

# TERMINATION OF EMPLOYMENT BASED ON EMPLOYEE'S HIV STATUS: THE RESPONSE OF THE NATIONAL INDUSTRIAL COURT OF NIGERIA

MARY-ANN ONOSHIOKE AJAYI<sup>1</sup>  
DAVID TARH-AKONG EYONGNDI<sup>2</sup>

**Abstract:** This article adopts desk-based methodology in interrogating the issue of HIV related employment termination in Nigeria, focusing on the National Industrial Court of Nigeria (NICN) decision in *Akinola v. Ocean Marine Solutions Ltd.* It examined international and domestic legal frameworks on the subject, the human rights affected by such termination, the impact of the decision taken on the protection of the human cum employment rights of employees living with HIV/AIDS and the response of the NICN to the quagmire. It observed that the quantum of damages awarded by the NICN cannot achieve deterrence. It recommends how to eradicate HIV related employment termination in Nigeria.

**Keywords:** Employment, Discrimination, HIV/AIDS, Human Rights, NICN, Nigeria.

**SUMMARY:** 1. INTRODUCTION. 2. *ADEWUNMI AKINOLA V. OCEAN MARINE SOLUTIONS LTD.* IN PERSPECTIVE. 2.1. Defendant's Argument before the Court. 2.2. Claimant's Argument before the Court. 2.3. Decision of the Court. 3. HIV/AIDS DISCRIMINATIONS AS A HUMAN RIGHTS VIOLATION. 4. MATTERS ARISING FROM THE DECISION IN *ADEWUNMI AKINOLA V. OCEAN MARINE SOLUTIONS LTD.* 5. CONCLUSION. 6. RECOMMENDATIONS.

## 1. INTRODUCTION

HIV/AIDS is a dreaded disease hence, persons infected with or affected by it are often discriminated against in the society based on their perceived or actual status<sup>3</sup>. Onyemelukwe<sup>4</sup> opined that when it comes to employment, employers are reluctant if not adamant to employ persons who are so infected or affected even when their status may not affect their competency or ability to perform or carry out the work and those who got infected after employment are often targeted for termination<sup>5</sup>. Aguwa,

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<sup>1</sup> PhD, Associate Professor. College of Law, Bowen University, Iwo, Osun State, Nigeria. Email: maryann.ajayi@bowen.edu.ng

<sup>2</sup> Assistant Professor. College of Law, Bowen University, Iwo, Osun State, Nigeria. Email: david.eyongndi@bowen.edu.ng

<sup>3</sup> Ogunyemi, A. O., Adubiaro, F. M., Oluwole, E. O., Somefun, E. O., and Olubodun, T., "Stigma, Discrimination and Non-disclosure among Young People Living with HIV in Lagos, Nigeria" (2022) 41(106) *Pan African Medical Journal* 1-12; Dahlui M, Azahar N, Bulgiba, A., Zaki, R., Oche O. M., Adekunjo F. O, "HIV/AIDS Related Stigma and Discrimination against PLWHA in Nigerian Population" *PLoS ONE*(2015) 10(12): e0143749. <https://doi.org/10.1371/journal.pone.0143749>

<sup>4</sup> Onyemelukwe, C, "Discrimination on the basis of HIV Status: An Analysis of Recent Developments in Nigerian Law and Jurisprudence" (2017) 17(3) *International Journal of Discrimination and the Law* 160-179.

<sup>5</sup> Nwana, C.R. (2005) 'Social Consequences of HIV/AIDS: Stigma and Discrimination in the Workplace in Nigeria' being a Paper presented at the XXV International Population Conference held at the Vinci Convention Centre, Tours, France, 18 – 23, 1-20.

Esonwanne, Onyia and Modebe<sup>6</sup> posited that being HIV positive attracts natural unfounded apprehension, leading to stigmatisation and discrimination. Pursuant to the foregoing, Eyongndi<sup>7</sup> has asserted that the probability of persons who are HIV positive securing employment or remaining in their employment is relatively low as they are often victims of HIV related employment. Termination or discrimination<sup>8</sup>. Where they are infected after been employed, instead of being treated equally by their employer and co-employees, they are rather stigmatised, discriminated against and treated as outcast due to their status<sup>9</sup>.

