

Due Process and the Right to Work in Nigeria: A Critical Analysis of Unlawful Dismissal Under International Labour Law Standards

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Abstract

Unlawful dismissal remains a serious challenge within the employment landscape of Nigeria. It is a phenomenon often occurring in violation of due process and without effective legal consequences to the perpetrators. This paper examines the issue from an international labour law perspective, recognising the right to work as a fundamental socio-economic right protected under international legal frameworks. A major problem addressed in this paper is Nigeria's weak statutory alignment with international labour law standards, particularly ILO Convention No. 158 and the government's failure to provide adequate statutory protections and remedies for wrongfully dismissed employees. The primary aim of the study is to examine whether Nigerian labour law and practices offer sufficient protection against unlawful dismissal in light of international obligations and standards. The objectives include evaluating the normative framework under international labour law, assessing the effectiveness of institutional enforcement in Nigeria, and identifying areas of divergence between Nigerian labour law and global standards. The Doctrinal legal research methodology was adopted, relying on both primary and secondary sources including the constitution, national legislations, case laws, international instruments, and relevant literature. A major finding of the study is the outdated nature of the Nigerian labour Act as a contributory factor both in its terminological inconsistencies, limited scope and lack of salient provisions on emerging issues, to the crises of unlawful dismissal in Nigeria. The Labour Act and Nigeria's current legal framework on dismissal, falls short of international best practices. It is thus recommended that legislative reforms starting with the amendment of the labour Act be made to restrict arbitrary dismissals, enforce due process, the right to work and adequate remedies to employees for a better labour environment in Nigeria.

1. Introduction:

The right to work is universally recognised as a fundamental right central to human dignity, social stability, and economic empowerment. However, in Nigeria, this right is frequently stifled by practices of unlawful dismissal that are always arbitrary and procedurally non-compliant with the law. While Nigeria acknowledges certain protections against unlawful dismissal, its remedies remain largely inconsistent and often framed in strictly contractual common law terms that fail to reflect the human rights and constitutional dimensions of employment. And even if over one thousand cases are handled annually by the National Industrial Court with billions awarded in remedies, the majority of termination and or dismissal claims are by formal sector employees, the implication being that the majority of Nigerian workforce which are mainly informal sector

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workers³ do not pursue their claims, are unable to pursue their claims or are impeded by certain barriers. Globally, international labour standards, especially those developed by the International Labour Organization (ILO), such as Convention No. 158 emphasise that employment should not be terminated without valid reason or following due process, and that adequate remedies must be available for victims when such occurs. These standards are also reflected in Nigeria's commitments to broader human rights instruments, including the African Charter on Human and Peoples' Rights and the International Covenant on Economic, Social and Cultural Rights. Nonetheless it can well be said that Nigeria's commitment is not encouraging, and her failure to ratify or effectively domesticate some of these instruments creates a serious gap between its formal commitments and the existing reality of its workforce, especially those in the informal sector. This paper explores that gap. It examines the extent to which Nigeria's legal and institutional frameworks on dismissal comply with international labour standards and uphold the right to work as a human right. By adopting a viewpoint predicated on human rights, the study exposes the current inadequacies of Nigeria's approach, particularly in offering meaningful remedies or requiring substantive justification for dismissals. The paper argues for an urgent reform of Nigeria's labour law regime not just to fulfil treaty obligations, but to protect workers from arbitrary loss of livelihood and to strengthen democratic accountability in the workplace.

2.1 Research Problem Statement:

Despite the recognition of the right to work under international and regional human rights instruments, Nigeria continues to treat dismissal largely as a matter of contract, with little emphasis on due process and job security. Employees are often dismissed without valid reasons or the opportunity to be heard, which undermines both the concept of procedural fairness and the dignity of labour. Although Nigeria is a signatory to international conventions relevant to labour relations, its legal and institutional framework lacks the mechanisms to give full effect to these standards. This disjuncture between Nigeria's international obligations and its regime in practice constitutes a significant legal and human rights problem.

3.1 Aim and Objectives:

The aim of this study is to evaluate the adequacy of Nigeria's legal and institutional framework on unlawful dismissal in light of international labour law standards and the human right to work. The objectives of the study includes;

- a. To examine the concept of unlawful dismissal and the right to work as a human right.
- b. To assess the extent to which Nigerian labour law guarantees due process in dismissals.
- c. To analyse Nigeria's obligations under international labour and human rights instruments.
- d. To identify the gaps between national legal protections in Nigeria and normative international standards.
- e. To propose legal and policy reforms that can strengthen Nigeria's compliance with its international obligations.

4.1 Research Methodology:

This study adopts a doctrinal legal research methodology, relying on a critical analysis of primary and secondary legal sources. These include statutes, case laws, international labour conventions

³ E. Adegbesan, 92% of Nigerian workers are in informal employment — NBS, Vanguard Newspaper (Nigeria, February 20, 2024). <<https://www.vanguardngr.com/2024/02/92-of-nigerian-workers-are-in-informal-employment-nbs/>> accessed 28 July 2025

and human rights instruments. The research also engages with scholarly literature and comparative materials to evaluate Nigeria's legal framework on unlawful dismissal against international best practices. The study is qualitative in nature and employs a human rights approach in interpreting legislative provisions and judicial decisions.

5.1 Conceptual Framework:

5.1.1 Concept of Contract of Employment:

The contract of employment is central to the relationship between an employer and an employee. It is the legal documents upon which their duties, rights, and obligations are built. To properly assess issues relating to unlawful dismissal, it is necessary to first understand what a contract of employment is and how it differs from other related concepts. A contract, in general, is an agreement that the law will recognise and enforce. According to Sagay,⁴ It is an agreement that affects the legal rights and duties of the parties involved. Not all agreements are enforceable, social or domestic arrangements, for instance, are often excluded within the realm of legal enforceability. In the context of employment, a contract must meet the basic requirements of the law of contract, that is, there must be offer and acceptance, consideration, intention to create legal relations between the parties, and existence of legality of purpose. The Labour Act⁵ defines a contract of employment as any agreement, whether oral or written, express or implied, under which one person agrees to employ another as a worker, and the other agrees to serve. However, employment relationships are not uniform. Over the years, the courts have recognised different types, including employment at pleasure (which has faded in significance in Nigeria), employment governed by statute, fixed-term appointments, and the classic master-servant relationship governed by common law.⁶ It is also important to draw a clear distinction between a contract of employment and a contract for employment. The former gives rise to a binding employment relationship. The latter, by contrast, may only represent an agreement to enter into an employment relationship in the future. Closely related is the distinction between a contract of service and a contract for service. The first indicates an employer-employee relationship; the second points to an independent contractor arrangement.⁷

The courts, in determining the nature of these relationships, have developed a number of tests; The control test for instance, looks at the degree of control the employer has over the worker's duties. The integration test considers how deeply the worker is embedded in the employer's business. While the economic reality test focuses on whether the worker depends economically on the employer or operates as an independent business. These tests are not applied rigidly but are used collectively to uncover the true nature of the relationship, regardless of how the parties have labelled it.⁸ Like all contracts, a contract of employment can come to an end. This may occur by way of resignation, expiration of a fixed term, frustration of the contract, or by deliberate action of either party. Where the employment ends with notice or with payment in lieu of notice, it is

⁴ I Sagay, *Nigerian Law of contract* (2nd edn, Ibadan: Spectrum Law Publishing 1993) p3.

