

TERMINATION AND DISMISSAL OF EMPLOYEES:

**KEY CONSIDERATIONS FOR
HUMAN RESOURCE PERSONNEL
UNDER NIGERIAN LAW**

INTRODUCTION

The relationship between an employer and an employee is governed by both statutory law and contractual agreements. The primary purpose of such regulation is to uphold the sanctity of the employment contract, which establishes a legally binding relationship between the parties based on mutually agreed terms. As with other forms of contracts, an employment contract may be terminated when its performance becomes impossible or when party elects to end it in accordance with the provisions of the agreement.

Termination of employment differs fundamentally from dismissal in both legal and procedural aspects. Termination is a right available to both the employer and the employee, typically requiring prior notice and often entitling the employee to certain post-employment benefits. Conversely, dismissal is a unilateral action exercised solely by the employer, with no obligation for notice and no entitlement to post-dismissal benefits. This article examines the legal framework governing termination and dismissal, highlighting the key considerations employers must take into account when deciding between these two courses of action



PRESENT POSITION UNDER NIGERIAN LAW ON TERMINATION

Termination of employment constitutes the lawful and valid cessation of an employment contract, contingent upon its execution in strict accordance with the terms and conditions expressly stipulated in the agreement. A termination is considered legally sound when it aligns with the contractual provisions governing the employment relationship. Historically, the common law principle that “he who hires can fire, for good reason, bad reason, or no reason at all” provided employers with wide discretion in terminating employment contracts. However, this doctrine has been significantly curtailed in contemporary employment law. This legal shift was underscored in *Bello Ibrahim v. Ecobank Plc* (Suit No. NICN/ABJ/144/2018)..

Nevertheless, the Supreme Court in *Peter Onyeachonam Obanye v. Union Bank of Nigeria Plc* (2018) LPELR-44702(SC) reaffirmed the general legal position that an employer possesses the right to unilaterally terminate an employee’s contract. The Court held that: “*The law is settled that an employer who has the right to hire also has the right to fire. The employer has an unfettered right to terminate the employee’s employment. He may terminate for good or bad reason or for no reason at all. The motive for exercising the right does not render the exercise ineffective.*”

Despite the broad discretion afforded to employers, termination of employment must be executed in compliance with the contractual terms governing the employment relationship. In cases of alleged wrongful termination, the burden of proof lies with the claimant, who must substantiate their claim by presenting the terms and conditions of the employment contract, the prescribed termination procedures, and evidence of the employer's deviation from such procedures. Failure to satisfy this evidentiary requirement renders the claimant's case unsustainable before the court.

Under Nigerian law, employment contracts may be terminated through three principal mechanisms:

- 1. Expiration of the employment period** – Termination occurs automatically upon the completion of the agreed contractual duration. In such instances, neither party is required to issue notice, as the employment relationship ceases by operation of law.
- 2. Death of the employee** – The contract is extinguished upon the demise of the employee, as contractual obligations cannot be enforced posthumously.
- 3. Issuance of notice in accordance with Section 11 of the Labour Act** – The Labour Act prescribes mandatory notice by either party seeking to terminate the employment contract. Alternatively, the party initiating termination may provide payment in lieu of notice to compensate for the required notification period.

Section 11 of the Labour Act explicitly mandates that notice of termination must be unequivocal and unambiguous. This principle was reinforced in *Honica Samwill Nig Ltd v. Hoff* (1992) 4 NWLR 238 at 673, where the Court of Appeal held that termination must be clearly expressed or inferred from the employer's conduct. Furthermore, notice of termination is required to be in writing, as stipulated under Section 11 of the Labour Act, a position reaffirmed in *Ogunsanmi v. V.C.F Furniture* (1961) All NLR 862.

Upon termination, employees are entitled to all accrued benefits and financial entitlements specified in their employment contract. This includes outstanding wages, pensions, gratuities, or any other contractual benefits agreed upon during the course of employment. These statutory provisions and judicial precedents collectively constitute the foundational legal framework governing employment termination in Nigeria, ensuring compliance with contractual obligations while balancing the rights of both employers and employees.



