ENFORCEABILITY OF EMPLOYMENT BOND AGREEMENT UNDER NIGERIAN LABOUR JURISPRUDENCE

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Abstract

This article through doctrinal methodology, examines the enforceability of employment bond agreement under Nigeria's labour jurisprudence by highlighting its meaning, types and the justifications for bonding employees. It also examines the practice in India and draw lessons for Nigeria. It discusses the nexus between employment bond and restraint of trade and also, the employee's right of resignation vis-à-vis employment bond agreement. It dilates employment bond against the backdrop of the doctrine of equality. The paper found that bond agreement are generally lawful under Nigerian labour jurisprudence however, insertion of certain terms, will render same unenforceable. Also, bond agreement is not expressly regulated by the labour legal regime but contract. It argues that non-financial bond agreement that have onerous, unconscionable, unequitable terms, especially in the academia, should be rendered unenforceable ab initio. The paper makes vital recommendation towards regulating the practice of employment bond to protect all labour stakeholders in Nigeria.

Keywords: *Employer, Employee, Employment bond, Nigeria, Restraint of trade. Unfair labour practice*

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1. INTRODUCTION

The present era, due to negative economic conditions, is experiencing phenomenal changes in industrial and economic processes which have resulted in stiff competition amongst business enterprises.[1]This competition threatens the continuous existence of some businesses in Nigeria. Hence, employers are compelled to take necessary steps to improve staff capacity towards increment in production and excellent service delivery. In order to do this, employers engage in continuous training and retraining of their employees towards capacity development. Some of these trainings are capital intensive and may require that the employee be absent from work during that period which may span through days, weeks and even months. In some instances, during this training, the employee trainee is entitled to his salary and other benefits despite not "working" on the employer's primary work. Also, there are some employees who during the course of their employment, are mandated to acquire more skill and knowledge. They do so without pausing from their employee's work as the acquisition of further knowledge is intrinsically required for their continuous qualification to engage in such an employment by law.[2] Moreover, some employees by virtue of their job description have become aware of their employer's trade secret (s) which, if divulged to a competitor, could be detrimental to the business of such an employer.

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1 Asaju, A., Arome, S., and Anyio, .S.L., "The Rising Rate of Unemployment in Nigeria: The Socio-economic and Political Implications", 3(2) *Global Business and Economics Research Journal* (2014) p. 8, at p. 12.

2 An example of such an employee is a lecturer in a Nigerian university who was employed as a graduate assistant but who cannot be promoted without subsequent acquisition of a Master's Degree and a PhD degree nor can continue lecturing based on the National Universities Commission requirement.

Thus, the employer in expending so much in training the employee or allowing him or her access to his trade secret (s) or acquisition of higher and further education while still working, does so hoping that the employee will stay longer in the employment. Moreover, generally before selecting employees for providing training or skill enhancement programme, employers take necessary safeguard of conducting interviews, take assurances that employee will stick to complete the projects for which he is being trained and shall also train the other co-employees so that an effective and efficient work environment is created. However, it is very common for such an employee to leave the employer in the event of a better employment offer notwithstanding the employer's investment on him or her. This situation is capable of exposing the employer to financial hardship and possible loss of goodwill and business. Therefore, in order to safeguard their interest, employers have cleverly introduced employment bond which is an agreement between the employer and employee wherein among other terms and conditions of the employment, an additional clause is incorporated or a separate agreement is signed which requires the employee to serve the employer compulsorily for a specific period of time else refund the amount specified as bond value.[3] Some employers seeing that the employee in the event of breaching the bond agreement may not be able to liquidate the bond sum, require the production of guarantor (s).

However, the questions that arises, in view of the extant position of the law in Nigeria, as contained under section 34(1) (c) and 17 (3) (a) and (b) of the 1999 Constitution of the Federal Republic of

[3] PSA Online Publishing, 'India: Enforceability of Employment Bond' Available at <http://www.mondaq.com/india/x/237806/employee+rights+labour+relations/Enforceability+of+Employment+Bond> (accessed on 28 October 2019).

Nigeria[4] (CFRN), Section 73 of the Labour Act[5], African Charter on Human and Peoples Right (Ratification and Enforcement) Act,[6] and international labour instruments which Nigeria is a signatory, all of which prohibits forced and compulsory labour, are; bond agreement contract/clause legally enforceable under Nigerian law? Does bond employment agreement qualify as unfair labour practice? Do they by their nature constitute restraint of employment? How adequate is the current Nigerian labour legal regime on bond employment agreement as a phenomenon that has become an accepted practice particularly in the private sector exemplified by the banking, educational, oil and gas, production, communication and construction sectors? What is or are the motivations for the adoption of bond employment agreement especially by private sector operators? What are the remedies available to both the employer and employee to a bond agreement contract? These questions form the crux of this paper. It is apposite to note that the discussion in this article, is predominantly on the practice in the private sector where bond agreement is prevalent as opposed to public sector which is more regulated and more liberal due to the absence of bourgeoisies' tendency.

2. MEANING, CONTENTS AND JUSTIFICATIONS OF EMPLOYMENT BOND

The employment bond is basically an agreement which the company (i.e. employer) and the employee enter into which among the other terms contained therein states that in consideration of the

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4 S 34(1) (c) and 17 (3) (a) and (b) The Constitution of the Federal Republic of Nigeria, 1999 Cap. C23, LFN, 2004. (Hereinafter referred to as 1999 CFRN)

5 Labour Act, 1974, Cap. L1, LFN, 2004.

6 African Charter on Human and Peoples Right (Ratification and Enforcement) Act, 1988, Cap. A8, LFN, 2004.

training given to the employee and the money spent by the company in imparting such training, the employee will remain in the services of the company for a particular period.[7] In case the employee breaches the provisions of the agreement, the employee will be liable to pay a certain sum of money, being the expenses incurred by the company in training the employee. Atilola[8] posits that employment bond is used by the employers to secure their investment which is training of the employee and it is customary of all wise investors, to expect returns on investments. Where an employee agrees to remain in an employment for a period of time in exchange for training sponsored or aided by the employer, he/she, is under a bond agreement. The bond ensures that the returns on investment (training) on the employee is assured for the business.

In the particular case where the company feels that the employee may not be able to pay the amount, the company shall require a guarantor who guarantees that he or she would take responsibility to ensure that the employee adheres to the terms of the bond. In case of breach, the guarantor will be jointly liable to pay the bond amount to the company. The bond may also contain confidentiality and non-competition clauses.[9]

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7 Otis, T., 'Employment Bonds in Nigeria are they Enforceable?' available at <https://nysclegalaidlagos.wordpress.com/2015/06/19/employment-bonds-in-nigeria-are-they-enforceable/> (accessed on 28 October 2019). He stated that "the employment bond is basically an agreement which the company and the employee enter into which among the other terms contained therein, states that in consideration of the training given to the employee and the money spent by the company in imparting such training, the employee would remain in the services of the company for a particular length of time."

