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Research Article

Measurement of Quantum of Damages for Wrongful Termination of Employment in Nigeria: Gleaning Lessons from Ghana and Malaysia

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ABSTRACT: In a master-servant employment relationship, when an employee's employment is wrongfully terminated, the traditional measure of damages upon a successful legal challenge is the amount the employee would have earned during the agreed notice period. However, the National Industrial Court of Nigeria (NICN), empowered by the Constitution (Third Alteration) Act, 2010 to apply international best labour practices and International Labour Organisation (ILO) standards, has departed from this position. This departure was affirmed by the Court of Appeal (CA) in Sahara Energy Resources Ltd. v. Oyebola, where the court held that, in deserving cases, damages exceeding the ordinary notice period can be awarded. This paper utilises an analytical method to examine the impact of this decision on the jurisprudence of damages for wrongful termination in Nigeria. It probes whether the decision permits the NICN to award unpredictable damages that prejudice employers. The paper argues that the decision promotes employment security amidst Nigeria's unprecedentedly high unemployment rate. By examining current legislation and practice in Ghana and Malaysia, this research aims to draw lessons for Nigeria. It concludes that the decision is a welcome development. The paper recommends that the CA, as the final court on labour matters, should sustain this precedent, as it aligns the law with modern realities. Furthermore, the decision should be given statutory backing by amending relevant domestic labour legislation, as is the case in Malaysia and Ghana.

KEYWORDS: Dismissal, Ghana, Malaysia, Nigeria, National Industrial Court of Nigeria.

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I. INTRODUCTION

Under the common law master-servant employment relationship (as distinct from statutory employment, where the relationship is regulated by statute),[1] an employee whose employment is wrongfully terminated is only entitled to recover damages.[2] The quantum is limited to the sum payable if the employer had rightfully terminated the contract in accordance with its terms—typically, the monetary equivalent of the prescribed notice period.[3] The Supreme Court of Nigeria (SCN) has consistently reiterated that this is the sole available measure of damages for wrongful termination.[4] Any attempt to seek further compensation has been dismissed as an effort to unsettle this trite common law position.[5]

This quantum remains unchanged even if the wrongful termination inflicts additional injury on the employee, such as damage to their reputation, perceived competence, or future employment prospects.[6] This situation has arguably emboldened many employers in the Nigerian private sector to terminate employment indiscriminately.[7] According to Eyongndi and Okongwu, this problem is exacerbated by high levels of unemployment, underemployment, and other unfair labour practices prevalent in Nigeria.[8] Eyongndi and Onu have opined that the National Industrial Court of Nigeria (NICN), from its creation,

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1 *Olaniyan & Ors v UNILAG*, [1985] 2 NWLR (Pt. 9) at 599.

2 *W N D C v Abimbola*, [1966] NMLR at 381.

3 *Iweha v Ebice Company Ltd*, [2004] 11 CLRN at 135.

4 *Idoniboye-Obu v NNPC*, [2003] 2 NWLR (Pt. 805) at 58.

5 Gbenga Ojo, "Legal Redress for Unlawful Termination of Employment: It is Time to Call a Spade a Spade" (2007) 1:3 NJLL & IR at 7-8.

6 Akin O Oluwadayisi, "Termination of Employment and Breach of Fundamental Rights: A Review of Folarin v Incorporated Trustees of Clinton Health Access Initiative" in *in Yemi Akinseye-George, Samuel Osamolu, & Akin O Oluwadayisi (eds), Contemporary Issues in Labour Law, Employment and National Industrial Court Practice and Procedures: Essays in Honour of Honourable Justice Babatunde Adeniran Adejumo* (Abuja: LawLords Publications, 2014) at 30.

7 Olushola Animashaun, "Unfair Dismissal, a Novel Idea in the Nigerian Employment Law?" (2008) 2:2 NJLL & IR at 6-7.

8 David T Eyongndi & C J Okongwu, "The Legal Framework for Combating Child Labour in Nigeria" (2008) 2:1 UNIPORT Law Review at 226.

had the power to exercise exclusive original civil jurisdiction over labour and ancillary matters as a specialised court for the speedy adjudication of disputes.[9]

The National Industrial Court of Nigeria (NICN) was created as a specialised court with exclusive original civil jurisdiction over labour matters for speedy dispute resolution. However, as Akeredolu and Eyongndi note, the court was initially bedevilled by constitutional and jurisdictional challenges.[10] The National Industrial Court Act of 2006 (NIC Act, 2006) sought to elevate the NICN to a Superior Court of Record (SCR).[11] Yet, because the NICN was omitted from the list of SCRs in section 6(5) of the 1999 Constitution (CFRN, 1999), its status remained controversial. [12] Appellate courts often declared the NICN unconstitutional, viewing its exclusive jurisdiction as a usurpation of the powers of the Federal High Court, High Court of the Federal Capital Territory, Abuja, and State High Courts under sections 251, 255 and 272 of the CFRN, 1999, respectively.[13]

A permanent solution arrived with the Constitution (Third Alteration) Act, 2010, which formally elevated the NICN to a SCR and vested it with exclusive original civil jurisdiction over labour and ancillary matters.[14] It also introduced other radical and novel innovations.[15] These innovations, which are exemplified by the

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[9] David T Eyongndi & Kingsley Osinachi N Ou, "The National Industrial Court Jurisdiction over Tortious Liability under Section 254C (1)(A) of the 1999 Constitution: Sieving Blood from Water" (2020) 10 Babcock University Socio-Legal Journal at 247-248.

[10] Alero E Akeredolu & David T Eyongndi, "Jurisdiction of the National Industrial Court under the Nigerian Constitution Third Alteration Act and Selected Statutes: Any Usurpation?" (2019) 10:1 The Gravitas Review of Business and Property Law, University of Lagos at 8.

[11] Israel N Worugji, James E Archibong & Eni Alobo, "The NIC Act (2006) and the Jurisdictional Conflict in the Adjudicatory Settlement of Labour Disputes in Nigeria: An Unresolved Issue" (2007) 1:2 Nigerian Journal of Labour & Industrial Relations at 35.

[12] John Oluwole O Akintayo & David T Eyongndi, "The Supreme Court Decision in Skye Bank Ltd. v. Victor Iwu: Matters Arising" (2018) 9:3 The Gravitas Review of Private and Business Law at 111.

[13] *Kalango v Dokubo*, [2004] 1 NLRR (Pt. 1) at 180.

[14] Bimbo Atilola, Michael Adetunji & Michael Dugeri, "Powers and Jurisdiction of the National Industrial Court of Nigeria under the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010: A Case for Its Retention" (2012) 6:3 Nigerian Journal of Labour & Industrial Relations at 35.

[15] Gerald M Nwagbogu, "Repositioning the National Industrial Court for Industrial Relations Facelift" (2013) 7:2 Nigerian Journal of Labour Law and Industrial Relations at 29.

