

**PAYMENT OF SALARY IN LIEU OF NOTICE AND THE LEGALITY OF THE
EMPLOYER'S ACT OF ABRUPT TERMINATION OF EMPLOYMENT WITH
STATUTORY FLAVOUR**

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Abstract

An employment is said to have statutory flavour when the appointment and termination is protected by statute or laid down regulations made to govern the procedure for employment of an employee. The implication is that in an employment with statutory flavour, the employer must comply strictly with its provisions in terminating the contract of employment or in dismissing an employee. Any other manner of terminating the employment which is inconsistent with the statute is null and void and of no effect. The requirement for issuing notice of termination is provided for in the Labour Act. The Labour Act also made provision for payment of salary in lieu of notice as a way to determine a contract of employment where accepted. This paper employs doctrinal approach in research which involves desk and library search for relevant materials. The paper examined payment of salary in lieu of notice and the legality of the employer's act of abrupt termination of employment with statutory flavour and finds that whereas in a pure master and servant or common law employment such payment and acceptance amount to waiver. The position is not the same in employment clothed with statutory flavour. This paper finds that employment with statutory flavour possess such special character that an unlawful act cannot be validated by subsequent acts of issuing salary in lieu of notice. This paper also finds that in cases of termination of appointment by death or injuries or diseases suffered by the employee in the course of his employment, compensation as provided for in the Employee Compensation Act 2010 avails an employee. The paper recommends that employers should adhere to the governing statute and regulations made thereunder in terminating the employment of employees in employment with statutory flavor. It recommends constant workshops aimed at educating the employers and employees on the terms of their contract as it relates to procedure for terminating the employment and their rights as employees in employment with statutory flavor respectively.

Keywords: Salary in Lieu, Notice, Termination, Employment, Statutory Flavour.

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1.0 Introduction

A contract of employment enjoys statutory flavour where its conditions are governed by the provision of statute or regulations derived from statute. It vests an employee with a status higher than the ordinary master and servant. The status of employments with statutory flavour, in its own rights guarantees an employee's right to fair hearing before termination of his employment.¹

In an employment with statutory flavour, the employer must comply strictly with statutory provisions in terminating the contract of employment or in dismissing the employee. Any other manner of terminating the employment which is inconsistent with the statute is null and void and of no effect.²

The Labour Act³ specifically requires that the appropriate period of notice of termination of employment must be incorporated as a written term of the contract of employment. The Act⁴ equally made provision for acceptance of salary in lieu of notice of termination of employment. The sore point is whether acceptance of salary in lieu of notice finally determines the contract of employment with statutory flavour even when the procedure laid down by the governing statute or regulation guiding such appointment has not been complied with. The paper examined payment of salary in lieu of notice and the legality of the employer's act of abrupt termination of employment with statutory flavour and finds that whereas in a pure master and servant or common law employment such payment and acceptance amounts to waiver.

The position is not the same in employment clothed with statutory flavour. This paper is segmented. The first segment clarified concepts; the second segment discussed features of contract of employment with statutory flavor; the third segment examined the essence of issuing notice of contract of employment; the fourth segment discussed judicial attitude towards sudden termination of contract of employment with statutory flavor; the fifth segment looked at the effect of departure from conditions of service and adherence to payment of salary in lieu of notice; the sixth segment reviewed other remedies available to employers other than payment of salary in lieu of notice; the seventh segment summarized findings and concludes the paper with recommendations.

¹ PHCN Plc v Offoelo (2013) 4 NWLR (Pt. 1344) 380; Iderima v R.S.C.S.C (2005) 16 NWLR (Pt. 951) 378

² Comptroller General of Customs v Gusau (2017) 18 NWLR (Pt. 1598) 353

³ Labour Act, CAP L1 LFN 2004. S 7

⁴ Ibid. s. 11 (6)

2.0 Conceptual Clarification

2.1 Contract of Employment

In the case of *NURTW &Ors v First Continental Insurance Co. Ltd*,⁵ a contract was defined as a “legally enforceable agreement, written or unwritten, (oral) freely and voluntarily reached between or entered by two or more persons with a clear intention to create a binding legal relationship.”

The Labour Act⁶ defined contract of employment as “an agreement, whether oral or written, express or implied, whereby one person agrees to employ another as a worker and that other person agrees to serve the employer as a worker.”