8 Atilola, B., *Recent Development in Nigerian Labour and Employment Law* (Lagos: Hybrid Consult Ltd, 2017) at pp. 7-8.

9 PSA Online Publishing, 'India: Enforceability of Employment Bond,' note 3 above, at p. 2.

Thus, an employment bond may contain the following items: considerations from employee and employer i.e. parts to be played in executing the agreement, the agreement must not be onerous i.e. protecting one party and exposing the other, a validity period after which the contract expires, conciliation clause which discusses action which will be first taken for resolution purposes in the event of breach, the value of the bond (if training driven-bond), confidentiality clause, non-competition clause or conflict of interest, steps that will be taken in the event of breach of the bond by the employee, names of the parties, particulars of the employee's guarantor (s) and the sum payable by the employee in the event of his or her breach.[10]

Moreover, from the meaning of employment bond, its basis is deducible. It is to safeguard the employer's interest owing to the money he has expended in the training of the employee or the time the employee took off his work to acquire the skill and knowledge. The employer reasons that bonding the employee to compulsorily work for a specified period of time will justify the money spent or time lost. More bases of employment bonds include the employer's desire for continuous relevance and maintenance of competitive edge in the industry as well as protection from unionism.[11]

3. TYPES OF EMPLOYMENT BOND AGREEMENTS

The categorization of employment bond is not a thing that is iron cast. The reason is since there are various types of employment

[10] Ajayi, A., 'Employment Bond' available at <https://www.linkedin.com/pulse/employment-bond-adeyemi-ajayi> (accessed on 28 October 2019).

[11] Ibid.

undertakings both in the private and public sectors of the economy, there are various types of bonds too. This depends on the peculiar type and need of the employment relationship. Thus, there is no universally accepted typology of employment bonds. However, the following types of employment bonds have been identified. Training driven-bond, **t**his is a situation where employer bonds an employee to the company due to a "specialized" training offered to the employee. The training must be specific, of high value and gives the company competitive advantage. Trainings that must qualify for bond include but not limited to trainings that are highly technical and rare to "find", costly and above the employee's annual training budgets relevant to the employer's business, key drivers' of a company's competitive edge and breakers for new business opportunities. There is also the project driven-bond**.** These are cases when the employer embarks on project that requires specialized skills. This project may last for specific period hence the employer may bond the employee to the company.

This type of bond is not very common. The employee would be given special benefits to accept such offer to remain on the project. Project that must qualify for bonds should be very specialized. They must indicate that the employee has been trained to handle such project (s) (at the company's expense) relevant to the company's business and a factor for company's competitive edge. There is also confidentiality driven-bond**. T**his occurs in a situation where the employee is privy to some high level confidential information which is more of company's trade secret (s). If the exit of the employee will pose danger to the organization, he or she may be required to sign a bond of non-exit within specified period. However, confidentiality bond should ensure that confidential information is not a common knowledge in the company or industry and give

evidence that breach of confidentiality will affect the company materially or significantly.[12]

4. LEGALITY OF EMPLOYMENT BOND AGREEMENT IN NIGERIA

At this juncture, it is pertinent to admit that the gamut of Nigerian labour legal legislation contains no express provision with regard to employment bond practices. This is so notwithstanding its long history and pronounced adoption particularly in the private sector. Thus, anything on the enforceability or otherwise of employment bond agreement, is drawn from the general law of contract and constitutional law. It is also apposite to state that each case has to be decided on its peculiarities meaning that there are instances where an employment bond will be enforceable and others that it will not be enforceable because its enforcement will obliterate from the public policy of Nigeria. These instances are discussed below.

It is apposite to note that by virtue of section 34(1) (c) of the 1999 Constitution of the Federal Republic of Nigeria[13] and section 73 of the Labour Act,[14] employment bond agreements are *prima facie* unenforceable where they constitute restraint of trade/employment and forced or compulsory labour.[15] These sections respectively

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12 Ajayi, 'Employment Bond,' above note 10.

13 1999 CFRN (as amended) Cap. C23, LFN, 2004.

14 Labour Act, Cap. L 1, LFN, 2004.

15 Are Employment Bonds Legal in Nigeria? Available at <http://lawpadi.com/employment-bonds-legal-nigeria/> (Accessed on 6 November 2019). It was stated that "as a general rule, employment contracts which state that the employee must stay in the employment of the employer for a certain period of time or else pay a sum of money are void and unenforceable because they constitute a restraint of trade and violate our Labour Laws. However, to avoid this, most of these sorts of bonds are couched in such a way that the employer states that the amount represents

provide thus "every individual is entitled to respect for the dignity of his human person, and accordingly, no person shall be required to perform forced or compulsory labour" and "any person who requires any other person, or permits any other person to be required, to perform forced labour contrary to section 34(1)(c) of the Constitution of the Federal Republic of Nigeria (CFRN) 1999, shall be guilty of an offence and on conviction shall be liable to a fine not exceeding ₦ 1,000 or to imprisonment for a term not exceeding two years, or to both." Section 17 (3) (a) and (b) of the 1999 CFRN enjoined the State to direct its policy towards ensuring that all citizens, without discrimination on any group whatsoever, have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure employment. Furthermore, the State must ensure that the conditions of work are just and humane. Thus, any employment contract or practice that is adjudged unjust and inhumane will be struck down by the court as was done in *Union Training Co. Ltd. v. Hauri*[16] and *C. F. O. A. v. George Leuba*[17] as was held by the Supreme Court in *Andrea I. Koumoulis v. Leventis Motors Ltd.*[18] per Udo Udoma JSC (as he then was) while expatiating the decision of the English Court OF Appeal in the case of *Nordenfeld v. Nordenfeld Co.*[19]

However, it is prudent to state that the above position is not sacrosanct as it is susceptible to an exception. The law by its nature is an organic phenomenon existing in a dynamic society; hence, its

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the investment they would have made in training the employee during the time of his employment with them." See also, Employment Bonds in Nigeria are they Enforceable? Available at <https://nysclegalaidlagos.wordpress.com/2015/06/19/employment-bonds-in-nigeria-are-they-enforceable/> (accessed 6 November 2019).

16 (1940) 6 WACA 148.

17 (1918) 3 N.L.R. 77.

18 [1973] 1 All NLR (Pt. 2) 144.

