



**THE JUSTICIABILITY AND ENFORCEABILITY OF COLLECTIVE AGREEMENT
IN NIGERIA: EXAMINING THE CASE OF NUHPSW V OUTSOURCING SERVICES
LTD [2023] LPELR 60683(CA)**

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ABSTRACT

This paper gives a comprehensive analysis of the Court of Appeal's decision in NUHPSW V Outsourcing Services Ltd [2023] LPELR 60683(CA). This case brought to the fore the position that Collective Agreements are justiciable and enforceable in Nigeria. Collective Agreement is an agreement reached between workers union and their employers as a result of collective bargaining between the union and the employers. Prior to this Judgment, Nigerian courts have consistently followed the common law principle that, collective agreements are binding only in honour and also not enforceable due to the absence of privity of contract. This paper follows a doctrinal methodology relying on primary and secondary sources of law. The findings got from the case under review is that it has put to rest the common law position that collective agreements are generally not justiciable and is devoid of sanction because there is no intention to create legal relations by the parties, hence it is perceived as a gentleman's agreement, a product of trade union pressure. This paper recommends that the National Industrial Court of Nigeria can enforce collective agreements since section 254C(1)and(2)oftheConstitution(as amended) (3rd alteration)hasconferredexclusivejurisdiction on labour matters on it, that since the constitution has also allowed it to apply international best practices on labour matters, it can employ the labour treaties ratified by Nigeria.

Keywords: *Collective Agreement, Collective Bargaining, Justiciability, Enforceability, Labour Law*

INTRODUCTION

The employer and the employee relationship arises out of a contract of employment.¹ The said contract of employment whether entered in writing or otherwise contains terms which govern the relationship. The parties, in line with the doctrine of freedom of contract, freely negotiate the

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¹ S Erugo, *Introduction to Nigerian Labour Law* (2nd edn, Lagos: Princeton Publishing Limited, 2019) 311.



terms of the contract on equal level basis. However, contrary to this presumption, the fact is that during the time of negotiation, the employer and the employee are not on the same pedestal. They have different bargaining powers and so bargain from different backgrounds, the employer having an upper hand, thereby making the doctrine of freedom of contract more or less illusory.²thus, Collective agreements result from a successful collective bargaining.

Nigeria courts have consistently followed the common law principle that collective agreements are binding only in honour and also not enforceable and justiciable due to the absence of privity. Nigerian courts have, in several cases declined to enforce them as a matter of course when relied upon by an individual employee.³ The main issue in the application was whether the parties intended the agreement to be a legally binding arrangement. It was held that there was no intention that the agreement would be legally binding on the parties. According to Geoffrey Lane J, there was at the time, “a climate of opinion adverse to enforceability of collective agreements”⁴

In the case of *Gbadegesim v Wema Bank PLC*,⁵ the National Industrial Court in interpreting who can sue for breach of collective agreement held that a party can take the benefit of a collective agreement only when it is a party to it; but as regards individual employees who are members of a union, they can take the benefit only through their unions of it, if the union is not minded to sue on their behalf, then they must show evidence of membership of the union in question.

² V Iwunze, ‘The General Unenforceability of Collective Agreements under Nigerian Labour Jurisprudence: The Paradox of Agreement without Agreement’ [2013] (4)(4) *International Journal of Advanced Legal Studies and Governance* 1.

³ *Osoh & Ors v Unity Bank Plc* [2013] 9 NWLR (pt.1358) 1(SC).

⁴ G Lane, *FordMotors Cov AmalgamatedUnionofEngineeringandFoundry workers* [1969] 2 AER 481 (HC).

⁵ [2012] 28 N.L.L.R (Pt 80) 304.(NIC).



Flowing, from the above, it is saddening that despite the developments in that area of labour law, the Courts in Nigeria still allow common law principle which has been long buried by our colonial masters, to be operable in Nigerian Courts and their decisions against the extant law on the issue at hand.