In order to stem the tides of stigmatisation and employment discrimination based on an employee's HIV status, Nigeria government through its Legislature, enacted the HIV and AIDS (Anti-Discrimination) Act, 2014 and issued the National Guidelines for HIV Counselling and Testing. The Guidelines regulates employers' right under section 8(1) of the Labour Act<sup>10</sup>, this permits an employer to carry out at his expense, medical test on the employee(s). Despite these statutes, some employers have persisted in the inhumane and inhuman practices of subjecting employees to HIV testing without disclosing the nature of the test to be carried out on such employees; not seeking and obtaining their informed consent before carrying out such test or withholding the result from them while making it known to co-employees and ultimately, terminating their employment on account of their HIV positive status<sup>11</sup>. All these are done without regards to the various fundamental human rights (such as right to dignity of human person, privacy and freedom from discrimination) of the employee and the need to protect and promote same in accordance with domestic and international human rights instruments<sup>12</sup>. Where an employee's right is violated due to his<sup>13</sup> perceived or actual HIV status, the

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<sup>6</sup> Agua E, Esonwanne O. F, Onyia S. U, and Modebe I, "Assessment of Workplace Stigma and Discrimination among People Living With HIV/AIDS attending Antiretroviral Clinics in Health Institutions in Enugu, South East Nigeria"(2015) 65(1) *The West Indian Medical Journal*, 1-21.

<sup>7</sup> Eyongndi, D.T., 'An Appraisal of HIV and AIDS (Anti-Discrimination) Act, 2014 and the Tides of Employment Discrimination in Nigeria' (2020) 8(1) *Africa Nazarene University Law Journal*, 11-127.

<sup>8</sup> Odimegwu, C. O. Akinyemi, J. O. and Alabi, O.O., "HIV-Stigma in Nigeria: Review of Research Studies, Policies, and Programmes" <https://www.hindawi.com/journals/art/2017/5812650/> Accessed 20 September 2022.

<sup>9</sup> Dakas, C.J.D. (2010) 'HIV/AIDS and Workplace Discrimination in Nigeria: Prejudice, Stigmatization and Legal Shenanigans' Available at: <http://www.ialsnet.org/meetings/labour/papers/Dakas-Nigeria.pdf> accessed 8 December 2021.

<sup>10</sup> Labour Act Cap. L1 Laws of the Federation of Nigeria (LFN) 2004.

<sup>11</sup> *Ibid.* Section 8(1).

<sup>12</sup> See for instance the 1999 Constitution of the Federal Republic of Nigeria Cap. C23 Laws of the Federation of Nigeria 2004; HIV and AIDS (Anti-Discrimination) Act, 2014; African Charter on Human and Peoples Right 1988, African Charter on Human and Peoples Right (Ratification and Enforcement) Act Cap. A9 Laws of the Federation of Nigeria 2004, Universal Declaration of Human Rights, 1948; ILO Discrimination (Employment and Occupation) Convention, 1958 and Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111).

<sup>13</sup> It should be noted that in this paper, the use of a masculine pronoun includes feminine.

aggrieved employee has a cause of action<sup>14</sup>. The accrued cause of action, grants the aggrieved employee a right of action at the National Industrial Court of Nigeria (NICN) as a specialised court with exclusive original civil jurisdiction over such matters<sup>15</sup>.

Thus, in *Adewunmi Akinola v Ocean Marine Solutions Ltd.*<sup>16</sup>, the NICN was invited to determine the following questions: whether the act of non-disclosure by the defendant of the nature and type of medical examination to be carried out on the claimant at the defendant's behest was not unlawful and a violation of the claimant's rights; whether subjecting the claimant to HIV testing without pre and post-test counselling was not in breach of the law and a violation of claimant's human rights; whether the failure of the defendant to disclose the HIV test result of the claimant to her but making same known to her co-employees is not unlawful and therefore a violation of her right to privacy and dignity of her human person, whether conducting HIV tests on the claimant without her informed consent first sought and obtained is not a violation of her rights and whether terminating her employment on account of her HIV positive status was not unlawful and discriminatory? This article, examines the impact of this decision on the quagmire of HIV employment related termination in Nigeria and the place of informed consent in medical testing of employees by employers. It discusses the human right perspective of HIV/AIDS employment discrimination in Nigeria and the attitude of the NICN towards such termination. The paper highlight matters arising from the decision and makes recommendations on how to effectively exploit the judgment towards curbing the tides of employment discrimination and termination of employment on account of an employee's HIV status in Nigeria.

