IN THE COURT OF APPEAL OF NIGERIA
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS
ON MONDAY, THE 17TH DAY OF JULY, 2023

BEFORE THEIR LORDSHIPS

OBANDE FESTUS OGBUINYA	**JUSTICE, COURT OF APPEAL**
FREDERICK OZIAKPONO OHO	**JUSTICE, COURT OF APPEAL**
MUHAMMAD IBRAHIM SIRAJO	**JUSTICE, COURT OF APPEAL**

APPEAL NO. CA/L/565/2013

BETWEEN:

NATIONAL UNION OF HOTEL & PERSONNEL SERVICES WORKERS (NUHPSW) ---------- **APPELLANT**
(For themselves and on behalf of the NUHPSW Warri Escravos/Swamp & Lagos Branches)

AND

OUTSOURCING SERVICES LIMITED ---------- **RESPONDENT**

JUDGMENT

(DELIVERED BY MUHAMMAD IBRAHIM SIRAJO, JCA)

On 18/01/2013, the Lagos Division of the National Industrial Court, Coram: Obaseki-Osaghae, J., (the lower Court), delivered its judgment in Suit No: NIC/LA/240/2011; filed by the Appellant, a Workers' Union, wherein the learned trial Judge, at the conclusion of the trial, held that the Collective Agreement, dated June, 2008, executed between the parties thereto; who are the parties in this appeal, had lapsed and no longer in operation.

CHIEDOZIE S. AMADI Esq
SENIOR EXECUTIVE OFFICER
CERTIFIED TRUE COPY
COURT OF APPEAL

28/7/23

At all material times, prior to the institution of the suit in the lower Court, parties herein were involved in a labour-related relationship which culminated in a "Collective Agreement" sometime in June, 2008 between the Appellant, on behalf of some of its members, as the employees, and the Respondent as their employer. The collective agreement was said to have been duly executed by parties herein and registered at the Federal Ministry of Labour, Abuja. There was yet another agreement, said to have been prepared by the Federal Ministry of Labour, Abuja after a meeting held on 30/10/2008, same was executed by both parties to this appeal. The crux of the claim of the Appellant in the lower court was that the Respondent had refused to implement both agreements, as afore-stated, even in a direct disregard of an instruction of the Federal Ministry of Labour, Abuja, directing the Respondent to implement same in full.

The Appellant thereafter filed the action in the lower Court, vide a Complaint, annexed with the Statement of Fact and other relevant processes, all dated 22/12/2011. See pages 1-13 of the Record of Appeal. The "*General Form of Complaint*" was later amended and refiled on 02/08/2012, on the face of which the Appellant prayed the lower Court for the following ten reliefs:

1. ***AN INTERPRETATION*** *of the Collective Agreement dated June 2008 between the Defendant and the Claimant and/or the following branches of the Claimant, (i.e., NUHPSW) Warri Branch, NUHPSW Escravos/Swamp Branch and Lagos Branch) respectively as to the existence of otherwise the rights of the Claimant to Claim and/or to demand from the Defendant their leaving gratuity.*

2. **AN INTERPRETATION** of the Collective Agreement dated June 2008 between the Defendant and the Claimant and/or the following branches of the Claimant. (i.e. NUHPSW Warri Branch, NUHPSW Escravos/Swamp Branch and Lagos Branch) respectively as to the existence of otherwise the rights of the Claimant to Claim and/or to demand from the Defendant their annual increment of 7.5% basic salary for the year 2011.

3. **AN INTERPRETATION** of the Collective Agreement dated June 2008 between the Defendant and the Claimant and/or the following branches of the Claimant (i.e. NUHPSW) Warri Branch, NUHPSW Escravos/Swamp Branch and Lagos: Branch) respectively as to the existence of otherwise the rights of the Claimant to Claim and/or to demand from the Defendant their overtime payment of N264,00 (Two Hundred and Sixty Four Naira) per hour for four (4) hours per day from 1st November, 2002 till date.

4. **AN INTERPRETATION** of the Collective Agreement dated June 2008 between Defendant and the Claimant and/or the following branches of the Claimant (i.e., NUHPSW Warri Branch, NUHPSW Escravos/Swamp Branch and Lagos Branch) respectively as to the existence of otherwise the rights of the Claimant to negotiate with the Defendant on behalf of such employees who are members of the Claimant/Union.

5. **A DECLARATION** that the Claimant and/or the following Branches of the Claimant (i.e., NUHPSW Warri Branch, NUHPSW Escravos/Swamp Branch and NUHPSW Lagos Branch) are entitled to the leaving gratuity as contained in the Collective

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Agreement between the Defendant and the Claimant and/or the Branches of the Claimants (i.e., NUHPSW Warri Branch, NUHPSW Branch and NUHPSW Lagos Branch).

