AN APPRAISAL OF THE TORTIOUS LIABILITY OF TRADE UNIONS IN NIGERIA

BY

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DECLARATION

I, declare that the work in this dissertation entitled: **"An Appraisal of the Tortious Liability of Trade Unions in Nigeria"** has been carried out by me in the Department of Public Law, Ahmadu Bello University, Zaria. The information derived from other literatures have been duly acknowledged in the text and a list of references provided. No part of this dissertation has been previously presented for another Degree or Diploma at this or any other institution.

Name of Student	**Signature**	**Date**

CERTIFICATION

This dissertation entitled: **"An Appraisal of the Tortious Liability of Trade Unions in Nigeria"** by OyelekeSuraj BUKOYE meets the regulations governing the award of the Degree of Master of Laws (LL.M) of the Ahmadu Bello University, and is approved for its contribution to knowledge and literary presentation.

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DEDICATION

I dedicate this work to my whole family. Most importantly to my lovely wife Mrs. AdetolaBukoye. Also to my lovely children OyetundeBukoye, AyodeleBukoye and OkikiolaBukoye. I do this in sincere appreciation to my parents High Chief (Dr.) YunusOyewaleBukoye (Essa of Offa) and Mrs. Sariyu Vivian Bukoye. Finally to my caring brothers, Mr. Akeem Bukoye, Engr. (Dr.) Kareem Bukoye and Associate Professor TeslimBukoye and their wives.

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ABSTRACT

This Dissertation aims at appraising the Tortious Liability of Trade Unions in Nigeria in relation to the existing laws such as Trade Union Act, 2005 and Trade Dispute Act, 2005. The research methodology here is Doctrinal Methodology, which involves the use of relevant books, articles, journal, publication, conference papers, and judicial authorities. The statement of the problem is whether or not the law has adequately afforded trade union immunity against civil persecutions and what are the nature of tortious act that may lead to tortious liability envisage by this section of the Trade Union Act. For example, the protection given to the unions under sections 43 and 44 (Part v) of the Trade Union Act, 2005 is not an absolute one. Any act done outside the contemplation of the said section attract civil liability on the unionist. The justification of this research is that trade union rules are not being implemented in Nigeria and consequently, the practice is different from the law. In view of this, the objective of the dissertation is to examine the adequacy or otherwise of existing rules of trade unions in Nigeria and to identify reasons accounting for such irregular practices. However, this research found that Trade Union Act, 2005 is not beneficial to the people because Section 33(1) of the Trade Union Act, 2005 states that no person shall be an official of more than one federation of trade unions at the same time. This makes an official restricted to only one federation of trade union. In this regard, therefore, the research concluded by recommending that person should not be allowed to be an official of more than one federation of trade unions.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Study

The background of organized Trade Union Movement in Nigeria dates back to 1912 when the workers in the Civil Service under the then Colonial Administration organized themselves into workers representatives. This then became known as the Nigeria Civil Service Union. This became a pivot with which workers in other sectors began the agitation for the formation of Trade Unions before and after independence in 1960.By 1975 during the Military regime of General Murtala Muhammad, Trade Unions in the country have risen to over 1000 which include Mushroom Unions.

In the year 1976, the Government established a Commission of inquiry into the activities of the various Unions and appointed an administrator to administer the unions and come up with a structure for the proper administration of the Unions. This became necessary as the Unions were polarized into ideological divide which was creating problems in the country. Towards the end of 1977, these Unions were restructured into 42 along industrial line. The government also insisted on the formation of a Labour Centre as there were various multiple centres. In February 1978, the Nigeria Labour Congress was formed and inaugurated. The then 42 Industrial Unions became affiliates of the Nigeria Labour Congress with a legal backing of Trade Union (Amendment) Decree 22 of 1978.

Also in the year 1989, the Trade Unions were again restructured to become 29 affiliate unions to the Nigeria Labour Congress. However, the Obasanjo administration in 2004 worked on a Labour Act to again pave way for multiple centres.

1.2 Statement of the Problem

It is known that an individual worker has no bargaining power due to the emergence of huge corporations, which has huge number of workers and can act in combination in order to exact their influence on management concerning the affairs that affect them all. In so doing, they may exceed their limited power leading in their actions amounting to liabilities.

In order for trade unions to achieve their aim, the Trade Union Act[1] has provided them with "immunity" against tortious act they commit or on behalf of the trade union in compellation of or in furtherance of a trade dispute. In S. 24 (1) and (2), 43 and 44 (1) and (2) of Trade Unions Act[2], trade unions or their agent are liable in tort for any unlawful act done outside these provision.

Tortious liability of Trade Union in Nigeria is about offences committed in the trade unions in their respective employments while acting in furtherance of their interests. Privatization resulted in the expansion of many previously owned government' corporations by private corporations and the liberalization of many sectors of the Nigeria economy led to the exercise of the constitutional rights of employees to freely join trade unions for the protection of their rights. The study recommended that the Trade Union Amendment Act 2005 need to be amended with a view to discourage government on trade union activities.

The politicization of the existing Trade Unions group has equally undermined the institutionalization of "best Trade Union practices" in Nigeria. Employers' resist suit to participation of Trade Union's activities could be attributable to the lack of proper understanding and or lack of appreciation of the law regulating Trade Unions Law in Nigeria, and their benefits to both private and public sectors of production.

[1] Trade Unions Act, Cap Tl4, Laws of Federation of Nigeria L.F.N., 2004
[2] Ibid

Accordingly, the study raises the following research questions:

(i) Whether or not the law has adequately afforded trade union immunity against Civil persecutions.

(ii) What are the nature of tortious acts that may lead to tortuous liability envisage by this section of the Trade Union Act.

1.3 Aim and Objectives of the Research

The aim of the study is to address the issue of tortious liability of trade union in Nigeria with a view to achieve the following objectives:

i. To appraise the nature of the provision of the law of trade union liability

ii. To examine the application of the statute law in protecting trade union towards enhancing their right to freedom of association, to act in furtherance of their interest, which would lead to an attractive workforce for maximum productivity for a strong economy.

iii. The research therefore examine all available relevant statutes and as well as judicial decisions, when put together made trade unions.

1.4 Scope of the Research

The scope of the research is on the study of trade union tortious liability in Nigeria. The study will also be made of other laws on trade union liability in England and United States of America, in order to learn some lessons from their experiences.

1.5 Research Methodology

This research adopts a doctrinal approach. The research therefore reviewed available materials and literature such as textbooks, Journals, Newspaper, Annual reports from relevant agencies within and outside. Reference was also made to unpublished works.

This study made use of Nigerian and foreign judicial decisions if supervisor courts such as Supreme Courts, Court of Appeal, High Courts, as well as pronouncements of specialized courts such of the relational Industrial court of Nigeria. The review provided useful insight in the material change in the legal status of trade union, which in turn formed the basis for recommendations.

1.6 Justification of the Research

The research is informed by the unfortunate situation in the industrial sector arising from enforcement and unending disputes, manifested by strike and litigations, which are detrimental to the economy of the country. Accordingly the employers of labour, employees, the policy makers and the society at large may find the dissertation useful. Also, this study is important because it will contribute to knowledge and development of labour law in Nigeria

1.7 Literature Review

UviegbaraE.E states that there is often a misconception of the real nature of a trade union. That there are persons who regard for example students unions association of marked women, or even an militant association as trade union. An understanding of the statutedefinition of trade union will help to[3]dispel such grave misconceptions. However, a proper understanding of the definition of Trade Union will not bring out any misconception.

To Sidney and Beatrice Webb[4], a trade union is an association of employees for the promotion and defence of terms and conditions of employment of their standard of living. This in relevant to the research due to the fact that employees terms and conditions with regards to their standard of living must be protected.

[3]Uviegbara E.E, (2001)*Labour law in Nigeria*, Malt House Press Ltd, Lagos p. 14

[4]Adebisi M.A Trade Union Leadership Structure and the Challenges of Succession Politics, Paper Presented at the International Industrial Relations African Regional Congress Held at the University of Lagos from 24th – 28th January 2011.

Agomo, C.K[5] states that there exist two basic criteria for determining whether or not a combination of employees or workers is to be described as a trade union. One is that the combination must be a combination of employers or that of worker. Another one is that the regulation of the terms and condition of employment must be fundamental objective of the combination. However, there are other purposes or power aside from these two. This work is relevant to the research because it clearly states that a trade union must be combination of employees or workers.

Wight Bakke .E. wrote that, trade union is realistic medium through which the workers common interests may be expressed and their common needs met. It gathers together the threads of individual lives made of the stuff but targeted, strengthens then and unveiled them into a patterned fabric which is not only important in itself, but gives new importance to each thread[6].. This work is relevant to the research because it states that common interest of workers are of importance to trade union in Nigeria.

Eniola, A. in his book "Nigerian labourlaw" states that the bedrock of modern employment is the right of the workers and his employer to come to agreement on the terms and conditions of his employment with the emergence of trade unions this relationship is regulated more and more by collective bargaining between the employers and the unions on behalf of their members[7]. The researcher wish to state that terms and conditions of employment must be stated in clear teams. It must also be known to the employee's in good term upon being employed.

Although the above mentioned learned scholars have done a great deal by given useful insight into the subject, the foregoing and other emerging development were not taken care of.

[5]Agomo, C.K *Nigerian employment and Labour Relation Law and Practice,* Concept Publication Limited Lagos, p. 273

[6] Wight B.E "why workers join union ", In Shister, J. (ed), *Readings in Economic and Industrial Relations*, Lippincott, 2nd ed cited in Audi, J.A.M Master Students First Semester Lectures Handout, op. cit. p.10

[7]Eniola A. (2008) *Nigeria Labour Law,*Eniola Published Limited, Lagos. p. 401.

This dissertation reviewed existing work on the subject, examined Act establishing the trade union with particular reference to Nigeria. This current research will address gaps if any left by other learned scholars into their contributed to this subject.

The Report for the WTO General Council review of the Trade policies of Nigeria entitle Internationally Recognised Core Labour Standards in Nigeria, concluded that forced labour is prohibited by law but does occur in practice. There are serious problems with trafficking of women and children within Nigeria and from neighbouring Countries. They are forced to work as domestics, in prostitution, or other forms of forced labour. And also, that various legal provisions are not in line with the ILO conventions on forced labour.[8] This report have contributed to the labour law in Nigeria however, the report did not dealt with other aspect of labour law, such as liability of trade union and what should be done to protect the force labour in Nigeria.

Akanle K.B[9] in her article entitleAn Appraisal of the Rules Book and Its Implication on the Legal Status of Trade Unions. Observed that the Rules book is the constitution of a trade union, which regulates its activities. It is regarded as the grand-norm of the union, which makes the activities of the union within this rule legal. However, on the contrary if any act of the union is performed outside the rule books it shall be regarded as ultra-vires, null and void and of no effect whatsoever.

She also observed that trade unions are a necessary and responsible partner in the nation's development process. In order to accelerate development, trade unions must not only

[8]International Confederation Of Free Trade Unions(ICFTU), The Report for the WTO General Council review of the Trade policies of Nigeria entitle: Internationally Recognised Core Labour Standards in Nigeria (Geneva, 11 and 13 may 2005), http://www.ituc-csi.org/IMG/pdf/final_Nigeria_TPR_CLS_2_.pdfaccessed on 2/05/2016

[9]Akanle K.B *An Appraisal of the Rules Book and Its Implication on the Legal Status of Trade Unions*. Umaru Musa Yar'adua University Law Journal, Katsina, UMYULJ Vols.1, No.1, September/October, 2014, http://umyu.edu.ng/umyu_faculty_of_law_journal.pdfaccessed on 2/05/2016

play a productionist role but must also participate in formulating developmental policies as long as trade unions play a production-oriented and responsible role, the Government should co-operate with trade unions to attain some of the labour basic objectives such as responsibly representing workers' interest. And she recommended that Governments should embrace, recognize and respect trade unions and their activities to foster peaceful co-existence. This article is of relevant to this research because it constitute the major part of the research work under the rule book of the trade union.

Yusuf Noah[10] in his article entitle "Trade Unionism and The Nigerian Worker in The Context of Contrasting Environment"considered trade union movement in Nigeria and its impact on workers emancipation with a focus on varying political setting in the country. It reflects that Nigerian trade union movement has a long history beginning from the colonial era to the present day. The postcolonial administration was seen to inherit the anti-labour policy of the colonial era. The military regime was considered to demonstrate harsher attitude towards trade union activities than the civilian administrations. However, both political environments were seen to pose serious challenges to trade union movement in the country.

Also observed that the trade unions represent one of the few era through what workers in developing country like Nigeria can articulate for the improvement of their work lives. It then becomes imperative for the organization to position itself well for it to meet these challenges. This may require reorganization of its structure paving way for increasing democratization aggressive policy of and mobilization for active participation of more members in union

[10]Yusuf N *"Trade Unionism and The Nigerian Worker in The Context of Contrasting Environment"* In Austin N. Nosike (ed) The State of Economic and Business Environment in the Global Age Printed in Granada-Spain (2008), Afro-Euro Centre for Development Studies Legal Deposit no.GR-2669-2008 ISBN: 978-84-612-8478-8, http://www.unilorin.edu.ng/publications/yusufn/Trade%20Unionism%20and%20the%20Nigerian%20Worker%20in%20The%20Context%20of%20Contrasting%20Environment%20-%20Yusuf%20Noah.pdfaccessed on 2/05/2016

activities. This material is of important to this research as it enrich the emancipation of trade union in Nigeria.

A.M Madaki and Paul Abraham[11] in their article entitle "Appraisal of the Trajectory and Transformation of the Enforceability of Collective Agreements in Labour Relations in Nigeria", their article examines the enforceability of collective agreement in Nigeria as a panacea for industrial harmony. It reveals that part of the problems responsible for the non-enforceability of collective agreement in Nigeria is created by the labour legislations in the country. For instance, section 3 (1) of the Trade Dispute Act makes collective agreement enforceable in Nigeria but subject to the confirmation by the Minister of Labour. But the challenge is that there is no guarantee that the Minister would be willing to confirm agreements which may not serve the interest of the government. Secondly, the fine of N100 provided under subsection 2 as a sanction for non-compliance with term of collective agreement as confirmed by the Minister is too small to command compliance. In fact, more confusing is the fact it is not clear whether the N100 fine is to apply for each day the default continues or it should apply once for the entire period of the default lasted. Furthermore, a careful look at section 3 (1) of the Trade Disputes Act seems to imply that not all collective agreements are intended to be enforceable, but only agreements made for the settlement of trade disputes are regarded as binding on the parties if confirmed by the Minister. Consequently, collective agreements on terms and conditions of employment are outside the purview of the Act.

[11]Madaki, A.M PhD, BL, Department of Private Law, Faculty of Law, A.B.U, Zaria and Abraham, P.LL.B, LL.M, BL, Part-time Lecturer, NuhuBamalli Polytechnic, Zaria *"Appraisal of the Trajectory and Transformation of the Enforceability of Collective Agreements in Labour Relations in Nigeria."* Umaru Musa Yar'adua University Law Journal, Katsina, UMYULJ Vols.1, No.1, September/October, 2014http://umyu.edu.ng/umyu_faculty_of_law_journal.pdfaccessed on 2/05/2016

Section 245 of the 1999 Constitution and Section 7 of the National Industrial Court Act 2006, seem to add to the existing confusion regarding the contractual effect of collective agreements in Nigeria. For instance, these sections only conferred on the NIC the jurisdiction to interpret collective agreement. Consequently, the argument now seems to be that the interpretative jurisdiction of the court carries with it the enforcement jurisdiction since there would not have been any need for the jurisdiction to interpret collective agreement if it is not to enforce it. It is sometimes also argued that section 7 of the NIC Act has given the NIC exclusive jurisdiction on labour matters, therefore, if the NIC only has power to interpret collective agreement, then which court would enforced. However, it would have been better if the Act has expressly make collective agreement enforceable as provided under the Schedule 1 to the British Employment Relation Act, which provides that if an employer is required by the law to recognise a particular trade union, then any collective agreement made with that union is legally enforceable even if not specifically stated to be so.

They finally observed that implementation of collective agreements in Nigeria is made difficult because of class interest. Employers who are the same as the government feel they own everything including the law and court. Consequently, even where section 4 (1) Trade Dispute Act 2005 required the parties to always resort to agreed means of resolving their disputes, in many instances, employers have not shown the willing to respond promptly to labour's request for negotiation. If the request is eventually honoured, there is no guarantee that the outcome will be successful. If however, the bargaining is successful there is no guarantee that the agreement would be implemented especially where doing so would not serve the interest of the government.

In addition,they recommended that the government should set up an independent agency to be charged with the responsibility of keeping in custody copies of collective agreements as

deposited by the parties. This would no doubt prevent any likelihood selective confirmation of collective agreements in favour of the government. Additionally, the N100 fine as sanction for non-compliance with any collective agreement should be reviewed. This should determine based on the financial strength of the organisation. Furthermore, section 245 of the constitution and section 7 of the National Industrial Court Act should be amended to specifically make collective agreement enforceable as provided under the Schedule 1 to the British Employment Relation Act. This work is relevant to the research because it states that common interest of workers are of importance to trade union in Nigeria.