CONCEPTUAL CLARIFICATIONS

Collective Agreement

The International Labour Organization (ILO) defines Collective Agreements as: all agreements in writing regarding working conditions and terms of employment concluded between an employer, a group of employers or one or more employers' organizations, on the one hand, and one or more representative workers' organizations, or, in the absence of such organizations, the representatives of the workers duly elected and authorized by them in accordance with national laws and regulations⁶. Collective agreements have proved to be a veritable instrument of industrial harmony and understanding, ensuring, more than anything else, that employees' interests in labour relations are protected through the bargaining process.⁷

Collective Agreement by virtue of section 47(1) of the Nigerian Trade Dispute Act of 1976 means any agreement in writing for the settlement of disputes and relating to terms of employment and physical' conditions of work.⁸ Section 91 of the Labour Act⁹ defines collective

⁶ILO Collective Agreements Recommendation, (No.91)1951, paragraph 2.

⁷ M J D Akpan, 'Nature of Collective Agreements in Nigeria: A Panoramic Analysis of Inherent Implementation Challenges' [2017] (5) (6) *Global Journal of Politics and Law Research* 19-28.

⁸ Trade Dispute Act 1976, s47(1).

⁹ Labour Act, Cap L1, Laws of the Federation of Nigeria 2004.



agreement as an agreement in writing regarding working conditions and terms of employment concluded between:

- (a) workers' organization or an organization acting for workers of the one part; and
- (b) employers' organization or an organization acting for employers of the other part.

Also, section 48 of the Trade Dispute Act, 1976 defines collective agreement as: any agreement in writing for the settlement of disputes and relating to terms of employment and physical conditions of work concluded between:

- (a) an employer, a group of employers or organisations representing workers, or the duly appointed representative of any body of workers, on the one hand; and
- (b) one or more trade unions or organisations representing workers, or the duly appointed representative of any body of workers on the other.¹⁰

Odunaiya posited that collective agreements refer to any agreement for the settlement of disputes relating to the terms of employment and physical conditions of work concluded between an employer or a group of employers and one or more trade unions or organizations representing workers.¹¹ Collective agreements aim at raising the living standard of workers, give confidence and self-respect to workers as individuals, and eliminate ignorance and illiteracy which hold down workers in the developing countries of the world and enable them enjoy human dignity.¹²

¹⁰ Trade Dispute Act 1976, s 48.

¹¹ V. Iwunze, 'The General Unenforceability of Collective Agreement under Nigerian Labour Jurisprudence: The Paradox of Agreement without Agreement' [2013] (3) (41) (1) *International Journal of Advance Legal Studies and Governance*, 44.

¹² OVC Okene, *Labour Law in Nigeria: The Law of Work*. (Claxton and Derrick Ltd, 2011) 14.



collective agreements are said to be more acceptable to governments in their relation with labour unions.¹³

Justiciability and Enforceability

Justiciability connotes a matter which is capable of being decided by a Court on the merit. It refers to the suitability for or amenability to judicial review of a particular administrative decision or class of decision. On the other hand, enforceability is an agreement that consists of the necessary components in order to be able to be imposed under law.

Collective Bargaining

Section 91 of the Labour Act defines Collective Bargaining as: “the process of attempting to arrive or arriving at a collective agreement”.¹⁴ Article 2 of the Collective Bargaining Convention, 1981 (No. 154) regards, employers and one or more employees concerning working conditions or regulating employer /employee relationship or regulating employer /employee organization’s relationship. It is a process of collective discussions and negotiation between the workers union or its representative or between an employer and the representative of a worker’s union on issues relating to their work situation with a view to arriving at a collective agreement, aimed at regulating working conditions. It is noteworthy that the term collective connotes that the outcome of the process usually affects persons organized in groupings. Therefore, Collective

¹³C0 Ajie & A EGabriel - Whyte, ‘Collective Agreement in Nigeria: A Comparative Analysis [2019] (4) *University of Port Harcourt Journal of Private Law* 71-72.

¹⁴. Labour Act 1974, s 91



Bargaining can be explained to be a negotiation or process or activity which ends up or leads to collective agreement.¹⁵

Labour Law

Labour Law is the legal framework that governs the relationship between employers and employees in Nigeria. It is the varied body of law applied to such matters as employment, remuneration, conditions of work, trade unions and industrial relations.

COLLECTIVE AGREEMENT UNDER COMMON LAW

Collective Agreement under Common Law are that they are not enforceable and generally binding in Honour.

