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CONTENTS

PROPRIETY OF JUDICIARY STAFF UNION OF NIGERIA STRIKE TOWARDS SECURING THE FINANCIAL AUTONOMY OF THE JUDICIARY IN NIGERIA

David Tarh-Akong Eyongndi*
Samuel A. Adeniji**

Abstract

This paper adopts the doctrinal methodology in appraising the propriety of the JUSUN strike embarked upon to compel State Governments to recognise the financial autonomy of the judiciary. Thus, strike action is a last deployed by employees to compel their employer to grant their demands; it is a corollary of the right to freedom of association guaranteed by the 1999 Constitution of the Federal Republic of Nigeria (1999 CFRN). The paper examines the provision of the Trade Disputes Act (TDA) as to the prerequisite and grounds upon which employees can embark on strike action, the meaning of trade dispute to ascertain whether the dispute that led to JUSUN strike is a trade dispute. The paper found that; while employees are legally permitted, upon fulfilment of certain conditions, to embark on strike, the strike embarked upon by JUSUN, does not come within the ambit of sections 18, 43 and 48 of the TDA and the dispute pursuant to which the strike is anchored, is not a trade dispute hence, same is therefore illegal. It argues that; while judicial officers are unable to "unionise" and embark on strike, the category of judicial staff who are directly affected by the lack of financial autonomy of the judiciary, are regarded as projection of management and therefore ineligible to join or form trade union (JUSUN). Also, despite embarking on an illegal strike, members of JUSUN are paid salaries notwithstanding the provision of the TDA. Giving

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the commitment shown by the Nigeria Governors Forum (NGF), the Nigerian Bar Association (NBA) and other sympathising stakeholders should implore JUSUN to call of the strike or governors should invoke no work, no pay rule.

Keywords: judiciary financial autonomy, strike action, trade union, Trade Disputes Act, Nigeria

1. Introduction

In employment relations under Nigerian law, there is presumption of voluntariness in the creation of the relationship as well as equality between the employer and the employee.[1] However, the presumed equality is a myth owing to several factors that have given the employer unfair advantage over the employees.[2] One way to counterbalance the unequal power equation between employer and employee is for the employees to congregate as a trade union pursuant to their right to freedom of association recognised by domestic and international legal regimes.[3] Where employees have legitimate grievances against their employer touching on their terms and condition of employment, employment of anybody or physical conditions of work, the employees usually attempt to resolve the issue amicably by dialoguing with the employer.[4] Where amicable settlement is not successful, the employees can resort to strike action as a last resort to compel a recalcitrant employer to accede to their demands.[5]

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[1] DT Eyongndi and MO Ajayi 'The Principles of Voluntariness and Equality under Nigerian Labour Law; Myth or Reality?' [2015-2016] (9) *University of Ibadan Journal of Private and Business Law*, 189-222.

[2] A Emiola, *Nigerian Labour Law*, 4th Ed., (Ogbomoso, Emiola Publishers Ltd., 2008) 2-3.

[3] See section 40 of the 1999 CFRN Cap. C23 Laws of the Federation of Nigeria (LFN) 2004; International Labour Organisation (ILO) Convention on the Freedom of Association and Protection of the Right to Organise No. 87 of 1948 and ILO Convention 98 Right to Organise and Collective Bargaining of 1949.

[4] AA Adeogun 'The Legal Framework of Industrial Relations in Nigeria [1969] (3) *Nigerian Law Journal*, 13.

[5] OVC Okene '*Internationalization of Nigerian Labour Law: Recent Developments in Freedom of Association* [2016] (13)(4) *Port-Harcourt Journal of Business Law*, 10.

Thus, on the 6th day of April, 2021, JUSUN embarked on a nationwide strike wherein all Courts in Nigeria were shut down due to continuous failure of the Executive arm of government to recognise and implement the financial autonomy granted the judiciary as an independent arm of government under the 1999 CFRN.[6] The NBA has shown sympathetic camaraderie with the strike and call on its members to visit their respective State Governors to implore them to give recognition and implementation of financial autonomy of the judiciary. Sections 18 and 48 of the TUA, provide prerequisites which employees who are desirous of embarking on strike must fulfil and the grounds upon which employees can embark on strike for the same to be valid and legal. Once this is done, the striking employees are exculpated from liability while section 43 of the TDA provides the effect of strike on continuous remuneration.[7] Since the commencement of the strike, the society has experienced unmitigated hardship particularly members of NBA who ply their trade in courts.[8] Despite the credibility of the cause for which the strike is hinged on vis-à-vis the hardship it has inflicted, the legality or otherwise of the strike, based on the express provisions of the TDA remains controversial.[9]

This article appraises the propriety cum legality of the strike action embarked upon by JUSUN in order to compel the Executive arm of government to recognise and implement the financial autonomy of the judiciary in Nigeria. It takes a historical

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[6] See sections 81(3) 121(3) and 162(9) of the 1999 CFRN.