Paul, et al.[12] in their artcle entitle "Labour Unions and the Transformation of the Nigerian Civil Service: A Discourse" observed that there is no gain-saying the fact that the Nigeria civil service has undergone several reforms dating from pre-independence to post independence period. Some of these reforms were the bye-product of several struggles by labour union movements targeted at bringing a decent work agenda for efficient service delivery. Examples are the Gorsuch Commission, 1954, Mbanefo Commission 1959 (pre-independence commissions) and the Morgan Commission 1963, Eliot Grading Panel 1966, Adebo Commission of 1970, Udoji Commission 1972, Williams and Williams Committee in 1975, 1988 civil service reform, Ayida Commission 1997 just to mention few. Being the organ of the government that is responsible to the people, it can be easily identified as a performer or failure. Labour union movements at various times have tried their best but that seems not to be enough.

Labour unions should first of all transform itself into agents of transformation. It is a popular slogan that one cannot give what he/she has not. The anticipated changes to be done in

[12]Paul, et al.in their article entitle "Labour Unions and the Transformation of the Nigerian Civil Service: A Discourse" International Journal Of Public Administration and Management Research (IJPAMR), Volume 2, Number 1, October, 2013.http://rcmss.com/2013/1ijpamr/Labour%20Unions%20and%20the%20Transformation%20of%20the%20Nigerian%20Civil%20Service_%20A%20Discourse.pdfaccessed on 2/05/2016

the civil service will be a mirage, if the labour unions are not changed. This can be done through constant membership skill development and value reorientation. The article have given relevant insight to the development of trade union in Nigeria and also recommended the way forward which is very relevant to this research.

Nchuchuwe, F.and Ajulor, O. N.[13] in their article entitle "The Roles of Trade Unions and Civil Society in Good Governance: The Case of Nigeria From 1999 Till Date"The paper examines Trade Unions and Civil Societies and the role they have been playing in promoting good governance in Nigeria since 1999 till date. They observed that over the years, ineffective governance, corruption, poor service delivery among others have been the bane of the Nigeria people. Their paper argues that a virile trade union and civil society will promote good governance. It went down memory lane to the colonial era and recalls the roles of Trade unions and Civil Society about good governance and Nigeria's independence and wondered why the trade unions and civil society of today have not been living up to the expectations of the people. The paper is of the view that such societal ills as corruption, mismanagement, of public funds, electricity failures, and extra judicial killings among others can be abated with a formidable Trade unions and civil society. It recalls that Trade union and civil society can also help to reduce poverty and straighten governance if well organized. Therefore, this research to fill in the area where the trade union Act, 2005 failed to provide adequate protection for members of the Trade Union in Nigeria.

1.8 Organizational Layout

The entire research work consists of five chapters as follows:

[13]Nchuchuwe, F.and Ajulor, O. N.[13] in their article entitle "The Roles of Trade Unions and Civil Society in Good Governance: The Case of Nigeria From 1999 Till Date" http://www.ilo.org/public/english/iira/documents/congresses/regional/lagos2011/5thsession/session5a/role.pdfaccessed on 2/05/2016

Chapter one serves as the key to the whole work. It highlights the meaning and background of the study. It also lays down the statement of the problem, aims and objectives of the research, scope of the research, research methodology, justification of the research, literature review and organizational layout.

Chapter two covers the formation, registration and merges of trade unions. It also discusses cancellation of registration of trade unions, legal status of trade unions, trade union merger, power of legal status of unregistered trade union, freedom to form trade unions, obligations of registration of trade union, powers of the registrar of trade unions, international affiliation and federation of trade union.

Chapter three deals with the examination of trade union rules in Nigeria. It discussed meaning, nature of the trade union, trade union rules in Nigeria, and enforcement of the trade union rules.

Chapter four deals with trade unions and tortious liability. It highlights on immunity of trade unions from actions in tort liability of trade unions for torts, civil liability, the Nigeria labour congress as the central labour organization, legal issued in the trade union (Amendment Act 2005), Jurisdiction and functions of the NICN, dispute resolution mechanism of the NICN.

Chapter five, contains summary, finding, and recommendation.

CHAPTER TWO

REGISTRATION, FORMATION AND MERGER OF TRADE UNION

2.1 Introduction

It is important to know that for modern industrial relation to be achieved, the right of workers to come together and form a trade is very necessary. Both the workers union and the employers may come to an agreement in the term and conditions of employment. This relationship is now being regulated more and more with the emergence of trade unions, once the initial contract has been agreed by collective bargains.[1] Collective bargaining legal framework in Nigeria is granted under section 40 of the 1999 constitution which guarantees that "every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests, provided that the provision of this section shall not derogate from the powers conferred by this constitution on the Independent National Electoral Commission with respect to political parties to which that commission does not accord recognition.[2] The aim is to showhow tortious liability of trade union in Nigeria are carried out.

2.2 Freedom of Association of Trade Unions

Freedom of trade union has two sides. First; it involves absence of compulsion. There is no statutory provision which compels anyone to join or be a member of a trade union. There is, however, recognition at common law, of the right of unions to establish and maintain a closed shop. As Sargent J. said in *Reynolds v Shipping Federation Ltd*[3] 'for many years past no one has questioned the right of a trade union to insist, if they are strong enough to do so, under penalty of

[1] Uviegbara E.E, (2001)*Labour law in Nigeria*, Malt House Press Ltd, Lagos, pp. 314-316
[2] S. 40 1999 Constitution of Nigeria (as amended)
[3] (1924) 1 Ch.28

a strike that an employer or a group of employers shall employ none but members of the trade union.'[4]

Secondly, trade union freedom demands a positive guarantee of a right to form or join a trade union of one's choice. The International Labour Organization Convention No. 87[5] envisages such a guarantee. Part 1 of the Convention, on freedom of association, requires the following protections - employees and employers must have the right to establish and join organizations of their own choosing without previous authorization; they must have the right to draw up their constitutions and rules, elect their representatives in full election, organize their administration and activities and to formulate their programmes and public authorities must refrain from any interference which would restrict these rights or impede their lawful exercise; their organizations must not be made liable to be dissolved or suspended by administrative authority and their organizations must have the right to establish and join federations and confederations and to affiliate with international organizations of employees and employers.[6] Since independence in 1960 the Constitution has always guaranteed freedom of association. Section 40 of the Constitution of the Federal Republic of Nigeria, 1999, provides as follows "*Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party trade union or any other association for the protection of his interests"*[7]

[4] Ibid, 39-40

[5] Convention Concerning Freedom of Association and Protection of the Right loOrganize. 1948. It came into forces on July 3950 and Nigeria has ratified it

[6] In *Collymore v. Attorney General [1970] AC 538* the Privy Council held that (he abridgment of the rights of free collective bargaining and of the freedom to strike are not abridgements of right of freedom of association.

[7] The proviso to the section does not affect trade unions.

This means there is no doubt that this is a guarantee of a fundamental right to form or belong to a trade union of one's choice. In *Basorun v Industrial Arbitration Tribunal*[8] the plaintiff, who was a deputy manager in the Central Bank of Nigeria, was also the president of the Central Bank of Nigeria Employees' Union, a duly registered trade union of junior employees of the bank. A trade dispute arose between the Bank and the union and it was referred for arbitration. In its award the arbitration tribunal recommended, inter alia, that 'no member of the staff above the rank of supervisor may join a trade union of any of the junior staff or participate either directly or indirectly in the activities of such union. The senior staff in their own right may form an association or a trade union of their own to protect their rights.' This award was confirmed by an order of the Commissioner for Labour under his statutory powers and it, therefore, became legally binding. The plaintiff, whose rank was above that of a supervisor, brought an' action for a declaration that his constitutional right to remain in his chosen union was infringed by the order.[9]Odesanya J held that the terms of the confirmed award were wide enough to invite the intervention of the court.

Any person who alleges that his right to form, join or belong to a trade union of his choice has been, is being or likely to be infringed may apply to a High Court in the State in which the infringement is threatened or has occurred for redress.[10] However, as will be seen, the right is not an absolute one. However there are other statutory protections which would be mentioned before considering the derogatory provisions. Any one who is otherwise eligible for membership of a particular trade union cannot be refused admission to membership of that union -by reason only that he is of a particular community, tribe, place of origin, religion or political opinion. Any inconsistent provision in the rules of a trade union is, to the existent of the

[8]Unreported Suit No. LQ/105/71, High Court of Lagos State
[9] S.40 1999 Constitution
[10] S.46,Ibid

inconsistency, void and if any person is refused admission in contravention of the provision the union itself and every official of the union is guilty of an offence and liable, of summary conviction, to a fine of N50.[11]

Under the Labour Act the membership of trade unions of employees who arc workers wider the Act and their union activities arc protected. Section 9(6) of the Act provides that - No contract shall

(a) make it a condition of employment that a worker shall or shall not join a trade union or shall or shall not relinquish membership of a trade union, or

(b) cause the dismissal of, or otherwise prejudice, a worker-

(i) by reason of trade union membership, or

(ii) because of trade union activities outside working hours, or with the consent of the employer, within working hours, or

(iii) by reason of the fact that he has lost or been deprived of membership of a trade union or has refused or been unable to become, or for any other' reason is not, a member of a trade union.

Apparently, this subsection is meant to give statutory force to Article of ILO Convention 9B - the Convention concerning the Application the Principles of the Right to Organize and to Bargain Collectively, 1949, which Nigeria has ratified. It would seem, however, that the subsection has not captured the essence of that article, which is to ensure adequate protection against anti union discrimination with respect to employment. Its coverage does not extend to employees who are not workers within that term under the labour Act. As for the extent of the protection offered such workers it would seems limited by the fact that It is tied to the contract of employment Many rights of an; employer or benefits to a worker do not necessarily arise from a

[11] SS. 12 and 49 Trade Union Act, 2005

contract There is, for example, no contractual right to promotion. As Brett JSC once said, in a contract of service, there may be many benefits, of which promotion is the most obvious one which the employer is not obliged to grant in the first place.[12] Also, the right to terminate a worker's employment by notice derives, not from contract, but from section IS of the Act. And, neither the section nor the common law, demands that any reason be given for a termination by notice and, in any event, the motive for the giving of requisite notice is irrelevant to the lawfulness or otherwise of a termination by notice.

A further protection for a class of employees in respect of union membership' is given under the Fair Wages clause. Any contractor or sub-contractor who enters into a contract with a government department which contract will receive assistance from the government by way of a grant, loan, subsidy, license, guarantee or any other form of assistance must recognize the freedom of his employees to be members of registered trade unions. Breach of this obligation may lead to the offender being struck off the list of approved government contractors.

As has been said, the constitutional right to form or belong to a union of one s choice is not an absolute one. The Constitution provides for derogation, Section 45[13] provides that nothing in section 40 'shall invalidate any law that is reasonably justifiable in a democratic society - (a) in the interest of defence, public safety, public order, public morality or public health; or (b) for the purpose of protecting the rights and freedom of other persons, it must be noted that the derogation thus permitted is by law[14] only and that such law must meet the criterion stipulated, that is, being reasonably justifiable in a democratic society for any one of the stipulated interests or purpose. Thus, clearly, an attempt by an employer to prevent or prohibit an employee from joining a trade union not based on any law will be an infringement of the employee's right. This

[12] Morakinyo v Ibadan City Council (1964) 1 All NLR 219, 222.
[13] S.41 Constitution 1990.
[14] For the meaning of law see below.

will include requiring an employee to sign a contract not to be a member of a trade union or, where by his contract of employment, he is made to forgo his right to belong to a trade union.

A number of statutory provisions which derogate from the constitutional guarantee of freedom of association. Section 11 of the Trade Unions Act provides that it is not lawful for persons employed in certain establishments to combine, organize themselves or be members of a trade union for purposes of employment but that they may set up joint consultative committees in their establishments. These establishments are the Nigerian Army, Navy or Air Force; the Nigeria Police Force; the Custom and Excise Department, the Immigration Department and the Prison Services; the Customs Preventive Service; the Nigerian Security, Printing and Minting Company Ltd.; the Central Bank of Nigeria; the Nigerian External Telecommunications Ltd.; every Federal or State government establishment the employees of which are authorised to bear arms; and such other establishments as the Minister may from time to time by order specify. The Federal Fire Service has been so specified.[15] In 1978 a number of amendments were made to the Trade Unions Act. One such amendment provided that no executive br senior staff could be a member of or hold office in a trade union whose members were employees of a rank junior to his own but that such staff could form and be members of or hold office in a trade union of employees of equal or higher rank than his own.[16] In 1979 this provision was, in turn, amended and section 3 subsections (3) and (41 on membership of trade unions of senior staff now reads as follows-

(3) No staff recognized as a projection of management within the management structure of any organization shall be a member of or hold office in a trade union (whether or not the members of that trade union are workers of a rank junior, equal or higher than his own) if such

[15] Trade Unions (Prohibition) (Federal Fire Service) Order 1976.
[16] See s. I (1) (a) Trade Unions (Amendment) Decree No.22 of 1978.

membership of or the holding of such office in the trade union will lead to a conflict of his loyalties to either the union or to the management. (4) For the purposes of subsection (3) of this section, a person may be recognized as a projection of management within a management structure if his status, authority, powers, duties and accountability which are reflected in his conditions of service are such as normally inhere in a person exercising executive authority (whether or not delegated) within the organization concerned. The effect of these provisions would seem to be that a management staff is totally prohibited from being a member of any trade union only where such membership will lead to a conflict of his loyalty either to the union or his employer. It is clear that there is no blanket prohibition of membership of trade unions of all management staff.

Persons under the age of sixteen years are prohibited from being a member of e union but a person sixteen years old or above but below twenty one years may be a member of a trade union unless the rules of the union provide otherwise. An infant member of a union cannot, however, be an official of a trade union but he may otherwise, subject to the rules of the union, enjoy all the rights of a member and may effectually sign any agreement or other document and give any receipt which may be required to be signed or given by the rules of the union for the purposes of the Act or Regulations made under the Act.[17]

In some cases it is only the capacity of a person to hold office in a union and not membership of the union that is restricted. A person who has been convicted of any of certain offences is disqualified from holding office as an official of a trade union from the date of his conviction up to the end of five years after the date on which he is discharged from prison but where he is not sentenced to a term of imprisonment then up to the end of five years from the

[17] S.19 Trade Union Act, 2005.

date of his conviction.[18] The offences which may so disqualify a person from holding office are the offences created under sections 47 and 48 and the offences under the criminal or penal code which may lead to the disqualification of membership of either the National Assembly or a House of Assembly.[19] Under the Constitution a person is disqualified for election to either National or a House of Assembly if he is under a sentence of death imposed by any court of law or a sentence of imprisonment for an offence involving dishonesty, by whatever name called, exceeding six months imposed on him by any court or where, within a period of less than ten years before an election to any Assembly he has been convicted and sentenced for an offence involving dishonesty or he has been found guilty of a contravention of the code of conduct.[20] Where a person is convicted of any of these offences and an appeal lies against the conviction the person must not be treated as having been convicted unless and until the time for bringing an appeal has expired without an appeal being brought or such an appeal has been brought and abandoned or has been finally determined by the upholding of the conviction.[21] Where any person holding office as an official of a trade union becomes disqualified he must vacate that office forthwith and if he purports to act as an official of a trade union at any time while he is so disqualified he is guilty of an offence and liable, on summary conviction, to a fine of N100.[22]

No person must hold office in any capacity in more than one trade union at the same time nor must a person who is a full time official of a central labour organization hold office at the

[18] S. 13(1) and (4) Trade Union Act, 2005; where a free pardon is granted the conviction no longer disqualified; S.13(1) proviso.
[19] S.13(3), Ibid.
[20] Ss. 66(1)(c) and (d) and 107(1)© and (d) 1999 Constitution.
[21] S.13(5) Trade Union Act, 2005
[22] S.13(6), Ibid

same time in any trade union.[23] Any person who contravenes the provision is guilty of an offence and liable, on summary conviction, to a fine of ₦50.[24]

The question has also arisen whether the requirement of compulsory registration of trade unions offends against the constitutional guarantee of freedom of association. Before 1978 it was clear that the Register of Trade Unions had no power to refuse to register any union which applied for registration having satisfied the statutory requirements for registration.

2.3 Registration of Trade Unions

A trade union is prohibited from performing any act in furtherance of its purposes unless it has been registered with the Registrar of Trade Unions. An unregistrered trade union shall take any steps, including the collection of subscriptions or dues, which may be necessary for the purpose of getting the union registered.[25] An application for the registration of a trade union must be made to the Registrar in the prescribed form and signed, in the case of a trade union of employees, by at least fifty members of the union and, in the case of a trade union of employers, by at least two members of the union.[26] Every application must state the name under which it is proposed that the trade union be registered and the address of the office which, if the union is registered, is to be the registered office of the union.[27] Every application must be accompanied by two copies of the rules of the union and by a list showing the name, address, age and occupation of each of the persons by whom the application is signed and the official title, name, address, age and occupation of each official of the union.[28] Where the Registrar receives an application for the registration of a trade union he must cause a notice of the application to be

[23] S.14(1) and (2), Ibid
[24] Ss.14(3) and 49, Ibid.
[25] S.3(1) Trade Union Act, 2005.
[26] S.4(1), Ibid.
[27] S.4(5), Ibid.
[28] S.4(6) Ibid.

published in the Gazette, stating that objections to the registration of the trade union may be submitted to him in writing within three months of the publication of the notice.[29] If, however, the application appears to him to be defective in any respect he must notify the applicants accordingly and must take no further action in relation to the application until it has been amended to his satisfaction or a fresh, it is submitted, non-defective, application is made.[30] Any detective application for registration of trade union should not be accepted in the register.

