

## **CASE REVIEW**

- **PARTIES: Odah Ezekiel & Ors v. Total E & P Nigeria Ltd & Ors**
- **SUIT NO. NICN/LA/663/2016**
- **COURT: National Industrial Court of Nigeria**
- **YEAR: 2024**

**JUDGEMENT DELIVERED BY: HON. JUSTICE (PROF) ELIZABETH A. OJI**

### **1. ABSTRACT:**

*This case review examines the decision of the National Industrial Court in **Odah Ezekiel & Ors v. Total E&P Nigeria Ltd & Ors**, wherein the Court addressed critical issues relating to the status of employees under Nigerian labour law and the rights accruable thereto. The review analyses the Court's reasoning in determining whether the Claimants qualified as "workers" within the contemplation of the Labour Act, and the legal implications of such classification on their claims.*

*It further evaluates the Court's approach to the reliefs sought, the application of established legal principles, and the extent to which the judgment aligns with existing jurisprudence. The decision, which was substantially in favour of the Claimants, is assessed in light of its impact on employment relationships and labour rights in Nigeria.*

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*Ultimately, this review highlights the significance of the judgment in shaping the interpretation of employment status and reinforces the protective role of the National Industrial Court in advancing fair labour practices.*

## **2.0 INTRODUCTION / OVERVIEW**

This case is notable for affirming that the actual employment relationship depends on the factual realities rather than formal titles or arrangements.

It involves determining who the true employer is in a situation where outsourcing was used for employment, and whether the employer's actions constituted unfair labour practices under Nigerian law.

The main question was whether the Claimants, employed as security staff, were actually employees of the 1<sup>st</sup> Defendant or of the outsourcing companies (2<sup>nd</sup>–6<sup>th</sup> Defendants), and if their rights were violated by not receiving employment letters or terminal benefits.

This case is important for its application of the principle of primacy of facts in determining employment relationships.

## **3.0 SUMMARY OF FACTS OF THE CASE**

The Claimants were engaged from 2001 as security guards to protect the facilities and residences of the 1st Defendant, an oil company operating in Victoria Island and *Ikoyi*, Lagos. They had responded to a newspaper advertisement and were recruited and trained through the 2nd Defendant, who informed them that they were being employed for the 1st Defendant. After training, a representative of the 1st Defendant addressed them as employees, and they commenced work at its facilities. Although they worked continuously at the 1<sup>st</sup> Defendant's locations and received salaries paid directly in cash, they were never given formal employment letters. The 2<sup>nd</sup> Defendant later withdrew from the contract, leading to supervisory control passing to the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> Defendants through various service agreements. Despite these transfers, the 1<sup>st</sup> Defendant

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supposedly maintained effective control, including approving or disapproving dismissals, organizing seminars, and claiming that supervisors lacked authority to dismiss them without its approval. In 2015, some colleagues in Abuja were downsized and received severance pay from the 1<sup>st</sup> Defendant. However, when the Claimants sought similar benefits, the 1<sup>st</sup> Defendant denied responsibility, stating they were employees of the outsourcing contractors (2<sup>nd</sup>–6<sup>th</sup> Defendants), and warned against further demands. After failed attempts at resolution by the Ministry of Labour and Employment, the Claimants filed a suit. An action, alleging that the 1st Defendant, in connivance with the other Defendants, deliberately refused to issue employment letters, unlawfully transferred them between contractors without consent or ministerial endorsement, and disengaged them without severance benefits, amounting to unfair labour practice and violation of labour laws.

**4.0 ISSUES FOR DETERMINATION**

1. Whether the Claimants are “workers” under the Labour Act.
2. Who the true employer of the Claimants was.
3. The effect of the absence of written letters of employment.
4. Whether the Defendants engaged in unfair labour practices.
5. Whether the Claimants were authorized to institute a representative action.
6. Whether previous Court of Appeal decisions in Appeal No.CA/ABJ/CV/563/2020- Total E&P Nigeria Limited V. Mr. Felix Adariku (suing for themselves and all service contract personnel of Total E&P Nigeria Limited) and Appeal No.CA/ABJ/CV/1061/2020 - Luck Guard Limited v. Mr. Felix Adariku (suing for themselves and all service contract personnel of Total E&P Nigeria Limited) were applicable to the instant case.
7. Whether the Claimants were entitled to the reliefs sought.

