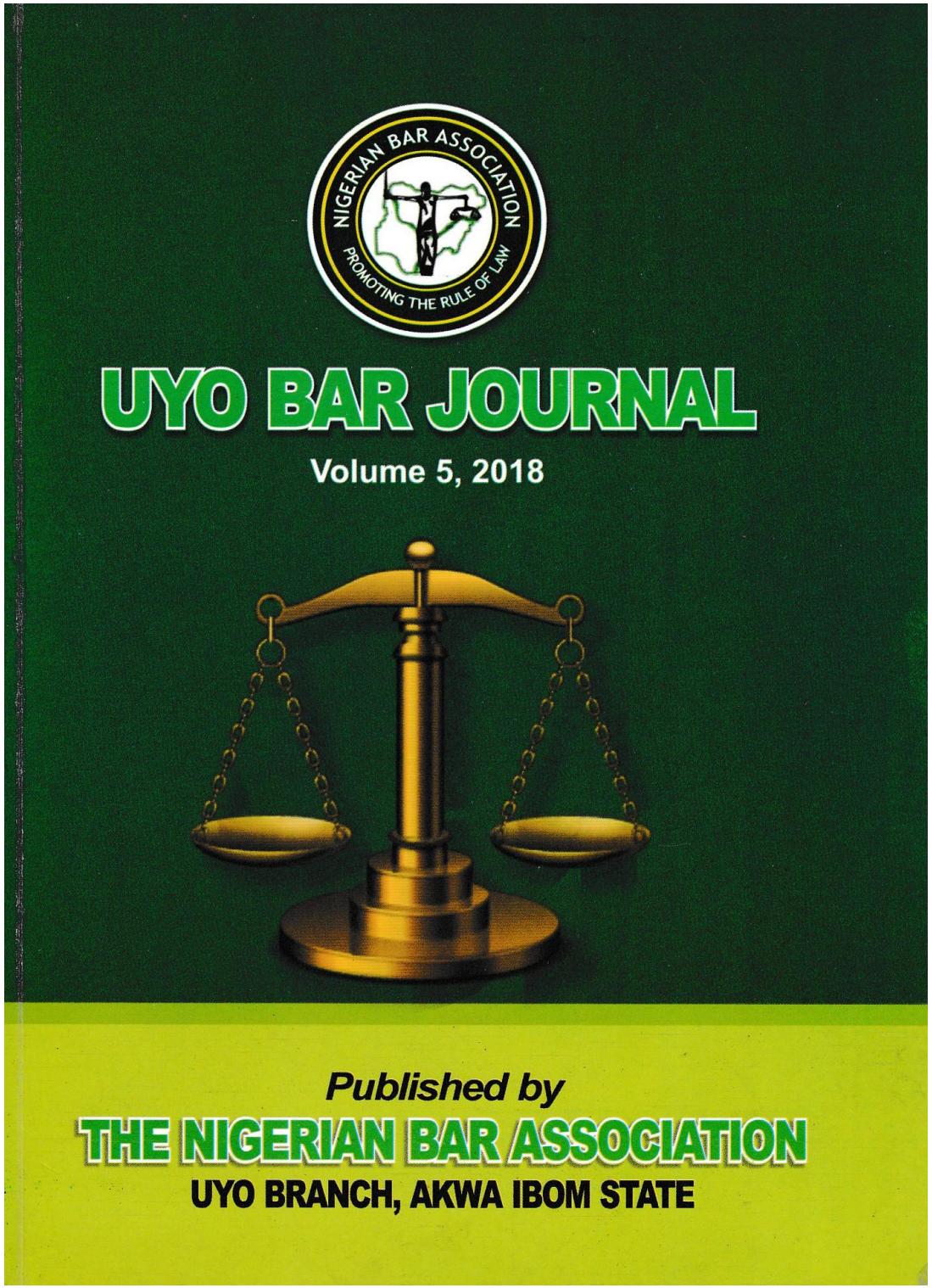

CONCEPTUALISING SOCIAL SECURITY WITHIN EMPLOYERS' LIABILITY UPON BREACH OF DUTY OF CARE AND EMPLOYEES' RIGHT TO COMPENSATION IN NIGERIA*