Black’s Law Dictionary,⁷ also defined Employment contract as “*a contract between an employer and employee in which the terms and conditions of employment are stated*”

The question that readily agitates the mind is how unenforceable is this contract of employment if it is unwritten? It is imperative to note that an unwritten contract of employment is not unenforceable. The court has stated that where the contract is not written, parties can be taken to agree either on the practice of the trade or by conduct.⁸

In *Ogundelu v Macjo*,⁹ it was noted that a court of law will not allow the absence of writing to be used as an engine of fraud. A Court will enforce the contract if it is found that there is an agreement from the facts before the court. The same principle was reiterated in *Nelmco Ltd v Onifade & Anor*.¹⁰ The only exception to the above is a situation, where the law requires the transaction to be in writing as was stated by the court in *Lawal V Ejidike*.¹¹

In the light of the above precedents, an unwritten contract of employment is enforceable once the court ascertains its existence. According to the Act,¹² an employer means “*any person who has entered into a contract of employment to employ any other person as a worker either for himself*

⁵ (2019) LPELR-48005 (CA)

⁶ Labour Act, CAP L1 LFN 2004. S.91

⁷ Black’s Law Dictionary, 9th ed., Bryan Garner (ed), St, Paul, MN: Thomson Reuters (West), 2009, p, 369

⁸ *Shena Security Co Ltd v Afropak (Nig) Ltd & Ors* (2008) LPELR-3052 (SC)

⁹ (2006) 7NWLR (pf) .973) 148 at 165.

¹⁰ (2022) LPELR 58118 (CA)

¹¹ (1997) 2 NWLR (pt487) 319 at 331

¹² *ibid*

or for the service of any other person, and includes the agent, manager or factor of that first – mentioned person and the personal representatives of deceased employer”.

Employer has also been defined as “*a person who controls and directs a worker under an express or implied contract of hire and who pays the worker’s salary or wages*”¹³ A worker means¹⁴ “*any person who has entered into or works under a contract with an employer, whether the contract is for manual labour or clerical work or is expressed or implied or oral or written, and whether it is a contract of service or a contract personally to execute any work or labour ...*”

Black’s Law Dictionary¹⁵ defined a worker as “*one who labours to attain an end, especially a person employed to work for another*” or “*A person who offers to perform services for compensation in the employ of another, whether or not the person is so employed at a given time*”.

Employee has been defined as “*a person who works in the service of another person (the employer) under an express or implied contract of hire, under which the employer has the right to control performance*”¹⁶

Contract of employment is founded on the twin pillars of services and wages as was decided in *Mainstreet Bank Registrars Ltd v Ukandu*.¹⁷ It therefore defines the employment relationship between the employer and the employed.

The Act,¹⁸ specifically enumerated the components of a contract of employment. According to the Act¹⁹ such a contract must contain the following: the name of the employer(s), the name, address of the employee, the date and place of engagement, the nature of employment, the date of expiration of the contract if for a fixed term, the appropriate period of notice to be given by the party wishing to terminate the contract, the rate of wages, salaries and method of calculation, the manner and periodicity of payment of wages, any term and condition relating to ; hour of work,

¹³ Ibid , 9, 604

¹⁴ ibid

¹⁵ Black’s Law Dictionary, 9th ed., Bryan Garner (ed), St, Paul, MN: Thomson Reuters (West), 2009, p.1744

¹⁶ Ibid p.602

¹⁷ (2017) LPELR-43646)CA),

¹⁸ Labour Act, CAP L1 LFN 2004.s.7

¹⁹Ibid S. 7(1)

holiday and holiday pay, incapacity to work due to sickness, injury and provisions for a sick day if any and insurance etc., any special conditions of the contract.

There are three categories of contracts of employment. They are:

- 1) Those regarded as purely master and servant
- 2) Those where a servant is said to hold office at the pleasure of the employer and
- 3) Those where the employment is regulated or governed by statute, often referred to as having statutory flavour.²⁰

2.2 Elements of Contract of Employment

As with any valid contract in Nigeria, a valid contract of employment in Nigeria defines the relationship between the employer and employee. It should outline the expectation of the employer from the employee on the job.²¹

It should provide for compensation of the employee, the benefits of the employee, and conditions that may warrant termination.²² The contract of employment should also provide information about the employer, period of work, vacation etc²³

There should be an offer by the employer and an unconditional acceptance of the offer by employee; an intention to create legal relations by both parties; consideration which will be the proposed wages and benefits by the employers to the employee and the expected services to be rendered by the employee; both parties must have the legal capacity to enter into the contract; the terms of the contract must be legal and the terms must also be certain.²⁴

2.3 Types of Contract of Employment

There are basically three types of contract of employment in Nigeria.