NICN's decision in *Aloysius v Diamond Bank Plc.,* are far-reaching.[16] Further fundamental innovations introduced by the Act, which Eyongndi, Imosemi, and Nnawulezi have outlined, include empowering the NICN to apply ILO Conventions, treaties, recommendations, international best practices (IBP), and international labour standards (ILS) under Section 254C (1) (f) and (h).[17] Thus, the amendment has made the NICN an SCR that has coordinate jurisdiction with the FHC, HCFCTA, and the various SHCs. Consequently, based on the impact of the act, the NICN has since departed from unpopular common law doctrines, including the measure of damages awardable for wrongful termination of master-servant employment.[18]

This innovative approach was affirmed by the Court of Appeal - the final court for civil appeals arising from the decisions of the NICN.[19] Departing from the unpopular common law position on the measure of damages awardable when an employer wrongly terminates an employee, in *Sahara Energy Resources Ltd. v Oyebola* the NICN awarded higher damages.[20] Upon appeal to the Court of Appeal, it held that in deserving cases, courts may award damages exceeding the amount payable in lieu of notice. This decision represents a paradigm shift. On one hand, it could be seen as granting the NICN discretion to award damages indiscriminately, creating uncertainty for employers. On the other hand, it can be viewed as a necessary step to enhance employment security in a context of high unemployment.[21]

This article views the decision as a welcome development and examines its impact on the jurisprudence of damages for wrongful termination in Nigeria. It raises the question of whether the decision permits the NICN to prejudice employers with unpredictable damages. It also seeks to ascertain if the decision complies

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[16] *Aloysius v Diamond Bank Plc*, [2015] 58 NLLR (Pt. 199) at 92.

[17] David T Eyongndi, Adekunbi Imosemi & Uche Nnawulezi, "Protection of Domestic Workers under Nigerian Law: Gleaning Lessons from ILO, Ghana, South Africa and India" (2024) 15:1 Jindal Global Law Review at 618.

[18] *Aero Contractors of Nigeria Limited v National Association of Aircrafts Pilots and Engineers (NAAPE) & Ors.* Unreported Suit No. NICN/LA/120/2013 Judgment delivered on 4th February, 2014.

[19] *Skye Bank Plc v Iwu*, [2017] 7 SC (Pt. 1) at 1.

[20] *Sahara Energy Resources Ltd v Oyebola*, [2020] LPELR at 51806.

[21] Timothy Tio, "Third Alteration to the 1999 CFRN: The Game Changer in Nigerian Labour Law" (2020), online: *Naija Cyber Lawyer* <https://naijacyberlawyer.blogspot.com//2020/12/third-alteration-to-the-1999-cfrn-the-game-changer-in-nigerian-labour-law>.

with global best practices by exploring the positions of Ghana and Malaysia to draw comparative lessons.

These issues are not peculiar to Nigeria. Courts in Ghana have progressively moved from the outdated common law position, aided by the employment-at-will doctrine, towards awarding punitive damages to comply with best practices. In Malaysia, the Industrial Relations Act, 1967 allows courts to award monetary compensation based on equity and fairness where reinstatement is inadequate. A review of these jurisdictions reveals potential for cross-jurisdictional learning.

This paper is subdivided into eight sections: introduction, methodology, the common law position, the enhanced status of the NICN, an analysis of the *Oyebola* case, a comparative examination of Ghana and Malaysia, conclusion, and recommendations.

II. METHODOLOGY

This research employs doctrinal and comparative methods to interrogate the quantum of damages awarded by courts in Nigeria, Ghana, and Malaysia for wrongful termination in master-servant relationships. The article compares statutory provisions and case law from these jurisdictions, highlighting areas of convergence and divergence. The analysis relies on secondary data from scholarly articles and online materials, and primary data, including case law and statutes such as the Nigerian Constitution, the Labour Act, the NIC Act, and Ghana's Labour Act, 2003. Data collected through a literature review is subjected to content and jurisprudential analysis, forming the basis for the findings and recommendations.

III. AWARD OF DAMAGES FOR UNLAWFUL TERMINATION IN MASTER-SERVANT EMPLOYMENT AT COMMON LAW

Before examining the measurement of damages for wrongful termination of employment under common law, it is essential to clarify what wrongful termination of employment is. Customarily, when an employment contract is created, the parties articulate specific terms and conditions that regulate the

relationship - including the process for termination.[22] Wrongful termination occurs when an employment contract is ended in a manner not specified in its terms.[23] While the contract ends, the party responsible for the breach incurs liability. The SCN in *Isheno v Julius Berger Nig. Plc.* affirmed the point that wrongful termination of employment renders the party that caused the breach liable to damages.[24] Thus, in *Oforishe v N.G. Co. Ltd.* the SCN affirmed that the only remedy awarded for such wrongful termination is damages equivalent to the notice period.[25] The SCN has sternly warned legal practitioners against seeking damages beyond this amount, as seen in *Olanrewaju v Afribank Plc.*[26]

The philosophical basis for this measure is the principle of *restitutio ad integrum*, which aims to restore the injured party to the position they would have been in without the breach.[27] However, this principle can be inadequate where wrongful termination inflicts reputational damage that hinders future employment prospects.[28] It is in such circumstances of proven inadequacy of the fixed-compensation regime that the court must look beyond *restitutio ad integrum*. They must particularly bear in mind that another guide for the award of damages is that they must be prompt and adequate.

It is important to note that many key decisions reinforcing the outdated common law position were made before the 2010 constitutional amendment (i.e. before the enactment of the Constitution (Third Alteration) Act, 2010). For instance, in *Longe v First Bank of Nigeria Plc.,*[29] a pre-2010 case, the SCN ordered reinstatement because the termination procedure that was statutorily regulated by section 266 (3) of the Companies and Allied Matters Act (CAMA) had not been followed. The NICN has also ordered reinstatement and damages in cases involving trade union activity, as was the case in its decision in *M & B Flour Mills Ind. Ltd. v.*

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[22] Chioma K Agomo, *Nigerian Employment and Labour Relations Law and Practice* (Lagos: Concept Publications Ltd., 2015) at 68.

[23] Akintunde Emiola, *Nigerian Labour Law* (Ogbomosho: Emiola Publishers Nig. Ltd., 2008) at 127.

[24] *Isheno v Julius Berger Nig Plc*, [2012] 2 NLLR (Pt. 41) at 127.

[25] *Oforishe v Nigerian Gas Company Ltd*, [2018] 2 NWLR (Pt. 1602) at 35.

[26] *Olanrewaju v Afribank (Nig) Plc*, [2001] 13 NWLR (Pt. 731) at 691.

[27] This Latin maxim means restoring to the original position.

[28] *Samson Ediagbonya v Dumez*, [1986] 3 NWLR (Pt. 31) at 53; *Salihu v Tin Associated Minerals Ltd*, [1958] NMLR at 56.

[29] *Longe v First Bank of Nigeria Plc*, [2010] 2 CLRN at 21.