6. ***A DECLARATION*** *that the Claimant and/or the following Branches of the Claimant (i.e., NUHPSW Warri Branch, NUHPSW Escravos/Swamp Branch and NUHPSW Lagos Branch) are entitled to the annual increment of 7.5% basic salary for the year 2011. As contained in the Collective Agreement between the Defendant and the Claimant.*
7. ***A DECLARATION*** *that the Claimant and/or the following Branches of the Claimant (i.e., NUHPSW Warri Branch, NUHPSW Escravos/Swamp Branch and NUHPSW Lagos Branch) are entitled to the over-time payment of N284,00 (Two Hundred and Sixty-Four Naira) per hour for four (4) hours per day from 1st November, 2002 till date.*
8. ***A DECLARATION*** *setting aside the negotiation and the signing of the Six (6) weeks' pay in lieu of the leaving gratuity the Defendant forced, mandated or threatened the Claimant's members into signing.*
9. ***AN ORDER*** *mandating the Defendant to pay the Claimant and/or the following Branches of the Claimant (i.e. NUHPSW Warri Branch, NUHPSW Escravos/Swamp Branch and NUHPSW Lagos Branch) the leaving gratuity, the annual increment of 7.5% basic salary for the year 2011 and the over-time payment of N264,00 (Two Hundred and Sixty Four Naira) per hour for four (4) hours per day from 1st November, 2002 till date.*

10. ***AN ORDER*** *mandating the Defendant to pay the leaving gratuity, the annual increment of 7.5% basic salary for the year 2011 and the over-time payment of N264,00 (Two Hundred and Sixty-Four Naira) per hour for four (4) hours per day from 1st November, 2002 till date for all the members of the Claimant and/or the following branches of the Claimant (i.e. NUHPSW Warri branch, NUHPSW Escravos/Swamp branch and Lagos branch) into their Solicitors Account opened with Diamond Bank, Account Number 0026428076; Account Name Francis O. Yekovie & Co.*

The Appellant filed, alongside its claim in the lower court, a Motion on Notice, of the same date with the originating processes and reproduced at pages 63-85 of the Record. The application was brought pursuant to Order 10 Rule 1 of the 2007 Rules of the lower Court, therein the Appellant, as the Claimant/Applicant, prayed the lower court for an Order entering judgment summarily in favour of the Appellant, as, according to the Appellant; there is no defence and/or reasonable defence to the complaint.

The Respondent, as the Defendant in the lower Court filed, in response to the processes filed by the Appellant, its Statement of Defence dated 05/03/2012, which was later amended on 27/06/2012. See pages 93-98 and 175-202 of the Record. The Respondent also filed a Notice of Preliminary Objection in which the jurisdiction of the lower Court to hear and determine the Appellant's suit was challenged. In opposition to the Respondent's objection, the Appellant filed an 11-paragraph Counter Affidavit deposed to by one Mohammed Jimoh, a Legal Practitioner in the firm of counsel to the Appellant. On 04/06/2012, the lower Court

ruled on the Respondent's preliminary objection and dismissed it accordingly.

At the close of pleadings, the learned trial Judge, having dispensed with oral evidence in the matter as it was founded on the interpretation of written instrument, directed both parties to file written addresses, after which the matter was reserved for judgment. In his considered judgment, delivered on 18/01/2013, the learned trial Judge found that there was no collective agreement to be interpreted between the parties and consequently dismissed the suit.

Displeased by the judgment of the lower Court, the Appellant initiated the instant appeal vide a Notice of Appeal dated 16/02/2013 premised on two grounds of appeal, copied at pages 283-285 of the Record.

Parties filed and exchanged their respective Briefs of Argument in compliance with the procedural rules of this Court, which Briefs were adopted at the hearing of the appeal on 10/05/2023. While the Appellant's Brief of argument together with the Reply Brief were settled by Francis Yekovie, Esq., the Respondent's Brief of Argument was prepared by Bamidele Adeleye Esq., leading Hannah Adeyemi, (Mrs.) and Chiamaka Anyanwu, Esq.

In the Appellants' Brief of Argument, a sole issue was formulated from the grounds of appeal, as follows:

> *Whether the trial judge was right to have held that the words "any other personal contract of agreement is not specific, it is vague, uncertain and unclear" without considering Article 6.2 of the collective agreement as against the intent of the parties.*

On his part, learned counsel for the Respondent, distilled two (2) issues for determination, thus:

a) *Whether the collective agreement entered into between the appellant and respondent in June 2008 is justiceable and enforceable.*

b) *Whether the collective agreement entered into between the appellant and the respondent is still operative for the court to interpret the content of the agreement.*

I have taken a careful look through the grounds of appeal in conjunction with their particulars; the respective issues formulated by both parties together with the arguments canvassed thereon vis-à-vis the judgment of the lower Court, and I hold the opinion that the twin issues formulated by the Respondent, are 2 sides of the same coin, in that they seek to challenge the propriety or otherwise of the "Collective Agreement", which is the undoubted subject matter of the dispute between the parties. This Court, as an appellate Court, could either adopt, reframe and or outrightly reformulate the issues earlier formulated by the parties, with an issue that will resolve the dispute between the parties. My Lords, I shall exercise the liberty afforded this Court, in its appellate jurisdiction, to collapse the arguments canvassed on the said issues into one, which, in my view, will best serve the interest of justice. To this end, the two issues formulated by the Respondent are hereby adopted and re-couched as follows:

Whether or not the Collective Agreement entered into between the Appellant and the Respondent in June 2008 is justiceable and enforceable ab initio, and whether it is still operative.