The Registrar must, within three months after the end of the period for objections, consider any objections submitted to him during the period. If he is satisfied (a) that no proper objection has been raised; (b) that none of the purposes of the trade union is unlawful, and (c) that the requirements of the Act[31] and of the regulations[32] with respect to the registration of trade unions have been complied with, must, subject to art acceptable name,[33] register the union and its rules.[34] On registering a union, the Registrar must issue a certificate of registration which, unless it is proved that the registration of the Union has been cancelled, is conclusive evidence, except in any proceedings for the cancellation of the registration of the union on the ground that its registration was obtained by fraud or as a result of a mistake, that (i) the requirements of the Act and the Regulations with respect to registration have been complied with; (ii) the trade union is authorised to be registered; and (iii) the trade union is a trade union for the purposes of the Act.[35] The certification of registration the only proof of registration as for as trade union registration is concern.

[29]SS.6(1) and (2), Ibid.
[30]S.6(1), Ibid.
[31] These include S.4 which provides that every trade union must have registered rules which must contain provisions with respect to the matters listed in schedule to the Act, as to which see below, and S.6 as regards the names of trade union as to which see below also.
[32] See the Trade Unions Regulations which prescribe various forms including the fee and form for application for registration.
[33] See below.
[34] S.5(2) Trade Union Act, 2005
[35]S.5(6), Ibid.

If the Registrar refuses to register the union he must, forthwith, send to the applicants a notice in the prescribed form to that effect and stating the grounds of the refusal and specifying the date from which the time for appealing against the refusal is to run, and he must publish a notice to the like effect in the Gazette[36], Any official or member of the union may, within the 'period of thirty days beginning with the date so specified, appeal to the appropriate court against such refusal.[37] On an appeal the court may make such order as it thinks proper and, without prejudice to the generality of this power, in any proceedings on such an appeal, the court has all the powers vested by the Act in the Registrar and may make any order which might or ought to have been made by the Registrar and the costs of and incident to the appeal including the costs of and incident to any proceedings before the Registrar are in die discretion of the Court.[38]

Before the amendments made in 1996 an appeal against refusal to register a trade union lay to the High Court of the State in which the registered office of the union was situated[39] and a further appeal lay from an order of that court to the Court of Appeal.[40] By the amendments this jurisdiction of a High Court as well as its powers, including the discretionary power as to costs of and incidental to an appeal, was transferred to the Minister of Labour and the right of appeal to the Court of Appeal was curtailed.[41] But it was obvious that it would have been difficult in practice to fit the Minister into the legal system, In any event the supreme Court has held that section 6(6)(b) of the constitution gives an unfettered access to the courts for the determination of any civil right or obligation.[42] Furthermore, natural justice at common law and fair hearing

[36]S.5(5)(a) Ibid.
[37]S.5(5)(b); see S.2 Trade Union (Amendment) (No.2) Act No.26 of 1996, and S.2(a) Trade Union (Amendment) Act No. 1 of 1999.
[38]S.8(1)(a) and (b); see S.4(a) and S.4 No 26 of 1996 and No. 1 of 1999 respectively.
[39]S.5(5)(b) before amendment and S. 52; but an unregistered union could not have had a registered office.
[40]S.8(2) now repealed.
[41] Ss. 5(5)(b) and 8(1)(a); See Ss. 2 and 4 Trade Unions (Amendment) (No.2) Act 1996 No. 26
[42]Adediran v. Interland Transport Ltd (1991) 9 NWLR 155

under the constitution may well have been trampled upon since it is the Minister who would have refused the registration in the first place.[43] As we have seen, an appeal from refusal to register a trade union now , not to a High Court or the Minister, but to the 'appropriate court' which is defined to mean 'the Industrial Arbitration Panel' and the National Industrial Court as the case may be.'[44] Presumably this means that an appeal must first be referred to the IAP, presumably by the Minister, and thereafter, if necessary, by the tradeunion to the NIC. But there is grave doubt as to whether both the IAP and the NIC have jurisdiction in such a matter. Although jurisdiction may be conferred on the NIC by 'any other Act' this must be with respect to the settlement of trade disputes, the interpretation of collective agreements and matters connected therewith.[45] It seems obvious that a refusal to register a trade union does not matter with respect to any of these matters.

There is also some doubt as to whether there is a right of appeal from a decision of the NIC. The only provision on a right of appeal to the NIC is S. 20(3) of the Trade Disputes Act which provision is that an appeal from the decisions of the Court lies as of right to the Court of Appeal on questions of fundamental rights.[46] If the contention that the NIC has no jurisdiction in questions of fundamental right is correct, then it is doubtful if s. 20(3) would be of any avail. It is suggested that it is necessary to give jurisdiction back to the High Courts and restore the right of appeal to the Court of Appeal where registration of a trade union is refused.

Whenever an application for the registration of a trade union is finally refused union must be dissolved in accordance with its rules within the period of three months beginning with the

[43]Bakare v. Lagos State Civil Service Commission (1992) 8 NWLR 641
[44] Ss. 5(5)(b), 8(1) and 52; See Ss. 2,4 and 8 Trade Unions (Amendment) Act 1999 No.1
[45]S.19(1) Trade Disputes Act, Cap. 432
[46] See S.6(a) Trade Disputes (Amendment) Act 1992 No.47

.date of the final refusal.[47] An application for the registration of a trade union must be taken to be finally refused (a) at the end of the thirty days allowed for appeal where no appeal from the Registrar's refusal is brought within those days; or (b) where an appeal was brought and the Registrar's refusal is confirmed on a final determination, on the date of the final determination; or (c) if the refusal by the Registrar to register was on the ground of its name being objectionable and the matter had been referred to the Minister for his decision, on the date on which the Minister confirms the refusal.[48] If a trade union whose application for registration has been finally refused fails to dissolve accordingly, the union and every official of the union is liable, on summary conviction, to a fine of ₦10 for each day on which the union remains undissolved.[49]

A trade union cannot be registered under a name identical with that of any existing trade union or which so nearly resembles the name of any existing trade union as to be likely to deceive the members of the public.[50] In*Ojo and 4 Ors (trading under the name and style of Ibadan Cornmillers' Association) v Registrar of Trade Unions and 4 Ors (being officers of the Ibadan and District Cornmillers' Association)*[51], the High Court rejected an application by the plaintiffs for an injunction to restrain the Registrar from registering the defendant trade union in that its name, the Ibadan and District Commillers' Association so nearly resembled the plaintiffs registered business name as to be likely to mislead the public. The court held that the plaintiffs, not being a trade union, could not object to the registration of the defendant trade union.

Also, a trade union must not be registered under a name containing 'any words which, in the opinion of the Registrar, are deceptive or objectionable in that they contain a reference, direct or indirect, to any personage, practice or institution, or are otherwise unsuitable as a name for a

[47] S.10(1)(a) Trade Union Act, 2005
[48] S.10(2), Ibid
[49] S.10(3), Ibid
[50] S.7(1), Ibid.
[51] Unreported Suit No. LD/521/68 High Court of Lagos State.

trade union.[52] However, if the Registrar refuses to register a trade union on this ground, that the name under which it desire to be registered is, by virtue of section (2) of this section, not under which it should be registered, any official or member of the union may require the matter tobe referred to the Minister,and the decision of the Minister on such reference shall be fined.[53]

a. Trade Union Merger

The merger of trade unions can be done by two or more trade unions but they cannot do so unless a resolution to that effect, signed by the president or secretary of each of the merging unions[54] is presented to the registrar of trade unions and the rules proposed for the merging[55] unions and the terms of the merger have been both forwarded to the registrar[56]. Where these requirements are satisfied the registrar must, forthwith, register the new union.[57] Property of each of the merging unions become vested in the new union. The extent provided in the terms of the merger forwarded to the registrar to the requirement of any form of conveyance or transfer other than those contained in the terms of the merger forwarded to the registrar.[58]

This means each of the merging union ceases to exists and its registration must be canceled.[59] After cancellation, the registration of the merging unions registrars must send to the address of which, immediately before the cancellation, the registered office of each of the union was situated, a notice in the prescribed form, stating the date and the grounds for the cancellation and must cause a similar notice to the publisher in the federal Gazette and the original certificate of registration of the union must be delivered to the Registrar not more than 30 days after date of

[52] S. 6(2) Trade Union Act, 2005
[53] S.6(3) Trade Union Act, 2005;
[54] S. 28(8), Ibid.
[55] Ibid
[56] S. 28(1), Ibid.
[57] S. 28(3), Ibid.
[58] Ibid
[59] S. 28(5), Ibid.

cancellation.[60] If the certificate is not delivered within the 30 days every person who, in the date of the cancellation, was an official or member of the union is guilty of an offence and liable in summary conviction to a fine of fifty naira.

b. Obligations of Registration of Trade Union

Upon register of a Trade Union there are certain obligations covered by it and they are as follows

i. Registered Office

Every trade union must have a registered office to which all communications and notices may be addressed.[61] On registering a trade union the Registrar must record as its registered office the office whose address is stated in the application for registration.[62] Any change in the situation of the registered office of trade union must be notified to the Registrar within thirty days after the date of the change and the change must be recorded by the Registrar.[63] If any union continues for more than thirty days without having a registered office the trade union and every official of the union will be liable, on summary conviction, to a fine of ₦10 for every day during which, after the end of the thirty days, it continues without a registered office.[64] The fine imposed of penalty is too small.

ii. Annual Return of Trade Unions

All registered trade union must send to the Registrar before 1st June in each year, an annual return in the prescribed form and must be made out to such time as may be prescribed and must be certified as correct by the duly appointed auditor.[65] An annual return must include:

[60] S. 38(6), Ibid.
[61] S.21(1), Ibid
[62] S.21(2), Ibid
[63] S.21(3), Ibid
[64] S.21(4), Ibid
[65] S.37(1), Ibid

a) full particulars of the assets and liabilities of the union at the date to which the return is made out;

b) full particulars of the receipts and expenditure during the year ending on that date:

c) particulars of the membership of the union at the date, and of any charges which occurred therein during the year ending with that date; and

d) evidence that the amount due to the Nigerian Labour Congress from the check-off contribution of its members has be paid to it;[66]

e) such other particulars as may be prescribed and must show separately the amount expended by the union during the year on each of its various purposes.[67]

All annual return must be accompanied by (a) a copy of the rules of the union as in force on the date to which the return is made out; (b) a copy of all alterations of the rules of the union and all new rules adopted during the year ending with that date, showing in respect of each alteration or new rule the date on which it was adopted whether or not it has been registered and, if so, the date on which it came or will come into force; and (c) a complete list of the officials of. the union at the date to which the return is made out, and a list of all changes in the officials which occurred during the year ending on that date, showing the date of each such change.[68] Upon request by any member of the union the union must deliver or send to the member a copy, free of charge, of the latest annual return sent to the Registrar upon request.[69] A copy of the annual returns is supposed to be sent to all members and not only on request.

[66] S.37(2), Ibid
[67] S.37(2), Ibid
[68] S. 37(2), Ibid ; Upon contravention of any of the requirements of subsection (!) to (3) of S. 36 the Union and every official of the union will be guilty of an offence and liable. on summary conviction, to a line ofN50; Ss.36(5) and 49
[69] 36(4); upon a contravention of this sub-section the union and every official of (he union who knowingly caused or permitted it will be liable, on summary conviction to a fine of N10 for each offence; S. 36(6).

(a) Duty of treasurer to render accounts

The treasurer of a trade union, whenever he is required, to do so by the rules of the union, or when specially directed to do so by the committee of management, must prepare a full and accurate account showing (a) all sums received or paid by him since the date to which the last account submitted by him was made out; and (b) the balance remaining in his hands at that date and must cause the account, when prepared, to be audited by the duly appointed auditor.[70] Every such account, after being audited, must be submitted by the treasurer to the members of the union in accordance with its rules, or if the account was prepared on the special directions of the committee of management, in accordance those directions.[71] Where the treasurer is required to do so by a resolution passed at a meeting of the union or is directed to do so by the committee of management, he must, as soon as possible, hand over to the union the balance due from him to the union as certified by the duly appointed auditor,, and, must also, if required, hand over all bounds, securities, books, papers and other property of the union in his possession or custody.[72] In determining the balance due from the treasurer the auditor must add to the balance shown as due from the treasurer in the latest account submitted by him any sums received by the treasurer on account of the union since the date to which the account was made up but must also deduct any sums paid by the treasurer on account of the union since that date.[73]

If the treasurer fails to hand over in foil to the union the balance due from him, the union or any person capable of suing as a representative of the union, may institute civil proceedings against the treasurer for the balance due and for all sums received by him on account of the union since the date to which the account was made up but he may, in the proceedings, set off any

[70]S.37(1) Trade Union Act, 2005.
[71]S.37(2), Ibid.
[72]S.37(3), Ibid.
[73]S.37(4), Ibid.

sums which may have been paid by him to or on account of the union since that date.[74] Similarly, if the treasurer fails to hand over any of the other union property which he is required to hand over, the union or any person-capable of suing as a representative of the union may initiate civil proceedings against the treasurer for its delivery to the union.[75] In any of such proceedings the court must order the defendant to pay the plaintiffs costs.[76]

Where an audited account is submitted to the members of a trade union or to the committee of management, the union must also send a copy of the account to the Registrar within, one month after the date on which it is so submitted.[77] If the union fails to do so the union and every official of the union who knowingly caused or permitted the failure will be guilty of an offence and liable on summary conviction, to a fine of ₦50.[78] The copy of the audited account being send to the registrar is to ensure that all trade union accounts are being audited.

iii. Powers of the Registrar of Trade Union

The Registrar may, at any time, and notwithstanding the above provisions, call upon the treasurer, the committee of management or any other official of a registered trade union to prepare and submit to him within a period of thirty days from the date of the call letter detailed accounts of the funds of the union in respect of any particular period.[79]

In his discretion, the registrar may either (a) direct all or any of the books, records or other documents of the union to be delivered to him for examination by himself or by an auditor appointed by him or (b) direct that the account be audited by an auditor designated by him for the

[74]S.37(5), Ibid.
[75]S.37(6), Ibid.
[76] S. 37(7), Ibid; the duly of the treasurer to render accounts apply, so far as sney are capable of applying, to every other official of a trade union and, accordingly, references to the treasurer must be so construed- S. 37(g).
[77]S.38(1), Ibid.
[78] Ss. 38(2) and 49, Ibid.
[79]S.39(1), Ibid.

purpose.[80] A designated auditor has power to require all or any of the books, records or other documents of the union to be produced to him, and to inspect and, if he thinks fit, take copies of or extracts from any such document so far as it appears to him necessary to do so for the purpose of auditing the account to which it relates and, for the purpose of auditing' the account, to enter any premises of the union at all reasonable times.[81] Any person who fails to deliver to the Registrar any document which the Registrar has directed should be delivered to him or fails to produce to a designated auditor any document which he requires to be produced to him or who obstructs, molests or hinders a designated auditor in the exercise of the powers conferred on him will be guilty of an offence and liable, on summary conviction, to a fine of N50.[82] The cost of either an examination by an auditor or audit by an auditor, as certified by the Registrar, must be paid by the trade union and, if not so paid, may be recovered from the union as if it were a simple contract debt due to the Registrar.[83] Trade union are to pay for the audit work done by the Auditor. This can also lead to the trade union influencing the Auditor

Where, as a result of an examination by the Registrar or an .auditor or an audit by an auditor of the accounts, it appears to the Registrar that any offence, whether under the Act or the regulations or any other enactment has been committed by the union or by any other person, and that it is expedient to do so by reason of the refusal or neglect of the union or its members to take proceedings, the Registrar may, on behalf, of the union institute criminal proceedings for the offence.[84] Similarly, if it appears to the Registrar from such examination or audit that any sum due to the union, other than subscriptions and other sums due from members of the union under its rules, has not been collected, the Registrar may, by reason of the same expediency, on behalf

[80] S.41(1) and (2), Ibid.
[81] S.4 (3), Ibid.
[82] S.41(4), Ibid.
[83] S.41(5), Ibid.
[84] S.41(1), Ibid.

of the union and in its name, institute civil proceedings for the recovery of the sum due,[85] In any such civil proceedings the court has the power to make an order for the payment of costs to or by the Registrar as if he were a party to the proceedings.[86]

iv. Registrar of the Trade Union

Section 46 of the Act provides for the appointment of a Registrar of Trade Unions for the purposes of the Act and there may be appointed for those purposes one or more Assistant Registrars of Trade Unions. The office of the Registrar or of any assistant is an office, in the Federal Ministry responsible for labour, but no appointment takes effect unless notice of it has been published in the Gazette. Anything which is required or authorized to be done by or to the Registrar under the Act or regulations may be done by or to any Assistant Registrar whom he may authorize, either specifically or generally, for the purpose.

It is the duty of the Registrar to cause notice of the following matters to be published in the Gazette:

a) the registration of a trade union under the Act;

b) the cancellation of the registration of any registered trade union;

c) the registration of any change of name or of any alteration of the rules of any registered trade union;

d) the merger[87]of any two or more trade unions;

e) any change in the situation of the registered office of a registered trade union; and

f) the dissolution of a trade union which is or has been registered.[88]

[85] Ibid
[86]S.41(2), Ibid.
[87] Substituted for amalgamation as required by the new provisions on mergers; see s.7 Trade Unions (Amendment) Decree 1996.
[88] S. 46, this is without prejudice to any of the requirements of the Act or the regulations.

