannot prevent or stop the employee from leaving the employment or work premises. In *Mr. Chidebere Ijoma v Fidelity Bank Plc*,<sup>10</sup> the NICN clearly emphasize the point, stating that:

*[t]he claimant having resigned from the employment of the defendant with immediate effect, means he had automatically left the services of the defendant with effect from 28/3/2017. The immediate resignation of the claimant also means that the claimant has forfeited any benefit he may be entitled to apart from earned salary.*

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<sup>9</sup> (Unreported Suit No. NICN/LA/321/2014, judgement delivered on July 4, 2017) *per* Justice B.B. Kanyip PhD (now President of the Court)

<sup>10</sup> (Unreported Suit No. NICN/ABJ/381/2017, judgment delivered on 10 March 2022, *per* Sanusi Kado, J)

It bears mentioning that the above pronouncement follows an earlier decision in *Dr. Dave Nwabor v Oilflow Services Limited*<sup>11</sup> where the Court held that “the tendering of the letter of resignation by the claimant and the receipt of same by the defendant was immediately effective and he ceased to be an employee of the employer.” An additional point that needs to be mentioned here, perhaps for emphasis, is that the employer cannot dismiss the employee from service after resigning with immediate effect as the employment relationship that existed had been severed the moment the notice of resignation was received by the employer. Whilst resolving a similar issue in *Dr. (Mrs) Ebele Felix v. Nigerian Institute of Management* earlier cited, the Court held thus:

*[i]n the instant case, the claimant resigned with immediate effect on 19th May 2014. The defendant received the said letter of resignation on same 19th May 2014. This means that going by the above case law authorities, the claimant’s resignation was effective from 19th May 2014, the date the defendant received the letter of resignation. I so find and hold. This being the case, there was no employment relationship between the parties which the defendant can reject and so dismiss the claimant afterwards. By *Jombo v. PEFMB* [2005] 14 NWLR (Pt. 945) 443 SC, it is elementary that an employee cannot be dismissed from an employment that had ceased to exist. Therefore, a dismissal coming after the termination of appointment would be futile exercise. The claimant effectively resigned her appointment on 19th May 2014; there was no employment relationship on 22nd May 2014 for the defendant to dismiss with immediate effect. It is ironic, indeed funny I would say, that Exhibit D8 is dated 22nd May 2014 but was delivered to the claimant on 21st May 2014, and the defendant’s response is that it was merely postdated. There was no employment for a postdated dismissal either. I so hold.*

It is also common, in real life scenarios, to see employees facing disciplinary proceedings resign with immediate effect while investigations are yet to be concluded by their employers. In deciding how to handle such pre-emptive resignation, it is important for the employer to bear in mind that the employment relationship automatically ended at the point the employee handed in his resignation notice and therefore can no longer discipline him. As such, the disciplinary proceedings must be terminated as any further step, for example, imposing disciplinary measures or dismissing the resigned employee from service would be an exercise in futility, if not unlawful.<sup>12</sup>

#### *The employee’s forfeiture of all benefits*

Perhaps, the most telling implication of a resignation with immediate effect is that the employee forfeits, not only the pay he would have earned during the unworked notice period, but all

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<sup>11</sup> (Unreported Suit No. NICN/LA/552/2015, judgment delivered on 10th July 2017).

<sup>12</sup>See *Dr. (Mrs) Ebele Felix v. Nigerian Institute of Management* (supra)

employee benefits that he may be entitled to, except outstanding salaries. In *Mr. Chidebere Ijoma v Fidelity Bank Plc* earlier cited, the NICN made this point, holding that:

*[i]t is to be noted that resignation with immediate effect has its own repercussion which is to deprived the employee of claiming benefits which he may have been entitled to enjoy, if, his resignation was done in line with the conditions of service. In the case at hand no admissible conditions of service has been tendered in evidence. This means for an employee to properly resign his employment, he must give reasonable notice...*

.....  
*The immediate resignation of the claimant also means that the claimant has forfeited any benefit he may be entitled to apart from earned salary... The justification for having to allow the resigning employee to leave immediately is the fact that the employee thereby forfeits any benefit he may be entitled to as well as the duty to pay off all indebtedness that he may have towards the employer, as such, the forfeiture of benefits inures as contractual consideration for the immediate and automatic separation of contractual relationship as per the employment issue. So it cannot be that an employee who resigns with immediate effect is allowed to also benefit from such immediate separation by claiming benefits from the employer.*