19 (1894) AC 535.

wheels revolve on exception on the fast lanes of justice delivery. Employment bond are generally a matter of contract and as such, the law of contract governs it.

Elementarily, for a contract to be valid, there are certain prerequisites. These are offer, acceptance, capacity, consideration and intention to create legal relationship.[20] The implication of this is that any employment bond contract that is executed in accordance with the above prerequisites will be valid and enforceable. In the same vein, some of the vitiating terms of a contract include duress, mistake, fraud and misrepresentation. If any of the conditions for validity are absent or any of the vitiating elements are present in any contract, that contract would not be enforceable. We reiterate that while there have been no statutory provisions or case laws which indicate that our labour laws support this concept, it would be safe to say that the general principles of contract law considerably cover the issue of the enforceability of employment bonds in Nigeria. Hence, if a valid employment bond is executed between a company and an employee with clear and reasonable terms which the employee sufficiently understands before he executes, it would be unfair to the employer for the employee to rescind the contract on the basis of forced labour.[21]

The National Industrial Court of Nigeria (hereinafter referred to as NICN) have upheld the enforceability of a training bond agreement which was voluntarily entered into by the parties and which the employer had furnished adequate consideration through the training of the employee. The furnishing of consideration entitles the

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[20] Yerokun, O., *Modern Law of Contract* (Lagos: Nigerian Revenue Projects Publications, 2004) at p. 16.

[21] Otis, 'Employment Bonds in Nigeria are they Enforceable?' above note 7 at p. 4.

employer to exploit the benefit of its investment in the employee as was held in *Overland Airways Ltd. v. Afolayan & Anor.*[22] In *Overland Airways Ltd. v. Captain Joseph Gamara*[23] the NICN held that although, employment bond are generally legitimate and therefore enforceable, they must fulfil certain conditions. These conditions includes the fact that the terms of the bond agreement must be reasonable especially the duration of the restraint. An employer cannot therefore use a bond agreement as a sham to restraint an employee for an unreasonably long period, it will amount to restraint of trade and it will be nullified. The duration of the bond must be seen to be fair and commensurate with the training period or money expended by the employer on the training of the bonded employee. Insertion of onerous terms will render the bond agreement unenforceable. The equity of the terms must be apparent.

The case of *Iscare Nigeria Ltd. v. Victoria Omotayo Akinsanya & Anor.*[24] amplifies terms that will vitiate a bond agreement. The 1st Defendant was an employee of the Claimant and on salary of ₦ 540, 000 (Five Hundred and Forty Thousand Naira) only per annum. She was sponsored to India for a 7 days training which cost ₦ 569,108, 00 (Five Hundred and Sixty-Nine Thousand, One Hundred and Eight Naira) only by the Claimant. She was made to sign a bond agreement where she was to remain in the employ of the Claimant for at least three years after the training or pay the sum of 5, 000,000.00 (Five Million Naira) only as compensation including the total cost of the training to the employer if she leaves the employment by way of resignation or dismissal before the expiration of the bonded time.

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22 [2015] 52 N.L.L.R. (Pt. 174) 214 at 281, Paras. B-E.
23 Unreported Suit No. NICN/LA/141/2011 Judgment delivered on the 7 January, 2016.
24 Unreported Suit No. NICN/LA/484/2012 judgment delivered on the 19 May, 2017.

She was almost immediately dismissed upon return from the training and the Claimant sought to enforce the bond agreement. The NICN dismissed the suit and awarded damages against the employer. The Court held that an examination of the terms of the bond agreement, shows that they are inhumane, unconscionable, and same amounted to unfair labour practice. The Court further held that the clauses are contrary to public policy and against International Labour Organisation Decent Work Agenda (ILO DWA) and as such, cannot be enforced. An employment bond is not a device of employment servitude to be used by employers to shackle "weak" employees who the odds of employment are already against. The doctrine of past consideration which renders contract unenforceable will apply to bond agreement where the same was entered into after the training and not before.

From the foregoing, it is patently clear that employment bond agreement practice, is very prevalent in Nigeria particularly within the private sector and exemplified by the aviation subsector. In fact, it may be safely argued that there is hardly any employment subsector within the private sector where the practice is not observed, the lack of judicial authorities on this is not a conclusive proof of its non-practice. However, it is more of a case of dispute not yet ensuing so as to make recourse to court possible or other methods of dispute resolution, have been adopted to settle such matters. Some private employers even have pecuniary and non-pecuniary bond with the difference being the length of time of the bonding period. In fact, giving the instability and volatility of Nigeria's labour and employment terrain with its multifarious debilitating consequences vis-à-vis the need to protect employer's "invest", it is not unsafe to conclude that there is bound to be an increase in bond employment agreement.

5. EMPLOYMENT BOND PRACTICE: A PEEP INTO INDIAN LAW

India is a common law jurisdiction just like Nigeria with a similar boisterous employment practice which has gradually progressed to a refine employment climate not without shortfalls. However, giving that the developmental level of the employment practice of India, is not excessively advanced than Nigeria's when compared to jurisdictions like the United Kingdom, Canada and United States of America, India is considered a developing model from which Nigeria can glean some lesson hence, a peep at the practice of employment bond there. *Prima facie* under Indian law; employment bonds are enforceable. Such employment agreements with the negative covenant is valid and legally enforceable if the parties agree with their free consent i.e. without force, coercion, undue influence, misrepresentation and mistake.[25] However, the enforceability of the employment bond can be challenged on the ground that it restrains the lawful exercise of trade profession or trade or business of the affected employee. This exception is anchored on the extant provisions of section 27 of the Indian Contract Act of 1872 which is to the effect that any agreement in restraint of trade or profession is void.[26]The Court in India in *Central Inland Water Transport Corporation v. Brojonath Gangully*[27] held that "the employee, by signing a contract of employment, does not sign a bond of slavery and, therefore, the employee always has the right to resign the employment even if he has agreed to serve the employer for specific time period."

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25 PSA Online Publishing, 'India: Enforceability of Employment Bond,' above at note 3, at p. 3.

26 Therefore, any terms and conditions of the agreement which directly or indirectly either compels the employee to serve the employer or restrict them from joining competitor or other employer is not valid under the law.

27 (1986) IILLJ171SC.