## 2. *ADEWUNMI AKINOLA V. OCEAN MARINE SOLUTIONS LTD. IN PERSPECTIVE*

Before the facts of this case are highlighted, it is apposite to state that this is a decision of the NICN which is a court of first instance and may cause some persons to

<sup>14</sup> *Akwa Ibom State University & Anor. v. Mr. Thompson Tom Ikpe* [2016] 5 NWLR (Pt. 1504) 146 at 162, Paras A-C; *Bello v. Attorney General of Oyo State Anor.* [1986] 5 NWLR (Pt. 45) 828; *Egbe v. Adefarasin* [1987] 1 NWLR (Pt. 47) 1; *P.N Udoh Trading Company Ltd. v. Abere* [2001] 11 NWLR (Pt. 723) 114; *Yare v. National Salaries, Wages and Income Commission* [2013] 12 NWLR (Pt. 1367) 173; *Owie v. Ighiwi* [2005] 5 NWLR (Pt. 917) 184.

<sup>15</sup> Section 253 of the 1999 Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010; Akeredolu, A. E. and Eyongndi, D. T. "Jurisdiction of the National Industrial Court under the Nigerian Constitution Third Alteration Act and Selected Statutes: Any Usurpation?" (2019) 10(1) *The Gravitas Review of Business and Property Law, University of Lagos* 1-16; B Atilola, M Adetunji, and M Dugeri, "Powers and Jurisdiction of the National Industrial Court of Nigeria under the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010: A Case for Its Retention" (2012) 6(3) *Nigerian Journal of Labour Law and Industrial Relations* 30-33; Akintayo, J.O.A and Eyongndi, D.T. "The Supreme Court of Nigeria Decision in *Skye Bank Ltd v Victor Iwu*: Matters Arising" (2018) 9(3) *The Gravitas Review of Business and Property Law* 110; Eyongndi, D.T. & Onu, K.O.N. "The National Industrial Court Jurisdiction over Tortious Liability under Section 254C (1) (A) of the 1999 Constitution: Sieving Blood from Water" (2019) 10 *Babcock University Socio-Legal Journal* 243-270.

<sup>16</sup> Unreported Suit No: NICN/LA/410/2019 Judgment delivered on the 25<sup>th</sup> of October, 2021 by Nweneka J.

disregard it or question the necessity or justification of interrogating it. However, the fact that the NICN is a court of first instance does not render its decisions inconsequential. The NICN, aside being a Superior Court of Record (SCR)<sup>17</sup>, is a specialised court<sup>18</sup> which has and exercises both original and appellate jurisdictions over administrative and quasi-judicial tribunals such as the Industrial Appeal Tribunal<sup>19</sup>. Moreover, appeals from the decision of the NICN on civil matters goes to the Court of Appeal which is the final court on such matters because its decisions are not appealable to the Supreme Court<sup>20</sup>. The implication of this is that a civil decision of the NICN, only goes one step upward i.e. to the Court of Appeal and most of NICN novel decisions have been upheld by the Court of Appeal as in *Sahara Energy Resources Ltd. v Oyebola*<sup>21</sup>. Quite often than none, the NICN decisions are rarely appealed therefore remain potent law on the issue determined<sup>22</sup>. The novelty and potency of the NICN decisions has placed it in a *sui generis* position such that unlike other courts of coordinate jurisdiction (i.e. the Federal High Court, State High Court and the High Court of the Federal Capital Territory, Abuja), its decisions are reported in a specialised law report like the decisions of the Court of Appeal and Supreme Court<sup>23</sup>. The decision under review, as would be seen subsequently, accord with an earlier decision of the Court of Appeal wherein the court held that subjecting a person to HIV test without obtaining informed consent and failure to conduct pre and post HIV test counselling is violation of the person's fundamental rights<sup>24</sup>. Thus, this present decision of the NICN is worthy of legal analysis.

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<sup>17</sup> By virtue of section 254C (1) (i) of the 1999 Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010, the NICN was included in section 6(5) of the 1999 Constitution as a superior court of record; Adejumo, B.A, 'The Role of the National Industrial Court in Dispute Resolution in Nigeria' (Faculty of Law Public Lecture of University of Abuja organized by the Law Student Association of Nigeria, UNIABUJA Chapter, 15 September, 2008).