Abstract

This paper highlights the exemplars of occupational social security within the precincts of employee compensation in Nigeria as codified in the Employee Compensation Act (2010). While identifying the improvements in the present employee compensation regime over that of the former workmen's compensation regime, this paper posits that all is not yet well with occupational social security standards applicable in Nigeria particularly against the backdrop of international labour standards as evinced by the International Labour Organisation's requirements pertaining to social security. The paper further argues that bringing occupational social security into the employee compensation regimen of Nigerian labour law effectively narrows the scope of occupational social security to parties who fall within the definition of employees as enunciated by the enabling statute. This paper surmises that statutory modification is imperative to bring the Employee Compensation Act within the definitive paradigms of international labour standards.

Introduction

The concept of employee compensation as a yardstick of recompense for injury arising from the course of employment, death in the course of employment and the spectre of occupational diseases acquired in the course of employment is predicated upon the employers' duty of care[1]. This predisposition of the law is applicable in Nigeria arising both from the legacies of common law and statutory amplification of the common law position.

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[1] *Wilson and Clyde Coal Company Limited v English*(1937) 3 All ER 628, (1938) AC 57. See also I N E Worugji, *Introduction to Individual Employment Law in Nigeria* (Adorable Press, 1999) p.100 and I T Tshoose, 'Employer's Duty to Provide a Safe Working Environment: A South African Perspective', in *Journal of International Commercial Law and Technology*, Vol. 6 (No.3) (2011) p. 165 available at http://www.jiclt.com/index.php/jiclt/article/view/136 last visited on 7h June 2017

> The employers' duty of care finds foundation in the general principle of law that the employer is under a duty of care to protect the health, welfare and safety of workers at and in course of the employers' work. Where however the employee sustains injuries, contacts or acquires occupational diseases or even dies in work-related circumstances, the employer is liable to pay compensation to the employee, if alive or, in the event of his or her death, to his or her dependants.[2] Depending on whether the contract of employment is written or oral, such duty of care could be express or implied. While the express duty of care is as contained in a plethora of statutory enactments, the implied duty of care accruable to an employer is as elucidated under common law.[3]

At common law, the employer's implied duty of care is usually typified under three dimensions, to wit: the duty to provide safe plant, equipment, tool and appliances,[4] the duty to provide a safe work process[5] and the duty to employ reasonably competent employees.[6] Instances of the employers' statutory duty of care can be seen as provided for in Factories Act specifically relating to compulsory registration of factories,[7] overcrowding,[8] fencing of dangerous equipment,[9] coverage of vessels

[2] *Samuel Obere v Eku Baptist Hospital Management Board* (1978) ANLR 155, (1978) 1 LRN 246, 251

[3] For instance in the Factories Act Cap F1 LFN 2004, the Fatal Accidents Laws of the different states of Nigeria, the National Environmental Standards and Regulatory Enforcement Agency Act (NESREA) 2007, etc.

[4] *Toronto Power Corporation v Pakswan* (1951) AC 734, see also *Strabag Construction Nigeria Limited v Ogarekkpe* (1991) 1 NWLR (Pt 170) 733

[5] *Paris v Stepney Borough Council* (1951) AC 367, *Bradford v Robinson Rentals* (1967) 1 All E.R 267, *Busari Ajao v Western Nigeria Trading Company Limited* (1965) NMLR 178,

[6] *Hudson v Ridge Manufacturing Company Limited* (1957) 2 QB 348, 2 ALL E.R 229. This is so because the safety of one employee in the ordinary and natural course of things depends on the care and skill of the others: *Nigerian Tobacco Company Limited v Agunanne* (1985) 5 NWLR (Pt. 397) 541

[7] Sections 1, 2 & 3 of the Factories Act Cap F1 LFN 2004

[8] Sections 8 & 9 *ibid*

containing dangerous liquids,[10] adequate training of personnel operating machinery,[11] safe access, ingress and egress in the factory,[12] etcetera.