⁵ Section 91 of the Labour Act. CAP. L1 Laws of the Federation of Nigeria, 2004

⁶ I Kolawole, "Termination of Contract of Employment With Statutory Flavour And The Remedy Of Reinstatement: Curtailing Summary And Unlawful Dismissal" (2018) (75) 3 *Journal Of Law, Policy And Globalization* <<https://www.iiste.org/Journals/index.php/JLPG/article/view/43477>> accessed 30 July 2025

⁷ A Goel, "The Difference Between A Contract Of Service And A Contract For Service" IPleaders, (2020) <<https://blog.ipleaders.in/difference-contract-service-contract-services/>> accessed 28 October 2023

⁸ E Uvieghara, *Labour Law In Nigeria* (Lagos: Malthouse Press Ltd 2001) p57.

often referred to as termination. Dismissal, however, especially where it is done summarily, arises where the employer ends the employment abruptly, usually on the grounds of serious misconduct and without notice or compensation.

This paper is primarily concerned with dismissal that is carried out unlawfully, that is, without valid reason or without following due process. In such cases, the writers believe the issue goes beyond contract and enters into the realm of human rights. The right to work, the right to fair hearing, and the right to human dignity are all affected when an employee is dismissed unlawfully. These rights are provided for not just under Nigerian law but also under international instruments such as the African Charter, the International Covenant on Economic, Social and Cultural Rights, and the ILO Convention No. 158. When seen and interpreted in this light, unlawful dismissal becomes not just a private wrong but a violation of public international standards that protect the victim as a worker and as a human being.

5.1.2. Concept of Dismissal

The concept of dismissal in Nigerian labour jurisprudence has generated considerable debate, particularly on whether it bears the same meaning as termination. Some authorities argue that both terms are interchangeable, while others maintain a clear distinction. Ogunniyi⁹ for instance made the argument that 'termination' and 'dismissal' are synonymous, defining both as bringing to an end the employment relationship. But Abugu¹⁰ in his work, argued that there is a definite difference between these two terms. He clarifies that 'termination' refers to ending an employment contract in the manner specified in its terms, while 'dismissal' is the employer's exercise of the right to end a contract outside of the terms agreed upon. A major problem with this view is that Abugu failed to take into consideration the negative impact of what he understood to be dismissal, as a careful dissection of his conception of dismissal may make dismissal look unlawful at all times. However, this paper adopts the latter view: that dismissal, in its strict sense, is distinct from termination, not only in procedure but also in legal implication and consequence. Dismissal refers to the determination of a contract of employment without notice, typically on grounds of gross misconduct, incompetence, or breach of trust by the employee. In *Irem v Obubra District Council*,¹¹ The Supreme Court observed that dismissal carries a stigma and deprives the affected employee of terminal benefits, something termination does not. This punitive character of dismissal makes it fundamentally different from ordinary termination, which may be initiated with or without reason but generally follows agreed procedures or guidelines. Courts have also further clarified the meaning of dismissal by reference to the conduct that gives rise to it. In *New Nigerian Bank PLC v Osunde*,¹² gross misconduct was defined as behaviour “grave and weighty in character” and capable of destroying the confidence and trust that ought to exist between employer and employee. Misconduct justifying dismissal must, therefore, go to the root of the employment relationship.

⁹ O Oladosu, *Nigerian Labour and Employment law in Perspective* (Ikeja: Folio Publishers Limited 2004)

¹⁰ A Joseph, *A Treatise on the Application of ILO Conventions in Nigeria* (Lagos: University of Lagos Press 2009) p48

¹¹ (1990) 5 FSC 24

¹² (1998) 9 NWLR (pp.556) p511

Dismissal may be either lawful or unlawful. Where it is based on valid reasons and carried out in accordance with proper procedure, it can be lawful. The following are common grounds upon which a lawful dismissal may be based on:

1. **Disobedience to Lawful Orders:** An employee may be lawfully dismissed for persistent insubordination or failure to follow reasonable directives. However, the law does not compel obedience to unlawful or unreasonable instructions. In *Palace Shipping Co. v Caine*,¹³ the dismissal of a worker who refused to take a dangerous sailing route was held to be unlawful.
2. **Breach of Fidelity or Trust:** An employer is justified in dismissing an employee who abuses his position of trust. In *Maja v Stocco*,¹⁴ it was held that a servant who uses his position for personal gain is liable for immediate dismissal.
3. **Incompetence:** Where an employee lacks the skill or capacity to perform the job, and this is demonstrably evident, dismissal may be justified. In *Harmer v Cornelius*,¹⁵ a scenic painter was found incompetent just days into his role, and the court upheld his dismissal.
4. **Misconduct or Gross Misconduct:** This covers serious violations such as theft, fraud, or the endangerment of workplace safety. In *Ningi v First Bank*,¹⁶ an employee who negligently opened an account to a fraudster without proper verification, leading to loss on the part of the company, was held to have committed misconduct warranting dismissal.

However, dismissal becomes unlawful when it occurs in any of the following ways:

1. **Discriminatory Dismissal:** Where an employee is dismissed on grounds such as race, gender, religion, disability, or other discriminatory practice. Such action is unlawful. In *Abiodun v State Security Service*,¹⁷ The court upheld a claim of discrimination where the employee was dismissed due to having visible tattoos.
2. **Retaliatory Dismissal:** Dismissing an employee for engaging in activities that are legally protected, such as reporting misconduct, whistleblowing, or union participation is unlawful. Such actions suppress the legitimate exercise of workplace rights.
3. **Dismissal Contrary to the Employment Contract:** Where an employer fails to follow the terms of an existing contract of employment containing provisions on the procedure for dismissal, the dismissal is unlawful and amounts to a breach of contract.
4. **Dismissal for Union Activity:** Section 9(6)(b)(ii) of the Labour Act protects workers from dismissal on account of union activities conducted outside working hours or with the employer's consent. Any dismissal in breach of this provision is unlawful.

¹³ (1907) AC 386

¹⁴ (1968) N.M.L.R. 372

¹⁵ (1858) 141 ER 94, 5 CB NS 236

¹⁶ (1996) 3 NWLR 435 220

¹⁷ Unreported Suit No. NICN/LA/605/2015,

It is essential to distinguish clearly between dismissal and termination. While dismissal is typically punitive, unilateral, and without notice, termination is generally neutral in tone and often accompanied by notice or payment in lieu.¹⁸ Dismissal usually follows gross misconduct; termination may result from redundancy, reorganisation, or the expiration of a contract. In dismissal, the employer alone exercises the right to end the contract as a sanction.¹⁹ In termination, the focus is usually on notice, and unlawfulness arises where there is either no reason given or the appropriate notice is not observed. In the context of international labour law, particularly ILO Convention No. 158, both dismissal and termination are addressed under the broader theme of protection against unjust removal from employment. However, the procedural and substantive safeguards are clearer in the case of dismissal because of its punitive nature. The requirement for valid reason, fair hearing, and right to appeal are all embedded in several international instruments, although they remain weakly reflected in the national labour laws of Nigeria. Understanding this very concept of dismissal is thus central to assessing the protection of workers' rights in Nigeria, particularly as it relates to dignity, due process, and the right to work.

5.1.3. The concept of International Labour Standards:

International Labour Standards are legal instruments adopted by the International Labour Organization (ILO), a tripartite UN agency composed of governments, employers, and workers. These standards are designed to set out fundamental principles and rights at work, providing a global framework for fair, safe, and dignified employment. International labour standards take two main forms:

- (a) Conventions: which are legally binding international treaties that member states may ratify. Once ratified, states pledge to align their national legislation and practices with the terms of the convention and to report periodically on implementation.
- (b) Recommendations: which are non-binding guidelines meant to guide policy and practice. They complement Conventions by offering detailed guidance or elaboration on implementation.²⁰

International labour standards are adopted at the annual International Labour Conference and monitored through ILO supervisory mechanisms involving government reporting, and input from employers and workers organizations. They are intended to ensure that work worldwide is: accessible and productive and carried out under conditions of freedom, equity, security, and dignity. Labour standards express labour rights not merely as employment policy but as human rights, closely integrated into the broader UN human rights framework, including the Universal Declaration of Human Rights and the 2030 Sustainable Development Agenda. International labour standards span a wide range of labour issues, including; Core human rights at work, Occupational health and safety, Wages, working time, social security, Maternity protection, migrant labour, indigenous workers, and vocational training.²¹

¹⁸ *Ibid*

¹⁹ O Odeyinde, "Unraveling The Consequential Difference Between Dismissal and Termination of Contract Of Employment under The Nigerian Labour Law" (2022) (48) 5 *Journal Of Private And Commercial Law* <https://www.researchgate.net/publication/367240696_Unravelling_the_consequential_differences_between_dismissal_and_termination_of_contract_of_employment_under_the_Nigerian_Labour_Law> accessed 30 July 2025

²⁰ International Labour Organization, "International Labour Standards" <<https://www.ilo.org/international-labour-standards>> accessed 2 August 2025.