[7] CK Agomo, *Nigerian Employment and Labour Relations Law and Practice* (Lagos, Concept Publications Press, 2011) 299.

[8] Vanguardonline "JUSUN Strike may cause Little Hardship-Lawyers" (20th April, 2021) available at google.com/amp/s/www.vanguardngr.com/2021/04/jusun-strike-may-cause-little-harship-lawyers/> accessed 2nd June 2021; Guardianonline 'Lawyers, Litigants groan as JUSUN Strike drags on' (17th May 2021) https://.guardian.ng/news/lawyers-litigants-groan-as-jusun-strike-drags-on-nan-survey/ accessed 2nd June 2021.

[9] B Nwannekanma, 'Strike: The Law and Constitutionality of Collective Bargaining' The *Guardian Online* (Lagos, 18 May, 2021) <https://m.guardian.ng/features/law/strike-the-law-and-constitutionalit-of-collective-bargaining/> accessed 2 June 2021.

excursion into the origin and nature of trade union and strike as a corollary of employees' combination.

The paper is divided into five parts. Part one is the introduction. Part two examines financial autonomy of the judiciary under the 1999 CFRN and its implication on the effective and efficient administration of justice in Nigeria. Part three discusses the prerequisites and grounds for embarking on strike action under the Nigerian labour law in juxtaposition of the legality or otherwise of the JUSUN strike. Part four contains the conclusion and recommendations.

2. Financial Autonomy of the Judiciary under the 1999 Constitution

Nigeria practices federal system of government wherein governmental power and functions are divided equally between the three arms of government (Executive, Legislature and Judiciary) and three tiers (Federal, State and Local Government).[10] Thus, the doctrine of separation of powers is well entrenched in Nigeria as contained in sections 4, 5 and 6 of the 1999 CFRN.[11] Although, the various arms of government are separate and distinct, their separateness is neither absolute, sacrosanct nor untrammelled; there is often overlaps for smooth governance.[12] As independent and autonomous arms, their operations and finance are to be controlled by each of them.

Thus, financial autonomy connotes a situation where each arm of government, due to their autonomy, have and exercise absolute control over their finance and are not tied to the control of any other save for oversight to ensure financial probity and accountability. The financial autonomy of the judiciary relates to a constitutional guarantee of control and management of the funds accruable to the judiciary by the judiciary itself and no other arm. The judiciary, just like the legislature and executive arms of

[10] AA Taiwo, *Separation of Powers: A Key Principle of Democratic Governance*, 2nd Ed. (Ibadan, Ababa Press Ltd., 2018) 14-18.
[11] C Chinwo, *Principles and Practice of Constitutional Law in Nigeria*, 2 Ed., (Lagos, Princeton & Associates Publishing Co. Ltd., 2020)101-105.
[12] PG Kusamotu, *Nigerian Federalism and Separation of Powers* (Ibadan: Phoenix Global Press, 2001) 34-38.

government, are equal in status with each having and performing its assigned functions.[13] At present, the finances of the judiciary is being controlled and managed by the Executive through the State Governors contrary to the provisions of the 1999 CFRN.

Sections 81(3) (c), 121 (3) and 162 (9) makes copious provision granting financial autonomy to the judiciary at the federal and state level. Thus, the amount standing to the credit of the judiciary in the Consolidated Revenue Fund (CRF) of the Federation shall be paid directly to the National Judicial Council for disbursement to the heads of the courts established for the Federation and the state under section 6 of the Constitution. According to section 121 (3), the amount standing to the credit of the judiciary in CRF of the State shall be paid directly to the heads of the courts concerned. Considering the foregoing, it is crystal clear that the 1999 CFRN recognises and grants the judiciary at the Federal and State level, financial autonomy however, the various State Governors, have persistently refused or failed to implement this. This is done to scuttle or whittle the independence of the judiciary as the aphorism goes, 'he who pays the pipers, dictates the tune.'