As opposed to the common law prescription of 'reasonable care' to be taken by employers, the statutory ambit as evinced by the stipulations of the Factories Act is more stringent as it requires that the employer complies strictly with the provisions of the Act.[13] The courts have therefore consistently held that failure of the employer to abide by the provisions of the Factories Act amounts to negligence which grounds liability for damages.[14]

With regards to the Labour Act,[15] the relevant provisions establishing the employers' duty of care are entrenched by way of stipulations in the differing sections placing employers under duties to medically examine the employee before commencement of work or so soon thereafter,[16] requiring provision of transportation to the place of work and taking care of the health of workers in the process,[17] provisions relating to the health and welfare of women,[18] and children[19] particularly as relates to maternity, working in the mines and night work for the former and as relates to capacity to work, suitability of work and restrictions on types of work for the latter.

Penal sanctions relating to the contravention of the employers' duties as laid out in the provisions of the Labour Act and the Factories Act are outdated enough to no longer be regarded as tenable in contemporary

[9] Section 18 *ibid*. See also V Ogharanduku, 'A Critique of the Factories Act in the Light of Challenging Work Patterns, Occupational Safety and Health Practice in' *Labour Law Review*, Vol.4 No.1 (2010) p23

[10] Section 21 *ibid*

[11] Section 23 *ibid*

[12] Section 27 *ibid*

[13] Section 87 *ibid*, see also T Hamed, 'The Factories Act and The Development of Occupational Health and Safety in Nigeria' in *Labour Law Review*, Vol.7 No.3 (2013) p. 24

[14] *A.C.C. & C (Nigeria) Limited v. Bamigboye* (2005) 17 NWLR 275

[15] The Labour Act Cap L1 Laws of the Federation of Nigeria 2004

[16] Section 8 of the Labour Act *ibid*

[17] Section 30 of the Labour Act *ibid*

[18] Sections 54-58 *ibid*

[19] Sections 59- 65 *ibid*

labour relations and practices.[20] The seemingly archival provisions inundating both the Labour Act and the Factories Act will remain until the hopeful passage into law of the Labour, Safety, Health and Welfare Bill (2012) currently before the Nigerian National Assembly.[21]The present state of the aforementioned laws is narrow for the purposes of establishing a statutory duty of care on employers. Further extending such attenuated statutory duties into the ambit of social security restricts their efficacy the more as they were especially created as devices to regulate the health and safety of employees at work, and not for purposes of instituting a legal framework mitigating economic exigencies arising from their health challenges.

According to Abubakar, the Nigerian framework actuating employers' liability in the terrain of occupational safety and health is inadequate when juxtaposed with the advances made in other jurisdictions[22]. This assertion is premised on the predilection of other jurisdictional approaches to typify their occupational safety and health horizons in conformity with emerging international labour standards as contained in the relevant International Labour Organisation instruments.[23] Nigerian legislations, on the other hand, make latitudinous statutory enactments left to the mercy of judicial interpretations for the setting of labour law precedents in establishment of domestic labour standards. The

[20] See Sections 47, 58, and 64 ibid. See also Adeyemi (n237)

[21] 7th National Assembly Second Session No. 17, Senate of the Federal Republic of Nigeria, Votes and Proceedings, Thursday 27th September 2012, p.144. Source: http://placng.org/wp/wp-content/uploads/2016/05/3191.pdf last accessed on 16June 2017

[22] U Abubakar, "An Overview of the Occupational Safety and Health Systems of Nigeria, UK, USA, Australia and China: Nigeria Being the Reference Case Study", in *American Journal of Educational Research*, Vol. 3 No. 11 2015 p1350 accessed from http://pubs.sciepub.com/education/3/11/3/ last visited on 12June 2017

[23] Such as the Workmen Compensation (Agriculture) Convention (No.12) (1921), Workmen Compensation (Accident) Convention (No.17) (1925), Workmen Compensation (Occupational Diseases) Convention (No.18) (1925), Equality of Treatment (Accident) Convention (No.19) (1925), Workmen Compensation (Occupational Diseases) (Revised) Convention (No.42) (1934), Employment Injury Benefits Convention (No.121) (1964), Occupational Safety and Health Convention (No.55) (1981), etc. Source: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:1:0::NO::: last accessed on 20 June 2017

reactive as opposed to pre-emptive nature of these legislative standards do not augurwell for the establishment of mechanisms of proactive labour law activism.