²¹ *Ibid*

Under the ILO Declaration on Fundamental Principles and Rights at Work (1998), amended (2022), all member states including those that haven't ratified the specific Conventions are obliged to respect, promote, and realise the principles set out in fundamental Conventions. And the ILO Governing Body has identified the following eight Conventions as "fundamental", covering subjects that are considered as fundamental principles and rights at work:

1. Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87);
2. Right to Organise and Collective Bargaining Convention, 1949 (No. 98);
3. Forced Labour Convention, 1930 (No. 29);
4. Abolition of Forced Labour Convention, 1957 (No. 105);
5. Minimum Age Convention, 1973 (No. 138);
6. Worst Forms of Child Labour Convention, 1999 (No. 182);
7. Equal Remuneration Convention, 1951 (No. 100); and
8. Discrimination (Employment and Occupation) Convention, 1958 (No. 111).²²

These conventions including Convention 158 For Termination Of Contract Of Employment, collectively touch on and address issues related to Freedom of association, Right to collective bargaining, Elimination of forced labour, Abolition of child labour, Equal remuneration and Non-discrimination in employment or occupation.²³ And undoubtedly, these core labour standards have become widely accepted as universal human rights, often embedded in other international human rights instruments and customary international law. In the Nigerian context, several key developments show how International Labour Standards intersect with Nigerian labour law. For instance, the 1999 Constitution (as amended by the Alteration Act of 2010) empowers the NIC to interpret, apply, and enforce ratified ILO Conventions, even if not domesticated in Nigeria. In a number of cases, the NIC has applied principles akin to Convention 158, demanding fair hearing, valid reasons for dismissal and enforcing remedies against unlawful dismissal. Although available literature and research shows that Nigerian law still contains gaps, many dismissals permissible under common law would be unfair by ILO standards, and remedies like reinstatement and comprehensive compensation are not consistently available under Nigerian labour law. International labour standards are nonetheless important, because they provide normative benchmarks for evaluating whether dismissals comply with international norms of fairness and not just being compliant with narrow domestic contract laws. They guide courts, policymakers, and employers toward best practices such as the requirements for valid reasons, due process, appeals, notice, and the award of equitable remedies when necessary.

5.1.4. Concept of Due Process in the determination of Employment:

Due process is the fundamental principle that state actions and legal procedures must be fair, transparent, and consistent with established law. It is both procedural; that is, requiring notice, an opportunity to be heard, and impartial adjudication. It is also substantive, that is ensuring that laws and actions are just and not arbitrary.²⁴ In Nigeria, due process derives primarily from Section 36

²² IOE, "International Labour Standards", <<https://www.ioe-emp.org/policy-priorities/international-labour-standards/?utm>> accessed 28 July 2025

²³ Ibid

²⁴ Wikipedia.com, "Loudermill hearing", <https://en.m.wikipedia.org/wiki/Loudermill_hearing?utm> accessed 27 July 2025

of the 1999 Constitution which guarantees the right to a fair hearing before a court or tribunal established by law.

When applied to the sphere of employment, especially dismissals, due process demands that an employee is not removed arbitrarily but only in accordance with law and fair procedure. In *Olaniyan v University of Lagos*²⁵ The Supreme Court held that employment with statutory flavour requires strict adherence to disciplinary procedures laid down by statute and any dismissal without following such procedures is null and void. Similarly, in *Imoloame v WAEC*²⁶, the court affirmed that a worker must be given notice of allegations and a fair opportunity to defend themselves before any dismissal. Thus, in cases of unlawful dismissal, the violation of due process often stems from the denial of right to be heard, failure to issue proper notice, or to comply with statutory or contractual terms. While in ordinary master–servant relationships the remedy may be damages, in statutory employments, the absence of due process can lead to reinstatement and payment of arrears.

In Nigeria, procedural safeguards for due process especially in the informal sector are often weak or absent. Informal sector Employers may suspend or summarily dismiss employees without proper inquiry or explanation. The National Industrial Court has occasionally referenced ILO standards in its decisions, but there's still a need to give such jurisprudence a statutory effect by ratifying and domesticating the ILO Convention No 158. In South Africa, for instance, the Labour Relations Act contains provisions mandating meaningful consultation before dismissal for operational reasons, thereby treating the process not just outcome, as being essential to fairness.²⁷ In the UK, the Polkey decision crystallised the principle that procedural inadequacy may not nullify a dismissal if the outcome would have been the same, but proper procedure has the effect of influencing the remedy to be awarded.²⁸ For there to be progress in the Nigerian labour regime, due process must therefore be recognised as integral to dismissal, and not just a contractual issue. Employees especially those in the informal sector should be informed of allegations, given time to prepare a defence, and offered avenues of appeal. Denial of these rights turns dismissal into arbitrary removal, thereby violating the right to work, fair hearing, and dignity.

5.1.5. The Right to Work as a Human Right:

The right to work is more than a legal concept, it is a fundamental human entitlement that safeguards human dignity, social inclusion, and economic participation. It is recognized in key international instruments and also emphasized in Nigeria's constitutional framework albeit in vague implied terms. The right to work has strong foundations under International law, Article 23 of the Universal Declaration of Human Rights affirms that “everyone has the right to work, to free choice of employment, and to just and favourable conditions of work, and to protection against unemployment.” Building on this, Article 6(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) requires member states to recognize the right of all persons to derive

²⁵(1985) 2 NWLR (Pt.9) 599,

²⁶ (1992) 9 NWLR (Pt.265)

²⁷ Wikipedia.org, “South African labour law”, <https://en.m.wikipedia.org/wiki/South_African_labour_law?utm> accessed 27 July 2025

²⁸ Polkey v AE Dayton Services Ltd [1987] UKHL

a living by means of freely chosen or accepted work, and to take "appropriate steps" to safeguard that right, including, where necessary, measures for vocational training and full employment.²⁹

The UN Committee on Economic, Social and Cultural Rights elaborated in General Comment 18 that the right to work includes availability, accessibility, acceptability, and quality, that is, non-discriminatory access, safe conditions, decent wages, and opportunities for all to earn a dignified living. Its Foundations are also traceable under regional and domestic Frameworks, for instance, The African Charter on Human and Peoples' Rights, which has been domesticated in Nigeria affirms the right to work under Article 15, guaranteeing fair conditions and equal pay for equal value. Nationally, the Nigerian constitution provides for socio-economic rights under Chapter II, including the right to livelihood and employment, however the Court has interpreted these provisions as mere policy directives rather than rights that are directly enforceable. But nonetheless, there is still Jurisprudential reasoning present in some decisions where the court attempts to connect socio-economic rights to fundamental rights under chapter IV of the constitution. For example in *Lafia Local Government v Governor of Nasarawa State*,³⁰ the Court of appeal underscored the duty of the government to guarantee access to suitable and nondiscriminatory employment, linking the duties under Chapter II to Chapter IV through section 13 of the Constitution.