The position adopted in the above case has been followed in several other decisions, including *Dr. Dave Nwabor v Oilflow Services Limited*<sup>13</sup> and *Mr. Liyi Victor v Mr. Dolapo Ajayi & Solo Phone Nigeria Ltd.*<sup>14</sup> Needless to mention, in the earlier case of *Patrick Anokwuru v Omatek Ventures Plc & Anor*,<sup>15</sup> the Court arrived at a similar decision, pronouncing *inter-alia* that:

*[t]he justification for having to allow the resigning employee to leave immediately and automatically is the fact that [he/she] thereby forfeits [any] benefit he/she may be entitled to as well as the duty to pay off all indebtedness that [he/she] may [have] towards the employer; as such, the forfeiture of benefits inures as contractual consideration for the immediate and automatic separation of contractual relationship as per the employment in issue. So it cannot be that an employee who resigns with immediate effect is allowed to also benefit from such immediate separation by claiming benefits from the employer.*

It is important to perhaps highlight the difference between benefits and earned salaries in this context as it could be crucial in an employment litigation where the issue turns on what the employee can claim from the employer after he resigned with immediate effect. Whilst these terminologies are not clearly defined in the cases, in practice, an employee who resigns with

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<sup>13</sup> (supra)

<sup>14</sup> (Unreported Suit No NICN/KD/06/2015, judgment delivered on 12 May 2022)

<sup>15</sup> (Unreported Suit No NICN/LA/140/2011, judgment delivered on 16 March 2016)

immediate effect would only be entitled to accrued unpaid salaries (i.e the cash remuneration typically paid to employees on a monthly basis) and would forgo employee benefits (i.e non-salary compensation) which usually include bonuses, allowances, gratuities, non-cash incentives and other fringe benefits within a compensation package. To this extent, earned salary would be different from benefit, as benefits are merely 'extras' to salary, and so resignation with immediate effect cannot disqualify a resigned employee from receiving or claiming his earned salaries.

[The employee paying any indebtedness to his employer](#)

By resigning with immediate effect, and that way bringing the employment contract to an end, the law requires the employee to pay off all debts that he owns the employer, just as the employer has a corresponding obligation to pay the employee all earned salaries.<sup>16</sup> Such debts could be in the form of the remaining balance of loans, cash/salary advance and other credits offered by the employer to the employee before the decision to resign with immediate effect.

As this point highlights the obligation placed on an employee who has made a decision to resign with immediate effect, it is necessary here to emphasized the justification provided by the NICN for equipping the employer with the right to withhold benefits upon an immediate effect resignation. The first is to allow the employer to apply the benefits the employee would have enjoyed, if he had resigned in line with the terms and conditions of the employment contract, to defray outstanding indebtedness, if any. The second is to serve as the contractual consideration for the immediate and automatic separation of the contractual relationship as per the employment in issue.<sup>17</sup>

## Conclusion

The reflections above point out several things. With respect to the NICN's case law reviewed, we have seen that, by resigning with immediate effect, an employee does not only forfeit the pay he would have earned for the notice period that he refused to work, but also forfeits all benefits he may be entitled to except earned/unpaid salaries. Therefore, in an employment litigation arising from a scenario of immediate effect resignation, unless there is a claim for outstanding salaries, any claim brought against the employer by the resigned employee is not likely to succeed.

Having said that, it is commendable, particularly in light of the vexed issue of inconsistent decisions by Nigerian courts, that the NICN appears to effectively track the trend of its case law as the same thread runs through its decisions on the legal effect of resignation with immediate effect discussed in this article.

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<sup>16</sup> See *Mr. Chidebere Ijoma v Fidelity Bank Plc* (supra)

<sup>17</sup> See *Beloved Patrick Anokwuru v Omatek Ventures Plc & Anor* (supra)

**Note:** This article does not constitute a legal advice. For proper legal advice or inquiries on the issues raised in this article or general enquiries relating to labour and employment law in Nigeria, please contact Aret & Bret LLP at [ab@aret-bret.com](mailto:ab@aret-bret.com). You can also reach out to the authors:



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