The Application of Social Security in the Employee Compensation Act (2010)

Statutory intervention in the terrain of employee compensation in Nigeria found its first manifestation in the Workmen Compensation Ordinance[24] which was an adaptation of the old English Workmen Compensation Act (1897)[25] under which workmen only needed to establish the fact of injury to be entitled to compensation. The Workmen Compensation Ordinance received a further transmutation to become the Workmen's Compensation Act (1958)[26] which rightly earned strictures on grounds of 'narrowness of scope, obsolescence and irrelevance to modern industrial needs'.[27] Oguniyi posits that the major criticism of the 1958 Act was that it unduly restricted the category of workmen to those whose earnings did not exceed N1600 per annum and excluded non-manual workmen earning more than N1600 per annum.[28]

The Employee Compensation Act 2010[29] was enacted as the successor of the Workmen's Compensation Act,[30] to fill the lacunae observed in the latter legislation. The 2010 Act out rightly repealed its

[24] Ordinance No. 30 (1941)

[25] Act No. 12 (1897), See also F H Bohen, "A Problem in the Drafting of Workmen's Compensation Acts. 1. Personal Injury Arising out of and in the Course of Employment" in *Harvard Law Review*, (1912) Vol.25 No.4, pp.328-348 accessed from https://www.jstor.org/stable/pdf/1325246.pdf?refreqid=excelsior%3A697750a359337acd02b2cba9ffe3fd0 last accessed on 11August 2017

[26] Cap 222 Laws of the Federation of Nigeria (1958)

[27] O. Oguniyi, Nigerian Labour and Employment Law in Perspective (Ibadan, Folio Publishers, 2007)

[28] *ibid*

[29] Act No. 13 of 2010, AN ACT TO REPEAL THE WORKMEN'S COMPENSATION ACT AND TO MAKE PROVISIONS FOR COMPENSATION FOR ANY DEATH, INJURY, DISEASE OR DISABILITY ARISING OUT OF OR IN THE COURSE OF EMPLOYMENT AND FOR RELATED MATTERS.

[30] Cap W6 LFN 2004,

progenitor, the 1958 Act, and provided for the types of compensation accruable to an employee or his estate where injury, disability or death occurs in the course of employment. In lauded rectification of the deficits of previous employee compensation regimes, the new law has established a guaranteed compensation system for employees and their dependents in the event of any of the contingencies provided for under it.[31]

Employees are statutorily assured of compensation whether or not the supervening event occasioning incapacitation, injury or death occurred in the workplace provided that it occurred in the course of the employment.[32] Injury arising from mental stress, or an 'acute reaction to a sudden and unexpected traumatic event arising out of or in the course of the employee's employment'are provided for as triggers for actuating compensation under the Act.[33]The current employee compensation regime is a singular improvement on the previous workmen compensation regime in its amplification of the categories of workers covered under the former. Under the abrogated Act, persons statutorily excluded, though employed under a contract of service or apprenticeship with an employer, included a person employed under a contract of service or collective agreement approved for exemption by the Minister of Labour, an outworker, a person employed in an agricultural or handicraft work by an employer who normally employs less than ten people or any class of persons discretionarily excluded by the Minister of Labour by an order published in a Federal Gazette. Under the current employee compensation regime however, an inclusive, if not exhaustive, approach is adopted whereby the Act defines an employee to mean