Appellant's Argument

In a nutshell, the argument canvassed by the Appellant on the sole issue formulated is to the effect that, the lower court erred when it failed to observe the fundamental rule of construction of instruments in arriving at its decision thereon, counsel argued, in the instance, that the several clauses of the Collective Agreement between the parties ought to be interpreted harmoniously in order to bring its various parts into an agreement with the drafters' intention. Learned counsel cited Authors of **HALSBURY'S LAWS OF ENGLAND VOL. 12 (4 Ed) para. 1469** which was cited with approval in the Supreme Court decision in **Unilife Development Co. Ltd vs. Adeshigbin (2001) VOL. 10 WRN. 158 @ 161** and also the decision of the apex Court in **Ojokolobo & Ors vs. Alanamu & Anor (1987) 7 SCNJ 98,** and submitted that the lower Court interprets Article 2 of the parties' Collective Agreement without putting into consideration the provision of Article 6.2 of the said instrument thereby creating conflict to the natural relation of the parties. Counsel argued that the lower court ought to have taken into consideration the fact that not all the members of the Appellant, who even consented to the Respondent's proposed waiver, had received their respective cheques, let alone the fact that several other of its members declined to consent to the said waiver. Whilst relying on the Supreme Court's decision in **Amaechi vs. INEC & 2 Ors WRN VOL. 10,** learned counsel submitted that the "Collective Agreement" remains the contract of employment between the members of the Appellant in the Respondent's employment. Counsel stated that the lower Court misconstrued the said collective agreement as being merely between "*an employer or group of employers and one or more trade unions or*

workers organization relating to working conditions and terms of employment" which has a limited application time. It was argued that the wording of the said Agreement in its Articles 2 and 6.2, apart from its being in compliance with the provision of Section 3 of the Trade Dispute Act, 2006; is a clear and unambiguous operative word of a contract, the Collective Agreement, and ought to be given its simple and ordinary grammatical meaning by the lower Court, citing the decisions in **Race Auto Supply Co. Ltd & Ors vs. Akibu (2006) SC. 1 @ 19; Daler Nigeria Ltd vs. Oil Mineral Producing Areas Development Commission (DESOPADEC) (2007) ALL FWLR (Pt 364) 204 @ 307; Odutola vs. Papersack (Nig) Ltd (2007) ALL FWLR (Pt 350) 1214; Unilife Development Co. Ltd vs. Adeshigbin, (supra).** Counsel contended that the lower court failed in its duty to read the intention of the parties from the wording of the collective agreement that was binding on them.

The Appellant submitted that its members have suffered a miscarriage of justice arising from the lower court's failure to consider, amongst others, Article 6.2 of the parties' collective agreement before reaching its decision thereon, which provision is clear, certain and specific, relying on **Samade vs. Okei (1998) 2 NWLR (Pt 538) 455** which was cited with approval in **Savannah Bank of Nig Plc V Central Bank of Nigeria (2009) NWLR (Pt 939) 958, Agbomeji vs. Bakare (1998) 9 NWLR (Pt. 5641)** cited in **Altimate Investment Ltd VS Castle and Cubicles Ltd (2008) ALL FWLR (Pt 417) 124 @ 131-132.**

Learned counsel for the Appellant, while urging the court to interfere with the decision of the lower court, cited the decisions of the Supreme Court in Brown **Uzuda & Ors vs. Ebigah & Ors (2009) All FWLR (Pt**

493)1233; **A.G. Leventis Nig. Ltd vs. Akpu (2007) Pt 388 1028 @ 1033,** and argued that the decision of the lower court is liable to be set it aside by this Court for the miscarriage of justice it occasioned on its members.

The Appellant restated manners in which a contract, of the instant nature, could be legally or deemed to be validly terminated, citing provisions of Sections 7 (5) and 9 (7) (a), (b) & (c)\ of the Labour Act, 1971. He expatiated further that employment for a fixed term or period or for a specific job terminates at the expiration of the stipulated term or upon the contractual completion of the job unless it is earlier brought to an end, counsel then reasoned that the Respondent's admission that there were ongoing negotiations for a new "collective bargain agreement" between the parties indicates that the Appellant's members' employments subsist and that no subsequent contract of employment has varied the initial agreement, drawing the attention of the Court to paragraphs 9 & 10 of the Respondent's Statement of Defence in the lower Court. Counsel urged the court to allow the appeal, set aside the judgment of the lower Court and enter judgment in favour of the Appellant.

Respondent's Argument.

In its response to the Appellant's submissions, the Respondent, in one leg of the reformulated issue, which borders on the justiciability and enforceability of the collective agreement executed by the parties before the court, averred that the issue was distilled from the "**Notice to Affirm**" dated and filed on 6th February, 2018 in the registry of this court, therein, counsel contended that the lower court ought not to hold

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that the collective agreement dated June, 2008 between the parties was justiceable and enforceable. The Respondent relied on the provisions of **Section 48, Trade Dispute Act, 2004, Section 91, Labour Act, 2004** and **the** Supreme Court's decision in **Osoh & Ors vs. Unity Bank Plc (2013) 9 NWLR (Pt.1358) 1**, where the apex Court distinguished between a "Collective Agreement" and a Contract of Employment. Counsel argued that the Appellant failed to appreciate the import of the difference between a contract of employment and a collective agreement as enunciated by the apex Court in the case cited, supra. Learned counsel for the Respondent, however, contended that the instant case falls not within the exception of when a collective agreement could be enforceable as provided for in **Section 3(3)** of the **Trade Dispute Act,** 2004, citing the decisions in **Union Bank of Nigeria vs. Edet (1993) 4 NWLR (Pt 287) 288; Rector, Kwara Poly vs. Adefila (2007) 15 NWLR (1056) 42 (CA)** in support of the submission.