FBTSSA.[30] Furthermore, it has held that employees can contest the reasons given for their termination in its decision in the case of *Pengasan v Schumberger Anadrill, Nigeria Ltd*.[31]

As Ojo posits,[32] the common law measure is strictly the salaries and benefits the employee would have earned during the notice period, justified by the principle that courts will not grant unearned salary.[33] The SCN reiterated this in *Ben Chukwuma v Shell Petroleum Company Nig. Ltd*.,[34] stating that damages are limited to the unexpired contract period (for fixed-term contracts) or the notice period.[35] It is important to note that an employment contract may expressly provide the remedy for its breach, and the court is bound to effectuate the same.[36] This legal position rests upon the principle that the express terms of a contract override any other contrary theory of law.[37] Aside from this, contracts are hinged and revolve around the wheels of *pacta sunt servanda*.[38]

In *Mobil Producing Nigeria Unltd. v Udo*, the court suggested a distinction: if termination is due to a failure to give notice, damages are limited to the notice period.[39] However, if it is based on an alleged malpractice that stigmatises the employee, substantial damages beyond the notice period may be warranted.[40] This distinction acknowledges that some terminations unjustly damage an employee's character and prospects, a factor the rigid common law rule often ignores. It is thus contended that, if termination is due to a failure to give notice, the employee would be entitled to damages for the required period of notice for the effective termination.[41] However, if termination is based on malpractice that stigmatizes the employee, they shall be entitled to substantial damages far beyond

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30 *M & B Flour Mills Ind Ltd v FBTSSA*, [2004] 1 NLLR (Pt. 2) at 247.
31 *Pengasan v Schumberger Anadrill, Nigeria Ltd*, [2008] 11 NLLR (Pt. 29) at 164.
32 Ojo, *supra* note 5.
33 *Bello Ibrahim v Ecobank Plc.* Unreported Suit No. NICN/ABJ/144/2018 Judgment delivered 17th December, 2019.
34 *Chukwuma v Shell Petroleum Company Nig Ltd*, [1993] 4 NWLR (Pt. 289) at 512.
35 *Ibama v SPDC Nig Ltd*, [2005] 10 SC at 62.
36 *Afrotrin v Attorney General of the Federation*, [1996] 9 NWLR (Pt. 755) at 634.
37 *Sona Breweries Plc v Sir Shina Peters & Anor*, [2005] 1 NWLR (Pt. 908) at 489.
38 *Idoniboye-Obu v NNPC*, [2003] 2 NWLR (Pt. 805) at 58.
39 *Mobil Producing Nigeria Unltd v Udo*, [2008] 36 WRN at 62.
40 *NURTW v Ogbodo*, [1998] 2 NLWR (Pt. 537) at 189.
41 *FBN Plc v Chinyere*, [2012] 2 NLLR (Pt. 41) at 62.

his/her salary and other entitlements for the period of the requisite notice.[42] This latter scenario aligns with present economic realities in Nigeria. There are some cases of termination that, aside from taking away the source of livelihood of the affected employee, their prospect of securing gainful employment is tainted, if not irreparably damaged. For instance, if an employee is proven wrongfully terminated based on an allegation of fraud or incompetence, awarding the employee damages based on what they would be entitled to if the employment had been rightly terminated is the height of insensitivity and injustice. This is because due regard has not been given to the affected reputation of the employee, which can extend to their family. The possibility of other members of society viewing the employee's family/children through the lens of the wrongful accusation cannot be ruled out. Under such circumstances, substantial damages beyond the ordinary requirements based on the agreed period of notice in rightful terminations should be awarded.[43]

There are two approaches for the calculation of damages:

a) For a fixed-term contract wrongfully terminated before its expiry, damages should cover the unexpired period.[44]
b) For contracts with a stipulated notice period, damages are equivalent to that period.[45] This approach is usually adopted where there is no specified duration of the contract, but the contract stipulates the period of notice either party is to give for termination is inferable from the trade customs and usages.

IV. THE CFRN, 1999 9THIRD ALTERATION) ACT AND THE ENHANCEMENT OF THE JURISDICTION OF THE NICN

Upon the cessation of the civil war that had adversely affected Nigeria's economy, the government could no longer continue with its hitherto non-interventionist labour posture, whereby it only intervened in labour and industrial disputes at the

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[42] Elizabeth A Oji & Offornze D Amucheazi, *Employment and Labour Law in Nigeria* (Lagos: Mbeyi and Associates (Nig.) Ltd., 2015) at 365.
[43] *Oforishe v. Nigerian Gas Company Ltd.*, *supra* note 25.
[44] *Agbaje v National Motors Limited*, [1970] 1 All NLR at 1.
[45] Oji & Amucheazi, *supra* note 42.

instance of either party.[46] To ensure industrial tranquillity towards economic recovery, in 1976, the Federal Military Government (FMG) promulgated the Trade Disputes Decree No. 7 of 1976. In Section 20, this Decree (which later became the Trade Disputes Act (TDA) created the NICN and vested it with exclusive civil and final jurisdiction (without prejudice to the jurisdiction of the Supreme Court to entertain appeals from the Court of Appeal on fundamental human rights issues) to settle trade disputes and interpret collective agreements. It also had the power to exercise appellate jurisdiction over the decisions of the Industrial Arbitration Panel (IAP).[47] To give it appropriate legal and constitutional validity, Sections 133, 147, 153, and 165 of the 1963 Constitution of the Federal Republic of Nigeria, which was in operation then and pursuant to which the Decree was promulgated, were amended.[48]

Despite the jurisdiction bestowed on the NICN, its functionality was hampered by the fact that it was subject to the supervision of the Minister of Labour, Employment, and Productivity. Only the Minister could refer a dispute to the NICN; disputants had no direct access.[49] In fact, the NICN was seen as an appendage of the Minister and lacked any autonomy in exercising its functions and powers.[50] As a result of this jurisdictional and statutory inhibition, the NICN declined jurisdiction in the case of *I.T.I.P.A. v Himma & Ors.*[51] In this case, the Claimant sought to directly activate the adjudicatory mechanism of the NICN without exhaustion of the internal settlement mechanism spelled out in Part I of the TDA. However, after exhaustion of this mechanism, only the minister's referral could activate the jurisdiction of the NICN. The NICN held that it lacked

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[46] David T Eyongndi, "The Powers, Functions and Role of the Minister of Labour and Productivity in the Settlement of Trade Disputes in Nigeria: An Analysis" (2016) 9:1 Journal of Public Law and Constitutional Practice at 79-80.

[47] Oluwakayode O Arowosegbe, "National Industrial Court and the Quest for Industrial Harmony and Sustainable Economic Growth and Development in Nigeria" (2011) 5:4 Nigerian Journal of Labour Law & Industrial Relations at 4.

[48] A B Chiafor, "Reflections on the Constitutionality of the Superior Court of Record Status and Exclusive Jurisdiction Clauses of the NIC Act 2006" (2007) 1:3 Nigerian Journal of Labour Law & Industrial Relations at 32-33.

[49] Oluwadayisi, *supra* note 6.