'A person employed by an employer under oral or written contract of employment whether on a continuous, part-time, temporary, apprenticeship or casual basis and includes a domestic servant who is not a member of the family of the employer including any person employed in

[31] Section 1(a) of the Employees Compensation Act
[32] Section 7(1) ibid
[33] Section 8(1) *ibid*

the Federal, State and Local Governments, and any of the government agencies and in the formal or informal sectors of the economy'.[34]

The Employee Compensation Act however continues to exclude members of the armed forces of Nigeria 'other than those employed in a civilian capacity' from taking shelter under its provisions.[35] It further defines an employer to include 'any individual, body corporate, Federal, State or Local Government or any of the government agencies who has entered into a contract of employment to employ any person as an employee or an apprentice.[36]The ECA creates employer's collective liability which infers that all employers whether in the private or public sector of the economy, share a collective responsibility for the funding of the cost of workers' compensation insurance and payment of claims which are charged against employers' accounts with the funds which are to be managed by the National Social Insurance Trust Fund Management Board[37]vested with power[38] to implement the provisions of the Act and management of the Employees Compensation Fund.[39]

The establishment of a State-managed compensation fund under Section 56 (1) of the ECA contrasts with the system under the WCA whereby employers were required to individually insure employees with insurance companies of their choice.[40] The ECA funding regime thus gives an assurance of solvency and accountability in the management of the Compensation Fund as private insurance and the vagaries attached thereto have been eclipsed by the stipulations for state management of the funds. Meritorious as these new statutory provisions are theoretically, the fear is rife and *bona fide*, given the infamous history of management of pension

[34] Section 73 of the ECA*ibid*
[35] Section 3 of the ECA *ibid*
[36] Section 73 *ibid* see *Bello v Dadah & another* (2016) LPELR-40337(CA), with respect to a cattle rearing-employee.
[37] Section 41 (1) *ibid*
[38]Section 2(2) and 57 *ibid*
[39] Created under Section 56 (1) of the ECA to receive the funds or contributions by employers for adequate compensation to employees or their dependants for any death, injury, disability or disease arising out of or in course of employment
[40] Section 40 WCA *ibid*

and compensation funds by public institution in Nigeria, if the implementation of these provisions would be spared the historical unpropitious notoriety.

The ECA regime further provides for monthly compensation emoluments payable to the dependants of a deceased employee for their lifetime in the event of death of an employee.[41] Irrespective of the fact that these provisions are qualified by the existence of widows or widowers,[42] the number of children,[43] the educational requirement of the dependent children[44] and the attainment of majority by such dependent children,[45] as well as other provisos as regards physically challenged dependants,[46] they nonetheless underscore the inclusive nature of the current ECA regime. In addition to the foregoing, lifetime entitlement to compensation under this regime distinguishes it from the former WCA which made provisions for payment of compensation to the tune of forty-two months cumulative earnings of the deceased.[47]

Ancillary to the foregoing is the provision for compensation in the event of accident involving the employee in the course of commuting to or from work[48] which connotes the fact that in tandem with emerging international trends,[49] the course of employment should be interpreted to be inclusive of trips between the workplace and the employee's permanent or secondary residence, staff canteen and the place where the employee ordinarily receives his remuneration. The ECA however falls short of the ILO standards by its proviso of the employer having had prior notification of such place.The augmentation of the elements of what constitutes the course of employment in relation to employee movements, location and

[41] Sections 17 and 19 ECA ibid
[42] Section 17(1) (a) ECA
[43] Section 17 (1) (a) (i), (ii), (iii), (iv), (v) ECA
[44] Section 17 (1) (c) ECA
[45] Section 17(1) (b) (i), (ii), (iii) ECA
[46] Section 17 (2), (3), (4) ECA
[47] Section 17 (1) ECA c/c Section 4(a) WCA
[48] Section 7(2)
[49] As evinced by the International Labour Organisation Benefits in the Case of Employment Injury Recommendation (No.121) (1964).

conduct appears to be a statutory negation of the principle espoused by the Nigerian courts that even where a workman travels in a vehicle provided by the employer, he is not in the course of his employment until he commences actual work.[50]