- i. Employment with statutory Flavour

²⁰*Olaniyan V University Of Lagos* (1965) 2 NWLR (PT.9) 599; *CBN V Igwilllo* (2007) LPELR-835 (SC)

²¹<https://www.pandadoc.com> ‘7 Essential Contract Element to Double your Document’s Credibility’ A accessed on 18th of May, 2025

²² *ibid*

²³ *ibid*

²⁴<https://chamanlawfirm.com> “Understanding a Valid Employment Contract in Nigeria. “Assessed on 10th May, 2025; *Orient Bank Nigeria Plc v Bilante Int. Limited* (1997) 8 NWLR (515) 37 at 76

This is a type of appointment where the appointment and termination are protected by statute or laid down regulations made to govern the procedure for employment of the employee. In this type of contract of employment, the rules and regulations are part of the terms and conditions of the employee's employment.

An employee's appointment cannot be abruptly terminated without following due procedure as provided in the governing statute or regulations. Where this is not complied with, the said termination is null and void and the employee can be granted the remedy of re-instatement or damages depending on the facts and circumstances of the case.

ii. Employment by written contract

The major difference between contract of employment and contract with statutory flavour is that whereas the contract with statutory flavour attracts re-instatement upon wrongful dismissal or damages depending on the facts and circumstances, contract of employment attracts damages for wrongful dismissal. The court has severally noted that it will not force a willing employee on an unwilling employer.²⁵

iii. Employment at will or pleasure of the master

This is the type of employer where the employee holds an office at the pleasure of the employer. The employer has the right to hire and fire. The loyalty of the employee resides squarely on the wish of the employer.

2.4 Employment with Statutory Flavour

Employment with statutory flavour or statutory employment have been defined as "*Employments in which the terms and conditions of service are regulated directly by Statute or by subsidiary legislation made pursuant to a Statutes*"²⁶

Such employments are said to enjoy *statutory flavour* which covers them with legal protection over and above that which is available to private employments.²⁷

²⁵*Ilodibe v NCC Ltd* (1997) 7 NWLR (Pt.512) 174

²⁶<https://banwo-ighdalo.com> "Re-Appraising The Rules Guiding Termination of Private Employments in Nigeria" Accessed on 14th May, 2025

²⁷ *ibid*

The Supreme Court stated in *PHCN v Offeolo*,²⁸ that for an employment to be statutory, there must be a nexus between the employee's appointment with the statute creating the employer or corporation. In further elucidation of the concept of statutory employment, the court in *Oloruntoba-Oju v Abdul- Raheem*,²⁹ held that the question whether a contract of employment is governed by statute or not depends on the construction of the contract itself or the relevant statute; the duty to construe being the exclusive preserve of the court.

Also, in *Institute of Health ABU Hospital Management Board v Anyip*,³⁰ the court held that where an employee has a contract of service with an employer determinable by agreement of the parties to the contract, it is quite clear without more that an employee under such a contract of service cannot be said to enjoy an appointment with any special security of tenure.

From the above stated judicial precedents, it can be inferred that an employment with statutory flavour is one governed by statute wherein the procedures for employment and dismissal of an employee are clearly spelt out. In such a situation, the employment cannot be terminated other than in the way and manner prescribed by the that statute and any other manner of termination inconsistent with the statute is null and void and of no effect. The contract is determinable not by the parties but only by the statutory preconditions governing its determination.

3.0. Features of Contract of Employment with Statutory Flavour

In determining what constitutes unlawful termination/ dismissal of employment with statutory flavour, adherence to the provisions of the statute or regulation on the procedure for termination or dismissal is critical. It will be unlawful termination or dismissal when the procedure for termination or dismissal as laid down in the Statute or Regulation made under it has not been complied with or the reasons for such termination /dismissal is not justified.

The Supreme court in *Oloruntoba-Oju v Abdul-Raheem*³¹ held that in the matter of discipline of an employee where employment has statutory flavour, the procedure laid down by such statute

²⁸ (2013) 16 WRN 28 SC

²⁹ (2009) 13 NWLR (Pt 1157) 83 SC

³⁰ (2011) LPELR- 1517 SC

³¹ (2009) 13 NWLR (Pt.1157) 83 SC

must be fully complied with; if not, any decision affecting the right or reputation or tenure of office of that employee will be declared null and void.