[50] Paul O Idornigie, "The National Industrial Court of Nigeria: Analysis of Powers, Cases and Jurisdiction" (2013) 7:2 Nigerian Journal of Labour Law & Industrial Relations at 3-4.

[51] *Suit No FHC/ABJ/CS/313/2004* ruling delivered on 23 January 2004.

jurisdiction to adjudicate the matter, as the claimant had failed to exhaust internal mechanisms and the Minister had not referred the matter.

The NICN suffered a setback as it was omitted from the list of SCRs under the 1979 Constitution, which led to the NICN being declared unconstitutional by the appellate court.[52] Because of this, cases ordinarily meant to be litigated at the NICN were being litigated at the Federal and State High Courts. This was despite the fact that, pursuant to Section 274 of the Constitution of the Federal Republic of Nigeria, 1979, the Trade Dispute Decree was regarded as an existing law and therefore transmogrified into an Act (i.e. Trade Disputes Act Cap. 432 Laws of the Federation of Nigeria 1990, Now Cap T8 Laws of the Federation, 2004). To address this challenge, the Trade Disputes (Amendment) Decree No. 47 of 1992 was promulgated, and it elevated the NICN to a SCR, having exclusive original jurisdiction of labour and employment matters. Being a military decree and ranking next to the unsuspended portion of the constitution, the NICN existed as a SCR from this time onward. It henceforth held exclusive original jurisdiction to the exclusion of all other courts over labour and employment matters. Although, the jurisdiction challenge that had trailed the NICN abated through the promulgation of Decree No. 47 of 1992, the intervention of the SCN was necessary. This is because the controversy generated by the decree needed to be addressed. This was done in the case of SCN in *Udoh v O.H.M.B.*,[53] where the SCN held that the regular court's jurisdiction to hear and determine trade disputes (inter or intra) or any other labour dispute vested in the NICN has been ousted by the decree and was now addressed exclusively by the NICN.

However, the same omission of the NICN under the Constitution of the Federal Republic of Nigeria,1979 Constitution, happened under the Constitution of the Federal Republic of Nigeria, 1999 (CFRN, 1999), thereby reawakening the vexed issue of the constitutionality of the NICN. Thus, the NICN was considered inferior to the various High Courts mentioned under section 6(5) of the CFRN, 1999. To address this issue, the National Assembly enacted the National Industrial Court Act, 2006 (NIC Act, 2006), which purportedly elevated the NICN to the status of a SCR with exclusive original civil jurisdiction over labour

[52] *Oloruntoba-Oju v Dopamu*, [2005] 4 NLLR (Pt. 10) at 246.
[53] *Udoh v OHMB*, [1993] 1 NWLR (Pt. 304) at 45.

and ancillary matters.[54] Despite this effort, the constitutional and jurisdictional challenge of the NICN persisted. Both the Court of Appeal and Supreme Court held that the NICN, under the NIC Act, 2006, could neither usurp nor restrict the jurisdiction conferred on the various High Courts by the CFRN, 1999.[55]

The rationale is that in Nigeria, an ordinary Act of the National Assembly cannot amend the constitution and will always be inferior to it pursuant to section 1(1) and (3) thereof. Aside from this, the SCNs have held that the High Courts are courts of unlimited jurisdiction.[56]

It therefore became imperative for the constitutional and jurisdictional debacle facing the NICN to be resolved so that the original intent of the NICN can be fulfilled.[57] Hence, in 2010, the National Assembly enacted the Constitution (Third Alteration) Act, 2010, which amended the principal act, i.e. the CFRN, 1999. Section 1 of the act, i.e. Constitution (Third Alteration) Act, 2010, altered section 6(5) of the CFRN, 1999 by including the NICN as one of the SCRs. Section 254C (1) and (2) gave the NICN expansive exclusive original civil jurisdiction over labour and ancillary matters to exclude all the High Courts in Nigeria.[58] According to Eyongndi and Imosemi, It also empowered the NICN in adjudicating any dispute before it, to have recourse to conventions, treaties and recommendations - especially the ILO, as well as the ILS and IBP, and to apply law and equity to determine any issue (s) submitted for determination.[59]

At present, all the challenges that have trailed the NICN from its inception have been finally addressed by the enactment of the Constitution (Third Alteration) Act, 2010. Appeals from the civil decision of the NICN fall to the Court of

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[54] Offornze D Amucheazi & Elizabeth A Oji, "The Status of the National Industrial Court under the 1999 Constitutio" (2008) 2:3 Nigerian Journal of Labour Law & Industrial Relations at 8-9.

[55] *Oloruntoba-Oju v Dopamu & Amor*, [2008] 4 SCM at 128.

[56] *Savannah Bank Nigeria Ltd v Pan Atlantic Shipping and Transport Agencies Ltd & Anor*, [1987] 1 NWLR (Pt. 42) at 212.

[57] Sam Erugo, "Security of Employment in Nigeria: A Case for Statutory Intervention" (2008) 1:1 Nigerian Journal of Labour Law & Industrial Relations at 63.

[58] Idornigie, *supra* note 50.

[59] David T Eyongndi & Adekunbi Imosemi, "Aloysius v. Diamond Bank Plc.: Opening a new Vista on Security of Employment in Nigeria through the Application of International Labour Organisation Convention" (2023) 31:3 African Journal of International and Comparative Law at 366.

Appeal. The decision of the Court of Appeal on any such appeal is final, and does not go on to the Supreme Court of Nigeria (SCN), as was held by the Supreme Court.[60] This position was arrived at by the Supreme Court of Nigeria because of section 254C (6) and the appellate jurisdiction of the Court of Appeal under the CFRN, 1999. While it is conceded that by its nature, labour disputes should be settled expeditiously and not linger, the rationale of limiting appeals from the NICN to the Court of Appeal is questionable. Most decisions that positively shaped Nigeria's labour jurisprudence were won at the SCN.[61]

V. CONTEXTUALIZING SAHARA ENERGY RESOURCES LTD. V. MRS. OLAWUNMI OYEBOLA NICN

Before analysing the *Oyebola* case, it is important to note that termination of employment within the commonwealth hinges on various theories. An analysis of these theories is central to understanding the law and practice on the measurement of damages awardable in cases of wrongful termination of employment in Nigeria, Ghana, and Malaysia. The elective theory holds that an employer's repudiatory breach gives the employee the option to either accept the breach and claim damages or affirm the contract.[62] The automatic theory posits that a repudiatory breach automatically terminates the contract, leaving damages as the only remedy.[63] The theory is based on the principle that a contract of employment cannot survive wrongful termination.[64] This is because, in English law, there is a presumption against an order of specific performance or injunctive relief in the context of an employee's actual or threatened termination.[65] Prior to the United Kingdom Supreme Court decision in *Societe Generale (London Branch) v Geys*,[66] which made a pronouncement on the definitive parameters of the theory, there had been several controversies. At present, the parameters of the theory are

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60 *Skye Bank Plc. v. Iwu*, *supra* note 19.

61 *Olaniyan & Ors. v. UNILAG*, *supra* note 1.