It was further argued that mere deposition of the collective agreement with the Ministry of Labour, as done by the Appellant in this instance, does not fulfil the requirement in the provision of **Section 3(3)** of the **Trade Dispute Act**, in light of which it was submitted that the collective agreement in issue between the parties herein, is neither justiciable nor enforceable by the court.

On whether the collective agreement was still operative, counsel contended that it had lapsed as at the time suit was filed in the lower court which was based on the said agreement, hence the needlessness of contesting the rightness of the lower court's judgment on the issue. Learned counsel submitted, vide the decision in **Uwah & Anor vs.**

Akpabio & Anor (2014) 2 - 3 S.C. 1, that the parties have expressly agreed on the duration of the collective agreement, hence the lower court was right to hold as it did.

The Respondent submitted that the lower court did carefully consider the provisions of Article 2 and Article 6.2 of the Collective Agreement, over which the Appellant had raised a stiff contention. Learned counsel placed reliance on the provision of section 91 of the Labour Act, 2004, to restate the difference between a contract of employment and a collective agreement as in the instance agreeing with the learned trial judge that collective bargaining agreement has a limited expiration time while a contract of employment inures till the cessation or determination of the employment, citing the decision in **UBN Plc vs. Toyinbo (2008) LPELR-5056(CA).**

Learned counsel also relied on the provisions of section 3(3), Trade Dispute Act, 2004, section 7(5) OF the Labour Act, 1971 and the decisions in **Nneji V Zakhem Con (Nig) Ltd (2006) LPELR-2059 (SC); Teju Investment and Property Co. Ltd vs. Subair (2016) LPELR-40087(CA); Bemil Nigeria Ltd V. Marcus Emeribe & Ors (2009) LPELR-8732(CA),** to submit that the Appellant Union cannot bring an action to enforce an agreement that is not enforceable, upon which the Respondent urged the court to dismiss the appeal and affirm the lower court's decision.

In the Appellant's Reply to the Respondent's submissions, learned counsel for the Appellant contended that the decision in **Osoh & Ors vs. Unity Bank Plc** (supra), heavily relied upon by the Respondent, was inapplicable to the instant appeal. Counsel proceeded to distinguish

that case and the instant one in order to buttress the assertion. He submitted also, that the collective agreement in issue remains the contract of employment in the instant appeal by virtue of Articles 2 and 6.2 of the Agreement, and urged the court to so hold.

It was the Appellant's further response that the Appellant and the Ministry of Labour complied with the provision of section 3 (3) of the Trade Dispute Act, 2004 in that the Minister of Labour, vide his letter dated 03/02/2011, directed the Respondents to comply with the terms of the collective agreement.

On whether the collective agreement has lapsed, counsel submitted that the said agreement stands as the contract of employment and remains operative between the Appellant's members and the Respondent employer, relying on the strength of the decision in **A.G. Fedearation & Ors vs. Abubakar & Ors (2007) ALL FWLR (Pt.375) 405 @ 430.**

RESOLUTION OF THE APPEAL

Before proceeding to resolve the sole issue in this appeal, one way or the other, I am of the view that a brief restatement of the background facts leading to the dispute between the parties herein, will not be out of place.

As stated earlier in this judgment, the Appellant, who was the Plaintiff in the lower court, is a registered Trade Union, as its name easily could give it away. It initiated the action on behalf of some of its members who were in the employment of the Respondent, the Defendant in the lower court and a company registered under the Nigerian law. The Respondent, at the material time, was engaged in an outsourcing contract with Chevron Nigeria Limited in some of its locations

nationwide. The concerned members of the Appellant were those engaged by the Respondent in the said outsourcing contract with Chevron. They were said to have been duly employed and issued letters of employment to that effect. This was the state of affairs between the Respondents and the members of the Appellant in the Respondent's employment, until June 2008, when the "Collective Agreement" was jointly executed between the representative of the parties. The grouse of the Appellant was that the Respondent reportedly refused to implement the terms agreed upon by the parties in the said agreement. To the foregoing contention, the Respondent was vehement in its argument that the said agreement had lived out its existence, the line of argument that the lower court bought into. The learned trial judge agreed with the Appellant and held that *"by virtue of constitutional powers of interpretation and application, a collective agreement is Justiceable and enforceable"*.

Before dabbling into resolving the dispute surrounding the agreement between the parties in the instant appeal, it is necessary to look into what in essence is this collective agreement. Section 48 of the Trade Dispute Act, 2004 provides that collective agreement is:

"Any agreement in writing for the settlement of the dispute and relating to terms of employment and physical condition of work concluded between:

a) An employer, a group of employers or organizations representing workers or the duly appointed representative of any body of workers, on the other hand and

b) One or more trade unions or organizations representing workers or the duly appointed representative of any body of workers, on the other hand.

Under section 91 of the Labour Act, 2004, the concept of the collective agreement is said to be:

An agreement in writing regarding working conditions and terms of employment concluded between:

a) An organization of workers or an organization representing workers (or an association of such organization) of the one part and;

b) An organization of employers or organization representing employers (or an association of such organization) of the other part.