In the case of *Ngakam v Strabag (Nig) Limited,*[51] a worker died in an accident involving a bus conveying him and other employees from work. The Supreme Court held that the accident occurred outside the course of the employment and the dependants of the deceased were not entitled to compensation. Similarly, in *Scandinavian Shipping Agencies v Ajide,*[52] the deceased worker, fell into the lagoon and drowned on his way from work. The court was of the decided view that the accident occurred outside the course of employment even more so as there were alternative means by which the deceased could have transported himself from work. The above cases were decided under the WCA regime, and from the current statutory provisions of ECA, it therefore stands to reason that, the courts in all cases would have arrived at radically different conclusions. The narrowness of the compensation paradigms under the WCA regime criticised by Oguniyi[53] evident in the provisions for death benefits,[54] compensation for permanent total incapacity[55] or temporary incapacity,[56] as well as sanctions for non-compliance,[57]appear to have been remedied under the ECA regime which provides for percentages of compensation in the event of death or injury to widows, widowers and children dependants.[58]

The introduction of the element of compensation for mental stress in the ECA regime is a noticeably novel trend in employee compensation in Nigeria.[59] Absent from previous employee compensation dynamics, the

[50] *Smith v Elder Dempster Lines Limited*(1937) 17 NLR 145
[51] (1960) SCNLR 1
[52] (1965) LLR 247, (1966) 17 NLR 262
[53] Oguniyi (n.27) p.159
[54] Section 5 WCA *ibid*
[55] Section 7 WCA
[56] Section 9 WCA
[57] Section 4 WCA
[58] Part IV of the ECA, see also Oguniyi, (n27) p.81
[59] Section 8 ECA

ECA provides for employer liability in the event of acute reaction to a sudden or unexpected traumatic event in the course of the employee's employment,[60] mental stress arising from the nature of work as diagnosed by an accredited medical practitioner[61] and mental stress arising from the decision of the employer to change the work or working condition in an unfair manner[62] This novelty in this provision is in tandem with international standards where contemporary legal trends emphasize an equitable attention to be given to the physical, social and mental parameters or state of the workers' health as a deficit in one aspect would invariably lead to organisational deficiencies in others.[63]

As earlier noted, for purposes of adjudication, appeals from the decisions of the National Social Insurance Trust Fund Management Board with respect to employer liability in the payment of compensations lie to the National Industrial Court of Nigeria which in discharge of its functions as a specialised court, has exclusive jurisdiction in all civil causes or matters concerning labour, trade unions, industrial relations and matters arising from workplace, health, safety, welfare of labour, employee, worker and matters relating thereto.[64]

Social Security Challenges in the Employee Compensation Act (2010)

In enunciating the applicable conditions precedential to the payment of compensation under the Act[65] to include the fact that the employee must have suffered an occupational disease which has resulted in death or injury, such diseases shown to arise from the nature of the employment of

[60] Section 8 (1) (a)
[61] Section 8 (1) (b)
[62] Section 8 (2)
[63] R S Rabinowitz and M M Hager, "Designing Health and Safety: Workplace Hazard Regulation in the United States and Canada". in *Cornell International Law Journal*. Vol.33 No. 2 (2000) p374 available at http://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1465&context=cilj last visited on 21June 2017.
[64] Section 254(c) of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act (2010), see also Section 55 ECA. See *S.C.C. (Nig.) Ltd & or v Sedi* (2013) NWLR (Pt. 1335) 230 and *Olufunsho & ors v Global and Detergent Industries Limited* (2012) LPELR-9822(CA)
[65] Section 9(1)

the employee, and listed in the First Schedule to the Act in respect of all of which compensation and health care benefits are payable, there appears no elucidation on whether the stated conditions are to be applied conjunctively or disjunctively.[66]

This statutory silence leaves the dynamics of interpretation[67] open to the discretion of the Board and the court, with the associated danger of such discretionary interpretative statutory construction being exercised in favour of a conjunctive interpretation, leaving an affected employee without compensation where the occupational disease is outside the scope of the diseases listed in the First Schedule to the Act.