**5.0 ARGUMENTS OF THE PARTIES**

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**5.1 Claimants' Arguments**

- They argued that they were employees of the 1st Defendant in substance.
- They argued that the outsourcing structure was a façade to evade legal responsibility.
- They argued that failure to issue employment letters and denial of benefits amounted to unfair labour practice.
- They argued that they were entitled to terminal benefits and damages.

**5.2 Defendants' Arguments**

- They argued that the Claimants were employees of the 2nd–6th Defendants.
- They argued that the 1st Defendant only engaged contractors and had no employment relationship with the Claimants.
- They argued that the Claimants' claims for benefits and damages were not proved.

**6.0 THE COURT RESOLVED THE ISSUES AS FOLLOWS:**

**6.1 ON ISSUE ONE: Whether the Claimants are “workers” under the Labour Act:**

The Court found and held that the Claimants are workers within the contemplation of the Labour Act.

**6.2 ON ISSUE TWO: Who the true employer of the Claimants was:**

The Court held that the 1st Defendant was the true employer, applying the principle of primacy of facts, which requires the substance of the relationship to govern over form or labels. Relying on **Section 91** of the Labour Act, the Court found that employment may arise orally, impliedly, or by

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conduct. The 2nd–6th Defendants acted only as supervisors under service contracts and did not employ the Claimants. Thus, the purported outsourcing arrangement was a disguised bilateral employment relationship designed to evade liability.

**6.3 ON ISSUE THREE: The effect of the absence of written letters of employment:**

The Court held that the absence of written employment letters did not negate the existence of an employment relationship. It held that the 1st Defendant's failure to issue letters within three months was in deed a breach of **Section 7** and constituted an unfair labour practice, but it could not be used to evade liability.

**6.4 ON ISSUE FOUR: Whether the Defendants engaged in unfair labour practices:**

The Court held that the 1st Defendant's conduct toward the Claimants amounted to unfair labour practice. It found that the prolonged failure to issue letters of employment, despite several years of service, was not only unlawful but fundamentally unfair, as it left the Claimants uncertain about the terms and conditions of their employment.

The Court further held that maintaining the Claimants on the same salary for many years, without progression or increment regardless of length of service, was contrary to the natural expectation of career growth and constituted unfair treatment.

Additionally, the Court found that transferring the Claimants from one supervisory contractor to another without prior notice or consultation was callous and degrading, violating their right to dignity.

On the whole, the Court concluded that the 1st Defendant engaged in unfair labour practices in its treatment of the Claimants.

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**6.5 ON ISSUE FIVE: Whether the Claimants were authorized to institute a representative action:**

The Court held that the Claimants were duly authorized to institute the action on behalf of themselves and the 140 disengaged security personnel they represented. **The Claimants gave unchallenged evidence that they had obtained the authority and consent of those they sought to represent, and none of the listed individuals disputed or objected to the representation.**

Accordingly, the Court found that the representative action was properly constituted. **It further held that it was not for the 1st Defendant to challenge the representative capacity of the Claimants in the absence of any objection from those being represented.**

The Court therefore affirmed the validity of the representative suit.

**6.6 ON ISSUE SIX: Whether previous Court of Appeal decisions in Appeal No.CA/ABJ/CV/563/2020- Total E&P Nigeria Limited V. Mr. Felix Adariku (suing for themselves and all service contract personnel of Total E&P Nigeria Limited) and Appeal No.CA/ABJ/CV/1061/2020 - Luck Guard Limited v. Mr.Felix Adariku (suing for themselves and all service contract personnel of Total E&P Nigeria Limited) were applicable to the instant case:**

The Court held that the authorities relied upon by the 1st Defendant, particularly the Court of Appeal decisions in *Total E&P Nigeria Ltd v. Adariku* and *Luck Guard Ltd v. Adariku*, were not applicable to the facts of this case.

It found that, **unlike in those cases, the 1st Defendant failed to establish the existence of any valid service or outsourcing contract with the 2nd to 6th Defendants. Furthermore, the 2nd to 6th Defendants did not employ the Claimants and did not issue them letters of employment. The evidence showed no contractual basis for a triangular or service contract arrangement.**

The Court reiterated that the 1st Defendant, having engaged the Claimants and benefitted from their services, could not rely on its own unlawful failure to issue employment letters to deny

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liability. Accordingly, the 1st Defendant was the only party that could have employed the Claimants.