Similarly, the Supreme Court in *Longe v FBN PLC*³² held that the procedure for discipline in an employment with statutory flavour must be complied with, otherwise, the dismissal ensuing thereof will be null and void.

Employments with statutory flavour are meant to provide security of tenure to employees. In the case of *Olaniyan v University of Lagos*,³³ the Supreme Court held that the remedies available to statutory employees who have been wrongfully dismissed by their employers include reinstatement of their employment and damages representing their salaries during the period of the purported dismissal.

Recently however, the Supreme Court, appears to have drawn a distinction between wrongful dismissal and unlawful (invalid) or null and void dismissal. The court will order for payment in lieu of notice where it finds that the dismissal or termination was wrongful whereas reinstatement will be ordered where the dismissal or termination was unlawful, null and void.

The Supreme Court in the case of *BCC PLC v Ager*,³⁴ held that there is a distinction between wrongful dismissal and an invalid or null and void dismissal. In cases where where the court makes a finding of wrongful dismissal, payment in lieu of notice will apply; but where the finding is that the dismissal or termination was null and void, then there is no dismissal or termination as what the employer did was a nullity before the law.

Accordingly, unless the court makes a finding that the claimant's dismissal is unlawful, null and void, the question of re-instalment will not arise, a finding that the dismissal is wrongful is insufficient to grant the remedy of re-instatement.

It is important to note that damages and re-instatement cannot be ordered at the same time. In the case of *Onalaja v African Petroleum Ltd*,³⁵ the court held that an employee cannot claim for re-instatement after collecting damages awarded by the court for unlawful dismissal; for to do so will

³² (2010) 6 NWLR (Pt.1199) 252 sc

³³ (1985) 2 NWLR (Pt.9) 599

³⁴ (2010) 9 NWLR (Pt.1199) 252 SC

³⁵ (1991) 7 NWLR (Pt. 206) 691

amount to double compensation and the court frowns at it. Also, in *CCB (Nig Ltd v Okonkwo*,³⁶ the court held that the court will not make an order of re-instatement after awarding damages to an employee for his unlawful dismissal as this would amount to double compensation.

4.0 Essence of Issuing Notice in Contract of Employment

A notice of termination is what an employer uses to notify an employee as to the end of the employment contract.³⁷ The court decided in the case of *Rufus Amokeodo v IGP*,³⁸ that the legal consequence of giving notice of termination by or to an employee is that the employee remains in service until the expiration of the notice.

Notice is very important for a valid determination of contract of employment. Where however, there is a provision in the contract of employment for salary in lieu of notice, then notice can be dispensed with on the payment of such a salary.

The Act,³⁹ provided for the various ways in which contract of employment may be terminated. A contract of employment may be terminated by the expiration of the period for which it was made; or by the death of the worker before the expiration of that period; or by notice in accordance with section 11 of the Act; or in any other way in which a contract is legally terminable or held to be terminated.

It is imperative to note that the Act⁴⁰ requires the length or period of notice to be incorporated in a written form as a term of the contract of employment. The Act provides as follows:

“Not later than three months after the beginning of a worker’s period of employment with an employer, the employer shall give to the worker a written statement specifying the appropriate period of notice to be given by the party wishing to terminate the contract, regard being had to section 11 of this Act.”

³⁶ (2001) 15 NWLR (Pt735) 114

³⁷ <https://www.investopedia.com> “Notice of Employment Termination, Meaning and Considerations” Accessed on 16th May, 2025

³⁸ (1999) 6 NWLR (Pt.60) 467. See also section 11(1) of the Labour Act.

³⁹ Labour Act, CAP L1 LFN 2004. S.91. s. 9(7) (a –c)

⁴⁰ Ibid s.7 (1) €

The Act⁴¹ clearly delineated the length or period of notice that shall be given for a certain period of contract of employment. A notice of one day shall be given where the contract has continued for a period of three months or less; one week, where the contract has continued for more than three months but less than two years; two weeks, where the contract has continued for a period of two years but less than five years; and one month, where the contract had continued for five years or more.

Furthermore, the Act mandated that any notice for a period of one week or more shall be in writing⁴² and in computing the days of the notice, the day on which the notice is given is usually excluded.⁴³ The Act⁴⁴ recognised the right of either party to a contract of employment to waive his rights to notice on any occasion, or from accepting a payment in lieu of notice.