In expatiating on the true meaning of “unbindingness” of collective agreement, Pearson J. opined that collective agreement is *"a gentlemen's agreement which the parties did not intend to be binding."*

The view of Pearson J. was upheld in **Young v. Canadian Northern Railway Co.** and restated by Geoffrey Lane J. in the leading case on collective agreement at common law: **Ford Motors Co v. Amalgamated Union of Engineering and Foundry Workers**, where the learned jurist posited that:

¹⁵ B Gernigon, A Odero, H Guido, ‘ILO Principles Concerning Collective bargaining in International Labour Law’ [2000] (139) *Review* 33-53



The climate of opinion was almost unanimous to the effect that no legally enforceable contract resulted from the collective agreements. The fact that the agreements prima facie deal with commercial relationship is outweighed by the other considerations, by the wording of the agreements and by climate of opinion voiced and evidenced by the extrajudicial authorities. Without clear and express provisions making them amenable to legal action, they remain in the realm of undertakings binding in honour.

Thus, under the common law, collective agreements are considered non-justiciable and ordinarily unenforceable or unlike every other agreement. Although they are the outcome of painstaking deliberations between employers and employees, collective agreements are not enforceable. Another reason for the non-enforceability of collective agreements at common law is the absence of privity of contract between an individual employee and the employer or employers' association since a collective agreement is always between employers or employers' associations on the one hand and workers' union on the other hand. An individual employee being no party to the agreement is prevented at common law from enforcing it. The classic exposition of the doctrine of privity of contract is contained in the judgment of Lord Haldane in *Dunlop Pneumatic Tyre Co. Ltd. v. Selfridge Ltd.*¹⁶ where the legal proposition was stated by the court in the following connection:

My Lords, in the law of England, certain principles are fundamental. One is that only a person who is a party to a contract can sue on it. Our law knows nothing of a *jus quaesitum tertio* arising by way of contract. Such a right may be conferred by way of property, as for example, under a trust, but it cannot be conferred on a stranger to a contract as a right in person to enforce the contract¹⁷.

¹⁶ [1915] A. C. 847 (CA).

¹⁷ *Ibid*, 853.



It is worthy of note to point out here that at common law there are exceptions to the doctrine of privity of contract. The exceptions to the doctrine include agency, assignment of contractual obligations, novation, contracts running with the land, contracts of insurance, charter parties and trust¹⁸ the right of an individual employee to enforce a collective agreement entered between a trade union of which he is a member and his employer for his benefit is not one of them. In *New Nigeria Bank v. Egun*,¹⁹ it was held that in the absence of privity of contract between the respondent employee and the appellant employer, the respondent could not claim under a collective agreement between his union and the appellant

COLLECTIVE AGREEMENT UNDER LABOUR LAW

Collective Agreement Under Labour Law encompasses and is regulated by the Labour Act,²⁰ Trade Dispute Act,²¹ National Industrial Court Act²² and Common Law. By the provision of the Labour Act. Collective agreement is an agreement in writing regarding working conditions and terms of employment concluded between an organization of workers or an organization representing workers (or an association of such organizations of the one part, and an organization of employers or an organization representing employers (or an association of such organizations) of the other part.²³ This clearly talks about working conditions and terms of employment of workers, and is similar to the definition of collective agreement under the National Industrial

¹⁸ G H Treitel, *Law of Contract* (9th edn. London: Sweet & Maxwell, 1995) 576- 587; I Sagay, *Nigerian Law of Contract*, (Ibadan: Spectrum Books, 1993) 489.

¹⁹ [2011] 7 NWLR (Pt. 711) 1.

²⁰ *Ibid* (n 10).

²¹ Trade Dispute Act, 1976.

²² National Industrial Court Act, 2006.

²³ *Ibid* (n 7), s 91.



Court Act (NICA),²⁴ unlike the definition in the Trade Dispute Act,²⁵ which relates it to settlement of disputes on terms of employment and conditions of work, the National Industrial Court Act only mentioned the terms of employment and conditions of work.