Furthermore, however, provided that the bond agreement is reasonable and conscionable, notwithstanding the position of the law as stated above; the negative covenant or restraint in the agreement or contract will be valid and enforceable. Thus, the onus of proof that the restraint or bond is reasonably necessary for the protection of the business interest of the employer lies on the employer as was held in *Niranjan Shankar Golikari v. The Century Spinning and Manufacturing Company Ltd.*[28] In order to execute a valid employment bond, the parties have to ensure that the following condition have been complied with i.e. (i) the agreement has to be signed by the parties with free consent; (ii) the conditions stipulated must be reasonable; and (iii) the conditions imposed on the employee must be proved to be necessary to safeguard the interests of the employer. Additionally, the employment bond specifying conditions such as serving the employer compulsorily for a specific time period or penalty for incurring the expenses is in the nature of the indemnity bond and, therefore, such kind of employment bond has to be executed on a stamp paper of appropriate value in order to be valid and enforceable.[29]

Moreover, it is apposite to note that where the employee breaches the bond agreement, the employer can maintain an action against him or her for breach of contract once the agreement is reasonable and necessary for the legitimate protection of the employer's business interest. However, award of damages is not *per se.* The court shall award compensation only if it determines that the employer has incurred loss by such breach of contract and not by the mere fact of the breach itself. The court in determining the quantum of compensation accruable to the employer; usually take

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28 1967 AIR SC 1098.

29 *IBS Software Services Group v. Leo Thomas,* (2009) 4 KLT 797.

cognizance of the period of service by the employee conditions stipulated in the contract to determine the loss incurred by the employer and the actual expenses incurred by the employer as it was in *Sicpa India Limited v. Shri Manas Pratim Deb.*[30] This is so notwithstanding the penalty hitherto stipulated by the employer. This assertion finds credence in the High Court of Andhra Pradesh decision in the case of *Satyam Computers v. Leela Ravichander*[31]

6. EMPLOYMENT BOND AND RESTRAINT OF EMPLOYMENT/TRADE

This section of the paper discusses the doctrine of restraint of trade/employment and the quagmire of bond employment agreement with a view to ascertaining the link between the two. Also, this section interrogates circumstances under which a bond agreement may have the effect of a restraint covenant. Oji and Amucheazi[32] defined restraint of trade as a practice whereby an employer and his employee enter into a covenant for the purpose of restricting the right of the employee to engage in particular or specific types of business activities within a given area or locality and/or within a stipulated period of time. Tugbiyele[33] identifies two kinds of restraint of trade an employer can impose on an employee

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30 MANU/DE/6554/2011.

31 MANU/AP/0416/2011.

32 Oji, E.A., and Amucheazi, O.D., *Employment and Labour Law in Nigeria* (Lagos: Mbeyi & Associates Nigeria Ltd. 2015) at p. 86. See also Emiola, A., *Nigerian Labour Law* (4th Edn.), Ogbomoso: Emiola Publishers, 2008, at p. 61.

33 Tugbiyele, T.O.A., *Labour Law and Practice*, (Lagos: T.A.O. Tugbiyele & Co., 2012) at p. 48. See also Bell, A.C., *Employment Law* (London: Sweet & Maxwell, 2006) at p. 177. He stated that "restrictive covenant is an express term of the contract of employment which purports to extend beyond the life of the contract and restrain the employee from working, post-contract for a particular employer, in a particular industry, in a particular role, or in a particular location or geographical area, for a length of time… their purpose being to prevent employees from taking knowledge, skills, information, etc., to a competitor."

thus "restraint of trade takes two forms. It may take the form of a restraint placed on the worker while he is still in the employment of the master and secondly, the restraint may become operative after the departure of the worker from the employer's service." Restraint of trade takes two forms. First, it may take the form of a restraint placed on the worker while he is still in the employment of the master, also known as internal restraint.[34]Secondly, the restraint may become operative after the departure of the worker from the employer's service, and is also known as external restraint.[35]

At common law, restraint of trade is *prima facie* unenforceable. This position finds fortification in the decision of the Supreme Court of Nigeria in *Andreas I. Koumoulis v. Leventis Motors Ltd.*[36] where Udo Udoma JSC. (as he them was) said "generally, all covenants in restraint of trade are *prima facie* unenforceable in common law. They are enforceable only if they are reasonable with reference to the interests of the parties concerned and of the public." The modern law on restraint covenant was laid in *Nordenfelt v. Maxim Nordenfelt Co.*[37] where it was categorically stated that all contracts in restraint of trade in the absence of special circumstances justifying them, are void as being contrary to public policy.[38] Thus, where an employee enters into an employment bond the employer should not convert it into a slavery or servitude agreement to render an abled body man's labour immobile to the extent of it being

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34 Emiola, *Nigerian Labour Law* (4th Edn.), above note 32 at p. 61. He posits that "even where the restraint is to operate while the worker is still in the service of the employer it is not lawful if it does not fulfill the basic elements of the general law of contract."

35 Oji, and Amucheazi, *Employment and Labour Law in Nigeria*, above note 32, at p. 87.

36 (1973) 1 All N.L.R. (Pt. 2) 144.

37 (1874) A. C. 535.

38 *Anglo-African Supply Co. Ltd. v. John Benvie* (1937) 13 N.L.R. 158.

offensive to the sensibility of public policy.[39] Public policy stands over and above private interest and it holds that no subject can lawfully do that which has a tendency to be injurious to the public, or against public good, which may be termed, as it sometimes has been, the policy of the law, or policy in relation to the administration of law.[40]

However, the modern guiding principle as far as the application of the doctrine of restraint of trade in Nigeria is concerned is as laid down in *Leotaritis v. Nigerian Textile Mills Ltd.*[41] Per Alexander J. The Learned Law Lord succinctly stated the exception to the doctrine that an employer/master is not to be protected against the mere competition of an employee notwithstanding this, where the employee is employed in a confidential capacity in the employer's employer, it is imperative to protect the business if the employer even if resort has to be made to restraint of trade to foreclose future competition. [42]

The exceptional circumstances which may justify restraint of trade contract would include the employer's desire to protect his trade secrets (a distinction must be drawn between the knowledge, often confidential, which an employee has gained whilst employed by a particular employer, which is not protectable, and knowledge of a particular sensitive nature known as trade secrets is protectable.) and business connection which if known by a rival employer, is

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39 Ndifon, C.O. *Issues in Conflict of Laws,* (Vol. 1) Calabar: Union Connection Digital Publishers, 2001 at pp. 257-58.

40 *Okonkwo v. Okagbue* [1994] 9 NWLR (Pt. 368) 301. See also *Anekwe v. Nweke* (2014) 9 NWLR (Pt. 1412) 393 at pages 421-422, 423, 425, 426-427, *Nzekwu v. Nzekwu* (1989) SCNJ page 167, (1989) 2 NWLR (Pt. 104) 373.

41 (1967) NCLR 144, 123.