From the provisions of the relevant statutes quoted above, it gives no room to entertain any doubt that collective agreement is basically between the employer of labour and the union representing the workers and it must be in *writing for the settlement of the dispute and relating to terms of* employment, that is, regarding *working conditions and terms of employment concluded between* such parties.

I have carefully looked through the 17-page document, copied at pages 14-31 of the Record of Appeal, titled "**OUTSOURCING SECURITY SERVICES LIMITED**" with a rider, "**STAFF CONDITIONS OF SERVICE**". At its table of contents, it has, under "Part A" titled "PRINCIPLES, POLICIES AND PROCEDURE", 56 items serially referred to as ARTICLE 1 to ARTICLE 56. It opens with the "*Introduction to*

Preamble" and "*Recognition*", it closes with Article 56, the "*Duration and Renewal*".

There is yet another 2-page document, copied at pages 32-33 of the Record, evidencing the agreement made at the Federal Ministry of Labour, thusly:

"AGREEMENT REACHED AT THE END OF THE MEETING HELD BY THE FEDERAL MINISTRY OF LABOUR WITH THE MANAGEMENT OF OUTSOURCING SERVICES LIMITED AND NATIONAL UNION OF HOTELS AND PERSONAL SERVICES WORKERS (NUHPSW) ON 30TH OCTOBER, 2008 AT THE CONFERENCE ROOM OF THE HONOURABLE MINISTER OF LABOUR, FEDERAL SECRETARIAT COMPLEX, PHASE 1, ABUJA."

In the said subsequent agreement, matters ranging from "*Increment for Non-Chevron Nigeria Limited (CNL) Staff*"; "*Leaving Gratuity*"; "*Redundancy*"; "*Annual leave*"; "*Leave Allowance*"; "*Retirement Benefits*"; *Hours of Work*"; "*Annual Increment*" *and* "*Implementation Date for CNL Staff*" were deliberated with various evidently concrete decisions arrived thereon, save for the implementation date. See pages 32-33 of the Record. Several other pieces of documentary evidence were reproduced in the Record of Appeal, as tendered in the lower court, which emanated across the divide of both parties in the appeal. It is apparent from the face of the two agreements that they were both duly executed by the parties to this appeal, it was so admitted in the lower court.

I also note that one other area of concurrence between both parties in the appeal is the fact that members of the Appellant who were in the

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Respondent's employment, at the material time, were accordingly issued with individual letters of contract of employment by the Respondent. The parties, however, fell apart at the stage of implementation of the collective agreement. While the Appellant contended that the contract of employment of its members in the employment of the Respondent remains the collective agreement in dispute, the Respondent insists that the collective agreement in dispute, having not been incorporated into the Appellant's members contract of employment, becomes unenforceable and non-justiciable.

The contract of employment, on the other hand, is described in the said section 91 of the Labour Act, as **"any agreement, whether oral or written, express or implied, whereby one person agrees to employ another as a worker and that other person agrees to serve the employer as a worker".** It is no doubt, from the statutory description of what amount to a collective agreement and a contract of employment, that the two concepts differ, though may set out to achieve the same objective. I am in agreement with the learned trial Judge that the contract of employment amounts to the legal basis of engagement between the employee and the employer, and that the relationship, being contractual, would be subject to some sets of pre-agreed terms to regulate the relationship.

It is instructive to note that the contention of the Appellant was that its individual member's contract of employment has been replaced by the collective agreement in the instant case. Having taken considerable time to look into the terms contained in the collective agreement executed by the parties from the standpoint of the provision of section 254C (j)(i) of

the Constitution of the Federal Republic of Nigeria, 1999 (as amended), (the 3rd Alteration Act), relied on by the learned trial Judge, I am of the respectful opinion that the collective agreement is both enforceable as well as justiciable.

I find the said constitutional provision apt and is hereby paraphrased hereunder:

> ***The National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters relating to the determination of any question as to the interpretation and application of any collective agreement.***

In the said provision, the jurisdictional frontiers of the lower court, the National Industrial Court of Nigeria, was expanded to, *inter alia*, hear and determine questions bordering on "Collective Agreement" as in the instant case. It is important to note that this power granted the lower court is "*to the exclusion of any other court*". The learned trial Judge recognized and took the liberty of it when it held thus:

> ***The defendant has argued that a collective agreement is not justiceable. Section 254C (j)(i) of the 1999 Constitution, as amended, has conferred this court with exclusive jurisdiction "relating to the determination of any question as to the interpretation/application of any collective agreement". The power of interpretation and application of collective agreement approximates the power to declare as to the nature of rights, privileges and obligations existing under the collective agreement. By virtue of constitutional powers of interpretation and***

application, a collective agreement is Justiceable and enforceable.

In the argument canvassed on behalf of the Respondent, in this regard, counsel must have been oblivious of this sweeping constitutional power with which the National Industrial Court of Nigeria is clothed, to the exclusion of any other court, to hear and determine the nature of the instant question. The constitutional dispensation moved the jurisdiction of the lower court past the realm of mere interpretation, to include enforcement; *Id est*, the determination of the question as to the "*interpretation of any collective agreement*", See section 7 subsection (1) (C)(i) of the National Industrial Court Act, 2006.