In the case of *Osoh & Ors v Unity Bank Plc*,²⁶ being a Supreme Court's decision, the Appellants' employments were terminated by the Respondents on the ground that the Appellants' services were no longer needed. The Appellants contended that the termination of their employments was wrong because under a collective agreement between the Appellants' trade union and the Nigerian Employers Association of Banks, Insurance and Allied Institutions (of which the Respondent was a member), the Respondent could only determine the Appellants' employment on the ground of redundancy. The Appellants also argued that under the same agreement, the respondent had wrongly computed their terminal benefits. The Supreme Court held that there was want of privity of contract between the Appellants and the Respondents and as such the Appellants could not enforce the collective agreement against the Respondents. The Supreme Court went further to distinguish a collective agreement from a contract by stating thus:

“Even though the forgoing provisions of subsection 1 of section 47 of the Trade Disputes Act are plain and unambiguous and have talked of “any agreements” nonetheless these provisions have nowhere referred to the phrase “any agreements” as used in the Act as coterminous with “contracts” in the strict sense of the word. The reason is quite simple and obvious as collective agreements (even in this case construed from the backdrop of the instant agreements as contained in these exhibits) are known to cover many different kinds of agreements on topics and matters

²⁴*Ibid* (n27), s7.

²⁵*Ibid* (n26), s46.

²⁶ [2013] 9 NWLR (pt.1358) 1(SC).



that are not really amenable to be described as contracts as they are not legally binding not having created legal relations. So that the phrase “collective agreement” is not in every case synonymous with the word “contract”. Not having appreciated this distinction is the bane of the appellants’ erroneous contention in this appeal by equating the instant agreements as per the said exhibits as legal contracts between the parties.’’²⁷

In the case of *Gbadegesim v Wema Bank PLC*,²⁸ the National Industrial Court in interpreting who can sue for breach of collective agreement held that a party can take the benefit of a collective agreement only when it is a party to it; but as regards individual employees who are members of a union, they can take the benefit only through their unions of it, if the union is not minded to sue on their behalf, then they must show evidence of membership of the union in question.

It is indubitable that the aforesaid cases shows the position of the Nigerian Court with regards to justiciability of collective agreements and on who can derive benefit from it. It is indeed worrisome that in spite of the developments in the area of labour law, the Courts in Nigeria still apply common law principles and their decisions against the extant law on the issue at hand. It is also saddening to note that, while the principle of privity of contract was being used to deny an employee the benefit of an agreement entered on his/her behalf, the provision of the Trade Dispute Act bestows power on a person/ body not even a Court . The Trade Dispute Act 2004 stipulates that of parties to a collective agreement will drop at least three copies of the agreement with the Minister of Labour within a specified period. After which, the Minister is expected to

²⁷*Osoh &Ors v Unity Bank Plc* (n 31), 29.

²⁸ [2012] 28 N.L.L.R (Pt 80) 304 (NIC).



make an order upon receipt of the copies of the agreement authorizing that any part or all of such agreement shall be binding on the employer and employees concerned.²⁹ This goes to show that collective agreement is brought under the scrutiny and discretionary power of a third party who is an appointee of the State with likelihood of bias and redtapism, although, the section applies to collective agreement relating to the settlement of trade disputes.

ENFORCEABILITY OF COLLECTIVE AGREEMENT IN NIGERIA

As aforesaid, Collective Agreement under Nigerian Law is not a binding document. In Nigeria over the years, the courts have taken the common law position that collective agreements are not binding. The courts have taken this position because of the doctrine of privity of contract,³⁰ as most collective agreements are usually between the employers on one hand and trade

The courts have held that collective agreements are binding in honour only and not enforceable.³¹ In *Ford Motor Co.Ltd.v Amalgamated Union of Engineering and Foundry Workers*³² (an English case), the main issue was whether the parties intended the agreement to be a legally binding arrangement. The court held that there was no intention whatsoever that the

²⁹ Trade Dispute Act, (n30), s 3(1),(3).

³⁰ *Union Bank of Nigeria v Edet* (1993) 4 NWLR (Pt 287) 298-299 (CA); *Afri Bank (Nig) Plc v Osisanya* [2000] 1 NWLR (Pt. 642) 598.