<sup>18</sup> Eyongndi, D.T. & Oyagiri, B.I., "Paradigm Shift on Remedies for Wrongful Termination of Master Servant Employment in Nigeria" (2019) 1(3) *International Review of Law and Jurisprudence, Afe Babalola University* 37-42.

<sup>19</sup> Eyongndi, D. T. "Towards Repositioning the Industrial Arbitration Panel (IAP) for the Effective Settlement of Trade Disputes in Nigeria" (2019) 9 *University of Ibadan Law Journal* 114-129.

<sup>20</sup> Section 254C (3) Constitution of the Federal Republic of Nigeria 1999 (Third Alteration) Act, 2010, *Lagos State Sheraton Hotel v. Hotel and Personal Service Staff Association* [2014] 14 NWLR (Part 1426) 45; *Coca-Cola Nigeria Ltd v. Akinsaya* [2013] 8 NWLR (Part 1386) 255; *Local Government Service Commission, Ekiti State v Mr M A Jegede* [2013] LPELR- 21131 (CA). (2015); Otuturu, G. G. "Powers and Jurisdiction of the National Industrial Court in the Resolution of Labour Disputes in Nigeria" (2010) 9(1) *Nigerian Journal of Labour Law and Industrial Relations* 35; Ayeni, V.O. "Criminal Jurisdiction of the National Industrial Court of Nigeria: Constitutional Watershed or Another Fly in the Ointment?" in Akinseye-George, Y., Osamolu, S. and Oluwadayisi, A.O. (eds) *Contemporary Issues on Labour Law, Employment and National Industrial Court Practice and Procedures Essays in Honour of Hon. Justice Babatunde Adeniran Adejumo*, (LawLords Publications 2014) 75.

<sup>21</sup> (2020) LPELR-51806 (CA). in this case, the Court of Appeal upheld the award of two year salary as damages for wrongful termination of employment contrary to the established common law position of the amount the employee is entitled if the specified period of notice had been abided.

<sup>22</sup> *Petroleum and Natural Gas Staff Association of Nigeria v Schumberger Anadrill*[2008] 11 NLLR (Pt. 29) 164.

<sup>23</sup> The Nigerian Labour Law Reports (N.L.L.R) published by Rocheba Law Publishers is dedicated to reporting the judgement/Rulings of the NICN.

<sup>24</sup> *Mrs. Georgina Ahamefule v. Imperial Medical Centre & Anor.* (2017) JELR 34304 (CA).

The brief facts of the case are that the claimant was employed by the defendant as a cleaner and resumed work on the 23<sup>rd</sup> of January, 2017. In April 2018, she was directed by the defendant alongside five other employees to go to Kleinburg Medical Centre which is the defendant retained medical facility for medical test without informing her of the nature of the test to be conducted on her. At the medical facility, a form was given to her which was read and interpreted to her by her colleague whom they went together since she could not read and she signed thereafter. She was neither informed of the test, nor was her consent sought or even was there pre counselling before the test was conducted as it turned out to be HIV test. The result of the test was not sent to her but was sent directly to the defendant. Subsequently, the Human Resources Manager and the Admin Manager of the defendant at various times, confronted her and demanded to know if she had done HIV test during the birth of her children which she responded in the negative. She was immediately directed to go home and take an HIV test. Thereafter, she began to receive discriminatory and embarrassing sympathetic messages from her colleagues on her HIV positive status. She was later on compelled to undergo another medical test with a directive to only return to the office after the result was received and she was not told the nature of the test she was to undertake despite asking. She complied although the result of the test was not given to her but it was also emailed directly to the defendant and subsequently, when she attempted to enter the defendant's premises, she was disallowed by its management. Thereafter, her employment was terminated. She reported her termination to the Citizen Mediation Centre which invited the defendant for amicable settlement but the mediation was frustrated by the defendant's uncooperative attitude.