The importance of giving termination notice in a contract of employment cannot be overemphasised. The notice period allows either party the ability to end the employment relationship without causing undue hardship to the other. The notice period also serves as a buffer, providing the employer with time to find a replacement and the employer with time to seek alternative employment⁴⁵

The notice gives the employee the opportunity for fair hearing⁴⁶ as entrenched in the 1999 constitution of the Federal Republic of Nigeria. the employee therefore gets the opportunity through the notice to prepare and ventilate and defend himself of any allegation.

The notice period also ensures compliance with the law, thereby avoiding legal consequences of non-issuance of the notice.

5.0 Payment of Salary in lieu of Notice

Payment in lieu of Notice (PILON) refers to a payment made by an employer to an employee when their employment is terminated, and they are not required to serve out their notice period, instead

⁴¹ Ibid s. 11 (2) (a-d)

⁴² Ibid s. 11(3)

⁴³ Ibid s. 11 (4)

⁴⁴ Ibid. s. 11 (6)

⁴⁵ <https://aocsolicitors.com.ng> “Termination of Employment: Understanding Nigerian Labour Law” Accessed on 16th May, 2025

⁴⁶ The 1999 Constitution of the Federal Republic of Nigeria. s. 36

of working for the payment, the employee is compensated with an equivalent amount of pay for that period. This payment covers the statutory minimum notice period they would have worked as per the employment contract, effectively ending the employment relationship immediately.⁴⁷

The Act⁴⁸ recognises the right of the parties to a contract of employment to determine such contract by payment of salary in lieu of notice. The Act⁴⁹ made provision for the quantum of payment in lieu of salary. The basic salary of the employee exclusive of overtime and other allowances is the payment in lieu of salary.

The Court of Appeal in *NNPC v Idoniboye Obu*⁵⁰ and *NEPA v Isiereore*,⁵¹ held that where a contract of service gives a party a right of termination of the contract by either giving a particular length of notice or payment of salary in lieu of the length of notice, and the latter course is chosen, the party seeking to end the contract must pay to the other party the salary in lieu of notice at the time of termination of the contract, the said salary in lieu of notice must be actually paid since mere offer to pay is not sufficient.

In *Ben Chukwuma v Shell Petroleum Dev. Co.*,⁵² the Supreme Court held that where the employer chooses to pay salary in lieu of notice, it must be paid at the time the letter of termination is delivered to the employee.

6.0 Judicial Attitude towards Sudden Termination of Contract of Employment with Statutory Flavour

In the case of *Oloruntoba – Oju v AbdulRaheem*,⁵³ it was stated that for an employer to successfully justify the dismissal or termination of an employee's employment with statutory flavour, he should be able to prove to the satisfaction of the court the following:

- (a) That the allegation was disclosed to the employee;
- (b) That he was given fair hearing;

⁴⁷<https://www.playroll.com> "Payment in Lieu of Notice(PILON) Accessed on 16th of May, 2025

⁴⁸ Labour Act, CAP L1 LFN 2004. S.91. s.11(6)

⁴⁹ Ibid s. 11 (9)

⁵⁰ (1996) 1 NWLR (Pt.427) 655 CA

⁵¹ (1997) 7 NWLR (Pt. 511) 135(CA)

⁵² (1993) 4 NWLR (Pt289) 512'(1993) 5 SCNJ 1

⁵³ Supra

(c) That the council believed that the appellant committed the offence after hearing the witnesses.

The courts attitude is that non-compliance with the statute or governing laws of their employee's appointment when bringing the appointment to end renders the termination or dismissal null and void.

In the case of *CBN & Anor. v. Igwilo*,⁵⁴ the court stated as follows:

“The 1st Appellant is a Federal institution created by statute. It follows therefore that it must carry out its activities in line with its governing laws. The laws regulating the appointment and discipline of its workers must be complied with strictly as their employment is with statutory flavour. Every action taken on behalf of the 1st Appellant is therefore expected to be done in good faith, free of bias or nepotism. Similarly, every provision of the Banks staff Manual (Exhibit U) must be strictly complied with by the Bank when dealing with every member of its staff”

Note that it is usually the employee that approach the court complaining of unlawful terminalisation or dismissal of his employment. He therefore has the onus to prove same⁵⁵.

In the case of *Oloruntoba – Oju v Abdul Raheem*,⁵⁶ the court held that the onus is on employee/ plaintiff/ Appellant to prove that the termination of his appointment is unlawful and to discharge this onus, he must prove the following:

- That he is the employee of the Respondent;
- He must place before the court the terms of the contract and the terms and conditions of his employment;
- Lead evidence with proof of who can appoint and who can remove him;
- Show in what circumstances the appointment can be determined by the employer and what constitutes breach of the terms.