³¹ *Ibid.*

³² *Ibid* (n30).



collective agreement would be binding. In *Union Bank of Nigeria v Edet*,³³ the employee's contention that her termination flouted the collective agreement was rejected. It was held that collective agreements, except where they have been adopted as forming part of the terms of employment, are not intended to give or capable of giving an individual employee the right to institute an action for breach of any collective agreement, nor is it intended to complement the employee's contract of service.³⁴ The Court noted that:

Collective agreements are not intended or capable of giving individual employees a right to litigate over an alleged breach of their terms as may be conceived by them to have affected their interest, nor are they meant to supplant or even supplement their contract of service. In other words, failure to act in strict compliance with collective labour agreement is not justiciable.³⁵

Where an agreement is made in a business or commercial models, the law raises a presumption that the parties intend to create legal relations by the said agreement. Intention is implied by the fact that it is not expressly denied. However, if it is expressly denied it could then be argued that the contract may not be enforceable. In the case of *Rose & Frank Co. v J. R. Crompton & Bros. Ltd*³⁶, Scrutton L.J stated that:

“Now it is quite possible for parties to come to an agreement by accepting a proposal with the result that the agreement concluded does not give rise to legal relations. The reason of this is that the parties do not intend that their agreement shall give rise to legal relations. This intention may be implied from the subject matter of the agreement, but it may also be expressed by the

³³*Ibid*(n35).

³⁴*Ibid*, 288,291, per Uwaifo JCA(as he then was).

³⁵*Ibid*(n32).

³⁶ [1923]2 K.B. 26143(HL).



parties. In social and family relations such an intention is readily implied, while in business matters the opposite result would ordinarily follow.”³⁷

**THE CASE OF *NUHPSW V OUTSOURCINGSERVICESLTD* [2023] LPELR 60683(CA)
ON THE JUSTICIABILITY AND ENFORCEABILITY OF COLLECTIVE
AGREEMENT.**

In this case, the Appellant-NUHPSW, a registered trade union, initiated the action on behalf of some of its members who were employed by the Respondent-Outsourcing Services Ltd. During the pendency of the contract, the Respondent had an outsourcing contract with Chevron Nigeria Limited at various locations in the country, and these members were engaged to work under that contract. They were duly employed and issued letters of employment to confirm their status. This situation persisted until June 2008, when a collective agreement was jointly executed by representatives of both parties and the Respondent refused to implement the terms previously agreed by them. The Appellant was aggrieved by the Respondent’s refusal and resorted to institute an action.

The Respondent countered this claim by arguing that the agreement had long expired, ceased to exist and thus it is not enforceable. This argument was upheld by the trial Court, Consequently, the Court found that there was no valid collective agreement between the parties to interpret, leading to the dismissal of the suit. The Appellant being displeased with the judgment of the trial Court, appealed against same.

³⁷*Ibid* 288.



The issues raised in this appeal was:

‘Whether or not the Collective Agreement entered into between the Appellant and the Respondent in June 2008 is justiciable and enforceable ab initio, and whether it is still operative.’

The Appellant argued that the trial court made an error by not adhering to the fundamental rule of interpreting instruments when arriving at its decision. They contended that the various clauses of the collective agreement between the parties should have been harmoniously interpreted to align with the intention of the drafters and cited legal authorities to support its claim that the trial court failed to consider Article 6.2 of the Collective Agreement, thereby creating a conflict in the parties’ relations.

The Appellant further argued that not all its members had received their cheques, and some members had not also consented to the waiver proposed by the Respondent. They also emphasized that the Collective Agreement remained the contract of employment for their members, and the trial court misunderstood its nature thereby causing a miscarriage of justice. They cited legal precedents to support their argument and urged the court to set aside the trial court’s judgment. In response, the Respondent contested the justiciability and enforceability of the Collective Agreement. They relied on relevant legal provisions and a Supreme Court decision to argue that the Agreement was neither justiciable nor enforceable. They also pointed out that the Appellant failed to appreciate the distinction between a contract of employment and a collective agreement.



The Appellant, in their reply, argued that they had complied with the Trade Dispute Act and urged the Court to recognize the agreement’s validity. They distinguished the Supreme Court decision relied upon by the Respondent and asserted that the collective agreement remained the contract of employment.

