



SKYE BANK PLC V. ADEGUN:
**International Best Practices in
Nigerian Labour and Industrial
Relations**

Introduction

Nigerian labour law has historically been an amalgam of inherited colonial statutes regulations and indigenous adaptations. For years, jurists have propelled the conversation on the need for a comprehensive overhaul that would address the inadequacies of existing frameworks and steer the nation towards an internationally compliant labour and industrial system.

In the evolving landscape of global labour and industrial relations, the Supreme Court of Nigeria (the “**Supreme Court**”) has recently delivered a landmark decision that seeks to synchronise Nigerian labour and industrial practices with international benchmarks in particular cases. Although the judgment under review addresses a broad range of principles governing employment relationships, this article focuses on the Honourable Justice Ogunwumiju’s decision relating to international best practices. The alignment with international best practices, drawn from conventions of the International Labour Organisation (ILO) among others, is indicative of Nigeria’s willingness to bridge the divide between its indigenous regulations and the expectations of foreign investors and its workforce who are well-versed in global labour standards.

In this article, we examine the judgment of the Supreme Court in *Skye Bank v. Adegun*,¹ and the position of statute and case law on the international best practices imbued in the recent decision of the Supreme Court. In analysing the decision in *Skye Bank v. Adegun*, we have primarily relied on the supporting judgment delivered by Helen Ogunwumiju, JSC. The leading judgment delivered by Emmanuel Akomaye Agim, JSC does not explicitly broach on international best practices on the issues at stake. However, the supporting judgment of Justice Helen Ogunwumiju, JSC does. It is on this basis that we recognise the need for a broader and comparative framework that situates Nigerian jurisprudence within the global discourse on employment matters.

Summary of *Skye Bank v. Adegun* (supra)

Mr. Adedokun Olusegun Adegun (the “**Respondent**”) was dismissed from the employ of Skye Bank Plc (“**Appellant**”) on March 29, 2006, following an investigation into the disciplinary cases of the Appellant by the Appellant’s integration team. During the Respondent’s time as an employee of Cooperative Bank Plc (“**Cooperative Bank**”), which became Skye Bank Plc following a merger, an investigation conducted on the books of the Appellant between August 2004 and December 2005 revealed that some funds were fraudulently withdrawn from a customer’s account and were paid to unidentified beneficiaries by the Respondent.

The inspectors appointed by Cooperative Bank discovered that between 2004 and 2005, when the Respondent was acting Treasury Officer of Oyo Branch of the Cooperative Bank, some senior officers including the Respondent defrauded Cooperative Bank some amounts of money. Cooperative Bank issued a query on the Respondent’s withdrawals, wherein it raised ten (10) questions for the Respondent to answer. However, the Respondent in his defence letter, failed to give direct responses to the ten (10) questions posed to him, but instead offered an apology. The defunct Cooperative Bank indicted the Respondent and issued a caution against the Respondent.

Following the merger of Cooperative Bank with other banks to form Skye Bank Plc, the Appellant formed an integration team which reviewed the Respondent’s case. The Appellant found the Respondent guilty of gross misconduct and consequently dismissed the Respondent. The Respondent then instituted an action at the High Court for wrongful termination of contract of employment.

The High Court held that although the Respondent’s dismissal was wrongful the Respondent was only entitled to one (1) month’s salary in *lieu* of notice as specified in his employment contract and ₦100,000 (One Hundred Thousand Naira) in damages. Dissatisfied with the quantum of damages awarded, the Respondent appealed to the Court of Appeal. The Court of Appeal upturned the award of damages from the High Court and awarded the Respondent a total sum of ₦14,221,000 (Fourteen Million, Two Hundred and Twenty-One Thousand Naira). Dissatisfied with the judgement of the Court of Appeal, the Appellant appealed to the Supreme Court.

¹(2024) 15 NWLR (Pt. 1960) 1.