62 John McMullen, "A Synthesis of the Mode of Termination of Contracts of Employment" (1982) 41:1 Cambridge Law Journal at 111.

63 David Cabrelli & Rebecca Zahn, "The Elective and Automatic Theories of Termination at Common Law: Resolving the Conundrum?" (2012) 41:3 Industrial Law Journal at 111.

64 *Chukwuma v Shell Petroleum Company Nig. Ltd.*, *supra* note 34.

65 Cabrelli & Zahn, *supra* note 63.

66 *Societe Generale (London Branch) v Geys*, [2021] UKSC 63, [2013] 1 AC 523 .

settled.[67] There is also the theory of statutory intervention, which seeks to protect employees by requiring valid reasons for termination, reflecting the understanding that employment is fundamental to human dignity.[68] This theory is supported by the provisions of several international labour and human rights treaties, which prohibit deprivation of means of subsistence. Lowy postulated in support of this theory by arguing that "once public employment has been secured, the constitution of member states does limit the method and reasons that may be utilised to dismiss an incumbent employee."[69] This theory contrasts with the employment-at-will doctrine, which allows termination for any reason or no reason.[70] It empowers the employer to cut employment ties with the employee and vice versa for no reason. This theory aligns with the common law principle of master-servant in employment relationships as established in *Ridge v Baldwin*.[71]

The Oyebola decision aligns Nigeria more closely with the statutory intervention theory. It is instructive to note that termination of employment in Nigeria, Ghana and Malaysia revolves around these theories, with the elective and statutory theories being more prominent. Although the automatic theory has been adopted in some instances, it has been adopted sparingly. In recent times, the ILO, with its decent work agenda campaign, has tilted most member states towards an admixture of elective and statutory theory, which, in combination, affords enhanced employee protection.

In *Sahara Energy Resources Ltd. v. Oyebola*, the respondent was summarily dismissed for alleged dishonesty and bribery.[72] After the exploration of amicable settlement was stalled, she challenged her termination at the NICN. The NICN found the dismissal unlawful and awarded damages equivalent to two years' salary, invoking its power under section 254C (1) (h) and (i) of the Constitution (Third Alteration) Act, 2010, to apply international best practices and international labour standards.

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[67] *Gunton v Richmond Upon Thames*, [1981] 1 CH 448; *Boyo v LB of Lambeth*, [1994] ICR at 727.

[68] *Chukwuma v Shell Petroleum Company Nig. Ltd.*, *supra* note 34.

[69] Joan Bertin Lowy, "Constitutional Limitations on the Dismissal of Public Employees" (1976) 43:1 Brooklyn Law Review at 2.

[70] Marvin F Jr Hill, "Arbitration as a Means of Protecting Employees from Unjust Dismissal: A Statutory Proposal" (1982) 3 Northern Illinois University Law Review at 112.

[71] *Ridge v Baldwin*, [1963] APPLR 03/14, HL.

[72] *Sahara Energy Resources Ltd v. Oyebola*, *supra* note 20.

Being dissatisfied by the NICN's decision, the Appellant appealed to the Court of Appeal contesting the amount of damages awarded arguing that it detracted from the laid down common law prescription. The Court of Appeal dismissed the employer's appeal, affirming the amount of damages awarded by the NICN. The CA held that while the general rule is to award damages based on the notice period, this is not immutable. In deserving cases, particularly where the claim is based on international best practices under the 2010 Act, a higher award is justified.

This decision is not entirely novel. In *British Airways v Makanjuola* the Court of Appeal had previously affirmed an award of two years' salary, reasoning that termination based on a stigmatising allegation (like malpractice) warrants substantial damages beyond the notice period.[73] The Court had reasoned that the determinant of the quantum of damages an employee will recover for wrongful termination of employment is contingent on two factors. The first is whether the wrongful termination resulted from the employer's failure to abide by the terms and conditions of the employment as it relates to giving of notice. The second is whether it resulted from an alleged malpractice on the part of the employee.[74] Although this precedent was later jettisoned in favour of the strict common law rule, the *Oyebola* case revives and solidifies this progressive approach.[75]

The impact of this judgment is profound. It represents a desirable triumph of equity over an archaic common law rule.[76] The decision acknowledges that a wrongful dismissal can unjustly impair an employee's reputation, severely impacting their ability to find future employment. In Nigeria's difficult job market, an employee's reputation is a critical asset. Thus, the Courts (particularly the NICN) have a duty to ensure that the reputation of an employee is protected, especially when one is losing employment and returning to the labour market. The judgment empowers courts to consider the full injury suffered, not merely

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[73] *British Airways v Makanjuola*, [1993] 8 NWLR (Pt. 311) at 276.

[74] *Adeniyi v Governing Council, YABATECH*, [1993] 6 NWLR (Pt. 300) at 426.

[75] *Oaks Pensions Ltd v Olayinka*, [2017] LPELR-43207 (CA).

[76] Dato F Won, "Unfairly Dismissed? An Employee may be Paid up to 24 months of Salary" (2020), online: *Shang & Co* <https://www.shangco.com.my/post/unfair_dismissal_reinstatement_backwages_compensation>.

the fact of termination. The discretion to award higher damages is reserved for "deserving cases," and the expertise of the NICN judges provides a safeguard against arbitrary awards. Hence, this decision does not in any way appear to be a judicial vendetta against employers but rather a shield against unlawful/wrongful termination of employment, coupled with reputational injury. Indeed, a new sheriff is in town, and this is a welcome development, particularly as it is a final decision with no further appeal.[77]

VI. THE PRACTICE IN GHANA AND MALAYSIA

A. Ghana

Ghana's law on termination was historically governed by the employment-at-will doctrine, as seen in *Kobi v Ghana Manganese Co Ltd.*[78] The Supreme Court of Ghana in *Kobea v Tema Oil Refinery* reiterated and reaffirmed the applicable common law employment-at-will position to termination of a simple contract of employment,[79] thus

> "… an employer is legally entitled to terminate an employee's contract of employment whenever he wishes and for whatever reasons, provided only that he gives due notice to the employee or pays him his wages in lieu of notice. He does not have to reveal his reason, much less justify the termination… At common law, an employer may dismiss an employee for many reasons, such as misconduct, substantial negligence, dishonesty, etc. These acts may be said to constitute such a breach of duty by the employee as to preclude the further satisfactory continuance of the contract of employment as repudiated by the employee… There is no fixed rule of law defining the degree of misconduct that would justify dismissal."[80]

The applicable doctrine of employment-at-will allowed employers to terminate the employment of an employee in a master-servant employment relationship for any reason (good or bad) or no reason at all, provided notice

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[77] *British Airways v Makanjuola*, *supra* note 73.
[78] *Kobi v Ghana Manganese Co Ltd*, [2007] SCGLR at 771.
[79] *Kobea v Tema Oil Refinery*, [2003] 2 SCGLR at 1039.
[80] *Faustina Asantewaa & 7 ors v Registered Trustees of the Catholic Church of Koforidua*, [2016] 92 GMJ at 176 (CA).

was given. This position was followed by the Ghana Court of Appeal in the case of *Aryee v State Construction Corporation*.[81]

It should be noted that Ghana is a common law jurisdiction, which, like Nigeria, is in the West African sub-region. Both nations are members of the Economic Community of West African States (ECOWAS). Thus, they share similar political and socio-economic ties having been colonised by Britain.