These foundations give the concept of right to work a legal and moral legitimacy, and this matters a lot because work is not only a means of earning a living, it underpins individual identity and participation in the society. Denial of the right to work or unfair removal from employment often leads to marginalization, poverty, and wounds to the dignity of the victims. It is closely tied to freedoms of association, fair wages, and safe conditions all of which are recognized under ILO standards.³¹

6.1. The Social Justice Theory in the Context of Labour Relations and Unlawful Dismissal:
"Social Justice Theory" provides a strong foundation for analysing issues of employment, not as isolated contractual arrangements, but as questions of fairness, dignity, and equality. The theory is rooted in the idea that all individuals are entitled to equal participation and protection in society, this theory holds that work must not only be available but also governed by equitable rules that prevent exploitation or arbitrary exclusions.³² The International Labour Organization (ILO) was established in 1919 on the conviction that universal and lasting peace can be established only if it is based upon social justice. Its 2008 "Declaration on Social Justice for a Fair Globalization" affirms that access to decent work, defined by fairness, security, and dignity is essential to inclusive

²⁹S. Battarcharjee, "Situating The Right To Work In International Human Rights Law: An Agenda For The Protection Of Refugees And Asylum-Seekers" (2013) *NUJS Lawreview*, <https://nujlawreview.org/2016/12/03/situating-the-right-to-work-in-international-human-rights-law-an-agenda-for-the-protection-of-refugees-and-asylum-seekers/?utm> accessed 27 July 2025.

³⁰(2012) 17 NWLR Pt. 1328 Pg. 94.

³¹Human Rights Educators USA, "<https://hreusa.org/hre-library/topics/work/background/?utm>" accessed 27 July 2025

³² World Employment Confederation, "Social Justice" <https://wecglobal.org/topics-global/social-justice/?utm> accessed 27 July 2025

economic development and human well-being. The ILO states that “social justice is more than a moral imperative; it is a foundation for social stability and peace”³³

From the lens of Social Justice Theory, unlawful dismissal cannot merely be a breach of contract, because the employee is not just a party to a contract, but a part and parcel of the larger society entitled to certain inalienable socioeconomic rights. Unlawful dismissal runs deep into the concept of fairness, justice and social equality in the world of work where there is unequal bargaining power between the employer and employee, and the latter being always at the mercy of the former. According to the United Nations World Day of Social Justice 2023 Report, labour market insecurity is one of the key drivers of inequality, poverty, and exclusion, especially in developing countries.³⁴ In Nigeria, where over 90% of the workforce is employed informally, most workers lack any form of protection against arbitrary removal from employment.³⁵ These facts and data solidifies the philosophical basis why due process and the right to be heard before dismissal, especially in the informal sectors, is crucial and cogent. A further analysis of labour relations within the context of the social justice theory also shows that the theory supports inclusive decision-making and participation in workplace governance. Employees ordinarily should have a voice in processes that affect their livelihoods, including disciplinary procedures, grievance redress, and union activity. The absence of such mechanisms entrenches inequality and reinforces the existing power imbalance between employers and workers. And this line of thought inexorably also goes to pinpoint the indispensable responsibility of trade unions as proselytizers of social Justice in the workplace, watchdogs and instruments against excesses by employers.

7.1. The Legal Framework of Unlawful Dismissal in Nigeria:

7.1.2. The Constitution of The Federal Republic of Nigeria 1999:

The 1999 Constitution of the Federal Republic of Nigeria lays the foundation for the protection of fundamental rights of citizens, especially the right to fair hearing, which is central to the concept of unlawful dismissal. Section 36(1) provides that in the determination of a person’s civil rights and obligations; he shall be entitled to a fair hearing by an impartial tribunal or body. This right extends to internal disciplinary panels set up by individual employers or employer institutions. A dismissal that occurs without affording the employee this right is a breach not only of due process but of constitutional rights. In *Denloye v Medical and Dental Practitioners Disciplinary Tribunal*,³⁶ The court held that failing to inform the appellant of the case against him before the hearing violated his right to fair hearing. In *Alakija v Medical Disciplinary Committee*,³⁷ The panel’s decision was quashed for breaching natural justice, as the prosecutor participated in the committee’s deliberations. Similarly, in *U.N.T.H.B. v Hope Nnoli*,³⁸ The court affirmed that even where misconduct is admitted, fair hearing must still be observed, reinforcing the principle that

³³International Labour Organization, “ILO Declaration on Social Justice for a Fair Globalization”

<<https://www.ilo.org/resource/other/ilo-declaration-social-justice-fair-globalization>> accessed 27 July 2025

³⁴ UN News, “On World Day of Social Justice, deeper dialogue across ‘real economy’ can drive progress, UN deputy chief says” (February 20, 2023) <<https://news.un.org/en/story/2023/02/1133707>> accessed 27 July 2025

³⁵ILO Terms of Reference, “A Rapid Diagnostics Assessing the Impact of COVID-19 on enterprises and workers in the informal Economy in Nigeria”

<<https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.ilo.org/media/67751/download%23:~:text=3D>> accessed 27 July 2025

³⁶ (1968) LPELR – 22526 (SC)

³⁷ (1959) 4 FSC 38

³⁸ (1994) LLJR-SC

this right is not subject to waiver or discretion. Section 254(c) of the Constitution (Third Alteration Act, 2010) further entrenches the protection of workers by establishing the National Industrial Court (NIC) and conferring it with exclusive jurisdiction over all employment-related disputes, including unlawful dismissals. By creating a specialised court like this, access to justice for employees whose rights have been violated is expedited.

However, a key limitation of the constitution in relation to the present issue at hand is the lack of express, justiciable constitutional provisions directly protecting workers' socio-economic rights. Section 17(3) of the Constitution, which calls for just and humane conditions of work and the safeguarding of health and safety at work, forms part of the Directive Principles of State Policy and is non-justiciable. This undoubtedly weakens the enforceability of core labour rights and underscores the need for reform that would elevate socio-economic rights such as protection from arbitrary dismissal to the status of constitutional rights that are enforceable. In essence, while the Nigerian Constitution provides a general framework for protecting workers' rights against unlawful dismissal primarily through the right to fair hearing and access to redress via the NIC, the absence of provisions for the enforceability of socio-economic rights continues to limit the full realization of human rights in the workplace.

7.1.3 The Nigerian Labour Act:

The Labour Act of 2004 is the principal statute governing employment relationships in Nigeria, including the formation and determination of contracts. Section 9(7) of the Act outlines the lawful modes of terminating a contract:

- (a) by the expiry of the contractual period;
- (b) by the death of the worker before expiry; or
- (c) by notice in accordance with section 11 or any legally recognized method of termination.

And section 11(1)-(4) of the Act, elaborates the notice periods required; it states that;

- (1) Either party to a contract of employment may terminate the contract on the expiration of notice given by him to the other party of his intention to do so.
- (2) The notice to be given for the purposes of subsection (1) of this section shall be-
 - (a) one day, where the contract has continued for a period of three months or less;
 - (b) one week, where the contract has continued for more than three months but less than two years;
 - (c) two weeks, where the contract has continued for a period of two years but less than five years;and
- (d) one month, where the contract has continued for five years or more.
- (3) Any notice for a period of one week or more shall be in writing.
- (4) The periods of notice specified in subsection (2) of this section excludes the day on which notice is given

However, it must be noted that section 11(5) of the Act makes an importation of dismissal, it states that; "Nothing in this section affects any right of either party to a contract to treat the contract as terminable without notice by reason of such conduct by the other party as would have enabled him so to treat it before the making of this Act." But a major problem that stems from this provision is the fact that the labour Act failed to state clearly what amounts to such conduct as stipulated in this section to warrant dismissal. The courts though have stepped in to clarify this, holding that such conduct must gravely undermine the trust between the employer and employee. In *Abukugbo*

v African Timber & Plywood Ltd,³⁹ The court upheld the dismissal of an employee who stole petrol from the employer, characterizing it as misconduct warranting dismissal.

