



## **CASE REVIEW:**

The Shell Petroleum Development Company of Nigeria Limited v. The Minister of Petroleum Resources Nigerian Upstream Petroleum Regulatory Commission Attorney-General of the Federation

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## INTRODUCTION

Under the Old Labour Jurisprudence based on commentaries and judicial decisions particularly the Supreme Court decision in *NNPC v. Famfa Oil Limited*<sup>1</sup>, an employer is not obligated to obtain the approval of the Minister of Petroleum Resources (“Minister”) before disengaging an employee in the Petroleum industry.

However, with the recent decision of the National Industrial Court delivered by the President of the National Industrial Court of Nigeria, His Lordship, Honourable Justice B.B Kanyip, PhD on 28th July 2022, in *Shell Petroleum Development Company Limited (“SPDC”) v. Minister of Petroleum Resources Limited & 2 Ors (Unreported)*<sup>2</sup>, an employer is obligated to obtain the approval of the Minister before disengaging an employee.

Given the impact of the decision on the old and well-established labour jurisprudence, this article will review the facts of the case, arguments and the rationale of the Court in arriving at its decision.

## FACTS OF THE CASE

The Claimant had employed Mrs Gbenuade Joko Olanitori effective from June 1 2008. The Claimant by a letter dated June 2nd, 2021, terminated the employment of Mrs. Olanitori. Being unhappy with her termination, Mrs. Olanitori petitioned the Department of Petroleum Resources (DPR), now replaced by the 2<sup>nd</sup> defendant, for her unlawful termination on the basis that it failed to obtain the prior approval of the DPR contrary to the *Guidelines for the Release of Staff in the Nigerian Oil and Gas Industry 2019*.

The Claimant was queried by the DPR and a fine of USD250,000 was imposed on the Claimant. Consequently, the Claimant instituted an action at the National Industrial Court, via an Originating Summons to determine whether the actions of the defendants were lawful.

The Defendants failed to enter an appearance within time and subsequently applied to do the same with the leave of court. However, the Court heard and dismissed the applications of the Defendants.

Having examined the facts of the instant case, we will proceed to examine the issues for determination as well as the holding of the Court on the same.

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<sup>1</sup> (2012) LPELR-7812(SC)

<sup>2</sup> Suit No. NICN/LA/178/2022

## **HIGHLIGHTS OF THE DECISION**

### **PRELIMINARY ISSUE:**

Before delving into the merit of the case, the Honourable Court suo motu noted that the Claimant failed to refer to the newly enacted law, the Petroleum Industry Act (“the PIA”) which became effective on August 16, 2021.

The Court in reliance on a plethora of cases<sup>3</sup> empowering it to suo motu raise and resolve an issue held that the applicable law is the Petroleum Industry Act and not just the Petroleum Act upon perusal of the Affidavit evidence before it and the reliefs sought the case.

### **ISSUES FOR DETERMINATION**

The following issues were raised:

#### **ISSUE 1**

#### ***The Validity or otherwise of the Act of the Department of Petroleum Resources (“DPR”) concerning the Guidelines for the Release of Staff in the Nigerian Oil and Gas Industry, 2019***

The Claimant submitted that the Minister lacked the power to regulate employment relations between employers in the oil and gas industry particularly because the Petroleum Act failed to confer on the Minister such powers. Also, the Claimant posited that the issue of employment is solely a private affair between the employer and employee and not that of the Agency.

However, the Court in resolving this issue against the Claimant identified the difference between the provisions of the Petroleum Act<sup>4</sup> and corresponding provisions under the PIA<sup>5</sup>. By the provisions of the PIA, a minister is empowered to formulate policies in the petroleum industry and delegate to the authority any power conferred on the Minister by the Act. Hence, the Guidelines can be enforced and as such not ultra vires.

#### **ISSUE 2**

#### ***Validity of the Guidelines issued by the DPR/NUPRC on behalf of the Minister***

The Claimant argued that the power to make regulations cannot be delegated because the same was not provided under the Petroleum Act. Also, by the established principle that a delegate cannot sub-delegate delegatus non potest delgare, the Minister cannot delegate his powers as conferred under the Petroleum Act to the DPR.