42 *Plowman (G. W.) & Co. Ltd. v. Ash* (1964) 2 All E.R. 10.

capable of jeopardizing his interest and most recently, stable workforce.[43]

However, within a labour sphere such as information and technology which is subject to constant rapid changes and improvements with particular reference to softwares; does not make it a straightforward task to determine what amounts to a trade secret as was the dilemma of the English Court of Appeal in *Lansing Linde Ltd. v. Kerr.*[44] In the case, the court held that a protectable trade secret need not be of a technical nature; once the disclosure of information is capable of causing significant harm to an employer's business, the court will protect it.[45] Where the status and work description of an employee does not give him or her access to the trade secret (s) of the employer, a restraint covenant will be declared void.[46] Where an employee is in the know of information pertaining to the client base of the employer; for the purpose of continuity in business, such information is deemed protectable even if it is for a limited period of time to ensure that the possibility of "persuading away" the clients of the ex-employer if not extinguished is drastically minimized.[47]

This restriction would cover all clients or anyone who was the client of the employer during the subsistence of the employer/employee contract.[48]The test is that of objective reasonableness. The court takes into cognizance the status of the employee and the quality and quantity of information that he or she must have been exposed

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43 Bell, A.C., *Employment Law*, above note 33 at p. 178.
44 [1991] I.R.L.R. 80.
45 *Faccenda Chicken Ltd. v. Fowler* [1986] I.C.R. 297.
46 *Plowman (G.W.) & Co. Ltd. v. Ash* (1964) 2 All E.R. 10.
47 *SW Strange v. Mann* [1965] 1 All E.R. 1069.
48 *GW Plowman & Sons Ltd. v. Ash* [1964] 2 All E.R. 10.

to and the effect of divulging same to another competitor employer. Where the area of restraint is too wide and capable of rendering an able bodied person redundant or unable to easily find gainful employment, the restraint covenant would be nullified as was held in *John Holt v. & Co. (Liverpool) Ltd. v. Chalmers.*[49]

However, the doctrine of severance ensures that the courts do no hastily strike down restraint covenants in their entirety. Where the agreement contains more than one term, the court will circumspectly examine it as a whole with a view to saving the part that is not unreasonable or offensive to public policy.[50]Also, where two or more employers covenant not to hire their former employee of each other within a specified period of time immediately preceding their disengage under trade protection agreement, though legal, it could be rendered unenforceable if it imposes an undue restraint on the mobility of labour and foist an unjustified restraint on freedom of competition.[51] This was the position taken by the English Court of Appeal *Kores Manufacturing Co. v. Kolok Manufacturing Ltd.*[52]

Moreso, the courts are now having a much liberal attitude to non-employment agreements between employers seeking to protect certain aspects of a company's workforce in some situations. In *Alliance Paper Group Ltd. v. Prestwich*[53] a "no poaching" agreement between two employers was upheld and in the case of *Dawney, Day & Co. Ltd. v. De Braconier d'Alphen*[54] the Court of Appeal enforced a one year anti-solicitation clause. Thus, in these

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49 (1918) 3 N.L.R. 77.
50 *Scorer v. Seymour-Johns* (1966) 3 All E.R. 347.
51 *Eastham v. Newcastle United Football Club Ltd*. (1963) 3 All E.R. 139.
52 [1958] 2 All. E.R. 65.
53 [1996] I.R.L.R. 25.
54 [1997] I.R.L.R. 442.

cases, the court was guided by the scope of the clause, the geographical area of its applicability as well as time-scale.

Thus, employment bond aside the usual undertaking by the employer to work for the employee for a specified period, some also have an additional restraint that at the expiration of the bond, the employee for a specified period of time, will not accept employment from a competitor employer. Also, where the bond sum is such that the employee may not be able to pay in the event of breach, the employer as a matter of practice, usually requires a guarantor.

Thus, it is not impossible to have a restraint covenant type of employment bond. However, the distinction between the two with regard to their purpose is well established. The NICN have appreciated this distinction when it held that "I agree with the argument of learned counsel for the Claimant that contracts in restraint of trade are distinguishable from training bonds. Learned counsel stood on strong logical firmament when he posited that the objective of a contract in restraint of trade is to protect an employer's confidential information acquired by an ex-employee from being used against the employer. On the other hand, a training bond seeks to compel a current employee whose training has been sponsored by employer to work for an agreed duration so that the employer could derive the benefits of its investment on the employee."[55]

[55] [2015] 52 N.L.L.R. (Pt. 174) 214 at 281, Paras.C-E.

7. EMPLOYEES' RIGHT TO RESIGNATION AND EMPLOYMENT BOND

According to Chianu,[56] every employee has the right to resign at any time he wishes. The corollary of this right is that the resignation takes effect even where the employer does not expressly accept it.[57] His proposition is fortified by the case of *Benson v. Onitiri.*[58] In this case, the Appellant and the Respondent contested an election and the Appellant won. The Respondent brought an action challenging the victory of the Appellant on the ground that at the time of the election, the Appellant was an employee and a serving executive of the Lagos Executive Development Board contrary to the election regulation. However, there was no evidence that the Appellant's resignation that was sent in was accepted by the Board before the election. It was held that, a reply was not a *sine qua non* for the resignation to be effective. Ademola CJF held thus "there is a right to resign unless there is a reason to show that the holder of the office cannot… a power of resignation to those competent to receive it is by the common law incident to every corporate office."[59] Hence, acceptance of resignation is irrelevant once the procedure for exercising the right has been duly complied with by the employee as was stated in *West African Examinations Council v. Oshionebo*[60] and reiterated in *Obed Enikuomehin v. University of Lagos & 4 Ors.*[61] In the case of *Aprofin Engineering Construction Nig. Ltd. v. Jacquees Bigouret & Anor.*[62] the Court of Appeal reiterated that the right to hire and fire is inherent to an employer while the employee, reserves the right to accept an employment

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56 Chianu, E. *Employment Law* (Akure: Bemicov Publishers (Nigeria) Ltd., 2006) p. 311.
57 Id, at p. 312.
58 [1960] NSCC 52.
59 *Riordan v. War Office* [1959] 3 All ER 552.
60 [2015] 55 N.L.L.R. (Pt. 187) 165 at 191, Paras. A-B.
61 [2014] 43 N.L.L.R. (Pt. 137) 586 at 631, Paras. G-G.
62 [2012] FWLR (Pt. 622) 1740.

offer as well as resign from same, they can both do this lawfully and validly by abiding to the terms and conditions of the employment. Thus, an employer, lacks the vires to reject the resignation of an employee once same is tendered.[63] It becomes operational from the date it is received or the date indicated on it as its operational date even where same determines the employment afoul the terms and conditions of the employment. The fact of its wrongfulness does not negative its effectiveness save that it exposes the employee to damages for wrongful termination of contract of employment.

