

Legal Alert ? June 2011 ? **Employees' and Trade Unions**

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Introduction

The privatisation with the resulting expansion of many previously owned government corporations by private corporations, and the liberalisation of many sectors of the Nigerian economy should have led to the enhancement of the constitutional rights of employees to freely join Trade Unions for the protection of their employment rights. This has unfortunately not occurred.

The politicisation of the existing Trade Unions' groups has equally undermined the institutionalisation of best Trade Union practices in Nigeria.

Employers' resistance to Trade Unions' groups could be attributable to the lack of a proper understanding and or appreciation of the current legislations on the subject matter of Trade Unions Law in Nigeria, and the benefits that such Trade Unions bring to both the private and public sectors of the Nigerian economy.

This Legal Alert seeks to bridge the information gap by providing you with an understanding of the provisions in the Trade Union's Act (as amended) with other related legislations under Nigerian Law.

Who is a Trade Union?

The Trade Unions Act defines a Trade Union to be a combination of employees, or of employers, whether on temporary or a permanent employment basis, who come together with the primary purpose or objective of regulating the terms and conditions of the employment of employees, and resisting any practice that is in restraint of trade, and lawfully applying its funds to providing benefits to its members which benefits must not be political in nature.

Registration of Trade Unions

It is mandatory that a Trade Union, before it commences the execution of its objectives, must apply for and be registered by the Registrar of Trade Unions in accordance with the provisions of the Trade Unions Act (as amended).

An application for the registration of a Trade Union can only be made, in the case of a Trade Union of employees, by at least fifty (50) members of the Trade Union executing/signing the Trade Union's application form; and in the case of a Trade Union of employers, the application

form must be signed by at least two members of the Trade Union of employers.

However, a Trade Union will not be registered where:-

- (a) There is evidence that there already exist a registered Trade Union that sufficiently represents the interest of the employees or of the employer in a class or industry whose interest the Trade Union intending registration, wishes to represent its members. See the Supreme Court's decision in *The Registered Trustees of the National Association of Community Health Practitioners of Nigeria & Others v. Medical & Health Workers Union of Nigeria & Others* (2008) 1 SC (part. III) 1.
- (b) The proposed name of the Trade Union closely resembles that of an existing and registered Trade Union so as to be likely to deceive the members of the public or the members of the Trade Union itself.
- (c) The purpose or objectives of the Trade Union is/are unlawful.
- (d) The consent of the members of the Trade Union was/were obtained by force or by fraud.
- (e) The purpose of the Trade Union has ceased to exist or the Trade Union has ceased to function.

Membership of Trade Unions

No employee of a company, who is recognised as a projection of the management team of such a company or who is within the management structure of the company, can be a member of or hold office in any Trade Union in Nigeria. This proviso is to ensure that there are no conflict of interest issues in the administration of Trade Unions in Nigeria.

Also, no employee or employer can be an executive official in more than one Trade Union, at any one given time.

The membership of a Trade Union cannot be denied of an employee or an employer on grounds of ethnicity, race, religions beliefs or political opinions or affiliations.

Members of the Armed Forces, Police Force, Custom Service, Nigerian Security Printing & Minting Company, Central Bank of Nigeria, Nigerian Telecommunications Limited and every Federal or State Government establishment whose employees bear arms, cannot join or form a Trade Union. They can however establish consultative committees to protect their employment interests.

Effect of Non registration of a Trade Union.

A Trade Union cannot lawfully perform any of its objectives unless and until it is registered by the Registrar of Trade Unions. A breach of this statutory provision by a Trade Union ascribes to the Trade Union and every official of the Trade Union, with any member of the Trade Union that takes active part in the breach, legal liability and penalties as prescribed in the Trade Unions Act (as amended).

Employers are statutorily required to recognise and deal with a registered Trade Union to which their employees have registered their membership in accordance with the provisions of the Trade Unions Act (as amended). It is an offence for an employer to refuse to recognise a registered Trade Union. The liability on conviction is a fine in the paltry sum of N1,000:00 (One Thousand Naira).