In answering the issue for the determination, the court held that the contention of the appellant was that its individual member’s contract of employment has been replaced by the collective agreement in the instant case. It held further that having taken considerable time to look into the terms contained in the collective agreement executed by the parties from the standpoint of the provision of **Section 254C (j)(i) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), (the 3rd Alteration Act)**, relied on by the learned trial Judge. By the said provision. The National Industrial Court shall have and exercise jurisdiction to the exclusion of any other Court in civil causes and matters relating to the determination of any question as to the interpretation and application of any collective agreement.³⁸

In the above provision, the jurisdictional frontiers of the National Industrial Court of Nigeria, were expanded to, *inter alia*, hear and determine questions bordering on “Collective Agreement” as in the instant case. It is instructive to note that this power granted the lower Court is to the exclusion of any other Court. The learned trial Judge recognized and took the liberty of it when it held thus: “The defendant has argued that a collective agreement is not justiciable. **Section 254C(j)(i) of the 1999 Constitution, as amended**, has conferred this Court with exclusive

³⁸ Constitution of the Federal Republic of Nigeria ,1999(as amended) (the 3rd Alteration Act), s254C (j)(i).



jurisdiction relating to the determination of any question as to the interpretation or application of any collective agreement.’’³⁹

The power of interpretation and application of Collective Agreements approximates the power to declare as to the nature of rights, privileges, and obligations existing under the collective agreement. By virtue of constitutional powers of interpretation and application, a collective agreement is justiciable and enforceable.⁴⁰In the argument canvassed on behalf of the Respondent, in this regard, counsel must have been oblivious to this sweeping constitutional power with which the National Industrial Court of Nigeria is clothed, to the exclusion of any other Court, to hear and determine the nature of the instant question. The constitutional dispensation as highlighted above moved the jurisdiction of the lower court past the realm of mere interpretation to include enforcement, *id est*, the determination of the question as to the interpretation of any collective agreement.⁴¹

Suffices to point out here that the above statutory provision and the majority of the decisions on which the Respondent placed its reliance were pre-alteration positions of the Law when the provision of **Section 7 of the NICN Act, 2006**, held sway. The advent of the **Alteration Act of the 1999 Constitution** could be validly likened to a game changer when the hitherto unenforceable agreement becomes justiciable. But prior to the Alteration Act, the doctrine of

³⁹*NUHPSW V Outsourcing Services Ltd* [2023] LPELR 60683(CA).

⁴⁰(n 43)

⁴¹National Industrial Court Act, 2006, s 7 (1) (C)(i).



privity robbed collective agreements of their enforceability, except and until such time as the terms of the agreement are incorporated into individual members' contracts of employment.⁴²

This power of the lower court to interpret and apply terms in a collective agreement is further reinforced in Section 254C(1)(b) of the Third Alteration Act of the 1999 Constitution, as amended, over civil matters or causes that relate to or arise from the Factories Act⁴³, Trade Disputes Act⁴⁴, Trade Unions Act,⁴⁵ Labour Act,⁴⁶ Employees' Compensation Act,⁴⁷ or any other Act or Law relating to labor, employment, industrial relations, the workplace, or any other enactment replacing the Acts or Laws.⁴⁸

The provision of **Section 3 (3) of the Trade Dispute Act**,⁴⁹ is an administrative approach set in place to compel adherence to terms of an agreement freely entered into by parties, especially in the Pre-Third Alteration Act era, as it relates to labour matters.⁵⁰ The Court takes judicial notice of countless labour-related animosities which may hamper industrial relations if left to fester, hence the enactment.

⁴² *Osoh & Ors v. Unity Bank Plc* (n32).

⁴³ Factories Act 2014.

⁴⁴ Trade Dispute Act, 1976.

⁴⁵ Trade Union Act, 2005.

⁴⁶ Labour Act 2004.

⁴⁷ Employees' Compensation Act, 2010.

⁴⁸ *Ibid; Kwara Poly vs. Adefila*.

⁴⁹ *Ibid* (n 49).

⁵⁰ *Ibid*, s 3(3).