The supporting judgment delivered by Helen Ogunwumiju, JSC relied on a sole issue, “[W]hether there was any (material) basis whatsoever for the lower court to have upturned and set aside the assessment of damages made by the trial court which assessment was based on proper evaluation of evidence led before the trial court.”

Relevant to the topic under discussion, Justice Helen Ogunwumiju stated, *inter alia*, that “...[T]he failure of the Appellant to call the Respondent when his case was being reviewed was a violation of his right to fair hearing. The dismissal after that procedure amounted to wrongful dismissal... Even if [the Respondent] had been given fair hearing by the Integration Committee, it would be unconscionable and too late in the day to “rediscipline” the Respondent for the same offence on the same facts. The law is that a party cannot be allowed to mislead another person into believing in a state of affairs and then turn around to say to that person’s disadvantage that the state of affairs which he represented does not exist at all. That is the doctrine of estoppel.² ...**The point being made here is that it goes against international best practices and labour standards to terminate the employment of a high-performing staff without justifiable reasons.** Moreso, globally, the termination of employment without cause or reason is no longer considered fashionable or acceptable.”³ (Emphasis supplied).

International Best Practices on Labour and Industrial Relations

The National Industrial Court (“NIC”) which has jurisdiction over labour and employment matters in Nigeria is empowered by section 254C (2) of the Constitution of the Federal Republic of Nigeria, 1999 (the “**Constitution**”) to apply international treaties or conventions that Nigeria has ratified relating to labour and industrial relations in adjudicating matters before it. Further, section 7(6) of the National Industrial Court Act, 2006 (the “**NIC Act**”) provides that “[T]he Court shall, in exercising its jurisdiction or any of the powers conferred upon it by this Act or any other enactment or law, have due regard to good or international best practice in labour or industrial relations and what amounts to good or international best practice in labour or industrial relations shall be a question of fact.”

A combined reading of the provisions of the Constitution and NIC Act shows that the NIC has power to apply and rely on international best practices. In fact, this principle receives judicial approval in *Skye Bank v. Adegun* where the Supreme Court (per Helen Ogunwumiju JSC) stated that “the new labour jurisprudence with the 3rd Alteration to the 1999 Constitution and the provisions of the law in that regard, particularly Section 7(6) of the National Industrial Court Act mandates that every court in the land shall have recourse to good or international best practices in labour or industrial relations”.

Doctrine of Estoppel in Employment Matters

The doctrine of estoppel is a vital principle in employment law, preventing employers from revisiting and punishing employees for matters already resolved. The Court of Appeal in *Ozde Distilleries Ltd. v. Diamond Bank Plc* (2013) LPELR-20172 (CA), expounded on the doctrine of estoppel, stating that “where one party has, by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party had taken him at his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relations as if no such promise or assurance had been made by him.”

This principle was applied in *Skye Bank v. Adegun*, where the Supreme Court prevented the Appellant from revisiting and punishing the Respondent for the same misconduct after it had already been resolved. The Court held that the subsequent dismissal amounted to “redisciplining” the Respondent for the same offence, which is inconsistent with fairness and global labour standards. The doctrine of estoppel ensures that an employer cannot mislead an employee into believing that a matter is resolved and then act otherwise to the employee’s detriment. This doctrine aligns with international best practices, as it upholds procedural fairness, protects against arbitrary decisions, and fosters trust in employment relationships. For example, paragraph 10 of the ILO Convention on the Termination of Employment Recommendation, 1982 (No. 166) provides that “the employer should be deemed to have

² (2024) 15 NWLR (Pt. 1960) 38B.

³ (2024) 15 NWLR (Pt. 1960) 42B.

waived his right to terminate the employment of a worker for misconduct if he has failed to do so within a reasonable period of time after he has knowledge of the misconduct."

Dismissal of an Employee Without Cause or Without a Justifiable Reason.