To ensure that recognition is given to the financial autonomy of the judiciary, two suits were filed at the Federal High Court.[14] In *Judiciary Staff Union of Nigeria v National Judicial Council & 74 Ors,*[15] the Applicant sued the respondent for the failure and persistent refusal to pay the amount standing to the credit of the judiciary to the Heads of Courts of the various States. The Court pursuant to sections 81(3) (c), 121 (3) and 162 (9), held that the failure to pay the amount standing to the credit of the judiciary to

[13] G Ochima, 'The JUSUN Strike for the Financial Autonomy of the Judiciary' *BarristerNG.com* (4 June 2021) <barristerng.com/the-jusun-strike-for-the-financial-autonomy-of-the-judiciary-and-the-effects-of-the-autonomy-on-the-judiciary-by-chima-george-esq/> accessed 5 June, 2021.

[14] IT Gambo 'Financial Independence of the Judiciary: A Mirage or a Reality?' Being A Paper presented at the National Workshop for Chief Registrars, Deputy Chief Registrars, Directors and Secretaries of Judicial Service Commission/Committees held at National Judicial Institute on 4th September, (2019) 8-9.

[15] *JUSUN v FJC & 73 Ors.* Suit No. FHC/ABJ/CS/667/13 Judgment delivered on the 16th day of January, 2014.

the Heads of Courts of each State is a constitutional breach which has to be abated forthwith and it compelled the respondent to comply with the provisions of 81(3) (c), 121 (3) and 162 (9).

To show his support for the above profound judicial pronouncements, the President of Nigeria, His Excellency, Mohammadu Buhari on the 22nd day of May, 2020 signed into law, Executive Order No. 10 of 2020 on "Implementation of Financial Autonomy of State Legislature and State Judiciary" pursuant to section 5 of the 1999 CFRN[16] which recognised the financial autonomy of the judiciary.[17] Rule 1(a) of the Executive Order, empowers the Accountant General of the Federation to deduct from the allocation from the Federation Account Allocation of any State that fails to release money standing to the credit of the legislature or judiciary in line with the financial autonomy of these arms of government as guaranteed under the Constitution. For the purpose of appropriation, Rules 3 thereof creates State Judiciary Budget Committee which is the body charged with the responsibility of preparing the budget of the judiciary and shall defend same before the State Houses of Assembly.[18]

The implementation of the Executive Order has become a controversial issue as State Governors expressed dissatisfaction with it. Hopefully, its implementation might strengthen the judicial institution at the state level by making them independent and accountable in line with the tenets of constitutional democracy. However, the Nigeria Governors Forum (NGF) have faulted the Executive Order as unnecessary basing their argument on the fact that section 121(3) of the 1999 CFRN does not require an

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[16] J Akubo "Executive Order on Financial Autonomy for State Judiciary, Legislature is Faulty says Ekweremadu' *Guardian Online* (Lagos, 20 May 2021) <https://m.guardian.ng.news/executive-order-on-financial-autonomy-for-state-judiciary-legislature-is-faulty/> accessed 5 June, 2021.

[17] I Nnochiri 'Financial Autonomy: Justice takes knee as Judiciary Battles for Survival' *Vanguard Online*, (Lagos, 20th May, 2021) <https://www.vanguardngr.com/2021/05/financial-autonomy--justice-takes-knees-as-judiciary-battles-for-survival/?amp=1> accessed 5 June 2021.

[18] Niji Oni & Co., 'Constitutionality of the Presidential Executive Order on Financial Autonomy in the States' available at <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3677073> accessed 5 June 2021.

Executive Order to be implemented.[19] No doubt, the benefit of the judiciary being financially autonomous cannot be overemphasised especially in the current dispensation. Where the Governors further delay the executive sanctioning of sections, 81(3) 121(3) and 162(9) of the 1999 CFRN, it is a gross misconduct which justifies setting in motion, impeachment process by the House of Assembly. Despite this, one doubts if political affiliation and consideration, will allow the State House of Assembly to take this option as there seems not to be any hope of this.

3. Trade Dispute and Strike Action under Nigerian Labour Law

In the consummation of employer-employee relationship, basic principles of contract state that, the employer and the employee are equal and the relationship is a product of voluntary bargain.[20] However, this presumption is a myth as the reality is that, at all times, the employer stands at an advantageous position over the employee.[21] This is particularly true in Nigeria owing to the high level of unemployment and underemployment which has aided the continuous existence and unabated practice of precarious employment relationships under non-standard employment relationships.[22] Employees' combination into trade unions became an inevitable option to balance the inherently imbalance

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[19] Buhari's Executive Order on Legislature, Judiciary Autonomy Unnecessary-Tambuwal" *Premium Timesng.com* (Lagos, 17 June 2019) <https://www.premiumtimesng.com/regional/ssouth-west/464156-buharis-executive-order-on-legislature-judiciary-autonomy-unnecessary-tambulaw/> accessed 3 June 2021.

[20] Eyongndi and Ajayi (note 1) 189-222.