Thus, the question, however, is; where an employee has benefitted by all standards from an employment bond, can he or she resign from the employ of the employer while the bond period subsists? Put differently, is the employee's right of resignation sequestrated by an existing bond agreement? At this juncture, it is admitted that there is no judicial authority on this. However, law of contract principles would be adopted to answer the question. It is contended that where an employee has benefitted from a bond such as training fund at the expense of the employer, it would be highly unfair to allow the employee to renege on his or her obligation to the employer by exercising the right of resignation. This, if permitted, would amount to double jeopardy on the part of the employer and is capable of truncating employer-employee relationship. Though, it is the law that, in a pure master-servant employment relationship, a willing employee cannot be forced on an unwilling employer; an unwilling employee cannot be also forced on a willing employer.[64] This proposition underlines the main reason why damages is the main relief usually awarded for breach of contract/ wrongful

63 *Longe v. First Bank of Nigeria Plc*. [2006] 3 NWLR (Pt. 967) 288.
64 *Owolabi v. Ajana* (1969) NCLR 27.

termination of contract of employment.[65] Thus, where an employee validly executes a bond and subsequently derives benefits thereof, the legitimate expectation of the employer to exploit the benefits of his "investment" must be guarded and protected by the law.

8. CONSIDERATION IN EMPLOYMENT BOND AGREEMENT

Notwithstanding the fact that the meaning of consideration is uncontroversial; it is not superfluous howbeit; passively to examine few definitions in order to enhance precision in presentation before looking at it within the context of bond employment contract. According to Sagay,[66] unless an agreement is under seal, it cannot be enforced by a party that has not furnished some consideration in support of it. Hence, the dictum, "consideration must move from the promisee." There must be an exchange, either of promises or of a promise for an act. The basic feature of the doctrine is reciprocity.[67] The Court of Appeal in the case of *Stabilini & Co. Ltd. v. Obasi*[68] commenting on whether a promise made without consideration can be enforced held that "a promise merely given without consideration cannot be enforced or acted upon. It is the consideration given that converts a mere promise into a binding and enforceable contract made under hand."[69]

Defining consideration, Fatula[70] states that "consideration is something of value given by the promisee to the promisor in

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65 [2012] FWLR (Pt. 622) 1740.

66 Sagay, I.E., *Nigerian Law of Contract,* (2nd edn.) Ibadan: Spectrum Books Ltd., 2007 at p. 59.

67 *Royal Exchange Assurance Ltd. v. Aswani Textile Industries Ltd*. [1991] 2 NWLR (Pt. 176) 639.

68 [1997] 9 NWLR (Pt. 520) 293 at 305.

69 *Bioku v. Light Machine* [1986] 5 NWLR (Pt. 39) 42; *Udechukwu v. Ngene* [1992] 8 NWLR (Pt. 261) 565.

70 Fatula, O.A., *Law of Contract* (Ile-Ife: Afribic Publications, 2012) at p. 17.

exchange for something of value given by the promisor to a promise. It consists of a legal detriment and a bargain."[71] The House of Lords in the case of *Dunlop v. Selfridge*[72]held that "consideration is an act of forbearance of one party, or the promise thereof, is the price for which the promise of the other is brought, and the promise thus given for value is enforceable."[73] However, the most comprehensive and articulated meaning of consideration is that of Lush, J. in the case of *Currier v. Misa*[74] which is that consideration does not only consist of profit which one party derives, it involves waiver or limitation of legal right or freedom of action. It consists of some interest, right, profit, benefit given, suffered or undertaken by another for the benefit of another, it needs not be adequate but sufficient.[75] Thus, consideration can take the form of forbearance.[76] In the absence of fraud, misrepresentation or duress, the adequacy of consideration cannot be a subject of judicial inquiry as was held in the case of *Gaji v. Paye.*[77]

Furthermore, in an employment bond contract, the consideration furnished by the employer is usually the money or resources whether material, time or financial expended in the training of the employee. This assertion is *in tandem* with the decision of the National Industrial Court of Nigeria (NICN) *Overland Airways Ltd. v. Afolayan & Anor*[78] wherein the NICN in distinguishing between

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71 *Younis v. Chidiak* [1970] NCLR 26; *Kamal & Soufan Sons Ltd. v. Zairi* (1961) NRNLR 16.
72 [1915] A.C. 79.
73 *B. Stabilini & Co. Ltd. v. Obasi* [1997] 9 NWLR (Pt. 520) 293 at 305.
74 (1875) L.R. 10 Exch. 153 at P. 12.
75 *Odusoga v. Ricketts* [1997] 7 NWLR (Pt. 511) 417.
76 *Banque Genevoise De Commerce El De Credit v. Cla Marisola Spetsal Ltd.* (1962) 2 SCNLR 227.
77 [2003] 8 NWLR (Pt. 823) 583.
78 [2015] 52 N.L.L.R. (Pt. 174) 214 at 281, Paras. B-E.

contracts in restraint of trade and training bond held that "… a training bond seeks to compel a current employee whose training has been sponsored by the employer to work for an agreed duration so that the employer could derive the benefits of its investment on the employee."[79] Thus, the employee's consideration at the stage of consummating the agreement is his or her undertaking to abide by the terms and conditions of the bond after undergoing the necessary training sponsored by the employer. This undertaking crystallizes into tangible benefit to the advantage of the employer when the employee upon acquisition of the requisite knowledge, skill or expertise; abides by the subsisting bond.

However, particularly in the private sector, it is not uncommon to see employer bonding employees with consideration such as 'allowing you to undertake further study while working and also being paid salary.'[80] By this, the employer uses the time used by the employee for further study while still actively discharging his duties and functions as well as the remuneration paid as consideration for the bond. [81] While there is no legal authority on the legality of such a consideration; which is a fundamental element of a valid contract; it is vehemently contended that such consideration cannot be legally sustainable and it is also morally reprehensible. The basis for the contention is that particularly in the academia, the revered doctrine of academic freedom inures to the benefit of classroom employees whether private or public.

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79 *A. G. Federation v. Awojoodu* (1973) 3 UILR 4.

80 This type of consideration is typical in the banks and private universities where staff on further education are mandated to sign employment bonds under the guise that having been permitted to engage in further study (which in the final analysis is to the benefit of the university especially for the requisite National University Commission Staff Mix requirement) and being paid salary without more; are required to continue in the employ of the university for a year for each year used on the programme.