Funds of a Trade Union

Employers whose employees belong to a Trade Union, or Trade Unions, are required by the Trade Unions Act (as amended) to deduct Trade Unions dues' from the wages or salaries of every such employee(s), and to remit such trade union dues' deductions to the registered office of the Trade Union concerned within a reasonable period of time or within such period as may be prescribed from time to time by the Registrar of Trade Unions.

Trade Unions are in turn required to pay to the appropriate Federation of Trade Unions, out of the contributions or trade union dues that the Trade Unions have received from their members, such a percentage of the dues as may be prescribed in the Constitution of the Federation of Trade Unions concerned.

Any Trade Union that defaults in remitting its contributions to the Federation of Trade Unions concerned shall be guilty of an offence and shall be liable on conviction to a fine of two times the said contribution.

Application of Trade Union Funds

The subscriptions and or dues contributed by the members of a Trade Union, with other funds belonging to a Trade Union, are not to be applied directly or indirectly, or otherwise to further any political objective or agenda. Where the funds of a Trade Union are applied in the furtherance of a political objective, the Trade Union and every official thereof shall be guilty of an offence.

Also, no person shall apply the funds of a Trade Union, whether directly or through any other Trade Union, or some other association or body, to prosecute any legal proceedings relating to such a person's election or appointment into any office in a Trade Union.

Any person who applies the funds of a Trade Union to purposes that are expressly prohibited under the Trade Unions Act (as amended) will be guilty of an offence and liable on conviction to a paltry fine of (N5,000:00) Five Thousand Naira.

The Benefits of Trade Unions Registration

One of the primary benefits for the registration of a Trade Union is that a Trade Union, once registered, assumes a legal personality of its own, with the legal capacity to negotiate collectively on behalf of its members' better employment conditions using the most modern tools and information for negotiating such agreements.

However, collective agreements that are negotiated by Trade Unions and executed by Employers with these Trade Unions are not legally binding except they are enshrined in the individual employment contracts of each employee. This is in the light of the privity rule in the law of contract.

It is mandatory for an employer or employers to recognise a registered Trade Union and to allow its employees the constitutional right to elect whether or not to join any Trade Union in Nigeria.

Federation of Trade Unions & Affiliations

A group of Trade Unions may combine to form a Federation of Trade Unions provided that a majority of the members of the intending combined Federated Trade Union have agreed to the creation of the Federation of Trade Union. Despite this provision, Trade Unions representing junior employees cannot combine or be affiliated to senior employees Trade Unions.

The Nigerian Labour Congress ("NLC") is the statutorily recognised Federated Trade Union for junior employees while the Trade Unions Congress ("TUC") is the statutorily recognised Federated Trade Union for senior employees.

A Federation of Trade Unions may be registered by the Registrar for Trade Unions where:-

- (1) Its main objective is to represent the interest of employees;
- (2) Its members are twelve or more registered Trade Unions none of which is a member of another Federated Trade Union;
- (3) It is established by a majority resolution of the national delegates conference of the trade unions concerned;
- (4) Its name does not resemble nor conflict with the name of another federation of trade unions;
- (5) It has adopted a constitution and or rules which is/are in accordance with the first schedule to the Trade Unions Act.

A critical objective for the establishment of a Federated Trade Union is for such federation to, among other things and subject to its Rules or Constitution, collect and disseminate to its members information and advice on labour relations, economic and social matters, or such other connected fields or matters; in addition to giving advice, encouragement and financial assistance to any of its members in need of such assistance.

Rendering of Accounts and Returns by Trade Unions

Every registered Trade Union in Nigeria is statutorily required to prepare and have certified by a licensed Auditor the Trade Union's Statement of Accounts and Returns which must be filed at the office of the Registrar of Trade Unions on or before the 1st day of June of each year.

Every member of a Trade Union is entitled to receive free of charge, the audited returns and statement of accounts that is filed with the Registrar of Trade Unions, once a request is made by

such a member to his or her Trade Union. Failure to file or furnish such an audited account, with returns, is an offence by the Trade Union and every official of the Trade Union.