[21] A Emiola, *Nigerian Labour Law*, 4th Ed., (Ogbomoso, Emiola Publishers Ltd., 2008) 2-3.

[22] EE Okafor and B Rasak 'Casual Employment a Nostrum to Unemployment in Nigeria' [2015] (4)(2) *Fountain Journal of Management and Social Sciences*, 109; Danesi, R.A. 'Labour Standards and the Flexible Workforce: Casualisation of Labour under the Nigerian Labour Laws' < www.ajol.info/indexphd/eajphr/cart/view//39344/7848> accessed 10 May 2021; Atilola, B. 'Protecting the rights of casual workers in Nigeria: Lessons from Ghana' [2014 (8)(1) *Nigerian Journal of Labour and Industrial Relations*, 1-9.

power equation between employers and employees. Through mutual dialogue, it is expected that employers and their employees acting through their representatives of trade union, negotiate on issues which entrenches industrial tranquillity aided by industrial democracy. However, where dialogue fails, or the employer is disinterested in dialoguing, the employees' most effective option is to resort to strike action giving its devastating potency on the socio-economic wellbeing of the employer's business.

The origin of trade union could be traced and discovered from the divine and economic origins. The divine origin traceable to the Bible is in the book of Acts.[23] One labour leader Demetrius who was a silver-smith dealt in making silver shrines for the goddess of Ephesus Diana made great fortune thereof with his companions. However, things negatively turn around for them with the arrival of Apostle Paul and his evangelistic companions. Aside the fact that the craftsmen made a lot of gain from the business, the goddess Diana was the only god of the Ephesians known and religiously worshipped and extoled by all hence, any attack on her person, met stiff resistance by the people.[24] Upon their arrival, Paul and his team went to town preaching the Lordship of Jesus Christ and condemning the worship of graven images of Diana as idolatry because it neither speak, have nor gives life. These of Paul's claims were fortified by the performance of several miracles to the extent that sick people particularly the image of Paul while passing healed the sick and handkerchiefs used to touched his body was laid on the sick and they were healed. Thus, many persons forsook Diana and every practices pertaining to her worship and purchase of her image. This outcome precipitated by Paul's teaching, constituted a grave danger to the economic fortune of the businesses hence, Demetrius who was alarmed, went to town mobilizing blacksmiths, silver-smiths and his own workers. In his speech to them, he stated thus:

[23] See Acts 19:23-41 King James Version of the Holy Bible.
[24] Uranta (note 14) 107.

> Whom he called together with the workmen of like occupation, and said, Sirs, ye know that by this craft we have our wealth. Moreover, ye see and hear, that not alone at Ephesus, but almost throughout all Asia, this Paul hath persuaded and turned away much people, saying that they be no gods, which are made with hands. So that not only this our craft is in danger to be set at nought; but also that the temple of the great goddess Diana should be despised, and her magnificence should destroyed, whom all Asia and the world worshippeth.[25]

At the end of his eloquent speech, his fellow craftsmen, could not resist apprehension but got submerged for it is recorded that *after they have heard this sayings, they were full of wrath, and cried out, saying Great is Diana of the Ephesians.*[26] As a result of this, the craftsmen started protesting and pandemonium broke out in the whole city.[27] Two of Paul's companions, Gaius and Aristarchus were caught by the strikers and brought to the authority for judgment and sanction. This account demonstrates the first organised strike action on earth from a Biblical account. In their demonstration, they chanted labour song, *great is Diana of the Ephesus,* and sort for the arrest and prosecution of Paul and his companions ostensibly for economic sabotage and blasphemy.[28] While the Garden of Eden account contained in Genesis,[29] represents the first case of industrial relations, the above event is a classic case of first organised industrial action (strike).[30]

From the economic perspective, the history of trade unions is traceable to the United States of America and Britain. The local clubs of skilled craftsmen in the 18th century which were

[25] Acts 19:25-27. New King James Version (NKJV).
[26] *Ibid.* verse 28.
[27] Uranta (note 14) 108.
[28] *Ibid.*
[29] Genesis Chapter 2:15. New King James Version (NKJV).
[30] Uranta (note 14) 108.

oppressed until the advent of the Combination Act of 1775 to1824 which accorded employees restricted trade union rights kick-started trade unionism.[31] Robert Owen is believed to be the first employee to organise skilled and unskilled employees in 1834 and formed the Grand National Consolidated Trade Union.[32] In 1834 six Dorset farm labourers of Tolpuddle, were sentenced to transportation (imprisonment) to Australia for seven year for administering an illegal oath to themselves with the aim of forming a trade union.[33] Despite this setback there were renewed efforts which led to the establishment of the Amalgamated Society of Engineers in 1951 and Trade Union Congress in 1868. Notwithstanding this advances, the legal position of the trade unions remained evasive. This was until 1871 when the Trade Union Act was promulgated by the Parliament which for the first time, giving trade unions legal recognition. Collective bargaining and collective agreements could be explored and reached under the Act and in the absence of express agreement, a collective agreement pursuant to section 4(4) thereof, was binding only in honour as a "gentle man agreement." this advancement soon suffered a fatal blow with the passage of the Criminal Law Amendment Act, 1871 which placed heavy restrictions on picketing although peaceful picket was permissible.