Apart from the two instances of the occupational disease causing the death of the employee or arising from the nature of employment of the employee, compensation and health care benefits are only limited to an employee who suffers a disease outlined in the First Schedule to the ECA. Gleaning from the foregoing, it is apposite to state that where the occupational disease does not result in death or the nature of the employment does not cause the occupational disease and such occupational disease is not one listed in the First Schedule, entitlement to payment of compensation and health care benefit will not arise.

This is further buttressed by the case of *Adetona v Edet*[68] where the Court of Appeal was of the view that the facts of occupational disease averred to in the statement of claim were insufficient to satisfy the statutory delineations of occupational diseases as the disease described did not come within the statutory ambit of Section 26(b) of the then applicable WCA which is in *pari materia* with Section 9(2) of the ECA.Additionally, the occupational diseases listed in the current ECA regime falls short of

[66] I N E Worugji, 'Work Injuries under the Employee's Compensation Act in Nigeria: What is Next?' In *Journal of Law Policy and Globalization*, Vol. 10 No2 (2013) p. 30-45 available https://www.iiste.org?Journals/index.php/JLPG/article/download/4356/4438 last visited on 21st June 2017
[67] Q Johnstone, 'An Evaluation of the Rules of Statutory Interpretation', in *Kansas Law Review* Vol. 3 No.1 (1954) p.17 accessed from http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=2967&context=fss_papers last visited on 21June 2017
[68] (2003) 2 NWLR (Pt 889) p.133

international standards as it omits thirty-three occupational diseases listed by the International Labour Organisation for the purpose of defining and delineating occupational diseases.[69] In framing the constituents of occupational diseases under the present ECA regime, recourse should have been had to modern contemporary standards to bring the current legislation in consonance with the prescriptions of the international legal standards. Section 9(4) provides that for the employee or the dependants of a dead employee can only be entitled to compensation under the Act where it is shown that the disease or complications arising there from arose from catalysts in the workplace and the employee wasn't suffering from the disease or complications there from prior to his/her assumption of duty in the workplace.

It is submitted with respect that the above of section 9(4) is an abuse of Section 28 of the Labour Act[70] which mandated an employer to ensure that every employee is medically fit to work upon resumption of duty or so soon thereafter by subjecting such an employee to medical examination. Chris, Acheampong, Antwi-Kusi and Ameyaw however contend that such requirements for mandatory medical examination in national laws are not justifiable as it leads to discrimination of health grounds.[71] This argument is however untenable as the need for medical ascertainment of the employees' medical employability as regards his or her fitness to work defeats arguments of justification of mandatory medical examination.

[69] International Labour Organisation List of Occupational Diseases Recommendation (No. 194) (2002) which was revised by the International Labour Organisation List of Occupational Diseases (2010) . Available at http://www.ilo.org/safework/info/publications/WCMS_125137/lang--en/index.htmlast accessed 26 June 2017

[70] A Ogunlari- Smith, *'Minimum Obligations of an Employer under Nigerian Labour Law and Employment Regulations'*, available at https://www.linkedin.com/pulse/minimum-obligations-employer-under-nigerian-labour-adesogun last visited on 26 June 2017.

[71] A K Chris, A O Acheampong. A Antwi-Kusi and E Ameyaw, Mandatory Pre-Employment Medical Examination – The Practice and the Law: is it Justifiable? in *Beijing Law Review*, Vol. 8 (No. 1) (2017) p.1-9 available at http://www.scirp.org/journal/PaperInformation.aspx?paperID=74289 last visited on 26 June 2017.

Beyond the foregoing, the provisions under the ECA regime do not make it clear whether the contributions under the Act are tax deductible. This silence connotes that such contributions are not and therefore creates additional financial burdens on employers which in no way enhances the popularity of the ECA regime among the employers of labour. The ECA regime represents an improved social security mechanism for employee compensation in the event of economic exigencies arising from inability to work occasioned by illness. Its shortcomings notwithstanding, it remains a responsive legislation which has largely corrected many of the defects inherent in the previous WCA regime.