The Court having regard to the provisions of the PIA<sup>6</sup>, held that the Guidelines issued by the DPR/NUPRC are valid and not ultra-vires. By the PIA, the Minister may by writing under his hand delegate to the Chief Executive of the Nigerian Upstream Petroleum Regulatory Commission (“NUPRC”), any power conferred on the Minister by or under the PIA.

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3 Omokuwajo v. FRN [2013] 9 NWLR (Pt. 1359) 300 at 332; [2013] LPELR-20184(SC), Felix Ngozi Achi v. IGP [2022] LPELR-56647(CA)

4 Section 9

5 Section 3

6 section 3(1)(i)

### **ISSUE 3**

#### ***The Applicability of the Guidelines for the Release of Staff in the Nigerian Oil and Gas Industry, 2019 on Contract of Employment.***

The Claimant argued that the Guidelines, having not been incorporated into the contract between the claimant and its ex-employee, cannot validly govern their employment relationship and as such, unenforceable.

The Court stated that the Guidelines is a government policy, enjoying legislative character and backing both the PIA and the Interpretation Act. Hence, the incorporation of the Guidelines into the contract of employment of Mrs Olanitori is unnecessary.

Also, the Court noted that the Claimant's argument on privity and sanctity of contract is inapplicable because the common law privity rule is not absolute. It admits exceptions, one of which is legislation. The privity rule is amenable to legislative control.

Given the above, the Court resolved this issue against the Claimant and held that the Guidelines can validly govern the employment relationship between Shell and its employees.

### **ISSUE 4**

#### ***Imposition of fine for failure to obtain the consent of the minister before termination of employee's contract of employment***

The Claimant submitted that fines and penalties are the exclusive reserves of the Courts as conferred on it by the 1999 Constitution. Hence, the 1st Defendant, who is not a judicial body can not punish for an offence or violation of the law.

The Court resolves this issue against the Claimant stating that the Interpretation Act<sup>7</sup> and the PIA<sup>8</sup> empower the 1<sup>st</sup> Defendant to prescribe punishments for contraventions of provisions of the instrument, not exceeding as respects a particular contravention.

Based on the above, the Court upheld the fine of US\$250,000 (Two Hundred and Fifty Thousand US Dollars) imposed against Shell by DPR and held that the same was not unconstitutional, illegal or void.

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<sup>7</sup> Section 12(1)(c)

<sup>8</sup> Section 297

## **ISSUE 5**

### **Reinstatement/Recall of an employee for non-compliance with the provisions of the Guidelines.**

The Claimant argued that the Guidelines do not confer on the 2nd Defendant, the power to demand or compel the recall and reinstatement of a released employee. The Claimant stated that the termination of employment without statutory flavour cannot be declared ineffectual or void

The Court stated that where a statutory provision is in conflict or differs from common law, the common law gives place to the statute. The rule against foisting a willing employee on an unwilling employer is a common law rule. The Guidelines in question are subsidiary legislation. Hence, the Guidelines as subsidiary legislation must be given effect to and above the common law rule so as not to foist an employee on an employer.<sup>9</sup>

## **IMPLICATION OF THE JUDGMENT**

In several decisions<sup>10</sup> handed down by the Nigerian courts, the employer was not obligated to obtain the written approval of the Minister before disengaging an employee in the petroleum industry. This was because there is nothing in the relevant laws (Petroleum Act and Regulations made thereunder) that vest the Minister with power to regulate private contracts of employment.

However, with this decision, an employer is obligated to obtain the written approval of the Minister before disengaging an employee in the petroleum industry. This decision stands as the current position of the law, pending when and/or if it is overturned by the Court of Appeal.

## **CONCLUSION**

In sum, an employer is obligated to obtain the written approval of the Minister before disengaging an employee in the Petroleum Industry.

Also, the guidelines issued by the DPR apply to a contract of employment between an employer and an employee.

Furthermore, an employee can be reinstated/recalled for non-compliance with the provisions of the Guidelines.

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<sup>9</sup> *Ibrahim v. Barde* [1996] 9 NWLR (Pt. 474) 513

<sup>10</sup> *Chukwumah v. Shell Petroleum Development Company of Nigeria* [1993] 4 NWLR (Pt.289) 512 SC; *Shell Petroleum Development Company of Nigeria Limited & ors v. Nwawka* [2003] 6 NWLR (Pt. 815) 184 SC; [2003] LPELR-3206(SC)

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