Peaceful Picketing or Persuasion

Section 43 of the Trade Unions Act (as amended) makes it lawful for a person or group of persons, acting on their own behalf or on the behalf of a Trade Union or a registered Federation of Trade Unions, or on behalf of an individual employer or firm, in contemplation of or in furtherance of a trade dispute to attend at or near a house or place where another person reside or works or carries on business or happens to be so present, if they so attend merely for the purpose of peacefully obtaining or communicating information or of peacefully persuading any person that is at work to abstain from working in furtherance of such a trade dispute. This exercise is more commonly known as the right to peaceful picketing or persuasion.

The right to a strike action or picketing or peaceful persuasion in the premises of an employer in furtherance of a trade dispute is guaranteed under the Trade Unions Act (as amended) and under the 1999 Constitution of the Federal Republic of Nigeria (as amended). Employees engaged in any of these activities cannot, subject to the exceptions stated in the following paragraphs, be charged with any offence arising from such peaceful exercise of their constitutional rights.

Exceptions to Peaceful Picketing and Strike Action

However, no person is allowed to subject another person or group of persons to any form or kind of intimidation, constraint or restriction of the latter's right to free movement in the course of the peaceful picketing or persuasion in another's premises.

Also, no Trade Union or registered Federation of Trade Unions or any member thereof shall in the course of any peaceful picketing or persuasion, or strike action compel any person who is not a member of its Union to join in such picketing, persuasion or strike action, in any premises, institution or highway of any kind, for the purpose of giving effect to the picketing or strike action.

Exemption from Actionable Torts in a Trade Dispute

Any action done by a person in the contemplation of or in the furtherance of a trade or labour dispute is not actionable in a Court of Law in Nigeria. Such actions include the inducement of or the persuasion or threat of persecution of Trade Union members to breach or break their contracts of employment and interference with an employer's trade or business, or the employment of some other party. Any actions outside the latter stated exemptions to the general protection to trade union activism could be actionable in a court of law.

Trade Unions and the Companies and Allied Matters Act

The provision of the Companies and Allied Matters Act do not apply to the activities of any Trade Unions, or to any Federation of Trade Unions in Nigeria. This exclusion includes the registration

of a Trade Union under part C of the Companies and Allied Matters Act as such registration is declared null and void by Section 45 of the Trade Unions Act (as amended).

Jurisdiction

The jurisdiction to try offences committed under the Trade Unions Act (as amended) was conferred on a Magistrate Court having the jurisdiction in the area where the registered office of the Trade Union concerned is registered or where the offending party resides.

However, the Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010 now confers on the National Industrial Court of Nigeria the status of a superior Court of Record with exclusive jurisdiction to entertain all labour, employment, trade unions, industrial relations related matters, with other matters connected therewith, that arise from the workplace, the conditions of service, welfare of employees, etc. You can visit the National Industrial Court's website, www.nicn.gov.ng for more information.

Conclusion

Trade Unions in Nigeria, with the Federated Unions for Trade Unions in Nigeria, have failed to enlighten their members, employers, with other stakeholders, on the twenty-first century benefits of Trade Unions to employers and employees via Trade Unions, and the necessity for these stakeholders to enter into loose partnerships to the benefit of all concerned.

The Trade Unions have also failed to build twenty-first century tools and capacity to enlighten their own members and economically protect them whenever their employment interest are threatened or jeopardised.

The Trade Unions have also failed to find a more effective negotiation tool other than threats of or actual strike or industrial actions which have failed due to the very weak economic structures in Nigeria and the lack of financial support to the employees during the period of the strike actions. Also, the percentage of employees or employers who are members of Trade Unions have diminished considerably in the last few years when compared to the entire workforce in the country.

The democratic structures in the various Trade Unions in Nigeria are undermined by the very poor governance and electioneering structures in the larger society. The labour movement continues to find it very difficult to show a good governance example as they had in the past due to their poor structures.

The none enforcement of the provisions of the Trade Unions Act with the fundamental human rights provisions in the Constitution of the Federal Republic of Nigeria, by the Trade Unions will continue to improvise the Nigerian workforce.

Curiously also are the paltry penalties for breaches of the express provisions of the Trade Unions

Act (as amended). These paltry penalties appear to be designed to encourage Employers' breach and disobedience that compliance with the present day applicable Law.

A holistic amendment of the Trade Unions Act (as amended) to meet present-day realities is therefore fundamental to the development of the Nigerian economy.

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