The defendant commenced this action at the NICN seeking various reliefs including but not limited to a declaration that the defendant's failure to discuss the results of tests conducted on her is wrongful; a declaration that the defendant's disclosure of the tests results to claimant's co-employees and locking her out of its premises is discriminatory and amounts to stigmatisation. She also sought for an order of the court awarding the sum of N 30, 000, 000: 00 (Thirty Million Naira) to her as damages for the wrongful termination of her employment, discrimination at work place, stigmatisation, embarrassment, psychological and emotional trauma that she suffered due to the defendants actions and omissions. The defendant entered appearance and filed its statement of defence and denied any wrongdoing.

### ***2.1. Defendant 's Argument before the Court***

With regard to issue one, the defendant argued that based on the pleadings and evidence, it did not terminate the employment of the claimant, rather the claimant terminated the employment contract as shown in paragraphs 24 and 25 of DW 1 Statement on Oath and the exhibits tendered by her, particularly the print out of text messages by DWI to claimant's telephones requesting her to return to work which were largely not responded to. On issue two, the defendant submitted that it has done no act that renders it liable to the claimant. On the assertion that the defendant scheduled the claimant for an undisclosed medical test, it argued that the uncontroverted evidence before the Court was that it did not specifically scheduled the claimant for HIV test, but a comprehensive medical test together with it other employees as permitted by section 8(1) of the Labour

Act and Section 9(5) of the HIV and AIDS (Anti-Discrimination and Prohibition) Act 2014 and since this evidence has not been controverted, the Court was bound to accept same placing reliance on *Dingyadi & Anor. v. Wamako & Ors*<sup>25</sup>. On the allegation of failure to do pre and post HIV testing counselling pursuant to the National Guidelines for HIV Counselling and Testing, the defendant contended that the responsibility was on the medical facility that determined which test to be conducted on the claimant. Having decided to conduct HIV test, the medical facility and not the defendant, had the duty of counselling the claimant; to require that from it (i.e. the defendant), will amount to expecting the defendant to do the impossible which the law does not permit<sup>26</sup>. On the claim of discrimination, the defendant relied on *NMCN v. Adesina*<sup>27</sup> and submitted that there was no evidence that the claimant was treated differently (either during or after the test) from its others employees, and that it did not disclosed the claimant HIV status to her colleagues but the claimant herself did in order to attract their sympathy and favour<sup>28</sup>. The defendant also argued that since the burden of proof was on the party whose case will fail if no evidence was tendered in support of the case, the claimant was not entitled to any of the reliefs sought because she had not proved her case as the law demanded<sup>29</sup>.

## 2.2. Claimant's Argument before the Court

Arguing issue one, the claimant referred to paragraphs 9-26 of her witness statement on oath and the evidence of DW1, under cross examination to the effect that before she was sent for the subsequent test, they had concluded that she will be replaced hence, all of DW1 action of sending her text messages, demanding her to return to work was an afterthought reason being that she had lodged a complaint with the Citizen Mediation Centre as at then<sup>30</sup>. At the meeting with the Managing Director of the defendant which the claimant brought her children to gain sympathy, claimant was advised to forget about her job and when she attempted to access the defendant's HMO for treatment for herself and her children, she was not allowed like before. By relying on sections 39 and 77(b) of the Evidence Act 2011 and the case of *Onovo v. Mba*<sup>31</sup>, the claimant urged the court to discountenance the evidence of DW1 and DW2 on the grounds of being hearsay and contradictory. Claimant contended that her employment was terminated mainly on account of her HIV positive status and without notice or payment of salary in lieu of notice. The Court was urged to resolve the issue in her favour<sup>32</sup>.

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<sup>25</sup> [2008] 17 NWLR (Pt. 1116) 395 at 407.

<sup>26</sup> *Lasun v. Awoyemi* [2009] 16 NWLR (Pt. 1168) 513.

<sup>27</sup> (2016) LPELR-40610 CA.

<sup>28</sup> *Adewunmi Akinola v. Ocean Marine Solutions Ltd.* Unreported Suit No: NICN/LA/410/2019 Judgment delivered on the 25<sup>th</sup> of October, 2021 by Nweneka J.

<sup>29</sup> *Ibid* at Para.5

<sup>30</sup> *Ibid*.

<sup>31</sup> [2014] 14 NWLR (Pt. 1427) 291.

<sup>32</sup> *Adewunmi Akinola v. Ocean Marine Solutions Ltd.* Unreported Suit No: NICN/LA/410/2019 Judgment delivered on the 25<sup>th</sup> of October, 2021 by Nweneka J at Para. 10.