It needs to be unequivocally stated that the above statutory provision and the majority of the decisions, on which the Respondent placed its reliance, were pre-alteration positions of the law, when the provision of section 7 of the NICN Act, 2006 held sway. The advent of the Alteration Act, of the 1999 Constitution, could be validly likened to a game changer when the hitherto unenforceable agreement becomes justiciable. But prior to the Alteration Act, the doctrine of privity robbed collective agreement of its enforceability, except and until such time when the terms of the agreement are incorporated into individual members' contract of employment. See: **Osoh & Ors V Unity Bank Plc** (supra), also reported as **(2013) LPELR-19968 (SC).**

This power of the lower court to interpret and apply terms in a collective agreement, is further reinforced in section 254C(1)(b) of the Third Alteration Act, of the 1999 Constitution, as amended, over civil matters or causes which relate to or in connection with, or arising from Factories Act, Trade Disputes Act, Trade Unions Act, Labour Act, Employees'

Compensation Act or any other Act or Law relating to labour, employment, industrial relations, workplace or any other enactment replacing the Acts or Laws. See **Osoh & Ors vs. Unity Bank Plc**, and **Rector, Kwara Poly vs. Adefila** (supra).

The provision of Section 3 (3) of the Trade Dispute Act, in my opinion, is an administrative approach set in place to compel adherence to terms of an agreement freely entered into by parties, especially in the pre-Third Alteration Act era, as it relates to labour matters. The Court takes judicial notice of countless labour-related animosities which may hamper industrial relations if left to fester, hence the enactment.

Let me say at this juncture that part of the novel idea introduced in the third alteration is in the area of international best practices, which section 254 (1) (f) of the Third Alteration Act makes provision for. The section provides:

(f) relating to or connected with unfair labour practices or international best practices in labour, employment and industrial relation matters;

(h) relating to, connected with or pertaining to the application or interpretation of international labour standards.

It becomes imperative to state the foregoing as the contemplation of the drafters appears more in their preference for the lower Court; the National Industrial Court of Nigeria, to take a proactive stance in ensuring that the nation will not be left out in the reckoning of the comity of nations in the area of robustly flourishing labour practices and industrial relations. This court, while expatiating the law in this regard in the case of **Sahara Energy Resources Ltd vs. Olawunmi Oyebola (2020) LPELR-51806(CA)**, per Ogakwu, JCA., held that:

The above provisions enjoin the National Industrial Court in the exercise of its jurisdiction, to "have due regard to good or international best practices in labour or industrial relations". The importance of this novel provision, in my deferential view, is that the National Industrial Court in considering the measure or quantum of damages is to do so in accordance with "good or international best practices in labour or industrial relations", which shall be a question of fact. It will be stating the obvious to say that prior to the Third Alteration, when employment and labour matters were handled by the High Courts, there was no obligation to apply and follow good or international best practices. It is an innovative provision which seems to be directed at enthroning an entirely new employment and labour jurisdiction. ....."

The court, in the cited case, was determining a different head of legal question, the measure of damages awardable in the event of a breach. The court hereby reiterates that the clarion call is to the stakeholders in labour and industrial relations, to strive in order to conform with the international best practices as obtainable in the field.

My Lords, in the course of preparing the instant judgment, I came across and digested, albeit, with a persuasive mindset, the judgment of Oji, J., of the Lagos Division of the lower court which bore some similar question of law, I find it relevant and am inclined to curl out some portion of the said judgment herein. In that case, the learned Judge was determining the legal question of enforceability and justiciability of a collective agreement having regard for international best practices, where he stated that:

"Once a valid collective agreement is shown to have been entered into between legal parties; that agreement becomes applicable, in favour of those expressed to be covered by the said instrument. In the interpretation and application of collective agreements, this Court is enjoined to go beyond itself, and apply international law and practices. The power, having been granted prior to section 254C(1)(j) by section 254(1) (f & h). The two sub-paragraphs provide as follows:

(f) relating to or connected with unfair labour practices or international best practices in labour, employment and industrial relation matters;

(h) relating to, connected with or pertaining to the application or interpretation of international labour standards.

29. Without finding the need to consider the implications on 'unfair labour practice', as this was not addressed by parties; what then is the international best practices and the international labour standards, in the application of collective agreements? Nigeria has entered into several international commitments which pre-determine for her, the way collective agreements are to be regarded. For instance, the Convention on the Freedom of Association and Protection of the Right to Organise Convention No 87 of 1948, ratified by Nigeria in October 17, 1960, Collective Agreements Recommendation No. 91 of 1951, Collective Bargaining Convention No. 154 of 1981, Right

to Organise and Collective Bargaining Convention No. 98 of 1949 ratified by Nigeria on 17th October 1960. The Collective Agreements Recommendation provides that collective agreements should bind the signatories thereto, and those on whose behalf the agreement is concluded. This Recommendation, though not a Convention is evidence of international best practice. This Court is able to apply international conventions and treaties, even where not nationalized by virtue of section 254C (2) which provides that:

Notwithstanding anything to the contrary in this Constitution, the National Industrial Court shall have the jurisdiction and power to deal with any matter connected with or pertaining to the application of any international convention, treaty or protocol of which Nigeria has ratified relating to labour, employment, workplace, industrial relations or matters connected therewith."