The Court therefore held that the cited Court of Appeal decisions were distinguishable and did not bind the Court in the circumstances of this case.

**6.7 ON ISSUE SEVEN: Whether the Claimants were entitled to the reliefs sought:**

The Court in determining whether the Claimants were entitled to the reliefs sought, granted some reliefs and refused others based on the evidence before it.

**Relief 1, 3, 4: Refused:** The Court refused Reliefs 1, 3, and 4, holding that there was no transfer of employment to the 2nd–6th Defendants, no proven conspiracy, and no evidence of enslavement or unlawful recruitment arrangement. The Court had earlier found that the 1st Defendant was the sole employer; therefore, the claim of transfer or conspiracy as framed could not succeed.

- **Relief 2: Granted:** The Court declared that the 1st Defendant’s failure to issue letters of employment was unlawful, unfair, and in breach of section 7 of the Labour Act.
- **Reliefs 5 & 6: Granted:** The Court held that the refusal to pay terminal benefits after the Claimants were downsized constituted unfair labour practice, and that the Claimants were entitled to terminal benefits for their years of service.
- **Relief 7 & 9: Refused:** However, Reliefs 7 and 9, which sought ₦10,000,000 as terminal benefits for each Claimant, were refused because the Claimants failed to establish the basis or computation of the amount claimed.
- **Relief 10: Refused:** this relief which bordered on seeking arrears of bonuses and leave allowances, was declined for lack of evidence.
- **Relief 11: Granted:** the Court awarded exemplary damages against the 1st Defendant in the sum of ₦50,000,000. The Court held that the 1st Defendant’s prolonged failure to issue employment letters, and its attempt to evade responsibility, was high-handed, oppressive, and in flagrant disregard of the Claimants’ rights, thereby justifying punitive damages.
- **Relief 12: Refused:** claims against 2nd–6th Defendants were dismissed.

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The Court also awarded ₦5,000,000 as costs against the 1st Defendant and ordered compliance within 30 days, failing which interest at 20% per annum would accrue.

## **7.0 SUMMARY OF THE COURT'S JUDGMENT:**

The Court delivered judgment substantially in favour of the Claimants.

## **8.0 *RATIO Decidendi***

The Court held that the existence of an employment relationship is to be determined by the principle of primacy of facts, such that the substance of the relationship prevails over its form or designation.

Accordingly, where a worker renders services under the control, supervision, and direction of an entity, and is integrated into its operations, an employment relationship may be inferred despite the absence of a written contract.

The Court further held that a contract of employment may be oral or implied from conduct pursuant to **Section 91** of the Labour Act, and that an employer cannot rely on its failure to issue written employment particulars, as required under **Section 7**, to deny the existence of such a relationship or evade liability.

## **9.0 *OBITER DICTA***

In addition to its core findings, the Court made instructive observations which, although not binding, provide insight into its approach to labour relations. and fairness in employment practices.

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The Court observed that prolonged uncertainty in the terms and conditions of employment is inherently unjust and inconsistent with fair labour practice, as employees are entitled to clarity, stability, and predictability in their working arrangements.

It further cautioned against the misuse of outsourcing or similar arrangements as a means of evading statutory and contractual obligations, emphasising that such structures must not be used as a façade to deny workers the protections guaranteed under labour law.

### **10.0 REASONING OF THE COURT**

The Court, in resolving the issues before it, applied the principle of primacy of facts, carefully examining the true nature of the working relationship between the parties rather than relying on the formal structure presented.

Upon evaluating the evidence, the Court found that the Claimants rendered their services exclusively to the 1st Defendant and were, in substance, integrated into its operations. It further held that the 1st Defendant exercised effective control over their duties, supervision, and overall conditions of work—an essential indicator of an employment relationship.

In contrast, the 2nd to 6th Defendants functioned merely as intermediaries, lacking any genuine or enforceable employment contracts with the Claimants. Their role did not reflect a true employer-employee relationship but served only as a conduit within the arrangement.

The Court also relied on Sections 7, 21, and 91 of the Labour Act, affirming that contracts of employment may be oral or implied from conduct. It emphasized that failure to provide written particulars within three months constitutes a breach of statutory duty but does not invalidate the employment relationship.