On issue two, the claimant contended that the defendant was in breach of section 7 of the Labour Act which requires an employer to give an employee, a statement stating the terms and conditions of employment within three months from the date of employment because, she was not given any by the defendant. The claimant further submitted that the manner the defendant and the medical family used to conduct the tests, which was without her knowledge and the result not given to her shows that they had colluded in violation of her right to privacy and human dignity<sup>33</sup>. This violated section 9 of the HIV/AIDS (Anti-Discrimination and Prohibition) Act 2014, Chapter 8, Paragraph C, at page 37 of the National Guidelines for HIV Counselling and Testing and section 12 of the Illiterate Protection Law of Lagos State 2015 as was espoused in *Kubau v. Rilwanu*<sup>34</sup>. While acknowledging the right of an employer to hire and fire an employee, the claimant argued that same cannot be on account of an employee's HIV positive status, which is an act of workplace discrimination. The claimant therefore argued that the various human rights violations by the defendant, entitled her to damages to be awarded against the defendant by the NICN.

### 2.3. *Decision of the Court*

The Court summarised the evidence of the parties and found that Exhibit D1 is the National Guidelines for HIV Counselling and Testing, November 2011. Chapter 4 pages 15 and 16 deals with pre and post-test counselling. Chapter 8 deals with ethical and legal considerations. Paragraph (a) page 35 provides *inter alia* that HIV test must be provided when requested or indicated in accordance with the 3Cs principle of counselling, confidentiality and consent. Paragraph (b) page 35 stipulates that the term informed consent refers to an intentional permission given by a client to a health care provider to proceed with the proposed HIV test procedures. The permission is based on an adequate understanding of the advantages, risks, potential consequences and implications of a HIV test result which could be negative or positive. The Guidelines also provide that HIV testing must be voluntary with the employee making an informed decision about accepting same; the choice of the concerned individual must be respected because they have the right to refuse testing at any time even after the blood sample has been taken for the test. The Guidelines prohibits mandatory HIV testing except in special circumstances. The Court found that aside the defendant subjecting the claimant to HIV testing without her informed consent, there was also neither pre nor post-testing counselling as required. It also found that the defendant directing its security personnel at its gate to disallow the claimant entry into its premises, giving her money in an envelope at the gate and disclosing her HIV test result to her co-employees were all done in breach of section 3(1) of the HIV and AIDS (Anti-Discrimination and Prohibition) Act 2014 which guarantees the right of person living with or affected by HIV from discrimination on the basis of their HIV status. The Court found that the Act (i.e. HIV and AIDS (Anti-Discrimination and Prohibition) Act 2014) directs stakeholders, especially employers to protect the human rights of people living with or affected by HIV by eliminating HIV

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<sup>33</sup> *Ibid.* para. 11-12.

<sup>34</sup> [2014] 4 NWLR (Pt. 1397) 284.

related discriminations in all settings including employment<sup>35</sup>. The Court also found that aside the HIV and AIDS (Anti-Discrimination and Prohibition) Act 2014, other laws especially section 42 of the 1999 CFRN and Article 2 of the African Charter on Human and Peoples Rights 1988 guarantees the claimant's right to freedom from discrimination, which the various acts and omissions of the defendant breached. It further found that pursuant to section 37 of the 1999 CFRN, the claimant had the right to privacy which the defendant violated by making public the result of her HIV test to her colleagues which exposed her to unimaginable trauma<sup>36</sup>. In deciding issue one, the Court made recourse to the evidence of the claimant wherein she averred that DW1 ordered her out of her office to go home and run a test on 5<sup>th</sup> and 7<sup>th</sup> May 2018 and not to come back until the results were received by the defendant. The DW1 and claimant line manager after receipt of the test results, admitted under cross examination that she knew that claimant would be replaced although same day i.e. 10<sup>th</sup> May 2018 they invited the claimant for a meeting with the Managing Director to hold on the 11<sup>th</sup> of May, 2022 who then told her to forget about her job. The court therefore came to the conclusion that the defendant terminated claimant's employment by conduct based on her HIV status<sup>37</sup>.