⁵⁴ (2007) vol.147 LRCN 913 at 931 FK

⁵⁵ Evidence Act 2011. S. 132

⁵⁶ Supra

The Supreme Court reiterated the above position in *Aji v Chad Basin Dev. Auth. &Anor.*,⁵⁷ when it stated as follows;

“ ..whether one is suing for wrongful dismissal from an employment with statutory flavour or under the common law principles of master and servant, the fact of the employment and the terms and conditions of same must not only be pleaded but must be proved by evidence before a determination of the wrongful nature of his termination/ dismissal can be considered by the court”

Furthermore, his lordship per Peter Odili JSC⁵⁸ succinctly captured the position of the law when his lordship stated as follows:

“what can be stated to be rock solid position of the law with regard to an action by an aggrieved employee on the termination or dismissal from service is that to found his case there is no running away from pleading and proving his contract of service to substantiate his claim. In the case at hand throughout the particulars of claim, there is no plea of the conditions of service governing his employment with the respondent and in evidence nothing is put forward from which those conditions could be ferreted out and no document evidencing the contract of service. It therefore needs be said that waving the flag of breach of fair hearing entrenched in the constitution as per section 33 of 1979 prevailing at the time of the action’s commencement which section is in pari material with the current section 36 of the 1999 Constitution does not provide the saving grace. This is because the absence of the pleading and establishing the contract of service, the Court is left without the working tools with which it can consider the case as advanced by the employee as to whether or not there was a breach.

7.0 Effect of Departure from Condition of Service and Adherence to Payment of Salary in Lieu of Notice

The question that requires an answer is whether payment or acceptance of payment in lieu of notice finally determines the appointment of an employee whose appointment has statutory flavour. It is a commonly held notion that in cases relating to common law master and servant relationship,

⁵⁷ (2015) Vol.246 LRCN 194 at 212 JJ & 213AF

⁵⁸ Ibid pg 212 KEE

where an employee accepts salary in lieu of notice of termination of his employment, he may not be heard to complain that his contract of employment was not validly determined.⁵⁹

The notion has been extended to employment with statutory flavour. The Court of Appeal in *NNPC v Idoniboye Obu*⁶⁰ and *NEPA v Isiereore*,⁶¹ as highlighted earlier, held that where a contract of service gives a party a right of termination of the contract by either giving a particular length of notice or payment of salary in lieu of the length of notice, and the latter course is chosen, the party seeking to end the contract must pay to the other party the salary in lieu of notice at the time of termination of the contract, the said salary in lieu of notice must be actually paid since mere offer to pay is not sufficient.

However, the Supreme Court of Nigeria in the case of the *Military Administrator of Benue State & 7 Ors v Ulegede & Anor*⁶² did not adhere to this view. In that case, the Respondents who were legal practitioners in the employment of the Ministry of Justice of Benue State sued the Appellants claiming inter alia that their purported retirement was unconstitutional, null and void. The Respondents were paid and accepted the three months' salary in lieu of notice. The Court relying on the case of *Adeniyi v Governing Council of Yaba College of Technology*⁶³ stated as follows: *The compulsory retirement of the appellant on the grounds of misconduct under section 12(1) is void. It cannot be rendered valid because the appellant had applied for benefits thereunder. The principle of that case applies with equal force to this case. There was nothing in the case to suggest that the respondents gave up their right of action by their conduct. Furthermore, the case was not a case of mere breach of a contract of employment but one in which the retirement of the respondents was void because of non-compliance with the provisions of the statute which it was claimed, conferred power on the first appellant to retire them.*"

⁵⁹<https://www.researchgate.net> "Assessing the Judicial Attitude of Courts on Termination Statutory Employment and Acceptance of Salary in Lieu of Notice" Accessed on 16th May, 2025

⁶⁰ (1996) 1 NWLR (Pt.427) 655 CA

⁶¹ (1997) 7 NWLR (Pt. 511) 135(CA)

⁶² (2001) 51 W.R.N. 1; (2001) 11 NWLR (Pt 141) 194

⁶³ (999) 7 SCNJ (Pt.11) 304; (1993) 6 NWLR (Pt. 300) 426

Also, in deciding the position of statutory employees in accepting salary in lieu of notice in terminating an appointment, the case of *Musa Abubakar v The Governing Council of Federal Polytechnic Bauchi*,⁶⁴ provided the requisite clarity. The court stated as follows:

‘Moreover, if it were proved that the claimant later collected the allegedly paid one months’ salary in lieu of notice, what then is the position of the law in this regard? The position of the law in pure master and servant or common law employment is that such acceptance amounts to waiver but this is not so with employment spiced with statutory flavour. I have had the course to carefully peruse the decided case of Adeniyi v Yaba College of Technology (1993) 7 SCNJ (Pt 11) 304 at 338, A.G. Karibi –Whyte, JSC delivering the leading judgement. To my view, the pronouncement of the apex court settles the issue. In this employment with statutory flavour, where the termination letter as well as the termination has been held to be unlawful, null and void, the subsequent acceptance of salary in lieu of notice of an unlawful, null and void termination does not and cannot convert the nullity to validity. The termination which is not in compliance with the statute abninitio. A void act cannot be ratified or validated by subsequent acts. What is void is seen in the eye of the law as completely non-existent. The claimant could not have accepted or waived what is non-existent...’

The above decisions of the Supreme Court, has provided enough ground to the fact that in an employment with statutory flavour, payment or receipt of salary in lieu of notice cannot amount to acceptance of the termination of the contract of employment, where there is non-compliance with the statute governing that employment. The basis of this as explained in the judgement is that where an act is void *ab-initio*, it cannot be validated by subsequent acts even if valid because one cannot add something on nothing⁶⁵. In the instant case, the court went further to void the retirement and order reinstatement of the respondents.⁶⁶

In the same vein, the court, in the Idongesit’s case⁶⁷ held that the mere acceptance of salary in lieu of notice by the employee cannot validate the invalid and void act of termination of his

⁶⁴ Suit No : NICN/BAU/05/2017

⁶⁵ UAC Ltd v Macfoy (1961) ALL ER 1160

⁶⁶<https://www.researchgate.net> “Assessing the Judicial Attitude of Courts on Termination Statutory Employment and Acceptance of Salary in Lieu of Notice” Accessed on 16th May, 2025

⁶⁷ Supra

employment done contrary to the stipulations of the laws and Regulations governing such appointment.

Other Remedies available to Employees other than payment of Salary in Lieu of Notice

We have noted that in the case of employment with statutory employment the remedies of reinstatement and damages are available to an employee whose appointment was wrongfully terminated or dismissed.

In the case of wrongful termination /dismissal of private employments, it has been held reinstatement cannot be ordered and the only remedy available to an employee wrongfully terminated/dissmised is damages. This principle was enunciated in the case of *Esther Ogbodo v Global Fleet Oil & Nicon Properties Ltd.*⁶⁸

The quantum or measure of damages recoverable becomes an issue especially where the litigation that has flowed from the subject has been on the increase.⁶⁹ The third Alteration to the 1999 Constitution in 2010 provides for the measure of damages in termination /dismissal being restricted to only payment in lieu of notice. This is in accord with the common law position and the courts have followed it in a long line of decided cases⁷⁰. However, there was a departure from this stance in the cases of *British Airways v Makanjuola*.⁷¹ The Court of Appeal held that the quantum of damages recoverable by an employee depends on whether the wrongful termination of employment was as a result of the failure to give the required notice or as a result of an alleged malpractice. If the former, the question of damages may be the employee's salary in lieu of notice, but if the latter, then since such a termination carries with it some stigma on the character of the employee, he shall be entitled to substantial damages far beyond the payment of salary in lieu of notice which was put at two years' salary.

The National Industrial Court has also been progressive as regards the quantum of damages available to an employee for wrongful dismissal or termination. In the case of *Mrs Folarin Maiya*

⁶⁸ (Unreported) Suit No LA/32/2012. Judgement of which was delivered on 5th December, 2014 p.44

⁶⁹ Kenen, *Determination of contract of Employment through Termination and Dismissal: the Current Trends in Nigeria*. Benue State University Law Journal, Vol. 11, 2022

⁷⁰ Nigerian Produce Market Board v Adewunmi(1972) 11 SC 111; Onalaja v African Petroleum ((1990) 7 NWLR (Pt. 2006) 691; Morohunjola v Kwara Tech (1990) 4 NWLR (Pt.145), 506; Olanrewaju v Afribank Plc ((2001) FWLR (Pt.72) 2008

⁷¹ (1993) 8 NWLR (Pt.311) 276

v The Incorporated Trustees of Clinton Health Access Initiative Nigeria & 2 Ors,⁷² the court awarded as damages one year's gross salary for termination based on pregnancy. Similarly, in *Mrs. Titilayo Akinsanya v Coca-cola Nigeria Ltd*,⁷³ the court awarded damages/compensation of one year's gross salary to the claimant.