The above position (i.e. theory of employment-at-will) subsisted despite Ghana's obligation under the ILO Termination of Employment Convention, 1982, which is contrary to the common law theory of employment-at-will, a determinant for termination of employment. To guide against the commodification of labour or the treatment of employees as disposable labour waste by employers, the convention put in place certain safeguards. Thus, the provisions in Article 4 prohibit the employer from any unilateral termination of the employment relationship. The employer is obligated not only to give reason(s) for the termination of an employee, but also to ensure that the reason is grounded on the fundamental principle of "justification, connected with the capacity, or conduct of the worker or based on the operational requirements of the undertaking."[82] However, following the Termination of Employment Convention, 1982, Ghana enacted the Labour Act, 2003 (Act No. 651). Sections 62-66 introduced a statutory framework for termination requiring valid reasons.[83] Thus, these sections have effectively introduced the theory of statutory termination by specifying certain conditions under which an employer can terminate an employment contract in Ghana, thereby extinguishing the outdated common law theory of employment-at-will. This theory (statutory termination) was applied in the case of *George Akpass vs. Ghana Commercial Bank Ltd.*[84]

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[81] *Aryee v State Construction Corporation*, [1984] 1 GLR at 432.

[82] Alexander Ndede, "Termination of Employment v. Dismissal: brief perspective of the laws of Ghana", online: <https://gh.linkedin.com/in/alexander-ndede-mba-sphri%E2%84%A2-acihrm-907996a4>.

[83] Kwame Asare Bediako, "Grounds for Termination of Employment Contract under the Labour Law Act 2003 (Act 651)", online: <https://www.mondaq.com/redundancylayoff/1249016/grounds-for-termination-of-employment-contract-under-the-labour-law-act-2003-act-651>.

[84] *George Akpass v Ghana Commercial Bank Ltd*, [2021] DLSC-10768 at 18.

Ghanaian courts have consequently awarded damages beyond the minimum required notice period. In *Isaac Osei Nyatankyi v. Ghana Grid Com. Ltd*,[85] the court awarded twenty-four months' salary plus three months' salary in lieu of notice. This amount of damages was awarded considering the country's unemployment situation and the inconvenience caused to the employee. The Supreme Court of Ghana in *Nartey-Tokoli v Volta Aluminium Company* held that damages for wrongful termination are not limited to salary in lieu of notice.[86] Similarly, in *Hemans v GNTC*,[87] the Court of Appeal awarded four months' salary despite a contractual one-month notice period. The courts aim to place the employee in a secure position while they seek new employment, as noted in *Lt. Col. S. B. Ashun v. Accra Brewery Ltd*.[88] Damages may also account for the prospective loss of promotion and the socio-economic dependencies of the employee's family.

The Supreme Court of Ghana has acknowledged the employer's right to terminate the employment of the employee; however, it frowns on it being done capriciously. In the case of *Akorfu v. State Fishing Cooperation*,[89] Osei Hwere JA held that the quantum of damages to be awarded in cases of wrongful termination shall be measured by the amount of salary which the employee had been prevented from earning by reason of the wrongful termination. This shall be in addition to the agreed period of notice to be given in the case of rightful termination of the employment by either of the parties, and all earned service awards shall be calculated from the date of termination until the judgment is delivered.[90] The calculation shall be based

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[85] *Isaac Osei Nyatankyi v Ghana Grid Com Ltd*, INDL21/11 judgement delivered 13/06/2013.

[86] *Nartey-Tokoli v Volta Aluminium Company*, [1987] 2 GLR at 532.

[87] *Hemans v GNTC*, [1978] GLR at 4.

[88] *Lt Col S B Ashun v Accra Brewery Ltd*, [2009] SCGLR at 81; *Klah v Phoenix Insurance Ltd*, [2012] 2 SCGLR at 1139; *Hadley v Baxendale*, [1854] 9 ER at 341, 354 & 355. "Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such of breach of contract should be such as may fairly and reasonably be considered as either arising naturally i.e., in the usual course of things from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract, as the probable result of a breach of it."

[89] *Akorfu v State Fishing Cooperation*, [1987] DLH at 2065.

[90] Solomon Gyesi, "Termination of Contract of Employment; Reason(s) required or not? A Review of Ghana's Labour Statutes and Case laws" (2024) 3:2 University of Cape Town Law Journal at 61-62.

on the substantive position the employee holds, and damages should be awarded for prospective loss of employment and promotion. The foregoing position is in line with the decision of Ampiah J in the case of *Turkson v. Mankoadze Fisheries Ltd*.[91]

In Ghana, the courts have mainstreamed and projected the socio-economic interests involved in employment and the need to protect the employee's rights, especially in cases of wrongful termination of employment. When a person is gainfully employed, the remuneration and other benefits that accrue to the employee additionally impact their dependents, including children, spouses, and parents.[92] These people's state of dependence for survival or nourishment is countenanced in cases of award of damages where their benefactor's employment is wrongly terminated. This showcases the socio-economic spiral effect of work. A person's employment termination seems to scar their competence or suitability in the eyes of reasonable members of society. Where this is proven to have been wrongly occasioned, adequate and prompt compensation in the form of damages should be paid.

From the analysis above, it is clear that the quantum of damages awarded in cases of wrongful termination of employment in Ghana ranges from the amount contained in the contract of employment (based on the period of notice) to a higher amount. In deserving cases, in addition to the period of notice, the court will award further damages. This position appropriately aligns with modern labour and economic realities requiring enhanced protection and compensation for injured employees.

B. Malaysia

Like Nigeria and Ghana, Malaysia is a commonwealth jurisdiction that gained political independence from Britain a few years before Nigeria.[93] Thus, these jurisdictions have a similar socio-political antecedent. In terms of commerce and

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91 *Turkson v Mankoadze Fisheries Ltd*, [1987] JELR 65433 (HC).

92 Kwame Yaro Appiah & Kwame Richard Klu, "Exploring the Distinctions between Dismissal and Termination under Ghanaian Labour Law: Insights from the George Akpass Case" (2024) 6:1 American Journal of Law at 31-32.

93 Malaysia became independent from Britain on August 31, 1957, while Nigeria became independent on October 1st, 1960.

bilateral trade, there are several agreements between Nigeria and Malaysia. Nigeria benefits from several trade assistance programs from Malaysia. Also, in terms of educational ties, Malaysia has become an educational hub for many Nigerians. As such, these students' experiences in Malaysia may influence Nigeria's legal landscape.

Unlike in most jurisdictions, the employment-at-will practice in which the employer can, at will, hire and fire an employee is impracticable in Malaysia. As a result, one may argue that under the Malaysian labour law, the employee is protected. However, when carefully scrutinised, this is not the case.