The Labour Act also contains protective provisions, such as section 54(4), which prohibits the dismissal of a pregnant employee during Maternity Leave. The provision applies where the absence is due to childbirth or certified pregnancy-related illness. In *Folarin v Incorporated Trustees of Clinton Health Access Initiative*⁴⁰ The court awarded ₦5 million in damages to a woman dismissed for being pregnant, affirming the argument that the employer's actions amounted to a breach of her statutory and human rights. However, a major limitation obvious in the Labour Act is the fact of it being riddled with linguistic and substantive ambiguities, especially in its inconsistent use of the terms such as “dismissal” “termination” and “notice” often with practical consequences of ambiguity. Such drafting flaws reflect a broader concern as the Labour Act can be said to fall short of international labour and human rights standards both in linguistics and practice especially in protecting vulnerable workers from arbitrary and discriminatory dismissals.

7.1.4 The National Industrial Court Act:

The National Industrial Court Act of 2006 is central to the enforcement of workers' rights in cases of unlawful dismissal as it establishes the NIC; a specialized court for labour and employment matters in Nigeria. The National Industrial Court (NIC) serves as the primary judicial forum for employees seeking redress when their rights, especially those of fair treatment and protection from arbitrary dismissal are violated. Under Section 7(1) of the Act, the NIC exercises exclusive jurisdiction over civil causes and matters relating to:

- (a) Labour, trade unionism, and industrial relations;
- (b) Conditions of work, including health, safety, and welfare;
- (c) The restraint of strikes, lockouts, and other industrial actions;
- (d) Interpretation of collective agreements, arbitral awards, trade union constitutions, and relevant judgments. This broad jurisdiction conferred on the court provides the avenue for the court to adjudicate on all forms of labour disputes litigated before it for a remedy.

Section 7(2)-(4) further allows the National Assembly to expand the jurisdiction of the NIC and provides a mechanism for appeals from arbitral tribunals. In line with modern practices that encourage alternative dispute resolution (ADR) before litigation, the NIC often insists on parties first exploring mediation, conciliation, and arbitration under Part I of the Trade Disputes Act.

Sections 8, 13, and 14 of the Act enhance the Court's capacity to ensure substantive justice. Section 8 of the Act empowers it to draw necessary inferences, order retrials, or substitute appropriate remedies. Under Section 13, the court must apply both legal and equitable principles, prioritizing equity where conflicts arise, an important human rights safeguard, especially in employment disputes where formal contracts may fail to capture or foresee certain gaps of equitable relevance. Section 14 of the Act is also crucial, as it empowers the court to grant reliefs such as reinstatement, declarations, or damages; remedies essential to achieving justice for dismissed employees. For

³⁹ (1996) 2 All NLR 377

⁴⁰ (2012) 27 NLLR

instance, in *Okongwu v NNPC*,⁴¹ the court awarded damages equivalent to 22 months of lost earnings to an employee unlawfully dismissed. The court's injunctive and supervisory powers under Sections 16 and 17 of the Act extend to granting mandamus, prohibition, and certiorari even against public authorities, further reinforcing its role as a human rights-enforcing forum as well. Moreover, the NIC has jurisdiction over criminal matters where such arise incidentally from its substantive jurisdiction.

A key human rights enhancing provision in the framework of the NIC which cannot be overlooked is found in Order 14 Rule 1(2) of the NIC Rules 2017, which explicitly prohibits discrimination on numerous grounds including gender, religion, ethnic origin, health status, disability, union affiliation, and pregnancy. This aligns with international best practices, including provisions of the African Charter on Human and Peoples' Rights and the Convention on the Elimination of all forms of Discrimination against Women, reinforcing that workplace equality is not just a matter of policy but of enforceable right. In sum, the NIC Act operationalizes constitutional and international human rights standards within the workplace, offering Nigerian workers an avenue to challenge unlawful dismissal and discriminatory practices. However, for this framework to fully realize its promise, greater awareness of the forum especially amongst informal sector workers, access to legal representation, and timely judicial intervention are essential. The NIC as an institution also requires more funding, judicial infrastructure and the training and retraining of its staff in core emerging human rights and international labour issues to remain abreast of emerging trends and developments.

7.1.5 The Companies and Allied Matters Act:

The Companies and Allied Matters Act of 2020 is Nigeria's principal governing law in corporate practice. It contains provisions relevant to the lawful determination of employment contracts of key company officers such as directors and secretaries. These provisions underscore not only compliance with statutes but the need to reinforce principles of due process and fair hearing, core to human rights protection in formal settings like the corporate world. Under Section 288 of the Act, a company may remove a director before the expiration of his term by an ordinary resolution, despite any contrary provision in its articles or the director's service contract. However, this is subject to several procedural safeguards:

- a. A special notice must be given of the resolution;
- b. The director must be notified and allowed to make written representations;
- c. These representations must be shared with members, or if not, read out at the meeting, unless a court determines they were intended to secure defamatory publicity.
- d. The director must be allowed to defend himself
- e. A vote is then passed by way of resolution removing the director were found guilty.

These procedural rights promote transparency and natural justice, and their denial may render the removal unlawful. In *Longe v First Bank*⁴² The Supreme Court declared the removal of the managing director void where notice and fair hearing were denied. The court emphasized that employment contracts governed by statute, such as those of directors, are not terminable at will.

⁴¹ (1989) 4 NWLR (pt. 115) 296

⁴² (2010) 6 NWLR (Pt. 1189) 1

Similarly, in *Yalaju-Amaye v A.R.E.C. Ltd*,⁴³ the company falsely claimed the managing director had orally resigned. His purported removal without fair hearing and in violation of his entitlements was held to be unlawful. The court awarded damages and declared him still in office as the director. These decisions reflect not only the statutory nature of such appointments but also the judiciary's commitment to upholding due process in the corporate workspace. In relation to company secretaries, who are designated as principal officers in public companies under section 333 of the CAMA, their removal must also comply with due process. Failure to provide notice and fair hearing invalidates such removal. The modern labour jurisprudence in relation to secretaries now is that company secretaries under the CAMA 2020 are no longer mere servants of the company subject to hire and fire, but has risen to a position of sacrosanctity and are now administrative officers of the company.

However, a grey area exists. While the CAMA is silent on summary dismissals for gross misconduct, companies often rely on their articles of association or contractual terms to effect such dismissals. This can create conflicts, especially when one party invokes the provisions of the CAMA as a procedural safeguard, and the other relies on the articles or contractual terms of the contract. The writers believe that this ambiguity here constitutes a lacuna in the CAMA, and it is argued that the Act should be amended to clarify whether and when summary dismissals can occur, and under what procedural safeguards. From a human rights standpoint, the provisions of the CAMA on protection of directors and secretaries speak to the right to job security, due process, non-discrimination, and access to remedies. Directors and senior officers should not be exempt from human rights protections at work simply by virtue of their rank, rather, due process must be stringently followed in determining their employment to prevent abuse of power and arbitrary treatment even in the highest cadre of formal employments.