If any person in any application, return, notice, certificate, statutory declaration or other document required to be made, sent or given to the Registrar under or for the purposes of the Act or the regulations, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, he is guilty of an offence and liable, on summary conviction, to a fine of N200 or to imprisonment for a term of six months.[89]

v. International Affiliation

It is important to note the first statute which is the trade unions (International Affiliation) Decree,[90] not only prohibited any registered trade union from affiliating with any international labour organization or trade secretariat except is provided by the decree but also provided that the central labour organization and the registered trade union must cease to be affiliated with any international labour organization or trade secretariat except as permitted by the decree. And the degree only permitted affiliation by the central labour organization and only to the organization for African Trade Union Unity (OATUU), the organization of Trade Union of West African and any other international labour organization specifically grounded by the government. Individual trade unions were not permitted to affiliate at all. This means any affiliation of any of the registered trade unions had to cease as also any affiliation of the Nigerian Labour Congress (NLC) to any other international body other than the ones to which the decree permitted affiliations. This decree was repealed in 1991[91] but subsequently in 1996[92] the same restrictions were re-imposed this time, the Act permitted the affiliation of not only the NLC but also of any registered trade union to the same bodies and trade the same conditions.

[89] S. 48 Trade Union Act, 2005; a conviction for this offence disqualifies a person from holding an office in a trade union for a term of years.
[90] 1989 40. 35
[91] Trade Unions (International Affiliation) (Repealed) Act, 1991 No. 32.
[92] Trade Unions International Affiliation Act, 1996 No. 29

In 1999, a more liberal approach was adopted, no doubt to the anticipated withdrawal of military rule, which had rendered the country desolate. This now make it possible for any trade union to affiliate with any international labour organization or trade secretariat in accordance with the provision of the Act.[93] An application must be made by a trade union or the NLC, which must be submitted with the details for affiliation to the minister[94] for his approval and he is required to give his decision within 30 days of documented evidence of receipt of such application.[95] Where no decision is received within those 30 days and another 7 days, for instant 37 consecutive days in all, it is deemed that an approval has been received.[96] However, where the minister for whatever reason refuses, objects or withholds his approval, he must course his reason for such refusal, objection or disapproval, to be communicated to the trade union or centre concerned within the same 30 days of documented evidence receipt of the association.[97] In such a case, any further representation must, firstly be made to the minister but on a further refusal, the trade union or centre has a right of appeal to the National Industrial Court.[98] It still dissatisfied there is a right of appeal from national industrial court (NIC) to the Court of Appeal and to the Supreme Court.

vi. Federation of Trade Union

This is the combination or association of trade unions. This can either be temporary or permanent, the purposes which include to regulate the term and conditions of employment of workers.[99] A federation of trade unions cannot come into existence until it is registered with the

[93] S. 1(1) 1996 No. 29, S. 2 1999 No. 2
[94] S. 2 Ibid
[95] S. 1(2) 1996 No. 29.
[96] S 1(3) ibid
[97] S 1(4) ibid
[98] S. 1(5) ibid
[99] S. 53 Trade Union Act, 2005

registrar of trade unions.[100] Any person who does any act on behalf of a proposed federation of trade unions before it is registered is guilty of an offence and liable, on summary conviction to a fine of fifty naira. A federation of trade unions may be formed by two or more trade unions, whose members are engaged in the same trade, occupation or industry or in substantiality similar trades, occupation or industries.

More importantly two or more trade unions may form a federation and where, in the case of each of the unions concerned, a resolution had in a secret ballot held at meeting whether annual or special of delegates representing all the members of the union is passed in circumstances such that the votes cast in favour of the resolution represents a simple majority of the members of the union.[101] It must not be less than thirty days before the date of the meeting a notice in the prescribed form setting out the resolution must have been given to the registrar and all reasonable steps taken by the union to secure that not less than thirty days before the meeting, every members of the union was supplied with a similar notice[102] where these requirements have been complied with, an application in the prescribed form signed by seven members of each one of the unions to form the federation and countersigned by the secretary of each one of those unions must be sent to the registrar together with a statutory declaration. The Registrar, if satisfied that the requirements of the Acts and of the regulations with respect to the registration of federation of trade unions have been complied with, must register the federation.[103] After registering a federation, the registrar must record the office whose address is stated on the application form for registration as the registered office of the federation. Notice of any change in the situation of the registered office of the federation. Notice of any change in the situation of

[100] S. 30, Ibid.
[101] S. 30(1), Ibid.
[102] S. 30(1)(b)(c), Ibid.
[103] S. 30(5), Ibid.

the registered office of the federation must be given to the registration within thirty days after the date of the change and the registrar must register the change there.[104]

Moreover, the ground on which and the procedure to be followed for the cancellation of the registration of federation of trade unions are the same as for a trade union.[105]

In conclusion, this chapter dealt with many issues relating to the trade union. The registrar is primarily responsible for the registration of the trade union and also accountable to produce all documents relating to the formation, merger, cancellation of trade union.

2.4 Legal Status of Trade Unions

Section 2 of the Act states that an unregistered trade union is prohibited from functioning provided that nothing in the subsection (1) shall prevent a trade union from collecting subscriptions or dues which may be necessary for the purpose of getting the union registered. As noted before, a registered trade union can sue and be sued in its registered name.[106] A trade union has legal personality as was held in the case of *Nigeria Nurses Association v. Attorney General of the Federation*[107]. In the case of *Taff Vale Rly vs Amalgamated Society of Railway Servants*[108] ,the House of Lords permitted a trade union to be sued in its own name but in doing so did not (with the exception of lord Brampton) see itself as conferring on the union any new juristic status by way of qusi-corporate personality.[109]

Corporate personality may be inferred from the statutory provisions expressly or impliedly under part IV of the Act. The Act places a duty on a registered trade union to have a

[104] S. 21(4) and 31, Ibid.
[105] S. 8(8), Ibid.
[106] See Nigerian Stevedores and Dockworkers Union vs. Opara Unreported suit No. P/1I1/1963), High Court, P.HCIT Registration Council of Nigeria (1974) 1 NMLR 108;
[107] (1981) 11 -12 SC 1,11 & 12
[108] (1901)A.C.426.
[109] See further the case of Bonsor v. Musicians Union (1956) Ac 104 where it was held interalia that a registered trade union differs from incorporated association in that it is unnecessary' to consider who were the members at any particular tie for instance, it is immaterial who were members at the time that any cause of action arose or what members have joined the union since the cause of action arose.

registered office[110] render annual return[111] and to submit an audited account of its funds to the registrar[112] Where a registered body fails to comply with any of the requirements of the above subsection (1)(3), the body and every official thereof shall be guilty of an offence under this Act[113] Contrary to what obtained under the British Trade Union and Labour Relations Act 1974[114] where the trade union shall be capable of making contracts in its own name and all property belonging to the trade union shall be vested in trustees in trust for the Union, the Nigerian Act is silent in relation to registered trade unions with respect to their legal capacity to hold their property. However, subsection 4 of section 28 of the Trade Union Act which provides that 'the property of each of the merged unions shall to the extend provided in the terms of the merger forwarded to the Registrar, become vested in the emerged union' seems to imply that the registrar of a trade union can hold its property real or personal in its name.

i. Recognition of Trade Union

Section 25 of the Act now provides that 'where there is a trade union of which persons in the employment of an employer are members, that trade union, shall, without further assurance, on registration in accordance with the provisions of this Act, be entitled to recognition by the employer.[115] If an employer deliberately fails to recognize any such registered trade union to which his employees belong as members, he is guilty of an offence and liable, on summary conviction, to a fine of to ₦1,000[116]Presumably the offence continues until recognition is granted.

[110] S.37(l) Trade Union Act, 2005
[111]S.37(2), Ibid.
[112]S.37(3), Ibid.
[113]S.37(5), Ibid.
[114] See also s.5(c) Trade Unions (Amendment) Act No. 4 of1996; See also English Trade Unions Act. 1871 -sections 7 & 8
[115] S.25(1), Trade Union Act, 2005
[116] S.525(2) Trade Union Act, 2005

We have seen that a trade union which is not registered is prohibited from performing any act in furtherance of the purposes for which it was formed except, such steps which are necessary for the purpose of registration. A registered trade union is thus able to perform any act in furtherance of its objects. It is also established beyond doubt that a registered trade union can sue and be sued in its registered name.[117] What is not so clear is whether by registration a trade union acquires legal personality of its own. In the case of *Nigerian Civil Service Union (WS) v Alien*[118] the court held that a registered trade union is not a legal entity. In an earlier decision in *Nigerian Stevedores and Dockworkers Union v Opara*[119], Betuel J. observed ‘‘that the union is either a quasi juristic person by virtue of the operation of the provision of our Trade Union Act or it is not. ‘ But more recently, however, Obaseki J.S.C. said, obiter, in *Nigeria Nurses' Association v Attorney General of the Federation*[120], that a trade union has legal personality. It is suggested, with respect, that the view of Obaseki J.S.C. is the correct one.

Corporate personality may be conferred by statute either by express provision or by implication.[121] The Trade Unions Act does not expressly incorporate registered trade unions so that if a registered trade union is a legal entity, it can only be by inference from the meaning and effect of the provisions of the Act. The Act places a duty on a registered trade union to have a registered office,[122] to render an annual return,148 and to submit an audited account of its funds

[117]Taff Vale Railway Co. v Amalgamated! Society of Railway Servants [1901] AC 426; Nigerian Stevedores and Dockworkers' Union v Opara Unreported Suit No. P/J11/1963, High Court, Port Harcourt; Okongwu v Anunobi (1966) LLR 49; Nigeria Union of Registered Draughtsmen v Architect Registration Council of Nigeria 1974(!) NMLR 108.

[118] (1972) 2 UILR 316

[119](unreported) Suit No P/111/1963

[120] (1981) 11 -12 SC 1, S1 and 12; the other members of the Supreme Court did not mention the point.

[121] Tom River Conservators v Ash (1829) 10 B s C 349. S.44 provides that the Companies St Allied Matters Act does not apply to trade unions and that the registration of a trade union under that Act is void.

[122] S. 20(1), Trade Union Act, 2005

to the Registrar,[123] and it may be convicted and liable to a penalty for failure to carry out these and other duties.[124] The provisions of two other sections of the Act are significant in this respect.

While the Act which in sub-section 22(4)(a)(ii) prohibits the courts from entertaining any action instituted for the purpose of directly enforcing, in relation to an unregistered trade union, 'any trust on which funds of the union are to be held' would seem to indicate that unregistered trade unions must appoint trustees to hold such funds, the Act is silent in relation to registered trade unions wife respect to their legal capacity to hold their property. Secondly, sub-section 27(4) which provides that the property of each of the merging unions become ''vested in the merged union' also seems to imply that a registered trade union can hold its property, real or personal, in its name.[125]

As we have seen, upon registration, a trade union acquires a major attribute of corporate personality. A registered trade union is able to sue and it can be sued in its registered name. Indeed, it acquires a sort of proprietary right to the registered name. It is freed from the vagaries of a representative action which constitutes a major obstacle to actions by unincorporated associations. Thus two important attributes of corporate personality which a registered trade union enjoys may be noted. As Lord Keith said in *Bansor v Musicians' Union*[126] a registered trade union *"differs from an unincorporated association in that it is unnecessary to consider who were the members at any particular time. For instance, it is."*

ii. Cancellation of Trade Unions

Section 7 provides that if any of the following six grounds is proved to the satisfaction of the Registrar of Trade Unions, he must cancel the registration of the trade union:

[123] S. 36(1), Ibid.
[124] S. 38(1), Ibid.
[125] See Ss. 9(3), 20(4), 21 (3), 36(5) and 38(2). Ibid,
[126] (1956) AC 104,

a) that the registration of the trade union was obtained by fraud or as the result of a mistake; or

b) that any of the purposes of the union is unlawful; or

c) that, after receipt of a warning in writing from the Registrar, the union has deliberately contravened or continued to contravene any provision of the Act or the regulations;[127]

d) that the principal purpose for which the union is in practice being carried on is a purpose other than that of regulating the terms and conditions of employment of workers; or

e) that the union though still in existence, has ceased to function; or

f) that the union has ceased to exist.[128]

Whenever the Registrar proposes to cancel the registration of a trade union he must send a notice in the prescribed form to the trade union at its registered office, stating that he proposes to cancel the union's registration and specifying briefly, the ground or grounds on which he proposes to do so.[129] It must also specify a date, not less than two months after the date of the notice, and stating that unless before that date, he is satisfied that the registration ought not to be cancelled, he will proceed to cancel the registration on the expiration of a period of thirty days beginning from that date unless an appeal against the proposed cancellation is taken within that

[127] S.7(4), Ibid.

[128] This provision is, perhaps, unlikely to be operative since the 1976-78 reorganization of the unions into much larger and virile ones. In 1976, the Federal Military Government promulgated the Trade Unions (Central Labour Organizations) (Special Provisions) Decree 1976 under which an administrator was appointed with responsibility, inter alia, 'for taking all steps as the Administrator may consider necessary to encourage and effect the formation, whether by amalgamation or federation of existing trade unions or otherwise, of strong and effective trade unions. ' The result was that the 983, mainly 'house' unions then on the register and some others were re-grouped on industrial basis into 70 unions. 42 of these were unions of junior employees, 18 unions of Senior staff, 9 of employers and the Nigerian Union of Pensioners. The Registrar was enjoined to register all the 70 unions; see s.5 (b) (iii)Trade Unions (Amendment) Decree No.22 of 1978 which gave effect to the restructuring exercise; in Nigerian Nurses' Association v A.G. of the Federation (1981) 1 FNR 55; (1981)11-12 SCI the Supreme Court held that the Act terminated the existence of all the trade unions then on the register with effect from the date on which it came into effect. A further restructuring, initiated by the Nigerian Labour Congress to which the 42 unions were by statute, deemed affiliated, but assisted by government, has reduced the number of these unions to 29. Only 19 of these unions remained untouched; see Trade Unions (Amendment) Act No.4 of 1996.

[129] S.8(2)(a) Trade Union Act, 2005

period.[130] Where the Registrar has sent a notice, and the trade union is still in existence on the date specified in the notice, and the Registrar has not withdrawn the notice before that date, any official or member of the trade union may, within the period of thirty days beginning with that date, appeal to the appropriate court against the proposed cancellation.[131] On an appeal the court may make such order as it thinks proper; and without prejudice to the generality of this power, in any proceedings on such an appeal, the court has all the powers vested by the Act in the Registrar, and may make any order which might or ought to have been made by the Registrar.[132] This means that only the registrar vested with power to cancel any trade union registration.

However, the right of appeal against a proposal to cancel the registration of a trade union in the same way as they affect the right of appeal from a refusal to register a trade union. Thus, the same comments and arguments apply, mutatis mutandis, with respect to the jurisdiction of the IAP and the NIC in an appeal against a proposal to cancel the registration of a registered trade union as they apply to the right of appeal against a refusal to register a trade unions. The Registrar must not cancel the registration of a trade union before the expiration of the period of thirty days beginning with the date specified in the notice of a proposed cancellation and, also where an appeal against the proposed cancellation is taken within that period, he must not cancel the registration unless the appeal is abandoned or the proposed cancellation is confirmed on the final determination of the appeal.[133] This mean any canceling by the registrar after the expiration of the 30 days specified is binding and legal.

A trade union whose registration is cancelled ceases to enjoy the privileges conferred by the Act on trade unions but any liabilities incurred by the union before the date of cancellation is

[130] S.8(2)(b), Ibid.
[131] See 8(3), Ibid
[132] S.9(1), Ibid
[133] S.9(1)(b), Ibid

not affected by the cancellation and may be enforced against the union on or after that date as if the cancellation had not taken place.,[134] A trade union whose registration is cancelled must be dissolved in accordance with its rules within the period of three months beginning with the date of the cancellation.[135] If the union fails to do so the union and every official of the union will be liable, on summary conviction, to a fine of ₦10 for each day on which the union remains undissolved after the end of the three months.[136] That the fine imposed as penalty is too small compare with current economic reality of Nigeria.

Where a trade union is voluntarily dissolved in accordance with its rules, & notice in the prescribed form signed by a person who immediately before the dissolution was an official of the union., stating that the union has been dissolved, and the original certificate of registration of the union must be delivered to the Registrar not more than thirty days after the date on which the union ceases to exist.[137] Where such a notice is received by the Registrar, the provisions of section 7 are not applicable, but the Registrar, when satisfied that the trade union has been duly dissolved, must cancel the registration of the union and notify the person by who the notice was signed that the registration has been cancelled.[138] Where either the notice of voluntary dissolution or the original certificate of .registration of the dissolved union is not delivered to the Registrar every person who immediately before the dissolution, was an official of the union, is guilty of an offence and liable, on summary conviction, to a fine of ₦50.[139] The notice by the registrar of the cancellation is to made the cancellation fully effective and in accordance with require of the Act.

[134] S.8(5), Ibid
[135] S.10(1) (b), Ibid.
[136] S.10(3), Ibid.
[137] S.19(1), Ibid.
[138] S.11(1), Ibid.
[139] S.10(3), Ibid.

Where a trade union registered under the Act ceases to be so registered it must not, thereafter, perform any act in furtherance of its purposes but it may take any steps which may be necessary' for the purpose of dissolving the union.[140] The existence of any cancelled trade union other the cancellation by registrar is illegal.