The 1875 Conspiracy and Protection of Property Act removed the fear of prosecution for criminal act but the civil liability of trade unions remained. The House of Lord decision in *Taff Vale Railway Co. v Amalgamated Society of Railway Servants*[34] exemplifies this. The company successfully sued the union and was awarded damages for conspiracy to induce its employees to breach their contract of employment by participating in a strike organised by it. The effect of the Taff Vale judgment on the union's funds led to the giving of immunity to union funds under the Trade Union Act of 1906. The failure of the

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[31] *Ibid.* 109.
[32] *Ibid.* 109.
[33] VA Odunaiya, *Law and Practice of Industrial Relations in Nigeria* (Lagos,Passfield Publishers Ltd., 2006) 44-45.
[34] (1901) AC 426.

general strike of 1926 was a major setback to the growth of trade unions in Britain for it snowballed to the promulgation of Trade Disputes (Amendment) Act, 1927 which outlawed all general strikes in Britain but was changed subsequently changed. Nigeria inherited the 1875 Conspiracy and Protection of Property Act which were largely adopted in its Trade Unions Act of 1939particularly section 4(1) thereof that protected unionists from criminal liability. Unfortunately, the 1973 Trade Unions Act does not contain a similar provision.

According to Oji and Amucheazi,[35] strike is the common and most popular form of industrial action. "Section 48 of the TDA contains an encompassing definition of strike that strike is:

> The cessation of work by a body of persons employed, acting in combination, or a concerted refusal or a refusal under a common understanding of any number of persons employed to continue to work for an employer in consequence of a dispute, done as a means of compelling their employer or any person or body of persons employed, or to aid other workers in compelling their employer or any person or body of persons employed to accept or not to accept terms of employment or physical conditions of work.

Strike action gives impetus to collective bargaining as the employees goes to the table knowing that fear of resorting to strike, is a potent anxiety that can compel the employer to fairly bargain. Lord Wright in *Crofter Harris Tweed Co. Ltd. v Veitch*[36] rightly held that "the right to strike is an essential element in the principle of collective bargaining. It is an essential element not only of the unions' bargaining itself, it is also a necessary sanction for enforcing agreed rules." Uwaifo JCA (as he then was) in *Union Bank of Nigeria Ltd. v Edet*[37] in agreement with the foregoing position, held that "it appears that whenever an

[35] EA Oji and OD Amucheazi, *Employment and Labour Law in Nigeria* (Lagos, Mbeyi and Associates (Nig) Ltd., 2015) 287.
[36] (1942) 1 All ER 124 at 159.
[37] [1993] 4 NWLR (Pt. 287) 288.

employer ignores or breaches a term of that agreement, resort could be had, if at all, to negotiation between the union and the employer, and ultimately to a strike action should the need arise for enforcing agreed rules."

A proper understanding of strike is necessary in highlighting its elements. From the definition under the TDA, it is obvious that for any action to amount to a strike there must be a cessation of work by any number of persons (employees) who are employed acting under a concerted or common understanding. There must be an agreement to strike between the strikers and they must be at least two or more in number and the agreement to cease from working must be premised on a dispute. The dispute contemplated here is not generic but restrictive and connotes labour/employment disputes as will soon be seen. Any dispute that does not come within trade dispute as defined under section 48 of the TDA will not legitimise a strike action and would therefore not absolve the strikers from liability. The definition does not admit of any conceivable dispute as a basis for employees' to stop work. The concerted cessation of work must be in a bid to compel an employer, body of employers or aid the employees of another employer compel their employer or body of persons employed, accept or not to accept terms and conditions of employment or physical conditions of work. The object of the cessation of work must be to compel an employer or aid other employees compel their employer or persons employed to accept terms and conditions of employment or physical conditions of work. Thus, it must relate to terms and conditions of employment or physical conditions of work for the concerted cessation of workers by workers to qualify as a strike action; if the cessation relate to things other than terms and conditions of employment or physical conditions of work, it does not qualify as strike action nor does it enjoy the protection afford by the law.