Under Nigerian law, an employer may terminate the employment of an employee without cause. However, where a reason is provided, the employer must justify the said reason. The Court in *Obanye v. Union Bank of Nigeria Plc* (2018) LPELR-44702 (SC) affirming this position, held that *"a private limited liability company or any employer of labour like the Respondent in the instant case does not have any obligation to retain the services of any unwanted employee and may terminate the appointment of the employee without any reason."* It follows the principle that a willing employee cannot be foisted on an unwilling employer. Thus, while an employment can be terminated wrongfully on a myriad of grounds, the failure of the employer not to give a reason for said termination does not make the employment wrongful, neither does it invalidate it.

Also, in *Angel Daodu v. UBA* (2004) 9 NWLR (Pt. 878) 276 (CA), the Court held that *"an employer can bring the appointment of his employee to an end for any reason or for no reason at all; so long as he acts within the terms of the employment, his motive for doing so is irrelevant. Simply put, if a reason is given for the termination, such reason must fall within the terms of the contract of employment, and where no reason is given the employer is not bound to give evidence as to any reason or reasons for the termination."* This is the settled position of the law.

However, since the enactment of the Third Alteration to the Constitution, the Court has derogated from this position to hold that an employment cannot be terminated by an employer without providing adequate reason justifying the termination, as this constitutes an unfair labour practice. Thus, the NIC in *Aloysius v. Diamond Bank Plc* (2015) 58 NLLR (Pt. 199) 92, 134 held, *inter alia*, that *"by the provisions of section 254C(1)(f) and (h) of the 1999 Constitution as amended, this Court can now move away from the harsh and rigid Common Law posture of allowing an employer to terminate its employee for bad or no reason at all...It is now contrary to international labour standard and international best practice and therefore, unfair for an employer to terminate the employment of its employee without any reason or justifiable reason that is connected with the performance of the employee's work... I hold that it is no longer conventional in this twenty-1st (sic) century labour law practice and in industrial relations for an employer to terminate the employment of its employee without any reason even in private employment."* This was also the position of the Supreme Court in the case of *Skye Bank v. Adegun* (*supra*).

Following recent decisions, it is evident that the Courts have adopted a stance in favour of employees in cases involving an employee's dismissal without justifiable reasons. However, in the recent decision of *Dangote Cement Plc v. Ager et al.* (2024) LPELR-61800 (SC), the Supreme Court took a different stance. In this case, *Ager et al*, former employees of the defunct Benue Cement Company Plc, which was taken over by Dangote Cement Plc, were indefinitely suspended pending investigations into fraud and theft. Subsequently, their employment was terminated. The trial court declared the indefinite suspension and termination unlawful and ordered that they be paid their entitlements from the date of the suspension.

The Court of Appeal upheld this decision. Dissatisfied, Dangote Cement Plc appealed to the Supreme Court. The Supreme Court held *inter alia* that an *"employer is vested with the discretionary right, power and authority to terminate the employment of its employees including the Respondents, without giving any reason at all, then the termination of the employment by the Appellant as their employer, was valid subject only to the requisite notice or payment in lieu thereof."* This decision is directly contradictory to the decision of the Supreme Court in *Skye Bank v. Adegun* (*supra*) which is to the effect that an employee cannot be dismissed without reason.⁴

⁴ (2024) 15 NWLR (Pt. 1960) 42B. Helen Ogunwumiju, JSC stated as follows *"[T]he point being made here is that it goes against international best practices and labour standards to terminate the employment of a high-performing staff without justifiable reasons. Moreso, globally, the termination of employment without cause or reason is no longer considered fashionable or acceptable"*.

The Supreme Court in the *Dangote Cement Plc v. Ager et al.*, further held that “where for instance, the contract provides that the parties may determine it by way of notice of a specified nature and length or payment of money in lieu thereof, then in a claim for alleged wrongful termination of the employment, the law is now firmly established and settled that the quantum of damages a claimant would be entitled to is the sum or amount of money to be in lieu of the requisite notice for the proper termination of the employment.”