Where there is a violation of this prohibition, the union and every official of the union and any member who, not being an official, but took any active part in the performance of that act will be guilty of any offence and liable, on summary conviction, to a fine of ₦50.[141] The fine imposed as penalty in too small with result to current realistic.

iii. Power and Legal Status of Unregistered Trade Union

The Trade Union Act under section 2(1) provides that "a trade union shall not perform any act in furtherance of the purposes for which it has been registered. It also states that provided nothing in this subsection shall prevent a trade union from taking any steps including the collection of subscription or dues which may be necessary for the purpose of getting the union registered.

Section 2(2) of the act provides that "where a trade union registered under this Act ceases to be so registered, it shall not thereafter perform any act I furtherance of its purposes. It also states that provided that nothing in this subsection shall prevent any steps which may be necessary for the purpose of dissolving the union.

While section 2(3) provides that if any act which is prohibited by subsection (1) or (2) of this section is performed by a trade union then (a) the union and every official thereof and (b) any member thereof who, not being an official thereof, took any active part in the performance of that at shall be guilty of an offence against the Act.

[140] S.3(2), Ibid.
[141] S.2(3), Ibid.

2.5 The Trade Union Act, 2005 And The Freedom Of Association

In its opposition to the passage of the Amendment Act, an organization known as the Democratic Socialist Movement in Nigeria[142], notes:

> If passed into an Act, the legal and democratic rights of Nigerian workers to freely associate and embark on collective struggles to strive to better their own lots would fare no better than that of the working masses of the stone-age era a virtual slavery condition, where employers whims and caprices constitute the laws! '

But how does the passage actually affect the freedom of association of the Nigerian worker? After section 12 (3) of the Principal Act, a new subsection (4) has been added, and it provides that, *"Notwithstanding anything to the contrary in this Act, membership of a trade union by employees shall be voluntary and no employee shall be forced to join any trade union or be victimized for refusing to join or remain a member".*

The new amendment Act says that a worker can join or form any trade union of his own choosing voluntarily and no employee shall be forced to join any trade union or victimized for not joining or remaining a member of a union.

It is a good development that the amendment specifically says membership should be voluntary, because it gives workers the freedom to belong or form a trade union of their choice without fear of victimization by union leaders.

Section 40 of the Constitution[143] guarantees the right to freedom of association *"Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests."*

[142] Democratic Socialist Movement^ (DSM). 'Obasanjo's Trade Union Bill: NLC Must Lead a Fi'ht against This Frontal Assault on Workers' Rights Now!' August 21, 2004. p. 27

[143] Constitution of the Federal Republic of Nigeria, 1999

The International LabourOrganisation (ILO) conventions that are applicable to freedom of association are Conventions 87-Freedom of Association and Protection of the Right to Organise Convention, and 98- Right to Organise and Collective Bargaining. Convention No. 87[144] establishes the right of all workers and employers to form and join organisations of their own choosing without prior authorization, and lays down a series of guarantees for the free functioning of organisations without interference by the public authorities. Convention No. 98[145] on the other hand, provides for protection against anti-union discrimination, protection of workers' and employers' organisations against acts of interference by each other, and for measures to promote collective bargaining.

It should be noted however, that in enacting this amendment the international principle of tripartite consultation for any amendment to be consistent with the ILO Conventions were not complied with. In other words, the other principal actors in the industrial relations environment were not taken into consideration. Before the bill which is now an Act was enacted, there was a tripartite committee consisting of Government, NECA and Employee Representatives (NLC), looking at the Labour Laws and working very hard on how to make them address the current realities on the ground by complying with international labour standards. One would have thought that the committee should have been allowed to do its work and submit a report that will be beneficial to the three industrial relations actors in the industrial relations environment. There were therefore a number of contradictions, not consistent with the freedom of association.

Even though the amendment provides that joining a trade union shall be voluntary, it states in section 34 (2) & (3) that an application for registration of a trade union should be submitted to the Registrar of Trade Union. Moreover, he shall only register the trade union if he

[144] ILO Convention on the Freedom of Association and Protection of the Right to Organise, 1948.
[145] ILO Convention on the Right to Organize and Collective Bargaining, 1948.

is 'satisfied' that all the requirements have been met[146]. This is an infringement on the freedom of association of Nigerian workers. Even though the ILO is against a centralized labour organization's system, it is explicit in its proclamation that workers should be the ones to decide the union they wish to belong to without any previous authorization from any administrative body[147].

For the formation of a Federation of Trade Unions, Section 30 of the principal Act has been amended by section 30 of the amendment which[148] provides that,

> (a) Subject to this section, a trade union may become a member of a registered federation of trade unions whether or not members of the trade union wishing to join the registered federation of trade unions are employed in trades, occupations or industries which are similar to the trades, occupations or industries of the trade unions which formed the registered federation which the trade union seeks to join; provided;'
> (b) The joining union is eligible for membership of the federation under the rules of the federation.

The Nigerian workforce should have the right to decide who represents them in the workplace, without any kind of input, interference or compulsion from or by owners of businesses, Ministers or employers.

Apart from the fact that the provisions of the amendment poses a serious risk to X workers and trade union rights, the unilateral approach of the Nigerian government regrettably departs from the time honored principle of tripartite consultation, enshrined in Convention 144 of ILO which Nigeria ratified in 1994.

The term Collective Bargaining is used more explicitly in the amendment than in the former Act. The amendment substitutes the section 24 of the Principal Act and states that[149] *''For*

[146] Trade Union (Amendment) Act, 2005.
[147] Article 1, ILO Convention 98
[148] Trade Union (Amendment) Act, 2005

the purpose of collective bargaining all registered unions in the employment of an employer shall constitute an electoral college to elect members who will represent them in negotiations with the employer".

Section 24 of the former Act[150] provides that once a trade union has been registered by the Registrar of Trade Union an employer must recognize the union immediately. Failure to do so is an offence and the employer shall be liable upon summary conviction to a fine of Nl, 000. This provision has been considered by: labour relations experts to mean that recognition is for the purpose of collective bargainings With this amendment, it appears that there is no automatic recognition for any union anymore upon registration as was the case in the past, until they constitute an electoral college to elect members who will represent them in negotiations with the employer.

2.6 Central Labour Organization

Nigeria Labour Congress is presently the only cengtrallabour organization in the country. The registration of trade unions was enjoined to register the congress as the only central labour organization the coming into effect of the trade unions (Amendment) Act 1978, on the 3rd August 1977.[151] Section 35 provides that the congress has since, subject to its rules (a) to represent the general interest of its members on any national advisory body set up by the government of the federation (b) to collect and disseminate to its members information and advice an economic and social matters (c) to give advice encouragement or financial assistance to any of its members in need of it (d) to promote the education of members of trade unions in the flied of labour relations and connected held and (e) to render any other assistance provided for under the articles of affiliation. But the congress must not engage in collective bargaining on behalf of any trade

[149] Trade Union Act, 1998
[150] Ibid
[151] S. 34(1) Trade Union Act, 2005

union or federation of trade unions except where it is requested to do so by a trade union or federation which is a party to the collective bargaining.[152] In contravention of this provision by act by the congress, the congress itself and every one of its official and every trade union or federation on behalf of which it so acts and everyone of its official is each, guilty of an offence and liable on summary conviction to a fine of fifty naira. The policy seems to be not only to exclude trade unions of senior employees from being affiliates of the Nigerian labour congress but also having a central labour organization of their own. There was an organization 1978 hat all trade unions other than associations of senior staff or employers are hereby deemed to be affiliated to the Nigerian labour congress.

Indeed, two senior staff unions, the share and distribution trade senior staff association and the academic staff union of university were purportedly affiliated to the given labour congress. The unions listed in part A are deemed to be affiliation to the Nigerian Labour Congress.[153] Any person including any officer or officers of a trade union guilty of this offence is liable on conviction to a fine of N1000 or twelve months imprisonments or to both such fine and imprisonment.[154]

In addition, if the minister is satisfied that there has been no violation of the provision concerning the affiliation of any case the name of the trade union concerned to be struck of the register of trade unions.[155]

No person is eligible to contest any elective post in the Nigerian labour congress unless he is a member of any union specified in part A of the third schedule[156]. Every trade union must pay to the Nigeria labour congress, and of the contribution received from its members, a sum

[152] S. 35(2), Ibid.
[153] S. 33(2), Ibid.
[154] S. 34(5), Ibid.
[155] S. 34(7), Ibid.
[156] Ibid

equal to 10 percent of the total sum received or such sum as may from time to time, be specified in the constitution of the Nigerian labour congress.[157] Any trade union which fails to pay its contribution is guilty of an office and liable on conviction to a fine of twice the amount of the contribution.[158] Relieves the institution of proceeding for the offence nor the imposition of a fine relieves the union from its liability to pay the contribution.[159]

Adminisability of either a trade union or registered federation of trade unions as a member of a central labour organization is contained in section 36. This provision has remained dormant and now seem redumdment under recommendation of a central labour organization is meant to be different from affiliation of it.

[157] S. 18(1), Ibid.
[158] S. 18(2), Ibid.
[159] S. 18(3), Ibid.

CHAPTER THREE

AN EXAMINATION OF TRADE UNION RULES IN NIGERIA

3.1 Introduction

It is important for every trade union to have registered rules.[1] Where the registrar registers a union he must, at the same time, register its rules.[2] A trade union may alter its rules by the method of doing so provided in its rules but an alteration cannot take effect until the alteration is registered. But the Registrar must not register an alteration of the rules of trade union if, as a result of the alteration, the rules of union would cease to contain provisions with respect to the various matters mentioned in first schedule of the Act or the principal purpose of the trade union would cease to be that of regulating the terms and conditions of employment of workers.[3] The provision in the First Schedule relates to matters to be provided for in the rules of trade union. An alteration of the rules of a trade union comes into effect, if the rules so provide, on a date later than the date of the registration of the alteration but otherwise it comes into effect on the date on which it is registered.[4]

The difficulty with this provision is that it has not spelt out what it means by trade union rules. In the Nigeria case of *Nigeria Civil Service Union v. Essien*,[5]the court of appeal had to contend with this problem. The union carries out an alteration of some of the rules of the union and sent it to the Registrar. The Registrar subsequently wrote to the union requesting the union to print the rules and thereafter inform him of having done so. The rules were not printed but it was contended that they had been registered. It was held by the court of appeal that the rules had been registered. Nnaemeka – Agu J.C.A whose judgment all the other members of the court agreed

[1] Sections 4(1) and (2)(a), Trade Union Act CAP. T14 L.F.N. 2005.
[2] Section 5(3), Ibid.
[3] Section 28(2), Ibid.
[4] Section 28(3), Ibid.
[5] (1985) 3 NWLR 306

with, said registration means no more than that the alteration or amendment after being passed by the union in accordance with the constitution is communicated to the Registrar in the usual manner and he, having satisfied himself that the alteration or amendment does not contravene sub-section (2) of section 29[6] record, or takes note of the amendment or alteration in official record kept for the purpose.[7] He continued if the legislators intended that the amended constitution incorporating the amendment or alteration should first be printed they would have said to expressly. Indeed once the proposed amendment does not fall foul of sub-section 2 of the section, the Registrar has no alternative but to register it.[8] Yet, the problem remains as to when and, indeed, whether he has registered the alternation by making a note or otherwise recording it in the official record kept for that purposely. It suggested that it is reasonable to require the Registrar to inform the union in writing of the registration of an alteration of its rules. It is the duty of the Registrar to cause the registration of an alteration of the rules of a registered trade union to be published in the Gazette presupposes that the registration precedes such publication at any point in time. Trade union rules play an important role in the management control to the trade union. They are regarded as contractually bringing as between the union and its members and between the members.[9] The aim of this chapter is to examine trade union rules in Nigeria and there relevancies to Nigeria.

3.2 Nature of the Trade Union Rules in Nigeria

The rules of a trade union play an important role in the management and control of the trade union. They are regarded as binding as between the union and its members, and between the members *inter se.* There have been judicial pronouncements on the legal position of the rules

[6] Section 29 Trade Union Act CAP. T14 L.F.N. 2005.
[7] Ibid
[8] Ibid
[9] Similarly decision are held in the case of Bonsor v. Musicians (1956) AC 104

book. In *Bonsor vs. Musicians' Union*,[10] Lord MacDermott said the contract, which is formed on admission by an acceptance of the union rules, as long been the generally accepted view of the bond by which the members of a trade union are held in association. In a House of Lords decision, Lord Davey said; "the rules in fact, form the social contract between the members, and every person on becoming a member accedes to them and is bound by them.[11] This same point was made by Lord Atkinson in *Amalgamated Society of Carpenters, Cabinet Makers & Joiners vs. Braithwaite*[12] when he said: "of course when a workman becomes a member of a trade union, he contracts to be bound by the rules of that union, and the contracts which he enters into with the union or with each of his fellow workmen are to be found, if found at all in those rules".

The rules must contain provision with respect to the various matters mentioned in the first schedule of the Act and the Registrar must not register a trade union whose rules do not contain these matters. It would appear that the specified items are not exhaustive and the unions are permitted to include certain other matters within the Rules book. The content of the Rules book serves as a directory or as a general guideline of what must be included in the Rules book. The content of the Rules book may fall into two categories; express terms and implied terms.

3.3 The Trade Union Rules in Nigeria

Trade unions are at liberty, in almost the same terms as individuals, to enter into whatever terms of contract their choose, in so far as their rules are concerned they are subject to a fair amount of control by both statute and common law. By section 4 every trade union must have registered rules which must be registered at the time with the union itself. Furthermore, the rules must contain provisions with respect to the various matters mentioned in the first schedule

[10] (1956) AC 104 p. 135-136
[11] Yorkshire Miners Association v. Howden (1905) AC 256, p.268. see also Nigerian Civil Service Union v Essien (1985) 3 NWLR 306, 315.
[12] (1922) 2 AC 440, 455

of the Act and the registrar must not register a trade union whose rules do not contain these matters. Fifteen (15) matters listed by the first schedule are as follows:

i. Name of the Trade Union

The name the trade union proposes as its name must not only be stated in union rules but must also be stated in the application for the registration of the union. A trade union may change its name if, but only if, not less than two-thirds of all its members have, in secret ballot, voted in favour of the proposed change. A change of name does not take effect until, it is registered with the Registrar.[13] Where a union proposes to change its name and it has obtained the necessary majority vote in favour of the change the union must send to the Registrar a notice in the prescribed form of the proposed change of name signed by seven members of the union and counter-signed by the secretary of the union and a statutory declaration by the secretary that the requirements as to the necessary vote in favour have been complied with.[14] In respect of the notice and the statutory declaration and if satisfied that the requirements of the Act and the regulations have been complied with, the Registrar must register the change of name.[15] However, the provisions regarding objectionable names apply also to change of name.[16] The Registrar is empowered to refuse to register a name which is identical with that of any existing trade union or which so nearly resembles the name of any existing trade union as to be likely to deceive the members or the public.[17]

A trade union must also provide for the purposes for which its funds may be applied. The funds of a union may be expended in carrying out any of the purposes of the union. This is made clear in section 1(2) which provides that the fact that a combination of workers or employers has

[13] Section 27(1) Trade Union Act CAP. T14 L.F.N. 2005
[14] Section 27(2), Ibid
[15] Section 27(3), Ibid
[16] Section 6(5), Ibid
[17] Section 6(1), Ibid

purposes or powers other than the purpose of regulating the terms and conditions of employment of workers shall not prevent it from being registered under this act and accordingly, subject to the provisions of this Act as to the application of funds for political purposes, a trade union may apply its funds for any lawful purpose for the time being authorized by its rules, including in particular, if so authorized, that of providing benefits for its members.

It is noted that Registrar is empowered to refuse to register a trade union whose name is objectionable and that the name with which a trade union is registered can only be changed in accordance with the provisions of the Act.

ii. Subscription and Dues

The subscriptions and dues, if any, which members of the trade union are required to pay must be stipulated in the rules book. Under the general contractual principles, an employer would be in breach of contract to unilaterally deduct union subscription from the wages or salary of an employee. However, check-off of members contribution to their union is made compulsory with respect to certain trade unions section 17A of the Trade Unions Act, provides that, upon the registration and recognition of any of the trade unions specified in the Third Schedule to this Act, the employer shall:

a. Make deduction from the wages of every worker who is eligible to be a member of any of the trade unions for the purpose of paying contributions to the trade union so registered;
b. Pay any sum so deducted directly to the registered office of the trade union: provided that: compliance with the provisions of this Section Act shall be subject to the insert of "No Strike" and "No lock-out" clauses in the relevant collective Bargaining Agreement between the workers and their employers."

Section 5(4) of the labour Act provides that No deductions may be made from the wages and salaries of persons who are eligible members of any of the trade unions specified in Part B of Schedule 3 of the Trade Unions Act except the person has accepted, in writing, to make voluntary contributions to the trade union. Section 5(6) of the Labour Act requires that an employer, shall when making a payment to a trade under paragraph (B) of subsection (3) of this section include with such payment a list of employees from whom deductions were made pursuant to paragraph C of the said subsection.

As already being discussed, it is provided that any agreement for the payment by any person of any subscription or penalty to a trade union cannot be directly enforced by the courts.

iii. Union Benefits

The Trade Union Act under Section 1 Subsection 1 provides that for a combination to be a trade union, it must have the principle, purpose of regulating the terms and conditions of employers or workers, whether the combination in question would or would not, be part from this Act, be an unlawful contribution by reason of any of its purpose being in restraint of trade and whether its purposes do or do not include the provision of benefits for its members. Also that a trade union may apply its funds for any lawful purpose for the time being authorized by its rules, including in particular, if so authorized, by providing benefits for its members. Even where the rules of a union make provision for benefits for its members, a member may be unable to enforce non-payment of a benefit to which he had become entitled by a court order.