The question may be asked, what is the effect of a strike action on contract of employment? A notice of strike by employees has been interpreted as having the effect of a unilateral suspension of contractual duties involving a breach of

contract. This effect is garnered from the dictum of Lord Justice Donovan (as he then was) in *Rookes v Barnard*.[38]

From the above, the focal point of strike is the existence of a dispute which must relate to terms and conditions of employment or physical conditions of work. It is pertinent to underscore the meaning of dispute of trade dispute which is the basis for a strike action. Under this theory, if an employee refuses to carry on working under his contract of employment, this gives the employer the option either to ignore the breach and to insist upon performance of it or alternatively to accept the such as a fundamental breach as a repudiation of the contract and treat himself as no longer bound by it.[39] What this means is that a notice of strike from the employees without adherence to due procedure, leaves the employer either with the choice of ignoring same and treat the contract of employment as subsisting or to accept it and treat same as unilateral repudiation of the contract which is a breach of a fundamental term entitling the employer to repudiate the contract and sue for damages due to the breach.[40]

The second effect is that a notice of strike is a notice of the employees' intention to terminate the employment contract and not actual termination. This is the case where the employees/trade union follow the laid down procedure for embarking on strike unlike the earlier where the notice does not align with the procedure.[41] Russel LJ in *Morgan v Fry*[42] stated the effect and distinguished it from that stated by Donovan LJ (as he then was) in *Rookes v Barnard*.[43] However, the notice of intention to determine the contract must be sufficient under normal circumstances to determine the contract in the absence of the intended strike action else, same will be declared insufficient thereby bringing it within the realm of unilateral determination.[44]

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[38] (1962) 2 All ER 579; (1962) 3 W.L.R. 260 at 287.
[39] See the dictum of Lord Denning in *Stratford (J.T.) & Sons Ltd. v Lindley* (1965) A.C. 507.
[40] Emiola (note 21) 510-511.
[41] *White v Riley* (1920) All E.R. Rep 371; (1921) 1 Ch 1.
[42] (1968) 3 All E.R. 452.
[43] (1962) 2 All ER 579; (1962) 3 W.L.R. 260 at 287.
[44] Oji and Amucheazi (note 35) 291.

Another effect is that a strike notice only suspends the contract of employment and does not terminate it. Lord Denning MR stated this effect in *Morgan v. Fry*[45] which is a detraction from his earlier view in *Stratford (J.T.) & Sons Ltd. v Lindley*.[46]

At the expense of sounding repetitive, it is apposite to reiterate that, the existence of a "trade dispute" is the condition upon which employees can embark on strike. The question is, what dispute will legally justify employees to go on strike? Section 48(1) of the TDA defines trade dispute a dispute between employers and the workers or between workers and workers, which is connected with employment or non-employment, or the terms of employment and/or physical conditions of work of any person. The definition under section 54 of the NIC Act 2006 is more expansive, it defines it as any dispute between employers and employees including disputes between their respective organisations and federations which is connected with the employment or non-employment of any person; the terms of employment and physical conditions of work of any person; the conclusion or variation of a collective agreement; and an allied dispute.

From the above definitions, for a dispute to qualify as a trade dispute, it must have three components, i.e. the subject matter of the dispute, the parties and the object or purpose of the dispute. The Court of Appeal in *Apena v NUPPP*[47] reiterated the point that a trade dispute must have the aforementioned components. The subject matter of a trade dispute is a four dimensional matter which are capable of independent existence.[48] It could involve the "employment" or the "non-employment" or the "terms of employment" or the "physical conditions of work" of any persons. Employment or non-employment of any person will necessarily be concerned with the initial engagement or continued employment or the reinstatement of any person. A dispute that arose as a result of the aforementioned reasons, qualifies as a

[45] (1968) 3 All E.R. 452.
[46] (1965) A.C. 507.
[47] [2003] 8 NWLR (Pt.822) 426.
[48] Emiola (note 21) 517.

trade dispute within the contemplation of the TDA. The decision in *Morgan v. Fry*[49] where the defendant and other union officials threatened to strike if the Port of London Authority continued to employ the claimant who had formed a parallel trade union, the Court of Appeal reversed the decision of the High Court on the basis that since their contract did not contain a no-strike clause, the action of the defendant was lawfully since it dealt with the non-employment of another. In *Ezaga v. Embechem Ltd. & Anor,*[50] the court held that a dispute that arose as a result of failure or refusal to reinstate a wrongfully terminated employee amounted to a trade dispute. Terms of employment normally covers express and implied terms in a contract of employment as contained under section 7 of the LA.