81 See Bowen University Staff Hand Book, 2017, P. 11.

The time available to a classroom worker is part of the fringe benefits of this category of employment which cannot and should not be used by an employer as consideration for bonding the employee. Thus, where an employee is on further study and discharges his duties accordingly, there is a duty on the employer to pay salary once due and a man should not be restricted or denied the opportunity of self-improvement.[82] This is because; the employee's salary is earned and has become a vested right. Thus, failure to pay, delay wages or wrongfully withhold wages which has become due, is an infraction of a fundamental term of the employment contract whether it was expressly so agreed or not by virtue of section 15 of the Labour Act.[83] This point which was stated by the Court of Appeal in *Lagos State University Teaching Hospital Management Board v. Prince M.B. Adewole*[84] was expatiated elaborately by the NICN in the *Overland case*[85] thus:

> The courts view the employer's obligations in respect of payment of wages as a key element of the employment contract. In reality it is difficult to exaggerate the crucial importance of payment in any contract of employment. In simple terms, the employee offers his skills and effort in exchange of his pay: that is the understanding at the heart of the contractual arrangement between him and his employer. The fact that an employer may have good reason for failing to make payment in accordance with the terms of the contract is irrelevant. With

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82 *Hygeia HMO v. Simbo Ukiri*. Unreported Suit NICN/LA/454/2013.
83 Section 15 Labour Act, 1974, Cap. L1, LFN, 2004.
84 [1998] 5 NWLR (Pt. 550) 406 at 422, Paras. D-E.
85 [2015] 52 N.L.L.R. (Pt. 174) 214 at 281, Paras. B-E.

> regard to pay, however, the obligation is very strong one. This means that any failure to pay that which is contractually owing, or any particular element of it, is likely viewed as a fundamental breach of contract entitling the employee to walk out and claim constructive dismissal… in general, however, pay, (including additional amounts such as bonus or commission) is likely to be such a basic element of the contract that any interference with it by the employer will be legally wrong. Non-payment of salary at the due date amounts to a breach of a fundamental term of the contract of employment. It is an unacceptable conduct which in the realm of employer/employee relationship effectively determines the contract of employment.[86]

The above decision underscores the point that payment of salary, is a fundamental obligation owed by the employer towards the employee. It is an accrued right of an employee once work has been performed and there is no justification, no matter the plausibility of the excuse, to delay or withhold its payment once same has become due. Failure or neglect to pay at the due date, goes to the root of the employment contract and renders same unilaterally determined. Unfortunate, failure to pay salary even for several months has become a "permitted" and common place yet, reprehensible practice both in the private and public sector of employment. We totally agree with the reasoning of the court that "non-payment of salary on the due date amounts to a breach of a fundamental term of the contract of employment. It is unacceptable conduct which unlawfully determines the employment contract." When an employer hires any employee, the offer of labour goes

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[86] [2015] 52 N.L.L.R. (Pt. 174) 214 at P. 289, Paras. B-G, Pp. 288-289, Paras. G-D.

beyond the expected benefit of the employee alone to those depending to benefits from same, social security and family wellbeing comes into the picture. The legitimate expectation of the employee and the dependants for ends meat from the employee's salary, can be justly frustrated under any guise once work has been performed and the obligation to pay accrued. Thus, it is trite that once the salary of an employee is wrongly withheld under the guise of being used as consideration in an employment bond, an actionable wrong has been committed and the employee is entitled to sue. The actionable wrong basically derives from the fact that the non-payment of the salary as at when due amounts to breach of contract by the employer who can be sued by the aggrieved employee.[87] Moreover, it will amount to double compensation for the employer if an employee is bonded while he or she may be on further studies or training yet discharging his or her duties as expected.

The reason is, during the period of study, his primary assignment with the employer (such as teaching, supervising project students, attending departmental and faculty board meetings, setting, invigilation and grading of examination scripts, publishing of results, etc.) is being carried on then at the end, he is made to spend extra years with the employer for the years spent on further studies which period, the employer's work suffered no loss. Thus, the employer benefits during the employee's study period and benefits after the period. Furthermore, such bonds where 'payment of salary and time spent on further study' are used as basis for the bond are usually captioned as non-pecuniary bond which is *res ipsa loquitor* of the fact that aside the two unscrupulous "consideration" the employer

87 *Lagos State University Teaching Hospital Management Board v. Prince M.B. Adewole* [1998] 5 NWLR (Pt. 550) 406 at 422, Paras. D-E.

did no more. The situation may even be partially equitable, if additional to allowing the employer time off to attend to his further studies or training, the employer is financially involved in its funding to justify expectation of returns on its "investment."[88]

It is worthy to note that where an employer expend money in training an employee and subsequently demanding the signing of a bond agreement, such is defective and ineffective. It is particularly where the term of the bond could be validly described as unreasonable for instance, where the period of bond is made indefinite. Where an employee refuse to sign same, there is no remedy that can be sought against him/her. Terminating the employment of the employee due to the refusal, would render the termination wrongful entitling the employee to damages. This was the position held by the Court in *Odaro v. Central Bank of Nigeria.*[89] Thus, the terms of the bond must be communicated at the period of the award availing the employee an opportunity to either accept or reject.

We had earlier on asked the question, does employment bond, amounts to unfair labour practice *per se?* A straightforward answer that easily comes to mind, based on the discussion above is no. However, that would making the matter too simplistic. Apparently, the utilitarian value of bond agreements in employment contract, is to safeguard the employer's investment on an employee as an investor, all things being equal, is naturally expected, to have returns on investment. This legitimate expectation, must be protected by a prudent employer which is sought to be achieved through bonding. However, where the scope and duration of the employment bond, is expressly obnoxious, unjust and

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88 The investment here is the extra time availed the employee by the employer plus the financial commitment towards the employee's undertaking.

89 (1974) 1 ALR Comm. 200.

unreasonable as to tacitly enslave and ensnare an employee with no real or justifiably protectable interest, same has become an unfair labour practice. Any bond agreement which, if placed on an objective examination, would not result to a fair or reasonable outcome, is unfair and bound to be struck down by the court.

The rationale of the practice has never been and would never be, the unjustifiable protection of the employer's interest at the detriment of the employee. Based on the foregoing, it can be safely concluded that, bond agreement, does not as a general rule, amounts to unfair labour practice however, if an examination of the circumstance and content of the agreement, negates fairness and equity, same would be rendered unfair and therefore, unenforceable. Also, the outcome of no two agreements maybe the same as an agreement, based on a certain situation and content which is fair, maybe unfair where the situation and content is different. This means that each case, would be examined and determined based on its peculiarities. It is therefore germane, for an employer who wishes to resort to bond agreement to protect its investment in the employee, to take all reasonable steps, towards ensuring that, the agreement is not patently unfair as to do so, is to risk the imminent declaration of same as unenforceable.