Recommendations

The extant legal framework for labour law in Nigeria is penurious in contemporarily relevant legislation and without requisite regard for emerging trends in international labour law and social security standards. For instance the Labour Act[72] and the Factories Act[73] are no longer tenable to modern day economic, fiscal and implementation realities. It is recommended that these laws be repealed and the National Assembly speedily pass into law the Labour, Health, Safety and Welfare Bill (2012)[74] that has since been pending before the august body to forestall its abatement in 2018 and the stagnation of Nigerians in the present day *status quo*.

It is additionally recommended that the traditional scope of the employment relationship as envisaged within the parameters of Nigerian law,[75] to include non standard working relationships with an expanded definition of who an employer is.[76] The Employee Compensation Act states that an 'employer includes any individual, body corporate, Federal, State or Local Government who has entered into a contract *of* employment to employ any other person as an employee or apprentice'.[77] Contemporary trends in

[72](n15)
[73](n3)
[74](n12)
[75] Section 73 of the Employee Compensation Act
[76]Section 73 of the ECA
[77]*ibid*

labour law suggest an inclusion of workers under the auspices of contracts *for* employment; that is, independent contractors into the scope of employment relationships as long as such contracts are of a continuing nature.[78] This inclusion takes into cognizance the growing trend towards 'informalisation' arising from flexibility of employment which has resulted 'contract' employment as opposed to formal employment relationships and aims at bringing workers within the context of these employments into the scope of statutory protection to ensure security of income. This legislative step will assist Nigeria to surmount the challenge of integrating social security in the face of traditional patterns of engagement of and emerging trends in the same.In order to facilitate the forgoing, the concept of the employee as couched by the Employee Compensation Act should also be expanded to include employees in a contract for employment. Section 73 of the Act states that,

employee means a person employed by an employer under oral or written contract *of* employment whether on a continuous, part time, temporary, apprenticeship or casual basis and include a domestic servant who is not a member of the family of the employer including any person employed in the Federal, State and Local Governments, and any of the government agencies and in the formal and informal sectors of the economy.[79]

It is submitted with respect that the amplitude of the definition of an employee notwithstanding, there exist room for statutory modification to include employees in contracts *for* employment and domestic servant members of the employers' families who are nonetheless in defined employment relationships with the employers. The relevant part of Section 73 of the Employee Compensation Act should be amended thus

employee means a person employed by an employer under oral or written contract *of* employment and a contract for employment whether on a continuous, part time, temporary, apprenticeship or casual basis and include a domestic servant who is not a member of the family of the employer including a domestic servant who is a member of the family of the employer

[78]See *Viscaino v Microsoft* 97 F.3d1187, 1189-90

[79] Section 73 of the Employee Compensation Act *ibid*

in a defined contract of employment including any person employed in the Federal, State and Local Governments, and any of the government agencies and in the formal and informal sectors of the economy.

Furthermore, a *sui generis* statutory framework like those applicable in the US jurisdiction should be established in Nigeria to specifically compensate those working in particularly risky forms of employment with increased susceptibility to terminal illnesses and specific victims of environmental pollution occasioned by explorative and environmentally degrading activities of employers.[80]

Arising from the archival content and context of the Labour Act and the Factories Act, this work further recommends their repeal in favour of an exhaustive legislation on occupational health and safety which would be in tandem with international labour standards and align with social security dimensions with universal applicability to formal and informal sectors of the economy. In view of the hopeful future passage into law of the Labour, Safety, Health and Welfare Bill (2012) presently before the Nigerian National Assembly,[81] it is further recommended that the occupational safety standards applicable to Nigeria be reviewed with the objective of enhancing the administrative and enforcement capacities of ombudsman bodies which will facilitate compliance with statutory standards prescribed by the enabling legislation.

[80](n12)

[81]*ibid*