It is of the view that trade union is to provide benefits for its members, the conditions under which any member will become entitled to any benefit must be stated in the Rules book. However, where the rules of a union make provision for benefits for its members, a member may

be unable to enforce by a court action non-payment of a benefit to which he has become entitled.[18]

iv. Disciplinary Rules

The fines and forfeiture which may be imposed on members of the union must be stipulated in the rules.[19] This provision should include all disciplinary measures, such as the ground for suspension of or expulsion from membership in addition to fines which may be imposed, and for what conduct or misconduct. Obviously, in every association disciplinary action is usually contained in the rules to regulate affairs of its erring members. However, there is no inherent common law power or statutorily implied clause in the Act conferring power in a union to expel or suspend a defaulting member except such a condition is expressly stipulated in the book.[20]

v. The Procedure for Making, Altering or Revoking the Rules

There is no implied power in a trade union to amend its rules; it can acquire such a power by its rules. In furtherance to this, section 29 of the Act provides that a trade union may alter its rules by any method provided by its rules. Otherwise the rules can be amended when the needs arises.

vi. Management Committee

There must be a provision for the appointment and removal of appointed and elected officers.[21]

[18] Harrington v. Sendall (1903) Ch.921.
[19] Para. 5, First Schedule, Trade Union Act CAP. T14 L.F.N. 2005.
[20] Olatunbosun .A, (2004) " The place of Trade Unions and their members under the law of contract" *Ife Juris Review,* Vol.1, Part 2, p.292
[21] Para.7, First Schedule, Trade Union Act CAP. T14 L.F.N. 2005.

vii. Qualification for Membership

The 1999 constitution provides that workers be given opportunities to participate fully in the economic, social and political development of the nation. Specifically, section 17(3) provides that the State shall direct its policy towards ensuring that:

a. All citizens, without discriminating on any group whatsoever have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment;
b. Conditions of work are just and human and that there are adequate facilities for leisure and for social, religious and cultural life;
c. The health, safety and wellbeing of all persons on employment are safeguarded and not endangered or abused;
d. There are adequate medical and health facilities for all persons;
e. There is equal pay for equal work without discrimination on account of sex, or on any other bond whatsoever;
f. Children both young persons and the age are provided against any exploitation whatsoever and against moral and material neglect;
g. Provision is not for public assistance in deserving cases or other conditions of need and
h. The evolution and promotion of family life is encouraged.

While section 40 of the 1999 constitution guaranteed that every person shall be entitled to associate freely and associate with other persons and in particular he may term or belong to any political party, the union or only other association for the protection of his interest provided that the provisions of this section shall not derogate from the power conferred by this constitution on the Independent National Electoral Commission with regard to political parties to which that

commission does and accord recognition. It guarantees fundamental right to former belong to a trade union.

There are, at least, two grounds which it may be held that trade union rules fall within "law" in the constitutional provision under consideration. The first is that, since the rules are required by the Trade Union Act to contain provisions with respect to the matters enumerated in the first Schedule to the Act and that a union must not be registered unless it has rules which contain such provision and, further, that if a union is registered its rules must, at the same time, be registered, it is arguable that registered trade union rules have statutory basis and force even if they cannot properly be regarded as subsidiary legislation. This point was made in *John EnasDubre National Union of petroleum and Natural Gas Worker*[22] but regrettably, the Court of Appeal said it was off the mark because it was not an issue submitted for determination in the court. However, the constitutional right, though fundamental, is not absolute. Derogation by law is allowed.

viii. Membership of Management Committee

Before 1996, what was required was that a trade union must provide in its Rules book that the general committee of management of the union by whatever name called, must consist only of persons who were members of the union.[23] The only exceptions made were with respect to President or Secretary of the union in order, perhaps to allow for the appointment of suitable and proper persons to those positions from outside the union membership if it was found necessary to do so.[24] However, that policy position was dramatically changed in 1996 and the rules were then required to contain a provision which protected the exclusive right of members of a union to the membership of all policy making organs of the union.Thus, any or all of the

[22] Judgments of the Court of Appeal, part 2, April-July 1984, p. 341
[23] Para.9, First Schedule, Trade Union Act CAP. T14 L.F.N. 2005.
[24] Ibid, Para.9

members of a management committee need not be actual members of the union within the popular meaning of that term, i.e. that they applied for and were admitted into membership in accordance with the union rules.

The same definition should also affect the application of the statutory provision, which stipulates that no person is eligible to contest any elective post under any registered trade union, unless he is a member of any of those unions. Again, it means that actual membership of the union is not a requirement for eligibility to stand election for office in any of those unions. It seems clear that this rule and its results are not intended, if they are, it is suggested that the said rule is not appropriate for the effective and proper management of the unions.

ix. Nominal Roll of Members

The Rules book must contain a provision for the keeping of a nominal roll of members showing the trade, calling or usual occupation of each member and, where possible, in the case of a trade union of employees, the name of his employer.[25]

x. Investment of Fund

A provision for the investment ofthe funds of trade union or their deposit in a bank must be contained in the Rules book.[26] This connotes that whatever the union intends to expend funds on, for example purchasing union properties (moveable and immoveable) must be clearly spelt out in the rules.

xi. Keeping of Full and Accurate Accounts

In the First Schedule, Paragraph 12,[27] provides that the Rules book must contain a provision for the keeping of full and accurate accounts by the treasurer, for the annual or more

[25] Ibid, Para 10.
[26] Ibid, Para 11.
[27] Trade Unions Act. Cap T14 LFN, 2005

frequent periodical audit, by a person to be appointed by the trade union with the approval of the Registrar, of the account so kept, and for their submission when audited, to the members.

xii. Inspection of Books

There must be a provision for the inspection of the books, accounts and nominal roll of members of the trade union by a person who has an interest in the funds of the union. In *Norey v. Keep*[28],a member applied to inspect the union accounts by a means of an accountant. The court held that a member(s) not only have a personal right to inspect but were also entitled to exercise the right through an agent.

xiii. Strikes

The Rules book must contain a provision that no member of the union can take part in a strike unless a majority of the members have, in secret ballot, voted in favour of the strike.[29] The implementation and enforcement of such a rule are fraught with enormous problems. Since the rule applies to the union itself and not to any branch of the union it will seem that a union must obtain a majority vote of all its members even in respect of a matter affecting only a local group of its members or a branch of the union. Thus, this rule appears impracticable of implementation because union members are scattered in the various states of the country and an attempt to bring them together to vote may be unattainable.

This rule will also be difficult to enforce. There may be a breach of such a rule either by the union in calling a strike without the necessary majority or ballot or by a member or members by refusing to go on strike assuming a strike is lawfully embarked upon by the union. When a trade union calls a strike there is little doubt that it is under terms and condition upon which its

[28] (1909) 1 Ch. 561
[29] Para.14, First Schedule, First Schedule, Trade Union Act CAP. T14 L.F.N. 2005.

members shall or shall not be employ. Indeed, it appears that a branch of a union can lawfully call a strike independently of the parent body.

xiv. Dissolution of a Union

The procedure for dissolving the trade union and for the distribution of its assets, if any, must be provided for in the rules.[30] Since the Registrar has the power to refuse to register any union whose rules do not conform to the provision of schedule 1, there would be an avoidance of the difficulty which the court may face as a result of the omission of a rule on dissolution. Where, however, the rules do not contain a rule on distribution upon dissolution, assets of the union become divisible on common law principles.[31]

xv. Purposes of Trade Union

The whole of the purposes of the trade unions and the purposes for which its funds may be applied must be stated.[32] Although, the principal purpose of a trade union must be to regulate the terms and conditions of employment, but this need not be the only purpose of the union. A trade union may have as many purposes or objects as its members desire. What is required is that the rules must contain the whole of the purposes of the union. In addition to this statutory requirement, it is also wise to state all the purposes of the union in its Rules book because it has been held that the ultra-vires doctrine also applies to trade union.[33]

A trade union must also provide for the purposes for which its fund may be applied. The funds of a union may be expended in carrying out any of the purposes of the union. This is made clear by Section1 (2) of the Act, which provides that a trade union may apply its funds for any lawful purpose for the time being authorized by its rules, including in particular, if so

[30] Ibid, Para.15.
[31] Re Printers & Transferors Amalgamated Trades Protection Society (1899) 2 Ch.184.
[32] Para. 2 First Schedule, Trade Union Act CAP. T14 L.F.N. 2005.
[33] Re Durham Miners Association v. Cann (1900) 17 TLR, 39

authorized, that of providing benefits for its members. But where a trade union intends to apply its funds towards an object which is not one of its purposes, it is necessary to so provide in the rules. For example a trade union cannot apply its funds towards a political object unless the rules of the union so provide.[34]

3.4 Enforcement of the Trade Union Rules

It has been established that a union and its members can enforce all the terms of the Rules book, subject to statutory and common law restrictions contained and implied respectively in the trade. However, the enforcement will be discuss below.

i. Exclusion from the area of the Law

Trade Unions were, in the early decided cases, almost entirely excluded from the area of the law of contact. First, the unions were severely affected by the common law doctrine of restraint of trade. Where union's rules were designed to regulate the terms upon which the union members could dispose of their labour, the union was stigmatized as being a restraint of trade and its rules unenforceable. Second the courts declined jurisdiction to interfere to enforce the rules of voluntary societies unless a proprietary right was shown to exist. The intervention of the courts was based on a right to property in the society of which a member had been improperly deprived. Sir George Jessel's judgment in *Rigby vsConnol*[35]contains a clear statement of this principle. There, (he plaintiff sought the court's aid to restrain the defendants from excluding him from the membership and benches of the trade union of which he was a member. Sir George, the Master of the Rolls, said:

> *The first question that I consider is, what is the jurisdiction of a court of equity as regards interfering at the instance of a member of a society to prevent his being improperly expelled there-from'? I have no doubt whatever that the foundation of*

[34]Uvieghara E.E, Op.cit, 247
[35] (1880) 14 Ch.D. 482.

> *the jurisdiction is that I am aware of reposed… in any of the court… to decide upon the rights of persons to associate together when the association possesses no property…That is to say, the courts, as such, have never dreamt of enforcing agreements strictly personal in their nature… in such cases no court of justice can interfere to so long as there is no property the light to which is taken away from the person complaining.*[36]

But, as we have seen, this principle later gave way to the principles of the law of contract as the basis for the jurisdiction of the courts. As for the doctrine of restraint of trade it was left to statute to modify it with respect to trade union. A trade union may not necessarily be in restraint of trade. Whether or not it depends on its purposes or objects as manifested by its rules. As Lord Shaw put it in *Russelvs Amalgamated Society of Carpenters & Joiners*[37]the issue is one determinable by a survey and construction of the rules of the union. He explained the approach thus:

> *The last-mentioned rule itself provides in most comprehensive terms for fine, suspension, or expulsion of any member upon satisfactory proof being given that such member has refused to comply with the decisions of any other of the committee referred to…So far as the individual liberty of the worker is concerned, it is accordingly fairly plain that in respect of him is restrained, but that would not be sufficient to satisfy the conditions of unlawfulness unless these were also such as to affect trade in general or the public at large. Upon this subject it, however, appears that provisions are made for granting assistance to other trades and for levies of three pence per week per member in the event of any great struggle between capital and labourin our own or any other trade. "My Lords, I have only indicated these points from the rules for the purpose of saying that the course adopted by the counsel for the association was the perfectly natural and proper course of a frank admission that these rules arc, in fact, ii restraint of trade. They mean, and appear, to provide the materials and machinery under which, according to the*

[36] Ibid, p. 7
[37] (1912) A.C. 421; 28 T.L.R. 276.

> *decision and at the discretion of the officials of the association, a particular trade may not merely be restrained, but by concerted action with other branches of industry, that and the trade of the country at large may be actually paralysed.*[38]

However, where the rule of a union can be construed as serving benevolent purposes and not purely to regulate the disposal of the labour of its members, such rules are enforceable within the general rules of the law of contract. In *Swains v Wilson* where the general object of the union was the giving of relief to members who was disabled by age or accident or when unemployed, it was held that the union was not in restraint of trade, in *Gazneyvs BristolTrade and Provident Society*[39], the rules of the union provided for raising funds to secure to the members certain benefits including superannuation, sickness, funeral, travelling and trade benefits.

However, there is no doubt that the vast majority of trade unions will, at common law, be in restraint of trade. The onus of proving that a trade union is unlawful in that its purpose or purposes are in restraint of trade lies upon the person who alleges the unlawfulness. It has been said that this is a "difficult task" but the better opinion would appear to be the contrary in view of the nature of and usual purposes of trade unions. However, any trade union which would have been unlawful at common law for this reason is now legalized by statute. Section 23(1) provides that the *purposes of a trade union shall not by reason only that they are in r trade, be unlawful so as to render void or voidable any agreement or trust relating to the union.*

[38] Ibid, p.10
[39] (1946) K.B. 81

This subsection validates not only the purposes or object rules, but also all the other rules of the union. In *Faramusvs Film Artistes Association*[40]it was argued that the subsection validates only the purposes or object clauses of the union rules and that a rule of the union which is not an object rule, but a "mere incidental piece of its internal organization" is still void irrespective of the subsection. The majority of the English Court of Appeal however, rejected that view and were upheld by the House of Lord where Lord Evershed said: *according to the language of the section the effect is to give validity to any agreement which may be made as appurtenant to or in pursuance of the purposes of the union where the purposes themselves are in restraint of trade.*[41]

Thus, any rule of a union which would have been void and unenforceable because the purposes of the union are in restraint of trade is protected by the subsection. In other words, the subsection gives a trade union carte blanche to make any rule it likes, however unreasonable it may be in restraint of trade, provided that there is no other ground of illegality.

However, it was not intended to open the whole range of trade union activities to the control of the courts. Accordingly, the subsection excludes certain agreements of a trade union from enforcement in the courts. The rest of subsection if 23 (1) reads: *...but nothing in this subsection shall enable any court to entertain any legal proceedings instituted for the purpose of directly enforcing any agreement mentioned in subsection (2) below, or of recovering damages for any breach of any agreement so mentioned.*

[40] (1963) 2 K.B. 527 (549).
[41]In MorellevsWakeling(1955) 1 A.E.R. at 724

It is clear, therefore, that unlike in the case of a trade union which is lawful at common law in that its purposes are not in restraint of trade and whose agreements are therefore enforceable within the general law of contract, not all the rules of trade unions are unlawful at common law but are validated by subsection 23(1) are enforceable by the court. In the words of Lord Robson[42]:

> *It to be observed that the Act did not go the length of abrogating or altering the general law against restraint of trade. It grafted an exception on it in favour of certain classes of persons, but by S. 4 (S. 22) it maintained the principle of the old law even against those persons, to the extent of refusing the assistance of the courts in the direct enforcement of contracts between members of a trade union. Had it gone further and altogether excluded the application of the common law doctrine in this connection, the courts would have been compelled to give full effect by decree, or by injunction, to contracts whereby workmen had bound themselves not to undertake certain legitimate kinds of work and to refrain, under certain circumstances, from working at their trade at all, except by leave of their union, no matter what their immediate necessities might be.*[43]

It has, however, been argued[44] that when a registered union which, at Common law, is lawful sues or it sued in its registered name, that it is something in the Act which enables the action to be entertained by the court; that, therefore, the enforcement of the agreements of such a union is equally similarly limited. In other words, where a lawful union sues or it sued in it registered name, it is exactly in the same position as a union which is unlawful at common law but validated by the Act. But, as Professor Grunfeld[45] has said, with respect, quite rightly, in the case of a registered lawful union, that it can sue or be sued in its registered name is only a procedural matter, "it is the lawfulness of the rule book at common law that 'enables' the court to

[42] In the Matter of Moses Amado Taylor (1912) 1 A.C .347
[43] Ibid.
[44] Grunfeld, C, (1989) *The Law of Redundancy,* 3rd edn, London: Sweet & Maxwell, p. 241
[45] Ibid, p. 400.

entertain the action." A trade union whose purposes are not in restraint of trade can enforce all its rules independent of the Act. However, unlike the repealed Trade Union Act[46] which provided that "nothing in this Act shall enable," the present Act[47] avoids all doubts by providing that "nothing in this subsection shall enable the matters listed in subsection 23(2) to be directly enforced. The subsection does not deal with the registration of trade unions. The agreements which are not to be directly enforced by the courts are contained in subsection 23(2) which reads as follows: (a) any agreement between the members of a trade union as such relating to the terms and conditions on which members of the union shall or shall not employ persons or to be employed; (b) any agreement for the payment by any person of any subscription or penalty to a trade union: (c) any agreement for the application of the funds of a trade union:

(i) to provide benefits to its members: or

(ii) to make payments to any employer or worker who is not a member of the union :a consideration of his acting in conformity with the rules or resolutions or the union; or

(iii) to discharge any fine imposed upon any person by a court;

(d) any agreement such that every party thereto is one or other of the following, that is to say a trade union, a federation of trade union, or a central labour organization; (e) any bond to secure the performance of any agreement mentioned in paragraphs (a) to (d) above. Subsection (3) then provides *ex abundant caiitcla,* that nothing in section 23 shall render unlawful any of these agreements. Thus, the section only renders the agreement unenforceable in the courts but not unlawful. Although the intention of the section seems clear enough it has not been easy to determine how to give effect to it. What is the meaning of directly? At first the

[46] Trade Union Act CAP. 1996 repealed.
[47] Trade Union Act CAP. T14 L.F.N. 2005.

courts took an attitude which gave maximum application to the section. Thus, in *Rigby vsConnol*[48]the rules of the union provided for the subscriptions of its members to be applied to provide benefits for its members but that, any member who apprenticed his son in a shop employing non-union men would be lined and would be disentitled from receiving benefit until such fine was paid. The plaintiff, a member of the union, was expelled from the union. He brought an action claiming to be entitled to participate in the union benefits and also an order restraining his expulsion. It was held that the action would directly enforce an agreement to provide benefits to members and was therefore bared. In the same year this decision was followed in *Duke vsLittleboy*[49], but two years later Fry J., took a contrary view in *Wolfe vs Mathews*[50]. The plaintiff sought an injunction to restrain the defendants from applying money from the funds of the union in carrying out an amalgamation of the union with another union. The defendants objected to the action on the ground that it was a attempt to enforce an agreement for the application of the funds of the union. Fry J. held that the action was maintainable and granted an injunction. It was not an action directly to enforce the application of the funds of the union. He said:

> *Now it is plain that this is not an action to recover damages for the breach of an agreement, neither is it…an action to directly enforce an agreement... An order that the defendants should pay money to the plaintiffs would be a direct enforcement of an agreement for the application of the funds but all that issought here is to prevent the payment of the monies to somebody else. Either that is no enforcement of an agreement at all, or it is an indirect enforcement.*[51]

[48] (1880) 14 Ch.D. 482.
[49] (1987) Ch 264 at 285-286
[50] (1882) 21 Ch. D. 194.
[51] Ibid.