Employment in Malaysia is regulated primarily by the Industrial Relations Act (IRA) 1967 and the Employment Act 1955.[94] An employee's right to earn a decent livelihood is guaranteed under Article 5 of the Malaysian Constitution. While the employee has a right to employment, for the survival of their business, it is only fair that the employer has control over hiring and firing practices which must be in accordance with the law. Employers are allowed to make necessary decisions for the company's best interest, but this must be procedurally fair. Section 11 of the Employment Act (EA), 1955 specifies how tenured and untenured employment is to be terminated upon the employment period's expiration or in accordance with the agreed notice period. By section 12 thereof, either party can issue notice of termination based on the time expressly agreed, or, in the absence of an agreement, based on the statutorily provided notice period.

Like in Nigeria and Ghana, under Malaysian law, either party can terminate an employment contract, pursuant to section 13(1) of the EA, 1955, without notice, but they must offer payment of salary in lieu of notice. While either party of the contract can determine where there is a breach of a fundamental term, neither is permitted to terminate the relationship arbitrarily. However, by section 14(1), the employer can terminate the contract or impose certain statutorily provided sanctions for special reasons, including misconduct.

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[94] Anantaraman Venkatraman, *Malaysian Industrial Relations: Law and Practice* (Serdang: Universiti Putra Malaysia Press, 1997) at 129.

For termination to be valid, it must be for a just cause or excuse; otherwise, it will be considered unfair by section 20(1) of the IRA (Legal Advice, 2023). Where the termination/dismissal was not for a just cause/excuse, the affected employee, based on section 20(3) of the IRA, can write to the Director General of Industrial Relations asking for reinstatement. For an employer to be absolved of liability, a notice detailing the reason for termination must be written and served to the employee, and the employee is required to respond. Upon receipt of the notice of termination, the employee is given ample time and resources to respond – assuming the matter is not resolved administratively. A formal domestic inquiry is made to ascertain if the reason for the termination is just. The inquiry must be objective, free and fair, and its record must be kept in compliance with fair hearing requirements. If this domestic process fails, the employee may file a complaint with the Minister, and if it is unsuccessful, the jurisdiction of the Industrial Court (provided for under section 30(5) thereof) could be invoked.[95] The principle of substantial justice, equity and fairness in adjudication guides the court. Where the court determines that a termination was without just cause/excuse, it could make an award reinstating the employee, award back wages to cover the period of unfair termination or further compensation, and the employee may take up a civil claim for damages.[96] Should the court award back pay, the maximum number of months is twenty-four months' salary and compensation in appropriate cases.[97]

According to Won, it must be noted that when it comes to quantum of damages to be awarded by the court for unfair termination cases, reinstatement, where ordered, could be inclusive of back wages for the period that the employee was unfairly dismissed.[98] The maximum award is 24 months' salary for a confirmed

[95] Zuraini Ab Hamid, Siti Fazilah & Ashgar Ali Mohamed, "Rights of Migrant Workers under Malaysian Employment Law" (2018) 11:2 Journal of East Asia and International Law at 356.

[96] Ashgar Ali Ali Mohamed, Mohd Akram Shair Mohamed & Farheen Baig Sardar Baig, "Compensatory Award for Unfair Dismissal in Malaysia: Criteria in Assessment of Award" (2016) 2:6 IJASOS at 670.

[97] *Teh Fook Wai v Panasonic Manufacturing Malaysia Bhd*, [2012] 2 LNS at 1183.

[98] Won, *supra* note 76.

employee and 12 months for a probationer. Back wages will only be ordered if, during layoff, the affected employee was unemployed.[99]

In the case of *Assunta Hospital v Dr A Dutt*,[100] the court held that where reinstatement will be inadequate, the Industrial Court has the power, based on section 30(4) (5) and (6) of the IRA, to award monetary compensation. To ensure uniformity in financial compensation, the President of the Industrial Court issued a Practice Direction in 1987, encouraging the award of back wages and compensation in appropriate cases. It provides inter alia that the monetary compensation shall comprise the following: back wages and compensation in lieu of reinstatement.[101] Back wages are aimed at compensating the worker for lost benefits which they might have reasonably expected if not for the dismissal. At the same time, compensation in lieu of reinstatement is intended to compensate the workman for the loss of employment.[102]

To reinforce this directive, the Malaysian parliament in the Industrial Relations (Amendment) Act, 2007, gave statutory backing to the measurement guide vide section 30(6A). Inclusive of the already mentioned remedies, an award of damages shall not include the loss of future earnings, and the contributory misconduct of the employee shall be countenanced in computation.[103]

Despite this, the Industrial Relations Court in the computation of damages has been guided by equity, fairness, and good conscience based on the peculiarity of each case, as was held in the case of *Nestle Food Storage (Sabah) Sdn Bhd v Terrence Tan Nyang Yin.*[104] Compensation typically includes back wages (capped at 24 months) and compensation in lieu of reinstatement. In cases of victimisation or unfair labour practices, Malaysian courts have awarded punitive damages. For

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[99] Dunston Ayadurai, *Industrial Relations in Malaysia*, 2nd ed edn (Kuala Lumpur: Malayan Law Journal Sdn. Bhd, 1998) at 126.

[100] *Assunta Hospital v Dr A Dutt*, [1981] 1 MLJ at 105.

[101] Ashgar Ali Mohamed, *Dismissal from Employment and the Remedies*, 2nd ed edn (Malaysia: Lexis Nexis, 2014) at 540.

[102] Arissa Arhon & Shariffullah Majeed, "Employment Special Alert: Industrial Court Remedies: Reliefs in a Claim for Unfair Dismissal", online: <https://www.mondaq.com/employee-rights-labour-relations/1383194/employment-special-alert-industrial-court-remedies-reliefs-in-a-claim-for-unfair-dismissal>.

[103] *Association of Bank Officers, Malaysia v Oversea-Chinese Banking Corporation Ltd*, [1994] 3 CLJ at 169.