The distinguishing factor between this case and *Skye Bank v. Adegun* (*supra*) was that the termination of employment of Ager and the other respondents in *Dangote Cement Plc v. Ager et al.* was done contrary to the terms and conditions of the employment contract between the parties. The employment contract provided that the company may terminate the employment of an employee without reason provided Dangote Cement Plc gave a notice period according to the employee’s level in the company, or made a payment in lieu of notice. The Supreme Court, affirming the contract between the parties, held that while the termination was wrongful for Dangote Cement Plc’s failure to make the payment in lieu of notice, it was not unlawful on the grounds of failure to give a reason.

The Supreme Court’s position in *Dangote Cement Plc v. Ager et al* (*supra*) underscores that the application of international best practices by the Courts is dependent on the specific contract between the parties and the facts of the case.

Payment of Only Salary in lieu of Notice upon Termination of an Employee’s Contract.

Although the Supreme Court in *Skye Bank v. Adegun* held that where employment is wrongfully terminated, the employee is only entitled to payment in lieu of notice and such other entitlement that accrued to them before such dismissal, in line with the case of *Nigerian Produce Marketing Board v. Adewunmi* (1972) LPELR-2023 (SC), the Supreme Court (through resounding reasons given by Ogunwimiju) still made recourse to international best practices in labour and industrial relations, in arriving at the conclusions it reached in the judgment and determining the quantum of damages the Respondent is entitled to.

The Supreme Court deviated from the settled position of the law “that no matter how hurtful, unreasonable or wrongful the termination of appointment is, the employee is only entitled to one month’s salary in lieu of notice to determine the quantum of damages.” Relying on the scathing dismissal letter from the Appellant which stated that the Respondent is “fraudulent, untrustworthy and no longer fit to work in a financial establishment,” the Supreme Court held that the letter was without cause and unreasonable and would affect the Respondent’s ability to find gainful employment in another financial institution. On this basis, the Supreme Court granted the Respondents claim for the accrued basic salary from April 2006 to April 2008 and the gratuity owed to the Respondent.

Conclusion

The Supreme Court’s decision, per Helen Ogunwumiju JSC in *Skye Bank v. Adegun* marks a pivotal shift in Nigerian labour jurisprudence, highlighting the integration of international best practices into domestic labour and industrial relations. Through this judgment, the Supreme Court has reinforced the principle that Nigerian courts must not only adhere to the letter of the law but also consider evolving global norms that promote social justice in labour relations. Justice Helen Ogunwumiju’s reliance on international conventions and labour practices signals a recognition of the interconnected nature of today’s labour markets, where national boundaries are increasingly blurred. By so doing, Nigeria not only enhances the protection of its workforce but also bolsters investor confidence, making the country a more attractive destination for multinational corporations and foreign investments.

However, the conflicting precedents set by other Supreme Court’s decision, *Dangote Cement Plc v. Ager et al.*, highlight the nuanced challenges involved in balancing established common law principles with emerging international standards. While *Skye Bank v. Adegun* underscores the importance of fairness and reasonableness in employee dismissals, *Dangote Cement v. Ager* reaffirms the contractual freedom of employers to terminate employment relationships, provided they adhere to the agreed terms of the contract. This divergence illustrates that the application of international best practices is not absolute; it remains contingent on the specific contractual arrangements and facts of each case.

Looking ahead, this decision serves as a benchmark for future labour disputes, encouraging Nigerian courts to consistently integrate international standards in their adjudications. While the path to full alignment with international best practices is fraught with interpretative challenges and potential conflicts with existing laws, this decision sets a strong precedent for promoting more just and humane labour practices in Nigeria.

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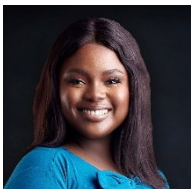
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