Which probably means that a negative or restraining order will not be a direct enforcement. Apart from *Chamberlains Wharf Ltd vs Smith*[52], where *Rigby vsConnol*[53]was once more followed, this view seems to have prevailed in subsequent cases, in Chamberlain's case, the committee of the union passed a resolution to expel the plaintiffs for alleged breaches of the included payment of benefits to members on a strike or lockout. The plaintiff, a member of the union sought an injunction to prevent the union paying out strike money in support of a strike he alleged was called not in accordance with the union rules. *It* was pleaded that this was an action directly to enforce provision of benefits to members. By a majority, the House held that this was not so. The object of the litigation, said Lord MacDermottwas simply to prevent misapplication of the funds of the union, not to administer those funds, or to apply them for the purpose of providing benefits to members. Similarly. Buckley L.J. in his judgment in *Osborne vs Amalgamated Society of Railway Servants*[54]said:

> *But it is said that an order to declare his expulsion ultra vires and a proper consequential injunction will be an enforcement of the agreement in the rules to apply the funds to provide whom with benefits. I cannot follow the contention. The plaintiff was a member of a solidity with (amongst others) rights as regard those benefits which were unenforceable. How can an order to restore him to membership do more than make him what he was before, namely, a member with the same unenforceable rights? How does such an order enforce those rights? What benefit in the application of the funds is it that the order compels the society to give him. Obviously none. If he succeeds in the action he merely resumes the position in which he stood before. His rights by way of benefits are neither greater nor less than before his expulsion.*

[52] (1886)17 Q.B. 154
[53] Op. Cit. p.400
[54] (1911) 1 Ch. 540; 27 T.L.R. 289.

In strict compliance with an expulsion rule is that only the body in which the power to expel is vested can vividly exercise the rule. In said in *Bonsorvs Musicians Union*[55] where the power to expel was vested in the branch committee of the union and the presorted expulsion was carried out by the secretary of the union, it has held that the expulsion was wrongful. Also similarly an expulsion carried out by the president of the union was held wrongful as the rules of the union vested power of expulsion in the incentive committee of the union.[56] Particular in the deliberation of the body vested with the power of expulsion by someone who is not a member of that body will also invalidate the decision.[57] The constitution guaranteed any person access to courts in the determination of any question as to civil rights and abolishment.

ii. Expulsion Rules

It is important to note that the courts have consider the union rules book contract in expulsion cases. The requirement that the rules or constitution of a union should provide for expulsion and other disciplinary measures is and so. There is no intended common law power in China to expel a member.[58] A power to expel must be exercised in strict compliance with the expulsion rule otherwise the expulsion is wrongful. Expulsion rules are that rules and therefore construed strictly.[59] In *Blackall v. National Union of Factory Workers of Great Britain and Ireland*[60] a rule provided for the exclusion of a member for non-payment of contribution for over twenty weeks – the plaintiff resorted exclusion a few days before he would have been in

[55] (1954)1 Ch 479
[56] EdetEkpoUdokijai v. EdetIsich (1974) 4 UILR 186
[57] Lane v. Uormey (1891) 66 LT 83
[58] Pawkins v. Antrobus (1881) 17 ch
[59] Per Coleridge J. in Blackall v. National Union of Fonndry workers it Great Britain and Ireland (1923) 39 TLR 431, 433
[60] Ibid

breaches for one twenty weeks was held not to be justified by the rules; most a times unions couch since expulsion rules in general terms usually referred

iii. The Rules in Foss vsHarbottle[61]

The Rule in *Foss vsHarbottle*[62] is being used by courts in the administration of trade unions and stated as follows: that if an act is intra vires the corporation therefore can be sanctioned by the majority of the corporators when properly assembled in general meeting, the court will not entertain any proceedings to restrain the doing of the act resolve upon unless such proceedings are brought by the majority of the corporators and in the name of the corporation itself.[63] It means that an individual member or a minority of members of a trade union will not be allowed to maintain an action in respect of an intra vires if it is carried out wrongfully or irregularly where such an act can be ratified by a simple majority of the members of the union. The court is interfering on behalf of the minority, thus does not stops the majority from carrying out the act again in the same way it had earlier done if it were minded to do so. This means the court would have acted in futility. If the majority believe that the wrong was done to the then the union caching through the majority, can sue. If the majority decide not to sue the wrong lies. Jenkins L.J. explain as follows:

If a mere majority of the members of the company or association is in favour of what has been done, then *credit queastio*. No wrong had been done to the company or association and there is nothing on respect of which any one can sue, in the other hand, a simple majority of

[61] (1843) 2 Hare 461
[62] Ibid.
[63] Cottes v. National Union of Seamen (1929) 2 Ch. 5 107-8 Per Lawrence Ltd.

members of the company or association is against what has been done, then there is no valid reason why the company or association itself should not sue.[64]

Moreover, there are exception to the rule although it may not be that accurate to refer to them as exception in the explanation of Sir Robert Megarry V.C., the reason for the exception[65] and stated by him is if the rule in *Foss v. Harbottle*[66] had remained unqualified, the way would have been open for the majority to stultify any proceeding which were for the benefit of the minority and to the disadvantage of the majority. Also one exception is that the rule does not apply where what has been done is ultra vires to the union or is illegal.[67] The second exception is that the rule has no application where what has been done amounts to a fraud on the minority and the persons against whom an action may be brought were themselves in control of the union and refuse to allow an action to be brought in the name of the union.[68] Other exception is that an individual member or minority members can sue where what has been done can be validly done or sanctioned, not by a simple majority of the members of the union, but only by some special majority of the members of the union.[69]

Further exception is the convict of the rule which applies where the wrong done to the union itself, this does not apply where the wrong is a violation of the right of an individual. When what has been done irregularly invades the personal or individual right of a member of a union that members may sue[70]. As Jenkins L.J. said "it is implicit in the rule that the matter relied on as constituting the cause of action properly belonging or association is applied to a

[64] Edwards v. Hallwell (1950) 2 All ER 1064, 1066
[65] Esimance (Kilmer House) Ltd. V. Greater London Council (1982) 1 All ER 437
[66] (1843) 2 Hare 461
[67] Ibid, 443
[68] Mbene v, Ofili supra
[69] Cotter v. National Union of Saemen supra
[70] Edwards v. Halliwell, supra

cause of action which some individual member can assert in his own right.[71] These five exceptions were discussed fully in the judgment of Jenkins L.J. in *Edwards v. Halliwell*[72]. In that judgment he had said "that the rule is not an inflexible rule and it will be relaxed where necessary in the interest of justice.[73] This statement has been interpreted as establishing a little exception.[74] Although this exception or statement has been described by the English court of appeal as not a practical test[75] the Supreme Court has not only accepted it but has in fact also applied it.[76] For the determination of one's civil rights and obligations.[77] According to the court, since the terms of a union's constitution constitute terms of contract between the union and each member and between the members *inter se* a breach of a constitution provision rules questions as the civil rights and obligations of the parties of the contract and, as such a party has a right at access to the court notwithstanding the rule. As Omo JSC puts it.[78]

> *Once the civil rights and obligation of the plaintiffs as individuals are affected, as I hold they are here the courts in exercise of their judicial power set out above[79] can look into such rights and obligation and for that reason the plaintiffs have a locus standi before the, such right generally under the constitution cannot be in any way detrimentally attested by the common law rule in Foss v. Harbottle.*

Therefore, whether it is regarded as an exception to the rule or not, that an individual union member can sue for breach of the union's constitution where he can show that such a

[71] Ibid, 1066-7
[72] See also Elufioye v. Halitu (1993) 6 NWLR 570
[73] (1950) 2 All ER 1064, 1067
[74] Prudential Assurance co. Ltd v. Newman Industries Ltd (1980) 2 All ER 841, 8797
[75] Ibid. at Pt. 254, p. 366
[76] Edokpolo& Co. Ltd v. Sum Edo wire industries Ltd (1984) LSCC 553
[77] S.6 (6)(b) Constitution
[78] (1993) 6 NWLR 570, 595
[79] Ibid

breach affects his individual civil right or obligation even where none of the established exceptions to the rule is applicable.

iv. Rules of Natural Justice

The rules of natural justice importantly is necessary to be in the union rules in all situation where the union rules empower the union or its official to exercise judicial or quasi-judicial functions. Cussack J. said "it is clear," that a committee fails at its peril to observe the rule of natural justice if it is exercising a judicial or quasi judicial function.[80] The exercise of a power which postulates an enquiry, leading to expulsion or other disciplinary measure against a member of the union, is a judicial or quasi-judicial function. Prior to 1971, the weight of authority seemed to have been that where a union was performing an administrative function as distinct from a judicial or quasi judicialfunction it was not obliged to observe the rules of natural justice. The courts in particular Lord Denning insist that the rules must be implied in all cases.

However, in the case of *Rusellvs Duke of Norfolk*[81], a majority Appeal held that natural justice could not be implied into a contract the terms of which conferred an unrestricted discretion in the stewards of a jockey club in withdrawing trainers' licenses. But in *Breen vs Amalgamated Engineering Union*[82], the same court unanimously held that a discretionary power does not exclude the application of the roles of natural justice. Where the rules, by express provision exclude the rules of natural Maugham J. Maclean no doubt that the matter must be decided by the terms of In such a case...where the tribunal is the result of rules adopted by persons who have formed the association known as a trade union,

[80] Dreen v. Amdstada Engineering Union (1970) 242 AL ER 190-182
[81] (1949) 1 All ER at 118
[82] (1971) 1 All E.R. 1148

it seems reasonably clear that the rights of the Plaintiff against the defendants must depend simply on die contract, and that the material terms of the contract must be found in the rules.

The learned judge added, "if for instance, there was a clearly expressed rule stating that a member might be expelled by a defined bed" without calling upon the member in question to explain his conduct, if there is no reason for supposing that the courts would interfere with such a rule on the ground of public policy. Yet, the courts have, in a number of decisions, said they will interfere with such a rule on that very ground. Thus, in *Dawkins vsAntrobus*[83], Brett L.J. said that the court can properly entertain the question whether "anything lias been done which is contrary to natural justice, although it is within the rules of a club, in other words, whether the rules of the club are contrary to natural justice.

In general terms natural justice comprises two main rules - (i) means both sides must be heard — a*udialterannnartern*- (ii) that the person or body deciding comes to its decision without bias. The rule that both sides must be heard requires that the party alleged to have committed some misconduct must be given a timely notice of the full charge against him and an opportunity for him to answer the charge. In *Annamumhodovs Oilfield Workers.*[84] *Trade* Union, the appellant, a member of the defendant union, was charged before the general council of the union with offences against certain rules of the union. The appellant attended a meeting of the council to answer to the charges and evidence was taken, but, owing to some other engagement, he failed to attend the adjourned sitting of the council a week later, at which the charges were held proved against him. He was expelled, not by virtue of the rules under which he was charged, but under a different rule of breach of which he had not been charged with. The judicial committee of the Privy Council held that there was an

[83] (1881) 17 Ch D 615, [1881–85] All ER Rep 126, 44 LT 557, 8 Digest (Repl) 652, 21
[84] (1961) AC 945

infringement of natural justice. It also has been held that failure to give notice to any member of the body vested with the power of expulsion of the meeting of that body at which an expulsion was pronounced invalidated the decision.

In conclusion this chapter examines the rules of the trade unions in Nigeria. It clearly shows how the rules have been applicable and practical in Nigeria.

CHAPTER FOUR

TORTIOUS LIABILITY OF TRADE UNIONS

4.1 Introduction

Tort is generally regarded as the law of duties, which imply refers to the 'central ideal that people have certain interests which others have obligation or duty to respect. With regard to so many such interests, the violation of the duty to respect it is called a 'tort' and the tort law is that body of principles which defines these interests, duties and the remedies available when the duties have not been met.[1] This chapter examines the extent of trade union tortious liability and it's effect on the trade union.

Trade unions may be sued in their own names in respect of a wide variety of civil actions, they may enjoy considerable immunity from actions in tort. However, the general immunity belongs to the union itself and does not apply to the individual who commits the tortuous act.[2] Section 44 of the Trade Unions Act, LFN 2005, certain acts are not actionable in tort if they are carried out in contemplation or furtherance of trade dispute. These acts relate only an inducement or threat to breach a contract or an interference with the trade, business or employment of another. It is however further provided that 'nothing... shall prevent an act done in contemplation or furtherance of a trade dispute from being actionable in tort on any ground not mentioned in that subsection.[3] While section 24(1) provides that an action against a trade union (whether of workers or employers) in respect of any tortuous act alleged to have been committed by or on behalf of the trade union in contemplation of or in furtherance of a trade dispute shall not be entertained by any court in Nigeria. From the above, these sections confer immunity and protection on trade union activities and shield then from tortuous liability. However, subsection 2

[1] See generally Winfield &Jolowicz, Tort (10th Ed.) pp.540-543
[2] See generally Winfield &Jolowicz. Tort (10th ed.) Pp. 540-543.
[3] S.44(2) LFN 2005

of section 44 points out clearly that trade union can be held liable under certain grounds, not mentioned in that subsection. It is in view of this that we shall now examine briefly some of the actions that can be taken by a trade union which may expose it to tortuous liability. Hence, there are some exceptions to the immunity clause in the Act.

Generally, it is observed that basically, there are three sphere of business activities in which the pursuits of the trade unions may constitute an encroachment on the rights of others. These are conspiracy, inducement to break a contract of employment, tort of intimidation and picketing.

a. Conspiracy

Section 518A[4] provided

> *'The provisions of section 516-518 shall not apply to any agreement or combination of two or more persons to do or procure to be done, any act in contemplation or furtherance of a trade dispute if such act when committed by one persons would not be punishable as an offence, provided that nothing in this section shall exempt from punishment any persons guilty of conspiracy for which a punishment is provided by any other enactment and provided further that nothing in this section shall affect the law relating to riot, unlawful assembly, breach of the peace or sedition or any offence against the state.'*

Similarly, section 96(2)[5] provides that notwithstanding the provisions of section 96(1), no agreement, except

> "*an agreement to commit an offence, shall amount to criminal conspiracy unless some acts besides the agreement is done by one or more parties to such an agreement in pursuance thereof'.*

Consequently, as in section 518A of the Criminal Code, section 96(2) of the Penal Code excludes the offence of criminal conspiracy from the area of trade dispute. It gives protection

[4] Criminal Code
[5] Penal Code

under a trade dispute only when an agreement is not to commit an act which amounts to an offence which is punishable when committed by one persons.[6]

The above seems to take a clue from the English 1871 Trade Unions Act which removed liability for criminal conspiracy. It provides that a trade union shall no longer be liable to criminal prosecution for conspiracy simply because its purposes are in restraint of trade.[7]

Having observed that a trade union shall no longer be liable to criminal prosecution, we shall be concerned with civil conspiracy or tort of conspiracy.

Civil conspiracy differs from criminal conspiracy in that actual loss must be shown. Mere agreement is not sufficient to create liability in civil conspiracy.[8]

Civil conspiracy takes two forms-general and narrow. The more general[9] form of conspiracy is when two or more persons combine together without lawful justification and intentionally to injure another. In its narrow[10] form, a combination amounts to conspiracy where unlawful means are used in pursuit of a legitimate object.

The general form of civil conspiracy is based on the deliberate agreement of the combiners to cause damage to another unlawfully. And this is the case whether or not the persons involved are trade unionists.[11]

However, in the case of *Crofter Hand Woven Harms Tweed Co. Ltd v. Veitch,*[12]Lord Simon said of tort of conspiracy.