7.1.6. International Labour Organization Convention 158 For Termination of Contract of Employment:

Article 4 of the ILO Convention No. 158 on Termination of Employment provides that a worker's employment shall not be terminated unless there is a valid reason connected with the worker's capacity or conduct, or based on the operational requirements of the undertaking. This article reflects a progressive stance that contrasts with Nigeria's statutory common law position under the Labour Act, which permitted employers to terminate employment for any reason or no reason at all, provided notice is given. The ILO approach therefore enhances job security and aligns with human rights principles of fairness, dignity, and protection against arbitrary dismissal.⁴⁴ Further strengthening this framework, Article 8(1) grants an employee the right to appeal against unjustified termination to an impartial body such as a court, tribunal, or arbitrator. Article 9(1) empowers such bodies to examine the reasons for termination and surrounding circumstances and determine whether it was justified. This procedural safeguard promotes the right to access to justice and fair hearing, both of which are quintessential to job security. Significantly, Article 5 of the Convention sets out prohibited grounds for dismissal. These include:

⁴³ (1990) 4 NWLR (Pt. 145) 422

⁴⁴E Obidinma "Unfair Dismissal In Nigeria: Imperative For A Departure From The Common Law" (2016) Nnamdi Azikiwe University Journal Of International Law & Jurisprudence. <https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.ajol.info/index.php/naujil/j/article/view/136256/125746&ved=2ahUKewjyq7OKgcSNAXX2aUEAHZpuK24QFnoECFYQAQ&usg=AOvVaw0KfCnE_Q8tDp1PvscSFL1E> Accessed 27 May 2025

- a. Union membership or participation in union activities;
- b. Acting as a workers' representative;
- c. Filing complaints or participating in proceedings against the employer;
- d. Discriminatory grounds, such as race, sex, religion, marital status, pregnancy, political opinion, or social origin;
- e. Absence during maternity leave.

These provisions reflect the virtues of non-discrimination, freedom of association, and protection of workers' voices, which are central to both labour rights and human rights under regional and international instruments. The National Industrial Court of Nigeria (NIC), by virtue of Section 254C(1)(f) and (h) of the 1999 Constitution (as amended), is constitutionally empowered to apply international best practices in labour and treaties ratified by Nigeria, particularly in employment and labour matters. And although the prevailing interpretation is that the aforementioned section is not affected by the effect of section 12 of the 1999 constitution requiring domestication of conventions and treaties before application in Nigeria, the writers believe the amendment of section 12 of the constitution remains imperative to avoid unnecessary ambiguities and loopholes.

8.1. The National Industrial Court of Nigeria as a major Regulatory Framework:

The National Industrial Court of Nigeria (NIC) plays a pivotal role in the evolving legal framework surrounding unlawful dismissal in Nigeria. As a specialised labour and employment court, its jurisprudence has significantly departed from rigid common law doctrines, instead embracing international best practices and a rights-based approach to employment relations. This shift is notable in how the NIC assesses wrongful dismissal and the remedies available to aggrieved employees. One of the court's landmark departures from traditional common law reasoning is illustrated in *Industrial Cartons Ltd v National Union of Paper and Paper Converters Workers*,⁴⁵ In that case, the NIC went beyond awarding compensation based solely on the requirements of notice and considered even how the content of the termination letter could hinder the prospects of the employee securing future employment. The court awarded six months' salary as compensation, even though the contract specified only one month's notice. This decision marked a progressive shift away from the conventional position that limits compensation to mere breach of contract without considering the broader socio-economic impact on the worker.

Further departure from the conventional approach occurred in *Michelin Nigeria Ltd. v Footwear, Leather, and Rubber Products Senior Staff Association*,⁴⁶ where the NIC introduced the concept of severance pay, not merely as a contractual right, but as an equitable compensation mechanism tied to the years of service of an employee. The court awarded one month's salary for each year of service, reiterating its stand that severance pay could be justified even in the absence of express contractual terms. The flexibility of the court in applying equitable principles is consistent with the Decent Work Agenda of the ILO which promotes fair treatment, economic security, and dignified exit from employment.

Perhaps the most transformative decision of the NIC emerged in *Bello v Eco bank*,⁴⁷ where the court expressly relied on international best practices, particularly Article 4 of ILO Convention No.

⁴⁵ 1980-1981 NICLR 54

⁴⁶ 1980-81 NICLR 153

⁴⁷ (Unreported) Suit No. NICN/ABJ/144/2018

158 and Recommendation 166, to introduce a new legal standard. Prior to this case, Nigerian courts generally upheld the employer's right to "hire and fire" without a requirement to provide a reason, provided notice was given. The NIC, however, rejected this doctrine, holding that valid reasons must now accompany every determination of employment contracts, specifically, reasons related to the employee's conduct, capacity, or the operational requirements of the organisation. This shift affirmed the importance of substantive due process in the determination of employment contracts and aligns with global labour standards.

Notwithstanding these positive developments, the NIC still faces several challenges that hinder its effectiveness in protecting workers' rights:

1. **Backlog of Cases:** The growing number of industrial disputes, coupled with limited resources, has led to significant delays in dispute resolution. This no doubt undermines access to timely justice and erodes confidence in the system.
2. **Inadequate Infrastructure:** The court often lacks modern technological tools, adequate courtrooms, and administrative facilities, factors that impact its efficiency and capacity to manage its docket effectively.
3. **Funding Constraints:** Insufficient funding of the judiciary generally, limits the recruitment of qualified personnel, development of judicial infrastructure, and implementation of judicial reforms that would otherwise enhance the impact of the court.
4. **Limited Specialised Manpower:** There is a shortage of judges and staff with deep expertise in employment and labour law. This also affects the court's ability to resolve complex cases swiftly and authoritatively.
5. **Lack of Public Awareness:** Many employers, employees, and even legal professionals remain unaware of the exclusive jurisdiction of the NIC in employment matters, leading to frequent misfiling of cases in regular courts and waste of resources.

These limitations must be addressed if the NIC is to fully realise its mandate of protecting the right to work and preventing unlawful dismissals. The writers believe that overcoming these challenges requires coordinated action by the executive, judiciary, bar association, and civil society. This includes increased funding, judicial training, digitisation of processes, and public sensitisation on the role of the NIC in labour justice.

9.1. Rights And Remedies Available under Nigerian Law:

Unlawful dismissal undermines the core principles of fairness, dignity, and justice in the workplace. When individuals who have committed their time, skill, and loyalty to an organization are abruptly and unjustly dismissed, it not only jeopardizes their career and livelihood but also erodes trust and morale within the organization. The protection of workers from such arbitrary dismissals is not merely a legal issue, it is a human rights concern rooted in the right to fair labour practices and protection from discrimination and exploitation. The pursuit of remedies for unlawful dismissal serves both corrective and deterrent purposes. It provides redress to the aggrieved worker and strengthens the ethical foundation of employment relationships. The concept of remedy, as defined in Black's Law Dictionary, encompasses the means through which a violation of a right is

prevented, redressed, or compensated.⁴⁸ In the context of employment law, several remedies are available to workers who have been unlawfully dismissed. These include:

9.2. Damages:

Damages stand as the primary and often sole recourse for addressing wrongful dismissal under the common law.⁴⁹ In this framework, the employer-employee relationship is seen as one of personal service. Hence, the courts are generally reluctant to enforce continued employment as a remedy where one party is unwilling to accept the other.⁵⁰ This principle was applied in *Araromi Rubber Estates Ltd v Orogun*,⁵¹ where the Court held that the court cannot foist a willing servant on an unwilling employer, even if the termination is wrongful, malicious, or unfounded. Accordingly, common law treats the employment as effectively terminated and focuses instead on awarding appropriate damages. But the award of damages as a remedy itself is fraught with technicalities and constraints, such as the need to set it out mathematically, the quantum to be awarded in each circumstance, its computation, and the duty to mitigate loss, amongst others. Accordingly, a plaintiff claiming damages must clearly state such under appropriate heads and compute the total amount in a mathematical form. Where this is not done, it may be difficult for damages to be awarded. In *Owo v Nigerian Airways*,⁵² The court awarded no damages because the plaintiff failed to specify the sum claimed. On the question of the quantum of damages that may be awarded, the Court in *Mobil Nig. Ltd v Udo*,⁵³ held that the amount recoverable depends on whether the wrongful termination was due to a failure to give required notice, or was based on alleged malpractice.