The National Industrial Court has gone beyond awarding substantial damages to loss of expectation interest where the claimant has been wrongfully terminated or dismissed. This was the position in *Patric Mndilim v United Bank for Africa Plc*⁷⁴

Apart from the above, there are other remedies available to an employee whose employment was abruptly terminated especially where the employee is in the course of his Employment.

The Employee Compensation Act 2010⁷⁵ has among its objective, to provide for an open and fair system of guaranteed and adequate compensation for all employees or their dependents to any death, injury, disease or disability arising out of or in the course of employment; provide rehabilitation to employees with work related disabilities as provided in the Act.⁷⁶

The Act⁷⁷ provided for the benefits and compensation structure in the case of injuries, disability or death resulting in the course of work to include, medical expenses, temporary or permanent disability benefits, and survivor benefits for dependents in the event of work-related fatality.

The employer has the responsibility to promptly report accidents, facilitating medical examinations, and ensuring compliance with compensation process.⁷⁸ In the case of *C & T Construction Co. Ltd v Okhai*,⁷⁹ the respondent, while on duty which involved the serving of the appellants crane sustained grievous injuries arising out of the 2nd Appellant failure to switch operator to use due care thereby causing the crane to become agitated and resulting in a drum of the crane to rollover violently over the respondents; left foot, crushing that leg below the knee. For

⁷² (2012) 27 NLLP (Pt. 76) 110 NIC

⁷³ Suit No NICN/LA/40/2012,. The judgement was delivered on 7th April, 2016,

⁷⁴ (Unreported) Suit No NICN/LA/353/2012. Judgement was delivered on 19th June, 2014.

⁷⁵ In Nigeria, the Employee's compensation Act of 2010 stands as a primary legislative framework to provide an equal system of compensation for employees in the case of work-related accidents, injuries, and diseases. The Act repealed the earlier Workmen Compensation Act, 1987.

⁷⁶ The Employee Compensation Act, 2010. S. 1

⁷⁷ Ibid. s. 7-11

⁷⁸ Ibid. s. 5

⁷⁹ (2003) 13 NWLR (Pt. 851) 79

this he was under great pain and suffering for which he was hospitalized and this eventually led to the amputation of that leg. The employee was awarded damages for loss of earning capacity, future loss and damages for pain and suffering.

8.0 Summary of Findings

This paper finds that whereas in a pure master and servant or common law employment the payment of salary in lieu of notice and acceptance could amount to waiver, the position is not the same in employment clothed with statutory flavour. The procedure for termination or dismissal provided by the governing statute or regulations made thereunder must be complied with. Where this is not the case, the termination or dismissal is null and void and of no moment. Payment and acceptance of salary in lieu of notice cannot cure the nullity as no one can place something on nothing and expect it to stand.

The paper also finds that employment with statutory flavour possess such special character that adhering strictly to the procedure laid down by the governing statute or regulations made thereunder in terminating an employee's appointment with statutory flavour is omnipotent. Where this is not done, the termination is null and void.

The paper further finds that employment with statutory flavour possess such special character that an unlawful act cannot be validated by subsequent acts of payment and acceptance of salary in lieu of notice. This paper also finds that in cases of termination of appointment by death or injuries or diseases suffered by the employee in the course of his employment, compensation as provided for in the Employee Compensation Act 2010 avails the employee.

This paper also finds that in cases of termination of appointment by death or injuries or diseases suffered by an employee in the course of his employment, compensation as provided for in the Employee Compensation Act 2010 avails the employee.

9.0 Conclusion and Recommendations

This paper recommends that employers should adhere to the governing statute and regulations made thereunder in terminating employees in employment with statutory flavor. A constant workshop aimed at educating the employers and employees in contract with statutory flavour on

the procedure for terminating the employment and their rights as employees in employment with statutory flavor respectively.

The paper also recommends sensitization of employees of the legal protection accorded them by the law. This paper recommends that employers should adhere to the governing statute and regulations made thereunder in terminating employees in employment with statutory flavor. A constant workshop aimed at educating the employers and employees on the terms of their contract and the procedure for terminating the employment and their rights as employees in employment with statutory flavor respectively.