> *'in the present case, the conclusion in my opinion, is that the predominant object of the respondents in getting the embargo*

[6]Idubor R., *Textbook on Employment and Trade Dispute law in Nigeria*, ed. Reprinted in 2005 pg. 120.
[7] See further s.3 of the conspiracy and protection of property act 1875 and reflected in s.4 of Nigeria Trade Unions Act 1939 (now repealed) and omitted from the Nigerian Trade Unions Decree 1973
[8]OladusuOguniyi,Opcit. Pg303.
[9] Quinn v. Leathern (1901) A. C. 495; Huntley v. Thornton (1957) 1 ALLER234.
[10]Rookes v. Bernard(1962)2 A11 E.R 579
[11]AkintundeEniola, op cit, p.201
[12] (1942) A.C. 435; (1935) 1 All E.R. 142;45 Digest (Repl) 535,1175.

> *imposed was to benefit their trade unions by preventing under cutting and unregulated competition, and so helping to secure the economic stability of the island industry. The result they aimed at achieving was to create a better basis for collective bargaining and thus directly to improve wage prospects. A combination with such an object is not unlawful, because the object is the legitimate promotion of the interests of the combiners and because the damage necessarily inflicted on the appellants is not inflicted by criminal or tortuous means and is not the real purpose of the combination.*

The judgement importance is that where an act is done in furtherance of trade union objectives or done to protect trade union interests which are not done unlawfully, then such actions are not actionable conspiracy. However where the sole or predominant purpose of the combination of agreement is to injure another in his trade and economic loss actually results, then the tort of civil conspiracy would have been committed, as the combiners have combined for an improper action.[13]

Furthermore, In explaining the concept of the tort of conspiracy Lord Wright stated as follows: *A conspiracy to injure, however is a tort which requires careful definition in order to hold the balance between the defendant's right to exercise his lawful rights and the plaintiffs right not to be injured by an injurious conspiracy.:…*[14]

Where trade unionists are pursuing a legitimate interest through unlawful means to achieve the object, the conspiracy is actionable. Thus in the case of *Majekodunmi v. R*[15]the West African Court of Appeal accepted this proposition of the law. It should be noted that for the tortuous act of a trade union to fall within the ambit of immunity clause, section 24 of the Trade Unions Act, Cap T14 States that the Act must have been done in contemplation or furtherance of

[13]OladosuOgunniyi, op citpg 305
[14] Crofter Hardwove Harris Tweed Co. Ltd Weitch (supra) Page 158
[15] Op cit.

a trade dispute 37. For this section to apply fully ‚the trade dispute'' the primary purpose of the action must be motive.

b. Inducement To Break A Contract Of Employment

Despite the general wordings of section 44(1)(a) of the Trade Union Act, 2005, where a trade unionist acted recklessly or knowingly in inducing a breach of contract, would be liable. Contrarily, where the person acted lawfully and within his rights, he cannot be held liable for causing a breach of contract.38 39 40 41 The principles highlighting the breach of contract were enunciated in the case of *Emerald Construction Ltd v. Lowthian*[16] where Lord Denning held:

> 'If the officer of the trade union knowing of the contract deliberately sought to procure a breach of it, they would do wrong. Even if they did not know of the actual terms of the contract, but had the means of knowing which they deliberately disregarded, that would be enough. Like the man who turns a blind eye. So here, if the officers deliberately sought to get this contract terminated, heedless of the terms, regardless whether it was terminated by breach or not, they would do wrong. For, it is unlawful for a third person to procure a breach of contract knowingly, or recklessly, in different whether it is a breach or not."

Conversely, where the inducement of the breach of the contract was not reckless nor deliberate but justifiable, a tortuous liability has not been committed. Thus in the case of *Brimelow v. Casson*[17] some chorus girls had to resort to prostitution in order to supplement their earning, it was held that the defendants who induced the contracts with the company were not liable because their action was justified.

c. Tort of Intimidation

[16] (1966) I All E.R. 1013 at 1017.
[17] (1924) 1 Ch. 302

The Trade Unions Actin Nigeria under Section 44(1), Cap T14, LFN 2005 gives a legal protection to a trade unionist who threatens to break his member's contract of employment 'in contemplation or furtherance of a trade dispute' However, where the threats amounted to the tort of intimidation, hence unlawful means has been used and a tort has been committed. Also, in the case,*Rookes vs.Bernard* Lord Reid held that:

> *Intimidation of any kind appears to me to be highly objectionable. The law was not slow to prevent it when violence and threats of violence were the most effective means. Now that subtle means are at least equally effective. I see no reason why the law should have to turn a blind eye. We have to tolerate intimidation by means which have been held to be lawful, but there I would stop. Accordingly, I hold that on the facts found by the jury the respondents actions in this case were tortuous.*[18]

d. Picketing

Section 43 of the Trade Unions Act, Cap T14, LFN 2005 provides for the rules as to picketing and particularly subsection 2 declares that where picketing is lawful, it shall not constitute an offence under any law in force in Nigeria and shall not constitute an offence under section 366 of the criminal code or any corresponding enactment in force in any part of Nigeria. In effect therefore, the control of picketing activity is achieved by applying the general criminal law, subject to the immunities conferred by statute on those who are acting in contemplation or furtherance of a trade dispute. It is therefore obvious that despite the provision under section 43 of the Act which seems to offer the worker unrestricted right of picketing, the protection however is restricted in scope. Thus in the case of *Hubbord v. Pitt*[19], Lord Denning in his dissenting judgment said: '*Picketing is lawful as it is done merely to obtain or communicate*

[18] Ibid at p. 375, intimidation may involve the use of threat of violence or illegal obstruction and this is not limited to the use of physical violence section 366(a) CCA.
[19] (1975) l.C.R.308

information, or peacefully to persuade; and is not such as to submit any other person to any kind of restraint or restriction of his personal freedom

However, section 43(1) of the Act as stated before is not absolute. It only protects peaceful persuasion to work or abstain from work. The protection will also be lost where violence or threat is employed. The law is that violence will render criminal an otherwise lawful act of peaceful persuading any person to work or abstain from working.[20] The term picketing describes the conduct of one who seeks to persuade other persons to take a certain course of action or not to do something usually, not to enter work premises or deliver supplies during industrial action.

It can be concluded from the above that pickets are subject to all the ordinary laws of obstruction, assault, public or private nuisance, trespass, unlawful assembly, affray and riot, breach of the peace etc. Despite the words 'it shall be lawful...' in section 43 of the Trade Unions Act, the effect is not to confer a right to picket as such but to provide an immunity from those offences which a person might by the very nature of his activity commit. The immunity applies as long as he has the purpose of peacefully communicating information or persuading any person to work or abstain from work. If his purpose changes, he loses the benefit of the section. The immunity therefore is limited. In the case of *Larkin v. Belfast Harbour commission.*[21]O'Brain, C.J. Said:

> 'The sections are not intended to enlarge the fields of operations the physical area of the operations of representatives of trade unions or of others ... it vim never intended to authorize, as a matter of right, an invasion into a man's house, or entry against the will of the owner into a place of business".

[20] Section 252 criminal code act, R v. Michael Imoduvsords. (1961) 1A11NLR 13 S.C.
[21] (1908)1 I.R. 214.

4.2 Liability of Trade Union for Torts

To achieve the aim of the trade unions, the Trade Union Act, cap T14, LFN, 2005 has clothed them with immunity in respect of any tortuous act alleged to have been committed by or on behalf of the trade union in contemplation of or in furtherance of a trade dispute. However, there are some exceptions to the immunity as we shall point out in the paper.

Consequently, despite the provisions of sections 24(1) and (2); 43 and 44 (1) & (2) of the Trade Unions Act, Cap T14, Laws of the Federation of Nigeria, 2004, trade unions or their agents are liable in tort for any unlawful act done outside these provisions. Therefore, a trade union or its agent can be liable in tort under civil conspiracy, inducement to break or breach contract of employment, intimidation and picketing. As a result, the successful plaintiff may be awarded damages and granted injunction. In order to achieve the aim of the trade unions, the Trade Union Act, Cap T14, LFN, 2004 has clothed them with immunity in respect of any tortuous act alleged to have been committed by or on behalf of the trade union in contemplation of or in furtherance of a trade dispute.

4.3 Civil Liability

The protection given to the unions under sections 43 and 44 (Part v) of the Trade Union Act,2005 is not an absolute one. Any act done outside the contemplation of the said section attract civil liability on the unionist. This may be in the form of award of damages or in the possibility of obtaining an injunction to restrain an act. An injunction here is an equitable remedy granted at the discretion of the court. It will not be; granted if other remedies in particular damages will be adequate. The test' for granting injunction is laid down by the Nigerian case

of*Obeya v. A. G. of the Federation*[22]. In the case of *Express Newspapers Ltd v.Mcshane*[23]*;* Lord Scarman said:

> *In a case where action alleged to be in contemplation or furtherance of a trade dispute endangers the nation or puts at risk such fundamental rights as the right of the public to be informed and the freedom of the press, it could well be a proper exercise of the court's discretion to restrain the industrial action pending trial of the action.*

Furthermore, where the defence of statutory immunity is highly likely to succeed at the trial, the courts would be justified in granting injunction where the threatened act would have immediate and devastating effect upon the applicant's person or property or where there was an immediate and otherwise unavoidable serious threat to public safety or health.

Under section 40 of the 1999 Constitution of the Federal Republic of Nigeria every Nigerian is entitled to belong to a trade Union.[24] However, having regard to section 45(1),this right is not absolute. A person who is otherwise eligible for membership of a particular trade union shall not be refused admission to membership of that union by reason only that he is of a political opinion[25] and where this subsection is contravened, the union and every official thereof

[22] (1987) NWLR (Pt 60) P. 325; Also the case of Kotoye v. CBN (1989) 1 NWLR 98.419

[23] (1980)1 C.R. 42

[24] However, subject to s.20 of the Trade Unions Act, Cap T14, LFN 2004, a person under the age of 16 shall not; be capable of being a member of a trade union. It should be noted that major human rights Treaties recognize: . a right to form trade unions:

(a) The international covenant on civil and political rights Dec. 16,1966 art. Para 1,999 UNTS, 171,178.'s|

(b) The International covenant on Economic, Social and Cultural Rights adopted Dec. 16,1966 art 8, para la,993,UNTS3,6

(c) The convention for the protection of human rights and fundamental freedoms (Europe) Nov. 4,; 1950 an 11, para 1,213 UNTS 221,232 (hereinafter European convention)

(d) The European social charter, 1961 gr. BritT.S.No.38 art5, (CMD2643)

(e) The American Convention on Human Rights Nov. 22 1969 art 16.9 ILM, 673, 680 (hereinafter ; American convention)

[25] Section 12(1) Trade Unions Act, Cap. Til, LFN 2005.

shall be, guilty of an offence against this Act.[26] Under the Act every trade union shall be registered and unregistered trade union shall be prohibited from functioning:[27]

In 1950 as an aftermath of the killing of defenseless striking coal miners in nugu by the police, the' two centres set up a caretaker committee to work out the modalities for merger, which eventually led to the birth of the Nigerian Labour Congress (NLC) in May 1950. This was the first NLC. Unhappy with the continued labor disunity and in an attempt to arrest this ugly trend in 1953 the All Nigerian Trade Union Federation (ANTUF) was inaugurated,sometime this attempt was also unsuccessful because the central body was riddled by crises and many labor centres thus emerged. In order to stem this trend, there was direct government intervention between 1975 and 1978 to restructure the unions.[28] This restructuring led to the emergence of a single labor centre, the Nigerian Labour Congress (NLC), 42 industrial unions, 15 Senior Staff Associations and 4 Professional Unions.[29]

The new structure introduced considerable sanity into the labor movement and significantly minimized chaos, which pervaded the system in the previous years.[30]

4.4 The Nigerian Labour Congress as the Central LabourOrganisation

The NLC before the amendment, used to be the only central labourorganisation in Nigeria. It was registered as the only central labour organization upon the coming into effect of the Trade Unions (Amendment) Act 197816. Section 34 of the Act provides that:

1. **The central labourorganisation** shall have power, subject to its rules

[26] S.12(2) Ibid
[27] Ss. 243 Ibid
[28] Ibid
[29] Adewuini F. (Ed) Comrade Sunmonu, H.A. *Trade Unionism in Nigeria: Challenges for the 21 Century.* 1997. Published by Freidrich Ebert Foundation, Lagos. Nigeria
[30] Ibid.

(a) to represent the general interest of its members on any national advisory body setup by the Government of the federation;

(b) to collect and disseminate to its members information and advice on economic and social matters;

(c) to give advice, encouragement or financial assistance to any of its members in need thereof;

(d) to promote the education of members of trade unions in the field of labour relations and connected fields; and

(e) to render any other assistance provide for under the articles of affiliation.

The Act further states in Section 2, that the NLC shall not engage in collective bargaining on behalf of any trade union or federation of trade unions except it is requested to do so by that trade union or federation which is a party to the collective bargaining. The penalty according to the Act in Section 3 is that if the central labourorganisation engages in any collective bargaining in contravention of subsection (2) of this section, then

a) The organization and every official thereof; and

b) Every trade union or federation of trade unions on behalf to which the organisation engaged therein and every official of that union or federation, shall each be guilty of an offence against this Act.

From the foregoing, it is very clear that the role of the NLC was clearly defined by the Trade Union Act17. From 1978 to the 1990's the role of the NLC remained primarily political. It resolved inter-union and intra-union disputes, organizes educational programs for affiliates, provides invaluable advice to membefs who may have to confront management at the negotiation table, represents workers interests at the national and international levels, and provides some

welfare facilities for workers, e.g. canteen services and co-operative societies. The NLC was made up of junior workers because the law that set it up in 1978 prohibited senior staff from being members18. The senior staff associations came under the umbrella of Trade Union Congress (TUC).

4.5 Legal Issues in The Trade Union (Amendment) Act? 2005 And The Implications For Freedom of Association

The explanatory memorandum of the Trade Union (Amendment) Act 2005 provides that"*This Act amends the Trade Unions Act, as amended to provide for among other things the democratization of the labour movement through the expansion of opportunities for the registration of Federation of Trade Unions as well as the granting freedom to employees to decide which unions they wish to belong*"[31]

The above explanatory memorandum to the Trade Union (Amendment) Act, 2005. This is the position the government has kept holding onto despite the public's thought to the contrary. The passing into law of the Labour Bill by the Senate has generated controversy and conflict between the Nigerian Labour Congress, the general public, the National Assembly and the Federal Government. Disagreements have been virulent to the point of eliciting mass action threats by the NLC. Among the general public, some see it as a positive development while others see it as a means of crippling the NLC and the unions under it. This group sees it as a revenge for the four general strikes that the NLC has called in the last four years.

Seeing how the NLC has been able to mobilize the vast majority of Nigerians in opposition to fuel price hikes, President Obasanjo thought that the only way to stop this is to decentralize the labourcentre. However, to the federal government, the Act essentially aims at democratizing and strengthening labour in the country as well as enhancing fundamental choices

[31] Explanatory Memorandum, Trade Unions (Amendment) Act, 2005

for Nigerian workers. In seeking to amend the Trade Union Act, the amendment would ultimately provide for a significant level of liberty and autonomy of trade unionism in Nigeria. This would be achieved through, among other things, the expanded registration of the Federation of Trade Unions and the voluntary rather than mandatory contribution of union dues to trade union[32].

As aptly surmised on the floor of the Nigerian Senate, the Minister of Employment, Labour and Productivity, Hassan Mohammed Lawal, said the Act was meant 'to promote the democratization of labour, and to further strengthen it.[33] The legal issues arising from the passage of this bill into an Act by the National Assembly include:

a) The right to freedom of association

b) The right to strike

c) Payment of the check-off dues which bothers on funding of the unions

d) The approval of the Minister before workers can join a trade union.

e) Ban on picketing

[32] Op. cit., See also the Daily Sun, Saturday, September 11, 2004. 'NLC broken, as 32 Senators pass Labour Bill into Law, By Joe Obi and Tony Icheku. Abuja.
[33] Ibid

CHAPTER FIVE

SUMMARY AND CONCLUSION

5.1 Summary

This research in centered on the appraisal of the tortuous liability of trade unions in Nigeria. Trade Union Acts defined "Trade Union" as any combination of workers or employers whether temporary or permanently, the purpose of which is to regulate the terms and conditions of employment of workers, whether the combination in question would or would not, apart from the Act be unlawful combination by reason of any of its purposes being in restraint of trade, and whether to purpose to or do not include the provision of benefit for his members.

Generally, the role of unions to their members includes economic, social, welfare, political, psychological benefits and opportunity to particulate in managerial functions in the industry. The law on recognition has the effect of compelling the employers to recognize registered trade unions and assist in ascertaining the matters for recognition of unions.

5.2 Findings

It was found as follows:

i. That if the government desires, it can manipulate trade union activities to promote its interests.

ii. That workers are not motivated to be productive in both the public and private sector.

iii. That Section 33(1) of the Trade Union Act, 2005 states that no person shall be an official of more than one federation of trade unions at the same time. This makes an official restricted to only one federation of trade union.

iv. That the intention of the Nigeria Trade Union law is to reform and democratize trade unionism in Nigeria and bring it into conformity with the prescriptions of the international labour organization (ILO).

v. That the Trade Union Act 2005 did not give members of trade unions enough promotion.

5.4 Recommendations

It is hereby recommended as follows:

i. That the government should allow trade union to be independent without any interference in its registration and formation.

ii. That workers needs to be highly motivated by the employers by way of incentives.

iii. That Section 33(1) of the Trade Union Act, 2005 need to be reviewed to create room for a person not to be allowed to be an official of more than one federation of trade unions at same time.

iv. That trade unions should be encourage to register with international labour organization.

v. That the Trade Union Act 2005 still need further amendment to enable it gives adequate promotion to members of the trade unions.

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