Physical condition of work is a knotty phrase which has not been judicially pigeonholed but which is believed will encompass safety and physical comfort at the place of work. It deals with the physical conditions under which an employee discharges his obligation towards his/her employer. It includes things such as provision of food canteen, conveniences, recreational and relaxation spot, sports, canteen and store facilities, rest period, dealing with overcrowding, placing of warning signs at appropriate places to avoid accidents, provision of safety wears and safety tools.

As regard terms of employment, it entails both express and implied terms of contract of employment as contained in the offer letter and ancillary documents or can be implied by the peculiarity of the concerned employment. It consist of things covering hours of work, nature of employment (contract, probationary, casual, permanent), grading and promotion, wages, holiday with or without pay, maternity and sick leave, procedure for termination, entitlement to allowances, retirement age, disciplinary measures and procedure, etc. Section 7 of the LA contain mandatory terms of employment that must be contained in an employment contract to be given by the employer within three months from the date of creation

[49] (1968) 3 All E.R. 452.
[50] (1981) 1-3 CCHCJ/119.

of the employment contract. Emiola[51] has opined that terms of employment may also include dispute over an agreement of workers to join a particular trade union[52] or the interpretation of the terms of a collective agreement[53] or an award of the industrial arbitration panel.[54] Where the Amalgamated Union of Musicians threatened to embark on strike save the agreed rate for Sundays performances were duly observed, the English Court of Appeal in *Dallimore v. Williams*[55] held that this was a dispute concerning the terms of employment and therefore qualifies as a trade dispute.

Aside the foregoing, the object of a trade dispute must be to further the interest of members of the trade union and nothing more.[56] The second constituent of a trade dispute is the parties. Under the TDA, for a dispute to qualify as a trade dispute, it must be either between employees and employer or amongst employees and the NIC Act includes a dispute between an association or organisation of employees or their federation. Thus, a dispute between employees and a third party other than their employer is not a trade dispute. While the parties from the definition under both Acts seems to suggest the subsistence of an employment relation, the fact is that, there need not be a subsisting employment relationship for a dispute between an employer and employee to amount to a trade dispute. Take for instance, it can be possible an employee has is purportedly dismissed, the dismissal does not disqualify the case as such as the fact of seeking reinstatement maybe the reason for a trade dispute also where employees in solidarity with another

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[51] Emiola (note 21) 518.
[52] *Anigboro & Ors. v Sea Trucks Ltd.* [1995] 6 NWLR (Pt. 399) 35.
[53] *Nigerian Union of Construction Workers v Constain (W/A) Ltd.* (1980/1981) NCLR 20.
[54] *National Union of Textile Garment and Tailoring Workers v Nigerian Kraft Bags Ltd.* (1980/1981) NCLR 13.
[55] 45 Digest (Repl.) 572.
[56] AK Ubeku, *Industrial Relations in Developing Countries: The Case of Nigeria* (London,McMillan Press, 1983) 156-159.

4. Contextualising the Propriety of Jusun Strike

From the preceding section, it has been established that strike is a fundamental labour right and a last resort weapon in the hands of employees to compel an employer accede to their demand after negotiation and or other less coercive measures have failed.[57] Strike is usually carried out in furtherance of a trade dispute which must pertain to the employment or non-employment of a person, terms of employment, or physical conditions of work and must be between employers and employees.[58] The question is, does the issue upon which JUSUN embarked on strike on the 6th day of April, 2021 come within the province of the four dimensional requirements of the meaning of a trade dispute under the TDA to justify the strike? Put differently, does the strike action embarked upon by JUSUN qualify as a dispute under the contemplation of section 48 of the TDA?

The answer to this question is in the negative. The issue of financial autonomy of the judiciary does not come within the definition of trade dispute as provided for under the TDA. The issue does not relate to the employment or non-employment of any person by the employer which if a dispute arose therefrom, same qualifies as a trade dispute based on the requirement of the TDA. It does not also relate to terms of employment of any member of JUSUN as it is purely a constitutional issue which cannot be made a term of employment. It is unconceivable that a term of employment of any member of JUSUN will be that the judiciary has financial autonomy. It cannot also be anchored on the prerequisite of physical condition of work which is regarded as an issue which if disputed about, the dispute will qualify as a trade dispute. Physical condition of work of employees is understood as pertaining to the working environment including the amenities and facilities that makes performance of work conducive. Provisions of basic amenities and facilities and

[57] GG Otuturu, 'Trade Unions (Amendment) Act 2005 and the Right to Strike in Nigeria: An International Perspective' [2014] (8)(4) *Labour Law Review*, 33-37.
[58] GG Otuturu, 'The Right of Workers to Strike in Nigeria: A Critical Appraisal' [2009] (3)(2) *Nigerian Journal of Labour and Law and Industrial Relations*, 37-48.

infrastructure to aid the working conditions of the employee. For instance issues such as provision of well-equipped offices, stationaries, leisure and recreational facilities, and other appurtenances needed for effective and efficient working all come under the prerequisite of physical conditions of work.