The learned judge, cited and quoted extensively the decision of this court in **Sahara Energy Resources Ltd vs. Oyebola (supra).**

As stated earlier I am sufficiently persuaded by the argument canvassed in favour of the applicability of the Collective Agreement dated June 2008, and duly executed by the parties in the appeal, I find the argument of the Respondent weak and unsustainable, I hereby discountenance it. I resolve the first leg of the reformulated issue in this appeal in favour of the Appellant and I find that the collective agreement of the parties is enforceable and justiciable as well, I so hold.

The second leg of the issue borders on whether the collective agreement has become inoperative. The Appellant asserted that the Collective Agreement is the contract of employment of its members in the Respondent's employment and that it remains operative as long as the members of the Appellant are still in the Respondent's employment and in the absence of any other agreement to the contrary. The Respondent, however, contended that the agreement had lapsed and as such the Appellant need not contest its validity. In his considered judgment, the learned trial Judge held thus:

> ***"The defendant has argued that the collective agreement has lapsed and that the fu.... agreement does not stand on its own but wholly rests on the expired collective agreement which is not in existence. Article 56 of the collective agreement which deals with duration and renewal provides as follows:***
>
> ***CNL Staff: Duration takes effect from June 2008 to the end of June 2009. NON-CNL Staff: August 2008 to July 2010.***
>
> ***The claimant's members in this action are CNL staff. The commencement date of the collective agreement is June 2008 and the terminal date is June 2009. There is no saving clause in this collective agreement to keep it alive until such a time a new one is drawn up by the parties. In other words, the collective agreement came into operation on June 1, 2008 and ended on June 30, 2009.***

The learned trial Judge thereafter proceeded to hold that the collective agreement is extinguished. See page 282 of the Record.

With due respect to the learned trial Judge, the line of reasoning towed together with the decision arrived at by His Lordship, was not borne out of sound principle of law. I maintain this line of opinion based on the verdict of the court that the Collective Agreement is valid and enforceable. Whereas, the line of difference drawn by the trial Judge, was merely vide the interpretation section of the Labour Act, section 91. The difference in the definition between the two; the contract of employment and the collective agreement, in my opinion, is not cast in iron. It is not in doubt that the learned Judge agreed that the collective agreement, as it were, is in relation to "*working conditions and terms of employment*" of the members of the Appellant, which has just been held to be enforceable and applicable to the Appellant's members employment in the Respondent's company. It could then be safely inferred and in agreement with learned counsel for the Appellant, that the collective agreement, validly and freely executed by the Respondent and the Appellant herein, is the subsisting contract of employment of the Appellant's members in the Respondent's employment, I so hold.

In the absence of any allegation of fraud, misrepresentation, mistake and/or other vitiating factors, the contract; which was freely signed by the party, binds the respective parties and same inures and spans with the parties' contractual relationship. It is a settled law that parties are bound to honour, with the performance, the terms of the contract they freely entered into, this is aptly captured in the Latin maxim, *Pacta Sunt Servanda*. See: **A.G. Rivers State vs. A.G Akwa Ibom State & AnOr (2011) LPELR-633 (SC); A.G. Nasarawa State vs. A>G Plateau State (2012) LPELR-9730 (SC).**

I have taken another look at the Collective agreement, it is my opinion that had it been that the learned trial Judge interpreted the whole 56 Articles as a whole, rather than at a convenient instalment as he has done, he would have arrived at a different verdict altogether. Courts are enjoined to interpret the contractual agreement submitted for it to determine and as made by the parties, and not to supplant its term in replacement for parties' intentions. See **Standard Nig. Engr Co. vs. Nigerian Bank for Commerce and Industry (2006) 25 NSCQR 654.**

I took yet another cursory look at Article 2 and Article 6.2 of the Collective Agreement, which provide respectively thus:

Article 2:

This condition of service shall apply to all existing regular employees of the Company and shall supersede any other personal contract of agreement before, irrespective of the Company's location or client's site and who are) service at the date hereof and those that will join the company hereafter, whom copies of these present condition of service/agreement shall be given.

Article 6.2:

Upon completion of the employment process, any employment letter shall be signed and issued by the Human Resources Manager of the company or his/her agent. The employment letter together with THE CONDITION OF SERVICE as STATED IN THIS AGREEMENT WILL FORM INDIVIDUAL EMPLOYEE'S CONTRACT OF EMPLOYMENT.

I am unable to see the basis for the categorization, done by the trial Judge, of the provision of the Article 2 above, especially the phrase, "***any other personal contract of agreement***", used in the provision, as being *not specific, vague, uncertain and unclear.* It is clear to me that the terms are expressly stated and freely executed by parties. I am clear in my view and also align with the Appellant's submission that neither parties nor Court can validly read extraneous matters not agreed on by the parties into the terms of an agreement to which they are bound. See: **Race Auto Supply Co. Ltd & Ors V Akibu (supra); BFI Group Corporation vs. Bureau of Public Enterprises (2012) LPELR-9339 (SC); Oforishe vs. Nigerian Gas Company Ltd (2017) LPELR-42766 (SC); Fidelity Bank Plc vs. Marcity Chemical industries Ltd & Ors (2022) LPELR-56866 (SC); NNPC vs Fung Tai Engineering Co. Ltd (2023) LPELR-59745 (SC).**

It is noted that the Collective Agreement in Article 2, provides that "*this condition of service* ***shall apply to all existing regular employees of the Company and shall supersede any other personal contract*** *of agreement...*" and both parties freely agreed and executed the agreement, but the learned trial Judge, in a very unsuitable manner, descended and held thus:

> "*in my opinion,* ***such a provision does not supersede the Claimant's members' individual contracts of employment*** *with the defendant ... See section 12(4) of Trade Unions Act CAP T14 LFN 2004".*

By way of reiteration, the trial Judge was in error in his foregoing finding, it is settled law that Court is precluded from reconstructing the contract which was freely entered into by the parties in order to import

into it terms not intended by the parties. The authorities cited above are on point.

