

# LABOUR LAW

**CAN THE NICN EXERCISE JURISDICTION OVER A CONTRACT EXPRESSED TO BE AN INDEPENDENT CONTRACT?: A LOOK AT THE JUDGMENT OF THE NATIONAL INDUSTRIAL COURT OF NIGERIA IN BUKONLA ABIMBOLA V NNPC & ANOR**

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## — INTRODUCTON

On the 3rd of July 2024, the National Industrial Court of Nigeria (NICN), per Prof. Elizabeth A. Oji, J., in the case of ***Bukonla Abimbola v NNPC & Anor (Suit No. NICN/LA/416/2020)***, delivered an interesting judgment on the nature of a contract of employment (that is, a contract of service) vis-à-vis an independent contractor arrangement (that is, a contract for service), a question that been contentious in labour and commercial disputes for as long as can be remembered. Since the establishment of the NICN, the question has become more frequent as the NICN's subject matter jurisdiction is restricted to employment and labour disputes.

In ***Bukonla Abimbola v NNPC & Anor***, the NICN was called upon to determine whether a service contract between the parties was in fact an employment contract although the agreement itself described the service rendered by the Claimant as that of an independent service provider. The Court found that there was in fact an employment relationship between the parties and, consequently, the Court assumed jurisdiction in the matter.

In this case review, we take a look at the judgment of the Court in the referenced case of ***Bukonla Abimbola v NNPC & Anor*** as well as the lessons to be learned from the Court's decision.

## — SUMMARY OF THE FACTS

In 2004, the Nigerian National Petroleum Corporation (NNPC), the 1st Defendant in this case, entered into a Service Contract Agreement with Bukky Joy-Bright Ventures (a business name venture owned by the Claimant) for the provision of cleaning, gardening and waste disposal services, renewable annually subject to satisfactory performance. By the express provisions of the Service Contract, Bukky Joy-Bright Ventures was engaged as an Independent Service Provider, and NNPC reserved the right to terminate the contract at any time without cause subject to a seven day's prior written notice.

NNPC renewed the Service Contract with Bukky Joy-Bright Ventures annually from 2004 when same commenced until the end of 2019, when NNPC exercised its right to terminate under the Contract. The Claimant, however, instituted an action before the NICN for breach of employment contract, claiming that she was in fact an employee of NNPC and seeking reliefs, including reinstatement as well as unpaid salaries and other employment benefits and entitlements from July 2019 after the Contract was terminated by NNPC until delivery of judgment.

NNPC raised an objection to the jurisdiction of the NICN to entertain the Claimant's suit on the ground that there was no employer/employee relationship between NNPC and the Claimant as the Service Contract between the parties expressly created an independent contractor relationship. In response, the Claimant argued that the contract was in fact a contract of service and that Court has a duty to determine the nature of the relationship from the combination of the several documents governing the relationship and not to construe a single document.

## — SUMMARY OF THE COURT'S FINDING AND REASONING

In this case, although the contract documents labelled the Claimant as an independent service provider, the Court regarded the agreement as a whole to be ambiguous. Therefore, the Court relied on the cases of *Shena Security Co Ltd v Afro Pak (Nig) Ltd & 2 Ors.*; *PENGASSAN v Mobil Producing Unlimited*; and *Stephen Ayogu & 16 Ors. v Mobil Producing Unlimited*; and *Stephen Ayogu & 16 Ors. v Mobil Producing Nigeria Unlimited & Anor*, as well as International Labour Jurisprudence, in applying the principle of primacy of facts, which requires the Court to look beyond the contract language to examine the actual nature of the relationship. Specifically, the Court stated that notwithstanding the content of the contract document executed between the parties or the description of the contractual relationship in such document, that the NICN will look at the nature of the relationship and the surrounding circumstance to determine whether it is an employment relationship or not.

The Court considered the facts that the cleaning, gardening and waste disposal services were to be carried out daily at NNPC's premises, some of the equipment to be used for the services were to be provided by NNPC, and payments for the services rendered were to be made monthly and in the form of salaries. In addition, the initial contract and the subsequent annual renewals spanned over a long unbroken period of about fifteen years from 2004 to 2019 until it was terminated in 2020, signifying a form of stability commonly associated with employment and unlikely for an independent contractor.

Furthermore, in arriving at its decision, the Court also considered the nature of the service provider under the Agreement. The Court emphasised that although NNPC engaged Bukky Joy-Bright Ventures under the Contract, it was obvious that the said Bukky Joy-Bright Ventures was not a legal person but merely the business name of the Claimant. Thus, the Court held instructively viz.

"It is therefore safe to conclude that in all correspondence between the Defendants and Bukky Joy-Bright Ventures, the Defendants knew they were contracting with the Claimant."

The holding of the Court from the above is to the effect that Bukky-Joy Bright Ventures, to which the annual contract for provision of gardening and waste disposal services was awarded, is a business name with no separate legal personality from its proprietor, and that the yearly contracts were in fact awarded to the Claimant as the defendants knew that they were dealing directly with the Claimant.

The combination of the above facts led the Court to conclude that there was an employer-employee relationship between NNPC and the Claimant, notwithstanding the fact that contract documents labelled the Claimant as an independent service provider. Thus, the court held that the NICN had jurisdiction to entertain the suit.

## LESSONS FROM THE JUDGMENT

**Avoiding Ambiguity in Contractual Arrangements:** Service contracts which are intended to create independent contractor relationships should not be awarded on terms and conditions akin to employment contracts. For example, independent contractor agreements requiring services to be rendered daily at the business premises of the company or other person engaging the service of the independent contractor, payment of compensation or service charge at the end of every month or in the form of salary payments to the independent contractor, provision of work equipment by the company or other person engaging the services of an independent contractor, or continuous and long term engagement of a supposed independent contractor may be construed as an employment contract by the NICN.

**Avoiding Contracts with Unincorporated Entities:** An important lesson to be drawn from the decision of the court in this case is that persons engaging service providers should be wary of awarding contracts for service to business name ventures and other unincorporated entities as such contracts will be regarded as contracts entered into with the proprietor of the unincorporated entity. Moreover, depending on the facts and circumstance of the case, the Court may interpret the contract as an employment contract with the entity's proprietor. Contracting with incorporated entities can protect the company from unintended employment relationships with the entity's owner.

## CONCLUSION

From the decision of the NICN in the case of *Bukonla Abimbola v NNPC & Anor*, it is clear that contractual language alone is insufficient to classify a contractual relationship as a contract for service as opposed to a contract of service. Instead, the courts will examine the substantive aspects of the relationship in determining the nature of the contract between the parties. This emphasises the importance of clearly defined and carefully structured contracts, especially when contracting for the provision of services under an independent contractor arrangement.