While it might be argued that there is a subsisting judgment of the Court in favour of JUSUN against the Executive arm of every state in Nigeria in which the financial autonomy of the judiciary has been judicially upheld, it is contended that, strike is not a legally approved means of enforcing a judgment of the court in the event of failure of compliance. While contempt proceedings is a means of ensuring compliance with court judgment, in the instant case, the immunity of the governors and their deputies, is a clog against that option. This notwithstanding, the action of JUSUN is not *in tandem* with the provisions of TDA.[59]

While it might be argued and rightly so on socio-political basis that, if JUSUN does not embark on strike to compel the recognition of the financial autonomy of the judiciary, the judiciary itself (judges and magistrate), being incapable of striking, no one may "fight for it," this propcsition still does not clothe the strike with legality. The law is a rational and dispassionate arbiter and not an emotional or sentimental phenomenon, while the socio-political undertone of the strike exists and is countenanced, its legality based on the extant provisions of the law is a totally different thing. Exculpation from liability associated with strike action or any other industrial action, is anchored squarely on the legality of the action and not socio-political undertone. The culture of using strike as a political instrument for every labour dispute breeds more injustice than entrench justice. It is illogical and amoral to adopt illegitimate means to pursue a just cause, the financial autonomy of the judiciary is a just cause with potentials of positively impacting the process of justice administration in Nigeria however, same must be rigorously pursued within the confines of the law.

[59] See section 43 and 48 of the TUA 2004.

Despite embarking on an illegal strike, the members of JUSUN were regularly paid their monthly salaries without working. The TUA allows their employers to invoke the no work, no pay rule and whenever any benefit is to be conferred based on continuous work period, the period of strike has to be discountenanced. While the strike seems to enjoy public sympathy, it has left so many casualties due to lack of access to court by justice seekers. Several persons imprisoned are unable to apply for bail, pending cases are left hanging and stands the risk of being commence *de novo* possibly due to lapse of time. The aphorism, justice delayed is justice denied resonate in this given situation. The citizenry are beginning to device other means of seeking justice as there seems to be a gradual and steady failure of the court system. It is a notorious fact that the wheel of justice in Nigeria, runs on a locomotive speed as same is bedevilled by several dilatory traps, this strike, is only exacerbating the situation with the main casualties being the litigants and lawyers whose main practice is litigation. The avoidable hardship it has cause, is immeasurable.

5. Conclusion and Recommendations

Extrapolating from the above analysis, it is trite that strike action is a germane employment right and a potent weapon in the hands of the employees to compel a recalcitrant employer to accede to their demands. It is a last as opposed to a first resort in negotiation towards improvement of the terms and conditions of employment. It can only be resorted to when there is a trade dispute as provided for under the TUA hence, the absence of a trade dispute within the meaning ascribed to it under the TUA, will render illegal any strike action embarked upon by employees. Thus, such an illegal strike action does not enjoy the protection accorded to striking employees under Nigeria's labour jurisprudence. The strike embarked upon by JUSUN in order to compel the Executives arm of government at the State level in Nigeria to recognise and implement the financial autonomy of the judiciary, having been ex-rayed under the relevant provisions of the TUA regulating trade disputes (strike), it is crystal clear that, the strike action, notwithstanding its intendment, does not accord

with the provision of the law but sentiments and political undertones. While it is conceded that, judges and managerial judiciary employees, based on ethical considerations, cannot unionise and left not to embark on strike hence, someone else has to do so for and on their behalf, the person to bell the cat is not JUSUN as illegality cannot be adopted in securing justice or fairness.

Giving the position of the law, the NBA, is in the best position to embark of industrial action through various means including boy cut of court to compel the Executive to abide by the autonomy of the other arms of government especially the judiciary. It is interesting that there are subsisting court judgments upholding the financial autonomy of the judiciary and one was litigated by JUSUN. It is productive for JUSUN to focus on the enforcement of the judgment through the appropriate means than resort to strike as strike action, is not a legitimate means of enforcement of judgment of courts in Nigeria.

It is therefore recommended that all stakeholders in the justice administration sector should liaise among themselves with a view to finding an amicable and urgent solution to this perennial hullabaloo as the strike is having negative ripple effects on the justice administration if indeed the judiciary is the hope of the common man.