Consequently, the Court concluded that the purported outsourcing arrangement was in reality a disguised employment structure designed to circumvent legal obligations and avoid responsibility toward the Claimants.

## **11.0 SIGNIFICANCE OF THE CASE**

This case carries profound implications for labour law practice and the protection of workers' rights in Nigeria.

- Firstly, it reinforces the doctrine of primacy of facts, underscoring that the true nature of an employment relationship is determined by the reality of the working arrangement rather than formal labels or contractual artifice. This principle ensures that employees cannot be denied their rights simply because their employment was structured unconventionally.
- Secondly, the case clarifies that outsourcing arrangements cannot be used as a loophole to defeat employee rights. Employers cannot rely on intermediaries or complex corporate structures to evade statutory obligations or contractual responsibilities.
- Thirdly, it strengthens protection against unfair labour practices, emphasizing that any attempt by employers to introduce ambiguity or instability in employment terms is inherently unjust and will be scrutinized by the courts.
- Finally, the case affirms the validity of representative actions in labour disputes, providing a pathway for employees to collectively enforce their rights and hold employers accountable where multiple workers are affected by the same unlawful practice.
- In sum, the decision serves as a guiding precedent for both employers and employees, promoting fairness, accountability, and the effective enforcement of labour protections.

## **12.0 CRITICISM**

The Court's decision is highly commendable for prioritizing substance over form, firmly protecting employees from exploitative and artificial labour arrangements that seek to evade statutory obligations. By focusing on the actual facts of the working relationship, the Court upheld the rights of vulnerable workers and reinforced fundamental principles of fairness in employment law.

- However, certain aspects invite constructive critique. The Court's refusal to grant specific monetary claims underscores the critical importance of presenting clear evidence and

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precise computation of damages in labour disputes. This highlights a practical lesson for both legal practitioners and employees in taking seriously the need for meticulous documentation and quantification when seeking financial remedies.

- Additionally, while the judgment addressed the overarching legality of the employment relationship, it could have offered more detailed guidance on the methodology for calculating terminal benefits, which would have provided clearer benchmarks for future cases.

Overall, the ruling represents a strong affirmation of fairness, accountability, and the protection of employee rights in Nigerian labour law, while also signaling areas where further judicial clarity could enhance the administration of justice in employment matters.

### **13.0 PERSONAL ANALYSIS**

#### **Explanation of the Courts reasoning on issue seven.**

**13.1** At first glance, the Court's decision may appear contradictory, I mean how can it refuse several substantive reliefs and yet proceed to award a hefty sum in exemplary damages? However, a closer and more careful legal analysis reveals that there is no inconsistency in the Court's reasoning. The key to understanding this lies in appreciating that each relief sought by a party is treated as a separate and independent claim, with its own legal requirements and evidentiary burden. The fact that some reliefs failed does not automatically invalidate others. In this case, the Court refused Reliefs 1, 3, and 4 because the Claimants were unable to discharge the burden of proof required for those specific allegations. Claims such as transfer of employment, conspiracy, and enslavement are grave in nature and demand strict, credible, and compelling evidence. The Court simply found that such evidence was lacking.

However, Relief 11, which relates to exemplary damages, stands on a different legal footing. Exemplary damages are not necessarily tied to proving complex arrangements like conspiracy or unlawful transfer of employment. Rather, they are awarded where the conduct of a defendant is shown to be oppressive, arbitrary, or high-handed. Here, the Court found that the 1st Defendant's prolonged failure to issue employment letters, coupled with its attempt to evade responsibility, **Re-Defining Employment Relationships in Nigeria: A Case Review of Odah Ezekiel & Ors v. Total E & P Nigeria Ltd & Ors (2024). Edited and published by LEGAL IDEAS FORUM INTERNATIONAL**

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amounted to conduct that was sufficiently egregious to justify punitive sanctions. This finding is independent of whether or not the more serious structural allegations were proven.

In essence, the Court is saying: although the Claimants could not establish certain far-reaching claims, they successfully demonstrated that the 1st Defendant acted in a manner that disregarded their rights and dignity. That misconduct alone is enough to attract exemplary damages. Thus, what may initially seem like a contradiction is, in reality, a demonstration of judicial precision—where the Court carefully separates unproven allegations from proven wrongdoing, and grants relief only to the extent justified by the evidence before it.