9. EQUALITY AND VOLUNTARINESS DOCTRINES AND EMPLOYMENT BOND

The doctrines of equality and voluntariness are fundamental in labour law. The former is to the effect that in an employment contract, the employer and the employee entered into it as equals. None of them is presumed to be in a less advantageous position. The latter presupposes that in creating the contract of employment;

the parties did so without compulsion or inducement. Oji and Amucheazi[90] underscore this fact by arguing that when employment relationship is regarded as a contract, it is presumed that the contracting parties are equal and had reached the agreement based on free and equal negotiation. However, this presumption, is rebuttable as certain factors, have placed the employer at an advantageous position over the employee. These factors includes the fact that the employer is the owner of the job and also possesses economic power; there are more employees scampering for the limited available jobs; the employer has the power to determine who to employ; and subject to some legal limitations, the employer reserves the right of determining who to fire.

These doctrines are anchored on the provisions of section 34(1) of the 1999 Constitution of the Federal Republic of Nigeria which prohibits force or compulsory labour. However, the existence of bond agreement in its practice particularly within the private sector in Nigeria shows that these doctrines are unrealistic in practice. It is not difficult for one to accept that if an employee was to choose between being employed without a bond and a bond; he or she will prefer the unbonded employment. However, certain factors militate against the employee in favour of the employer. It is uncontestable that there is a high rate of unemployment and underemployment in Nigeria.[91] Every year, an army of unemployed youths are churned out from the higher institutions to compete for non-existent jobs.

The effect of this is that the employer takes undue advantage of this precarious situation to subject prospective employees to precarious and near inhumane employment conditions (unreasonable bonding

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90 Oji, and Amucheazi, *Employment and Labour Law in Nigeria*, above note 32, at p. 13.

91 Asaju, Arome, and Anyio, "The Rising Rate of Unemployment in Nigeria: The Socio-economic and Political Implications" above note 1, at p. 12.

inclusive). Another contributory factor is the fact that the labour regulatory framework expressly places the employee at the mercy of the employer[92] and unfortunately, pronouncements of the courts have given further impetus to the recklessness of employers.[93] An example is the lack of punitive remedy for wrongful termination of employment save the amount of damages equivalent to the period of notice which ought to have been given to rightly terminate the employment which in most cases is 3 months.[94] Thus, the way and manner bond employment is being practiced in Nigeria shows that there is neither equality nor voluntariness in labour relations or make these principle highly rebuttable.

10. CONCLUSION AND RECOMMENDATIONS

Extrapolating from the above analysis, it is needless to argue that bond employment practice has become a notorious practice in Nigeria and other parts of the world as seen in *Northern Thunderbird Air Inc. v. Van Haren*.[95] This fact has been acknowledged by the National Industrial Court of Nigeria.[96] The essence of employment bond is to protect the legitimate expectation of an employer contingent on the investment in the employee through training. However, some employers use the

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92 See Eyongndi, D.T., "The Powers, Functions and the Role of the Minister of Labour and Productivity in the Settlement of Trade Disputes in Nigeria: An Analysis" 9 *Journal of Public and Constitutional Practice* (2016) p. 75 at pp. 86-8.

93 For instance an employer in a master-servant relationship can terminate the employment of the employee for good or bad reason or no reason at all as was held in *Nigerian Arab Bank Ltd. v. Shaibu* [1991] 4 NWLR (Pt. 186) 450.

94 *Mrs. Bridget Atere v. Steam Broadcasting Communication Limited* [2015] 59 NLLR (Pt. 206) 534 at 533, Paras. D-F.; *Anaja v. U.B.A Plc*. [2014] ACELR 78, *Victoria Emamoke Erihri v.Union Bank of Nigeria Plc*. [2014] 45 NLLR (Pt. 145) 597.

95 [2011] BCSC 837.

96 *Overland Airways Ltd. v. Afolayan & Anor*. Suit No. NICN/LA/19/2012 Judgment delivered on the 2nd May, 2014.

bond to tactically compel an employee to remain in their employment under questionable circumstances. It is however anachronistic that this notorious practice is inadequately checked under the labour legal regime as the law is almost silent on it. This inadequate state of the law is not peculiar to bond employment agreements but a general malaise as the laws are lacking in content and context in view of current legal realities in many respect one of such is the inadequacy of the Nigerian law on casualization of labour, flexicurity and probationary employment.[97] Thus, while force and compulsory labour is expressly prohibited in Nigeria, bond employment agreement are vacillating with the result that its enforceability or otherwise is to be determined on a case by case basis. Hence, where a bond agreement is patently unreasonable as well as unnecessary, it will be void but where from the surrounding circumstances; it was entered into in accordance with the guiding principle of general contract law and its existence is justifiable, the Nigerian courts will enforce it. The crux of the matter therefore for an employer intending to bond employees successfully, is to ensure that the bond does not constitute an infraction of the right to mobility of employment by being contrary to public policy. He must ensure that under the circumstance it is reasonably justifiable and adequate and valid consideration has been furnished.

Sequel to this, it is hereby recommended that the Labour Act of Nigeria which is a general labour legislation and the only statute that makes provision on general employment practice, and in the absence of specific law like the Indian Contract Act of 1872, it should be amended in consonance with the India Contract Act to specifically make provisions on bond employment which has come

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[97] Eyongndi, D.T., "The Nigerian Employee and the Quest for Confirmation: Examining the Quagmire of Probationary Status" 8(2) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* (2017) p. 61 at pp. 64-9.

to stay in Nigeria thereby fulfilling the end of the law as an instrument of social engineering in an ever dynamic society.

Moreover, there is need for awareness creation by organised labour particularly in the private sector on the way and manner employment bonds should be used as well as interrogation with employers and employers association with a view to protesting high handedness in bond employment practices. Unemployment and underemployment have been identified as catalysts for an unwholesome practice of bond employment; hence; the government should do all within its powers to create employment opportunities to aid Nigerians have access to gainful employment and or be in a position to bargain favourably and not at the whims and caprices of employment merchants with their take it or leave it attitude.

From the discussion in the preceding sections of this article, it has been seen that the NICN, has adopted a balancing stance when it comes to enforceability of employment bond agreement as depicted in its various decisions discussed above on the subject. It is therefore recommend that the court should aggressive keep expanding expounding the law on this issue against the posture of protecting the weak and vulnerable from the high handedness of unscrupulous employers would may seek to exploit the advantageous position just to gain unfair advantage over others. The Court should in deserving cases, award punitive damages to discourage enslavement through bonding