I am inclined to discountenance the Respondent's contention that the Collective Agreement had lapsed. By virtue of the provision of section 254C of the Third Alteration Act, supra, upon which it was found to be enforceable and applicable earlier in this judgment, the Collective Agreement, for every intent and purpose, remains subsisting as the contract of employment of the Appellant's members, to whom it relates. This flows from the established fact that the said Collective Agreement has not been mutually replaced yet, not even by the executory agreement signed on 30th October, 2008. In the light of this, it is my finding that the lower Court erred to have held that the agreement had lapsed. I am of the opinion that the Agreement remains operative and applicable to the Appellant, notwithstanding the unilateral waiver which was at the instance of the Respondent. This Court views the issue of the said waiver as being jaundiced; it is inimical and antithetical to the lofty ideal of the international best practices to which the country subscribes, and to which the Court owes a duty to ensure. I refrain from saying more on the issue of waiver.

The Appellant has contended that its members have suffered a miscarriage of justice occasioned on them both by the lower Court's decision said to be perverse by not considering total evidence placed before it at trial, and also, by the Respondent, who is said to be forcing the bitter pill of waiver down their throat, with the sole aim of shortchanging its members.

Now, it is settled law that a decision may be perverse where the trial Judge took into account matters that he ought not to have taken into account; or where the Judge shuts his eyes to the obvious; or where legal principles are wrongly applied to correctly ascertained facts. In any of such situations, the judgment from such proceedings is liable to be set aside on appeal in order to avoid a miscarriage of justice. See: **Aliyu vs. Namadi & Ors (2023) LPELR-59742 (SC); Abegunde vs. Ondo State House of Assembly & Ors (2015) LPELR-24588 (SC); Kelly vs. The State (2022) LPELR-57325 (SC); Okonkwo vs. FRN & Anor (2021) LPELR-58384 (SC).** I am persuaded by the Appellant's submission on this point and also find as apt the judicial authorities cited to buttress the submission.

The lower court was wrong in failing to consider the provisions of the Collective Agreement as a whole, which renders its judgment perverse and liable to be set aside. Consequently, the second leg of the issue for determination is equally resolved in favour of the Appellant.

In sum, flowing from the foregoing reasons, I find that the appeal is meritorious and I hereby allow it. The judgment of the National Industrial Court delivered on 18/01/2013 by Hon. Justice O.A. Obaseki-Osaghae, which held that the Collective Agreement between the parties has lapsed and is not in operation, is hereby set aside. In its place, judgment is entered in terms of the Appellant's Amended General Form of Complaint and the Statement of Facts thereto filed before the lower Court. That is to say, members of the Appellant, on whose behalf the action was filed, are entitled to the leaving gratuity as contained in the Collective Agreement; annual increment of 7.5 % basic salary for the year 2011; and overtime payment of N264.00 per hour for four hours

per day from 01/11/2002 till the date of filing the suit on 22/12/2011. The Respondent is accordingly mandated to pay the leaving gratuity, annual increment and hourly overtime aforesaid into the Appellant's Solicitors' Account No. 0026428076 domiciled with Diamond (Access) Bank, with Account name: Francis O. Yekovie & Co.

Costs is hereby assessed in the sum of N200,000.00 (Two Hundred Thousand Naira) in favour of the Appellant.

MUHAMMAD IBRAHIM SIRAJO
JUSTICE, COURT OF APPEAL

CHIEDOZIE S. AMADI Esq
SENIOR EXECUTIVE OFFICER
CERTIFIED TRUE COPY
COURT OF APPEAL
28/7/23

APPEARANCES:

Muhammed Jimoh for the Appellant.

Taiwo Owoeye for the Respondent.

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APPEAL NO: CA/L/565/2013

OBANDE FESTUS OGBUINYA, JCA.

I had a preview of the elegant leading judgment delivered by my learned brother: **Muhammad Ibrahim Sirajo, JCA.** I endorse *in toto* the judicial reasoning and conclusion in it. I, too, allow the appeal in the manner ordained by the leading judgment. I abide by the consequential order decreed therein.

OBANDE FESTUS OGBUINYA
JUSTICE, COURT OF APPEAL

CHIEDOZIE S. AMADI Esq
SENIOR EXECUTIVE OFFICER
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COURT OF APPEAL
28/7/23

FREDERICK O. OHO –JCA

(APPEAL NO.: CA/L/565/2013)

I had the opportunity of reading the draft of the Judgment just delivered by my learned Brother, **MUHAMMED IBRAHIM SIRAJO-JCA** and I am in agreement with his reasoning and conclusions in allowing this Appeal as meritorious. I have nothing else to add to a well written judgment. I subscribe to the consequential orders made thereto.

Dr. Frederick O. Oho,
Justice, Court of Appeal.