**13.2** Furthermore, any curious mind who might have looked up the cases of *Nwaogu v. Atuma and Ogoke v. Nduka* might wonder if the National Industrial Court's reasoning in this regard does not go against the reasoning of the Superior Courts in these particular cases with regards to this subject matter. At first blush, anyone who has read those cases would conclude that those decisions appear to mean that **once the principal reliefs fail, every other relief must inevitably collapse** and as such they might want to question the reasoning of the National Industrial Court in addressing a similar subject in the instant case. However, a deeper reflection reveals that the principle in those cases, though sound, is not of universal application. It operates within a specific boundary, one that turns on the nature of the relief in question.

It is true that the rule is that where a relief is ancillary, derivative, or dependent on a principal claim, it cannot survive the failure of that principal claim, because it has no independent legal footing. But that is only half of the picture. The more refined question, which a careful legal mind must then ask, is:

- **The relief in question truly an appendage, or**
- **Does it possess its own independent foundation?**

This is where the initial assumption begins to shift. In the present case, it is tempting to classify Relief 11 (exemplary damages) as merely flowing from the more substantive allegations such as conspiracy, transfer of employment, or unlawful arrangements. If that were so, then invoking

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**Nwaogu v. Atuma and Ogoke v. Nduka** would be entirely correct, and the damages ought to fail alongside those claims. But the Court's reasoning suggests otherwise. Rather than anchoring the claim for exemplary damages on the failed allegations, the Court identified a separate and self-sustaining wrong which is the 1st Defendant's prolonged failure to issue employment letters and its evasive, high-handed conduct toward the Claimants. That misconduct, standing alone, was found to be sufficiently oppressive to justify punitive sanction. At that point, Relief 11 ceases to be an appendage. It becomes a substantive remedy grounded in an independent cause of complaint. And once a relief stands on its own foundation, the principle in **Nwaogu v. Atuma and Ogoke v. Nduka** no longer applies to defeat it. What initially appears to be a contradiction or even a departure from settled law, thus resolves into something more precise, that is a careful judicial distinction between:

**(a) Dependent reliefs that must fall with their foundation, and**

**(b) Independent reliefs that survive on their own proven facts.**

**13.3** I find myself in agreement with the Court's reasoning in refusing Reliefs 1, 3, and 4, particularly on the basis that there was no credible evidence establishing a transfer of employment to the 2nd–6th Defendants, no substantiated proof of conspiracy, and no demonstration of enslavement or any unlawful recruitment arrangement. This position is firmly anchored in the principle restated by the Supreme Court in **Ativie v. Kabelmetal (Nig.) Ltd. (2008) 10 NWLR (Pt. 1095) 399**, where it was held that a party seeking relief must not only ask for it but must also **prove entitlement to it**. The use of the word "and" in that formulation is deliberate and conjunctive. **It "imposes a dual burden." That is to say it is not sufficient for a litigant to merely place a relief before the Court but there must be credible and convincing evidence to support the claim.** The implication of the referenced case (supra) is that **where a claimant fails to discharge this evidentiary burden, the Court is left with no legal basis upon which to grant such reliefs. And in fact any attempt by a trial court to award unproven or even unclaimed reliefs would amount to a grave error, one which an appellate court is not only entitled but duty-bound to correct by setting aside such an award.**

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In essence, the refusal of the reliefs in this case is not merely procedural but a necessary consequence of the claimant's failure to satisfy the strict legal threshold of both seeking and proving entitlement.

## **14.0 CONCLUSION**

The Court conclusively determined that the 1st Defendant was the true employer of the Claimants and held it fully accountable for engaging in unfair labour practices. By piercing through the formal structures of the outsourcing arrangement, the Court ensured that the substance of the employment relationship dictated the allocation of rights and responsibilities.

This case now stands as a significant authority on key aspects of Nigerian labour law, including the proper determination of employment relationships, the safeguarding of workers' rights, and the scope of employer liability in the context of outsourcing arrangements.

The decision ultimately reinforces the principle that justice in labour relations must be grounded in reality, not mere technicalities or formalities, setting a robust precedent that protects employees from artificial schemes designed to evade legal obligations while promoting fairness, accountability, and transparency in the workplace.

### **About The Author:**

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