PRESENT POSITION UNDER NIGERIAN LAW ON DISMISSAL

Dismissal, as distinct from termination of employment, refers to the involuntary cessation of an employment contract due to an employee's misconduct or violation of workplace policies. Unlike termination, which may occur for reasons unrelated to an employee's performance or behavior, dismissal is typically reserved for cases involving serious misconduct, including but not limited to insubordination, disobedience to lawful orders, negligence, suppression or falsification of records, corruption, dishonesty, and other breaches of professional conduct.

The legal position regarding dismissal is well established in Nigerian jurisprudence. Where an employer dismisses an employee on grounds of misconduct and the employee challenges the dismissal in court, the burden of proof shifts to the employer to justify the decision with credible evidence. This principle was reaffirmed in *Okwunakwe v. FBN* [2015] 53 NLLR (Pt. 180) 568 at 595-596 para G-B, where the court held that an employer who provides reasons for an employee's dismissal must substantiate the allegations with admissible proof.

For a dismissal based on misconduct to be deemed lawful, an employer must comply with the principles of natural justice and procedural fairness. The employer must:

- 1. Disclose the allegations to the employee** – The employee must be informed of the specific charges or infractions leading to the disciplinary action.
- 2. Ensure the employee is given a fair hearing** – The employee must have an opportunity to respond to the allegations and defend themselves, either personally or through representation.
- 3. Follow established disciplinary procedures** – If a company has internal policies governing disciplinary measures, they must be adhered to.

These principles were upheld in *Unical v. Essien* (1996) 10 NWLR (Pt. 477) 225 and *Udoh v. Civil Service Commission, Akwa Ibom State* (2013) LPELR-21849 (CA), where the courts emphasized that a dismissal decision must not breach the rules of fair hearing.

Right to Fair Hearing in Disciplinary Proceedings

The fairness of a disciplinary hearing is a fundamental consideration in employment disputes. An employee facing dismissal is entitled to know the nature of the allegations, be afforded reasonable time to prepare a defense, and be given the opportunity to state their case. However, physical presence throughout the hearing is not mandatory, as long as the process adheres to the principles of fairness and due process. This was reiterated in *Ntewo v. UCTH* (2013) LPELR-20332 (CA).

Moreover, once an employee has been confronted with allegations of misconduct before dismissal, they cannot later claim that they were denied fair hearing. This position was reaffirmed in *Joseph v. First Inland Bank Nig Plc* (2009) LPELR-885 and *Udoh v. Civil Service Commission, Akwa Ibom State* (2013) LPELR-21849 (CA).



In the context of employment relations, the terms termination and dismissal are often used interchangeably; however, they carry distinct legal and procedural implications. Dismissal typically refers to an involuntary separation initiated by the employer, often due to misconduct, poor performance, or redundancy. In contrast, termination is a broader concept that encompasses both voluntary and involuntary separations, including resignations, contract expirations, and mutual agreements to end employment. Accordingly, while both terms denote the conclusion of an employment relationship, dismissal generally implies employer-driven action, whereas termination may result from various circumstances, including employee-initiated decisions.

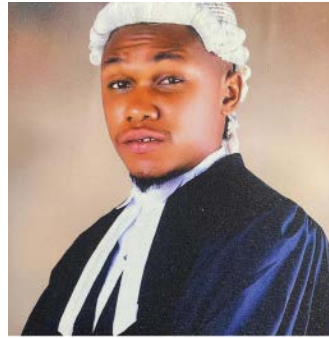
CONCLUSION

In ensuring compliance with employment laws and best practices, the human resources management team of any organization must strictly adhere to the provisions of the Labour Act and other relevant procedures for termination and dismissal. Failure to comply with these legal requirements not only exposes an employer to potential litigation but also undermines the principles of fairness and due process in employment relations.

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