According to Professor Amucheazi and Elizabeth Oji,⁵⁴ where the determination is due to failure to give notice, the employee may recover a salary equivalent to the notice period. However, where it is due to alleged misconduct (which may stigmatize the employee), the employee is entitled to substantial damages beyond the notice period. And if a fixed-term contract is terminated prematurely, damages will reflect the loss for the unexpired term, unless the contract provides for early termination, in which case damages are limited to the notice period. Also, two approaches exist for the computation of damages according to Professor Amucheazi and Elizabeth Oji;⁵⁵

- a. First Approach: This approach grants damages equivalent to what the employee would have earned during the unexpired term of a fixed contract. The court may consider factors such as the employee's age, employment prospects, and fringe benefits.⁵⁶ In *Garabedian v Jamakani*,⁵⁷ it was held that the proper measure of damages is the salary the worker would have earned for the unexpired term. Likewise, in *Swiss Nigerian Wood Industries v Danilo*

⁴⁸ B Garner "Black's law dictionary" (St. Paul, Minnesota: Thomson Reuters 2014) p567.

⁴⁹ B Lizzie, "Remedies for Breach and for Wrongful Dismissal" (Oxford: Oxford University Press 2016) p236.

⁵⁰ M Quadri, "Unfair Dismissals In The Workplace: An Appraisal Of The Available Remedies: The Nigerian Example" (LLB Project Faculty of Law University of Lagos 2014)

⁵¹ (1999) 1 NWLR 586

⁵² (1969) 1 ALL NLR 80

⁵³ (2008) 36 WRN 62

⁵⁴ O Amucheazi and A Oji, "Employment & Labour Law In Nigeria" (Lagos: Mbeyi&Associated(Nig) ltd 2015) p289.

⁵⁵ Ibid

⁵⁶ Ibid

⁵⁷ (1961) 1 ALL NLR 177

Bogo,⁵⁸ The court awarded ₦8,400 as salary for the remaining 14 months of a two-year contract.

- b. Second Approach: Here, damages are limited to what the employee would have earned during the notice period where there is no fixed duration.⁵⁹ In *Adewunmi v Nigerian Produce Board*,⁶⁰ The Supreme Court awarded six months' wages as damages where the contract was terminable by notice. It also considered other entitlements such as superannuation and withheld salaries.

Lastly, the question of mitigation of loss is also a technical principle in the award of damages. An unlawfully dismissed employee must take reasonable steps to reduce his losses consequent upon the determination of his contract of employment. In *Okongwu v NNPC*,⁶¹ The Court of Appeal faulted the plaintiff for rejecting a different job offer after his contract of employment was determined by his previous employer. However, the Supreme Court reversed the decision, holding that the duty is to act reasonably, and whether or not a plaintiff failed to mitigate his loss depends on the facts and circumstances. Lastly, the duty to show that the plaintiff failed to mitigate his losses lies on the defendant. In *Fashun v Pharco Nig.*⁶² Ltd, the court made clear that although a plaintiff must seek new employment where possible, it is the defendant's duty to prove that he failed to do so.

9.3 Specific Performance:

Specific performance is a form of remedy available to a dismissed employee, which entails compelling the employer to adhere to the terms of the contract, often by requiring the reinstatement of the employee or honouring other specific contractual duties that ought to have been honoured.⁶³ In a broader sense, the term encompasses cases where an employee seeks reinstatement, requests reemployment, or attempts to prevent determination of the contract of employment without due notice or procedural fairness as outlined in the employment contract, or as provided by principles of natural justice, or the constitution.⁶⁴ Traditionally under common law, the courts have denied the remedy of specific performance to unlawfully dismissed employees, usually pointing to the personal nature of employment contracts. The rationale has been that equity will not compel a performance that requires continuous supervision or is characterized by trust and confidence that has broken down. For instance in *Clarke v Price*,⁶⁵ Lord Eldon declined to compel an employee to continue his duties due to a lack of mutuality between both parties.

⁵⁸ (1971) 1 U.I.L.R 337

⁵⁹ Amucheazi, op cit, p 14

⁶⁰ (1972) 11 S.C. 111

⁶¹ (1989) 4 NWLR (pt. 115) 296

⁶² (1967) LD1 328/66

⁶³ D Edwin, "Remedies For Breach Of Contract Of Employment," (2009)(52) 3 *Cambridge Law Journal* <<https://www.cambridge.org/core/journals/cambridge-law-journal/article/abs/remedies-for-breach-of-the-contract-of-employment/C7F7FF7B208887511A4BC19C94B0E2E3>> accessed 27 May 2025

⁶⁴ U Sunday "Employees Contract of Employment and Wrongful Dismissal From Service" (2019) *African Journal of Politics and Administrative Studies*. <<https://www.ajol.info/index.php/ajpas/article/view/247204/233824>> Accessed 27 May 2025

⁶⁵ 37 ER 270

This strict common law view is worthy of criticism especially in the context of international labour standards and human rights jurisprudence, particularly under instruments such as the International Labour Organization (ILO) Convention No. 158 and the African Charter on Human and Peoples' Rights which specifically is now part of Nigeria's corpus juris. And it must be noted that in Nigeria, courts now acknowledge exceptions to the traditional common law position. But this exception is tied to only employment with statutory flavour, that is, where the terms of employment are governed by statute, specific performance becomes not only permissible but necessary to safeguard the employee's legal status.⁶⁶In *Shitta-Bey v Federal Public Service Commission*,⁶⁷ The Supreme Court held that a public servant within the pensionable cadre cannot be removed except in accordance with the civil service rules. Justice Idigbe JSC emphasized that such employees possess a legal status, and failure to follow the required statutory procedure renders the removal null and void. However, the remedy of specific performance is not granted where the subject matter becomes impossible, such as when the office is already filled. In *Igbe v Governor of Bendel State & Ors*,⁶⁸ The court declined to order reinstatement due to the post being occupied, opting instead for damages. In situations like this, while practicality may prevail, human rights principles still require that the dismissed employee be compensated in a manner that reflects the unjust nature of the removal, not merely economic loss, but the emotional, professional, and reputational impact as well.

In the private sector, Nigerian courts are very reluctant to order reinstatement, often treating employment as being at-will unless the presence of it being of statutory flavour is proven. While this is the regime, it is not false that the approach fails to align with international labour standards which Nigeria ought to embrace as obtainable in similar jurisdictions. In *Provincial Transport Services v State Industrial Court*,⁶⁹The Indian court for instance rightly held that even in private employment, where an employee is dismissed without a fair inquiry, industrial adjudication can nullify the dismissal and order reinstatement. The National Industrial Court of Nigeria with jurisdiction under Section 254C of the 1999 Constitution is now empowered to apply international best practices and labour standards, yet Nigerian jurisprudence still reflects the old hesitancy in the private sector when it comes to the remedy of reinstatement. Although it must be noted that there are some workers in the private sector who by virtue of their nature of service enjoy the remedy of reinstatement as of right. For example, under Sections 288 and 333 of the Companies and Allied Matters Act (CAMA) 2020, directors and company secretaries are entitled to specific procedures before removal. Where these are not complied with, courts may grant reinstatement or declare the removal void. But it is not surprising that the private sector employees entitled to this qualification are directors and secretaries of companies who are already strong participants in the labour relations. Extending this remedy to informal sector workers would be more important and effective in protecting workers' rights as a substantial amount of the Nigerian workforce as noted earlier are workers in the informal sector. The Nigerian jurisprudence must therefore continue evolving to give fuller effect to these international labour standards, particularly in private employment settings where vulnerability to abuse is often the highest.

⁶⁶ O Amucheazi and A Oji, "Employment & Labour Law In Nigeria" (Lagos: Mbeyi&Associated(Nig) ltd 2015) p289.