The **Third Alteration Act introduced novel areas of international** best practices. It enjoins the National Industrial Court in the exercise of its jurisdiction, to have due regard to good or international best practices in labour or industrial relations.⁵¹ These areas are:

- (i) relating to or connected with unfair labour practices or international best practices in labour, employment and industrial relation matters;
- (ii) relating to, connected with or pertaining to the application or interpretation of international labour standards.⁵²

The above novel provisions are that the National Industrial Court in considering the measure or quantum of damages is to do so in accordance with “good or international best practices in labour or industrial relations. The Court is to take a proactive stance in ensuring that the nation will not be left out in the reckoning of the comity of nations in the area of robustly flourishing labour practices and industrial relations. This position finds support in the case of *Sahara Energy Resources Ltd V. Olawunmi Oyebola*⁵³ where the reiterated that the clarion call is to the stakeholders in labour and industrial relations, to strive in order to conform with the international best practices as obtainable in the field. **The Court held that** prior to the Third Alteration, when employment and labour matters were handled by the High Courts, there was no obligation to apply and follow good or international best practices. It is an innovative provision which seems to be directed at enthrone an entirely new employment and labour jurisdiction...

⁵¹*Sahara Energy Resources Ltd vs. Olawunmi Oyebola* [2020] LPELR-51806(CA).

⁵²*Ibid* (n43), s254 (1) (f).

⁵³(n56).



What then is the international best practices and the international labour standards, in the application of collective agreements? Nigeria has entered into several international commitments which pre-determine for her, the way collective agreements are to be regarded. For instance, the Convention on the Freedom of Association and Protection of the Right to Organise **Convention No 87 of 1948, ratified by Nigeria in October 17, 1960, Collective Agreements Recommendation No. 91 of 1951, Collective Bargaining Convention No. 154 of 1981, Right to Organise and Collective Bargaining Convention No. 98 of 1949 ratified by Nigeria on 17th October, 1960.** The Collective Agreements Recommendation provides that collective agreements should bind the signatories thereto, and those on whose behalf the agreement is concluded. This, though not a convention is evidence of international best practice. This Court is able to apply international conventions and treaties, even where not nationalized by virtue of Section 254C (2) which provides that; Notwithstanding anything to the contrary in this Constitution, the National Industrial Court shall have the jurisdiction and power to deal with any matter connected with or pertaining to the application of any international convention, treaty or protocol of which Nigeria has ratified relating to labour, employment, workplace, industrial relations or matters connected therewith.⁵⁴The Court finds the argument of the Respondent weak and unsustainable and found the issue in the appeal in favour of the Appellant. It found out that the collective agreement of the parties is enforceable and justiciable.

CONCLUSION

⁵⁴ Constitution of the Federal Republic of Nigeria ,1999(as amended) (the 3rd Alteration Act), s254C.



One of the purposes of labour law is to deal in collective negotiation categories rather than of contract. This paper showed a comprehensive review of the case of *NUHPSW V Outsourcing Services Ltd* [2023] LPELR 60683(CA) where the Court held that the collective agreements entered between the Appellant and Respondent was enforceable and Justiciable. The Constitution of the Federal Republic of Nigeria, 1999 (as amended) (**the 3rd Alteration Act**)⁵⁵ empowers the National Industrial Court of Nigeria to exclusively apply any treaty which Nigeria has ratified relating to employment, labour industrial relations, workplace, and matters connected thereto notwithstanding any other provision of the Constitution requiring domestication of treaties before enforcement. It was also canvassed that since Nigeria has ratified numerous International Labour Conventions, domestication is not required before enforcement by the provision. Arguably, the National Industrial Court of Nigeria can now move away from the common law position, which held collective agreements not binding and enforces such agreements.

In summary therefore, by virtue of constitutional powers of interpretation and application, a collective agreement is justiciable and enforceable.

RECOMMENDATIONS

In the light of the foregoing and conclusion, it is pertinent to recommend as follows:

1. That the common law position that held collective agreements not binding unless incorporated into the individual worker's contract of employment should no longer

⁵⁵ CFRN 1999 (As amended) (the 3rd Alteration Act), s 254C(2).



remain because it has been known to influence and control many aspects of the employment relationship, including collective agreements.

2. That there is need for a statutory change in the Nigerian labour law now that the Court has recognized the enforceability and justiciability of collective agreements.
3. That there should be a clear statutory legislation stating that collective agreements are enforceable and justiciable.
4. That there should be a reform on the Nigerian Labour Law to align with international best labour practices and global trends which the Constitution of the Federal Republic of Nigeria, 1999 (as amended) (the 3rd Alteration Act) has recognized.