[104] *Nestle Food Storage (Sabah) Sdn Bhd v Terrence Tan Nyang Yin*, [2002] 1 ILR at 280.

example, in *KFC Technical Service Sdn Bhd v Industrial Court of Malaysia & Anor*,[105] the court awarded two months' salary for each year of service as punitive compensation. The Federal Court in *Hotel Jaya Puri Bhd v. National Union of Hotel Bar & Restaurant Workers & Anor* confirmed the Industrial Court's discretion to fix compensation.[106]

By this decision, the Malaysian Industrial Court regards victimised termination as a ground necessitating the award of punitive damages. This aims to cushion the negative impact it has on employment relations and serves as a deterrent. In the case of *Sivabalan Poobalasingam v Kuwait Finance House (Malaysia) Berhad*,[107] where the claimant was retrenched and replaced by another, the court, having found that the retrenchment was in the form of victimisation, awarded punitive compensation in lieu of reinstatement. Considering the profound nature of this decision to the discourse herein, we take the liberty to include the relevant portion of the judgment verbatim hereunder:

> "It is a trite principle of law on redundancy, which amounts to retrenchment of an employee, that the company has the right to reorganise its business in any manner the company considers best. However, this right is limited by the rule that the company must act bona fide and not capriciously or with motives of victimisation or unfair labour practice. Neither does this right entitle the company, under the cover of reorganisation, to rid itself of an employee to replace him with another person seemingly more favourable to the company. From the evidence provided before this court, the court finds that the company has failed to abide by these important legal principles. The reasons given for the alleged redundancy by the company are without good faith, indubitably unwarranted and were not the real and main reason for the dismissal. The claim of "redundancy" was merely a convenient and ingenious means to terminate the claimant. In view of that, after taking into account the totality of the evidence adduced by the parties and bearing in mind subsection 30(5) of the Industrial Relations Act 1967 "which requires the court to act according to equity, good conscience and the substantial merits of the case without regard for technicalities and legal form, the court finds that the company has failed to prove the position of the claimant as redundant on a balance

[105] *KFC Technical Service Sdn Bhd v Industrial Court of Malaysia & Anor*, [1992] 1 MLJ at 564.
[106] *Hotel Jaya Puri Bhd v National Union of Hotel Bar & Restaurant Workers & Anor*, [1980] 1 MLJ at 109.
[107] *Sivabalan Poobalasingam v Kuwait Finance House (Malaysia) Berhad*, [2016] 1 ILR at 548.

> of probabilities; and thus the claimant's dismissal is without just cause or excuse."[108]

The Industrial Court in *Zakaria Ahmad v. Airasia Bhd* held that, pursuant to section 30(5) of the Industrial Relations Act, the court has the power to grant punitive or aggravated damages in specific permissible circumstance of unfair termination of employment.[109] In the case of *Hotel Jaya Puri Bhd v. National Union of Hotel Bar & Restaurant Workers & Anor*,[110] the Federal Court held that where there is a legal basis for paying compensation/damages, the question of the quantum is a matter of discretion, which the Industrial Court is fully empowered under section 30 of the Industrial Relations Act to fix. As a result of this, in the cases of *KFC Technical Services Sdn Bhd v. Kesatuan Kebangsaan Pekerja-Pekerja Perdagangan* and *Soon Bao Corporation Sdn Bhd & Ors v. Kesatuan Pekerja-Pekerja Perusahaan Logam*,[111] punitive compensation was awarded in the sum of two months' salary for each year of service.[112] Where reinstatement is an inadequate and inappropriate remedy, the Industrial Court reserved the right to award payment of prompt and adequate compensation in form of punitive compensation, as was decided in *Nestle Storage (Sabah) Sdn Bhd v Tenance Tan Nyang Yin.*[113] In exceptional circumstances, however, the Industrial Court may award compensation in lieu of reinstatement in excess of the normal rate, a form of punitive compensation in favour of the employee.[114]

Unlike the traditional common law position in Nigeria, Malaysian law has statutorily embedded the principle that unfair dismissal warrants compensation that reflects the specific injustice, including punitive elements in deserving cases. From the discussion above, it is clear that the common law position hitherto applicable in Nigeria and Ghana to the effect that the monetary equivalent of the notice period is what an employee whose employment has been wrongfully

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[108] *Ibid.*

[109] *Zakaria Ahmad v Airasia Bhd*, [2014] 3 ILR at 201.

[110] *Hotel Jaya Puri Bhd v. National Union of Hotel Bar & Restaurant Workers & Anor*, *supra* note 106.

[111] *KFC Technical Services Sdn Bhd v Kesatuan Kebangsaan Pekerja-Pekerja Perdagangan*, [1989] 1 ILR at 535, (Award no. 83 of 1989).

[112] *Soon Bao Corporation Sdn Bhd & Ors v Kesatuan Pekerja-Pekerja Perusahaan Logam*, [2000] 1 ILR at 413, (Award no. 153 of 2000).

[113] *Nestle Food Storage (Sabah) Sdn Bhd v Terrence Tan Nyang Yin*, *supra* note 104.

[114] *Telekom Malaysia Bhd v Ramli Akim*, [2005] 6 CLJ 487; *Jasman Saidin v Hotel Istana*, [2015] 3 ILR at 299.

terminated is entitled to, had never been ingrained in Malaysia. However, it is a common law jurisdiction. Ghana and Malaysia, like Nigeria, have aligned their law and practice on the quantum of damages to be awarded in cases of wrongful termination of employment. Unlike Nigeria, they have given the ILO position statutory backing in their domestic legal frameworks. Based on the law in Malaysia, the courts have proceeded to award punitive damages and compensation in deserving cases, and, like in Ghana, have recognised the need to make provisions for an employee whose employment has been wrongly terminated based on the impacts on their ability to secure further employment. Nigerian courts have yet to adopt the novel reasoning of the Ghana and Malaysian courts in adjudicating such damage claims. Thus, Nigeria needs to give statutory backing to the ILO position in Oyebola's Case, just as it has been done in Malaysia. At the same time, the Malaysian and Ghanaian courts should, in deserving cases, increase the quantum of punitive damages beyond the present rate to that granted by the Nigerian courts in Oyebola's Case to instil deterrence

VII. CONCLUSION

The common law measure of damages for wrongful termination has historically favoured employers, limiting employees to notice-period pay regardless of additional injuries suffered. This position emboldened employers to act unjustly, particularly in Nigeria's volatile job market. The NICN's decision in Oyebola, affirmed by the CA, marks a significant departure by allowing higher damages in deserving cases. This aligns with ILO standards and practices in Ghana and Malaysia by protecting employees and recognising the socio-economic realities of work. The decision was made possible by the NICN's enhanced jurisdictional powers under the 2010 Act. While apprehensions about judicial discretion are understandable, the NICN's expertise and the "deserving cases" proviso provide sufficient safeguards. The decision is a welcome development that modernises Nigerian labour law.

VIII. RECOMMENDATIONS

Pursuant to the findings above, it is recommended that:

a) The Court of Appeal should resist any future attempts to overrule the *Oyebola* decision, as it is a progressive step. Labour stakeholders should publicise this decision to ensure employees are aware of their rights.
b) The Nigerian government should create more gainful employment opportunities to reduce the high levels of unemployment and underemployment that empower employers to engage in precarious labour practices.
c) The composition of the Court of Appeal should be reviewed to include justices with expertise in labour law, potentially elevated from the NICN bench, to ensure the evolving jurisprudence is not held back by a lack of specialist understanding.
d) The principle in *Oyebola* should be given statutory backing through an amendment to the Labour Act, establishing clear benchmarks for compensation while allowing judicial discretion - similar to the framework in Malaysia.
e) Contrary to the Malaysian practice of excluding loss of future earnings, Nigerian courts should consider the unparalleled unemployment rate in Nigeria and should not automatically preclude such claims, as doing so could inflict severe hardship on wrongfully terminated employees.

ACKNOWLEDGMENTS

None.

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