⁶⁷ (1981) 1 SC 40

⁶⁸ (1981) 3 NCLR 273

⁶⁹ A.I.R 1963 SC 114

9.4 Declaration of Rights:

A declaratory judgment essentially constitutes a judicial affirmation of the legal right of a plaintiff. It declares the legal position of the parties without offering any direct coercive relief.⁷⁰ Even where consequential relief is not granted, a declaration can still serve a critical role in safeguarding the right to access to justice as provided under Section 6(6)(b) of the 1999 Constitution. Declarations as a form of remedy are important where a public or private employer's action infringes on the constitutional or contractual rights of an employee. For instance, in *Thomas v Local Government Service Board*,⁷¹ the plaintiff sought a declaration that his termination was unlawful. Although the defendant board argued it could not be sued on the basis of legal personality, the court rejected this on the grounds of fairness and justice. A declaratory judgment also holds substantial significance in human rights discourse, particularly where dismissal is cloaked in allegations of misconduct. In such cases, a declaration that the dismissal was unlawful or unconstitutional alongside any substantive remedy not only vindicates the employee's reputation and dignity, but also affirms the principle of presumption of innocence, especially where no disciplinary hearing was held. The right to be presumed innocent no doubt is implicit in the right to fair hearing which must be accorded an employee alleged to have committed a misconduct.

9.5 Injunction:

An injunction is a court order directed at a defendant, either restraining the defendant from committing a wrongful act or compelling a specific act to be done. In employment law, courts traditionally resist granting mandatory injunctions, especially where the effect would be to compel continued personal relations or service. This caution stems from the idea that employment contracts are of a personal nature, making the courts hesitant to enforce its performance.⁷² In *Bankole v Nigerian Broadcasting Corporation*,⁷³ The court emphasized that compelling an employer to retain a dismissed worker contradicts established common law practices, where damages are deemed the appropriate remedy.

However, as noted earlier, human rights principles demand a broader view. Where a dismissal threatens constitutional rights such as the right to fair hearing, freedom from discrimination, or freedom of association, an injunction especially in the prohibitory sense may be essential to prevent irreversible harm. In such instances, damages may be inadequate to recompense the harm after it is done. This aligns with the reasoning in *Hill v. C.A. Parsons & Co. Ltd*,⁷⁴ where the court issued an injunction preventing an employer from treating a notice as determining the employment. The court here appears to have taken a proactive approach, understanding that money cannot compensate for certain harms which prohibitory injunctions can readily prevent.

Also, in *Fakoya v. St. Paul's Church, Sagamu*,⁷⁵ Justice Brette JSC explained that injunctions enforce contractual or procedural fairness, particularly where damages alone fall short. This line

⁷⁰ C Agoma, "Nigerian Employment and Labour Relations Law and Practice" (Lagos: Concept Publications 2011) p 213.

⁷¹ (1965) 1 All NLR 168

⁷² Y Cripps "Injunctions, Dismissal, Contracts of Employment and Judicial Review" (1983) Cambridge Law Journal. <<https://www.jstor.org/stable/4506540>> Accessed 27 May 2025

⁷³ (1968) 2 All NLR 372

⁷⁴ (1971) 3 All ER 1345 (CA)

⁷⁵ (1966) 4 NSCC 60

of thought is undoubtedly reflective of international labour standards and international best practices. Another good example is in *Fisher v Jackson*,⁷⁶ where a trustee sought to remove a schoolmaster contrary to the earlier terms agreed upon without just cause, the court granted an injunction to ensure there was adherence to due process. However, unfortunately, Nigerian courts have often undermined this remedy of injunction. For example, in *Shell Petroleum Devt. Co. of Nig Ltd v Omu*⁷⁷ and the case of *New Nigeria Bank Ltd v. Udobi*,⁷⁸ injunctions granted at the trial courts were overturned on appeal, reiterating the Nigerian judicial reluctance in applying equitable remedies to employment cases. This unarguably reflects a lingering rigidity that fails to embrace the evolving role of courts as flexible forums for justice and equity, and not a house where traditions are safeguarded to the detriment of victims.

10. Limitations of the Available Remedies for Unlawful Dismissal in Nigeria:

In recent years, as noted earlier, the National Industrial Court of Nigeria, have shifted away from the outdated “hire and fire at will” doctrine. Landmark decisions such as *Bello v Ecobank*,⁷⁹ have affirmed that employment cannot be determined without a valid reason, even in contracts that are not governed by statute. While these developments are laudable, the remedies available under Nigeria’s current legal framework remain largely inadequate to meet the realities and gravity of unlawful dismissals. One of the primary limitations lies in the continued reliance on the common law approach, which treats unlawful dismissal mainly as a breach of contract. Remedies are often limited to payments, even where the dismissal was procedurally flawed or substantively unjust. Although recent cases have awarded additional compensation based on length of service or emotional distress, such remedies are not consistently applied as a rule and they remain at the discretion of the court. The remedy of reinstatement, while theoretically available, is rarely granted in practice, except where the employment is one with statutory flavour. In private sector employment cases, the courts are rigid and uninterested in reinstating an employee, even when dismissal is found to be grossly unfair and unlawful. This approach fails to give full effect to international labour standards, especially Article 10 of ILO Convention No. 158, which recognises reinstatement as a preferred remedy where appropriate.

Another challenge is the absence of punitive damages or compensation for reputational harm, loss of dignity, or psychological impact of unlawful dismissals. Dismissed workers who have suffered reputational damage or lost future opportunities due to the stigma of allegations often have no legal redress beyond the basic damages for breach of contract. This approach minimizes the broader human rights implications of dismissal and disregards the constitutional right to dignity under Section 34 of the 1999 Constitution. There is also the issue of a lack of a framework for severance payments. While the NIC has, in cases like that of *Michelin Nigeria Ltd. v Footwear, Leather, and Rubber Products Senior Staff Association*,⁸⁰ introduced severance pay as a principle of international best practice, the Nigerian Labour Act remains silent on post-employment entitlements for most categories of workers, leaving many employees vulnerable at the end of their contracts.

⁷⁶ (1891) 2CH 84

⁷⁷ [1998] 9 NWLR 672

⁷⁸ [2001] 14 NWLR

⁷⁹ Supra

⁸⁰ Supra

Procedural barriers that exist cannot also be left out of the equation. The cost of litigation, delays due to backlog, and limited access to legal representation make it difficult for low-income workers to pursue their claims, especially in the informal sector. Additionally, many workers are unaware of their rights or the existence of the NIC, thus limiting their ability to seek justice, when unlawfully dismissed. In conclusion, while judicial reforms have begun to erode the "hire and fire" approach, the available remedies for unlawful dismissal in Nigeria still fall short of international human rights and labour standards. To ensure the full protection of the right to work and procedural fairness, there is a need for legislative reform that explicitly recognises the right to job security, expands the range and effect of available remedies, and domesticates international standards governing the determination of employment contracts in Nigeria.

11. Conclusion:

This paper has examined unlawful dismissal in Nigeria through the lens of international labour law and human rights standards. It critically engaged with instruments such as ILO Convention No. 158, the African Charter on Human and Peoples' Rights, and the international covenant on economic, social and cultural rights, to expose the substantial gaps in the present legal framework of Nigeria, especially in the areas of due process, the right to work, and effective remedies against unlawful dismissal. While the National Industrial Court has taken progressive steps in embracing international best practices, this progress is constrained and affected by the non-ratification of important treaties, outdated statutory provisions in the Labour Act and a compensation regime that fails to redress the full impact of unlawful dismissal. To ensure the full realisation of employment rights in Nigeria, legislative reform is imperative. Nigeria must ratify and domesticate core international labour conventions, revise the Labour Act to align with international best practices, and entrench substantive fairness as a legal standard. Furthermore, socio-economic rights such as the right to work must be elevated to a justiciable status under the Constitution, enabling the courts to enforce them without any legal limitations. Ultimately, aligning Nigeria's legal framework on unlawful dismissal with international labour standards is not just a legal necessity but a moral imperative rooted in the dignity, security, and wellbeing of workers in a modern democratic society.