On the claim of the sum of N 30, 000, 000 as compensation and/or damages for the wrongful termination of her employment, discrimination at workplace, stigmatisation, embarrassment, psychological and emotional trauma caused the claimant as a result of the actions or omissions of the defendant and her staff having found that the claimant's employment was terminated based on her HIV status in violation of extant laws, the court noted that:

When HIV positive people are denied employment, they are deprived of the opportunity to earn a living and their worth as human beings is devalued thus, leading to the violation of their right of dignity. I found elsewhere in this judgment that the claimant has made out a case for discrimination on the basis of her HIV positive status. Having so found, this Court must provide a remedy even though there is no remedy in claimant's contract of employment, for where there is a wrong there must be a remedy.

The court noted the trite position that ordinarily, in claims for wrongful termination, the quantum of damages is the salary for the length of time during which notice of termination would have been given in accordance with the contract of employment, this is in addition to the legitimate entitlement<sup>38</sup>. However, the court detracted from following this position by virtue of the fact that the termination was done in violation of statutory provisions conferring various rights on the claimant. Following

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<sup>35</sup> *Adewunmi Akinola v. Ocean Marine Solutions Ltd.* Unreported Suit No: NICN/LA/410/2019 Judgment delivered on the 25<sup>th</sup> of October, 2021 by Nweneka J at Para. 11-12.

<sup>36</sup> *Ibid.*

<sup>37</sup> *Adewunmi Akinola v. Ocean Marine Solutions Ltd.* Unreported Suit No: NICN/LA/410/2019 Judgment delivered on the 25<sup>th</sup> of October, 2021 by Nweneka J at Para. 15.

<sup>38</sup> *Idufueko v. Pfizer Products Limited & Anor.* (2014) LPELR-22999 (SC).



the decision of the Lagos State High Court in *Mrs. Georgina Ahamefule v. Imperial Medical Centre & Anor*<sup>39</sup>. The court made reference to its earlier decision in *Owolabi Susan v. Aso Savings & Loans Plc.*<sup>40</sup> which involved the violation of an employee's right of freedom of discrimination, and the sum of N 2, 437, 915.07 (Two Million, Four Hundred and Thirty Seven Thousand, Nine Hundred and Fifteen Naira, Seven Kobo) was awarded as compensation. Thus, on this claim, based on these decisions, the Court held thus:

In the light of the foregoing and having regard to the fact that the defendant did not provide the claimant with a contract of employment in breach of the Labour Act, and has thrown her into the society without any supports whatsoever, I award the claimant five years' salary as compensation for wrongful termination of her employment, discrimination at the workplace, stigmatisation, embarrassment, psychological and emotional trauma in the sum of N 2, 100, 000 (Two Million, One Hundred Thousand Naira)<sup>41</sup>.

The court also awarded the claimant the sum of 100,000:00 (One Hundred Thousand Naira) as the cost of the action although same was prosecuted *pro bono*, nonetheless, the claimant commuted to and fro the court all through the proceedings.

This decision is a profound and welcomed development. It is a step towards the right direction in stemming the negative tides of workplace discrimination on the basis of an employee's perceived HIV status. People infected by or affected by HIV are not outcast to be treated with discomfiture as the defendant did through its various acts and omissions. A person or an employee that is HIV positive still enjoy all his fundamental rights guaranteed by the law of Nigeria. This decision demonstrates the stance of the NICN against all forms of employment discrimination especially discrimination predicated on HIV status and subsequent termination of employment of an employee on the same basis. The court has by this decision, reaffirmed the inviolability of employees' rights of privacy, dignity of the human person, and freedom from discrimination as well as reiterated, in the strongest of terms, the unshifting obligation of an employer (even where it act through its proxy) to ensure that informed consent is sought and obtained for HIV testing to be conducted on an employee as well as pre and post testing counselling is done thereafter.

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<sup>39</sup> Unreported Suit No: ID/1627/2000 Judgment delivered by Y. O. Idowu on the 27<sup>th</sup> day of September 2012. It is apposite to state that as at the time this case was instituted, the National Industrial Court of Nigeria (NICN), neither had nor exercises exclusive original jurisdiction over labour and employment disputes. However, as from 2010 when the 1999 Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010 came in force, the NICN was the only court with requisite jurisdiction to adjudicate over such disputes pursuant to section 245C (1) (d) of the 1999 CFRN (Third Alteration) Act, 2010 notwithstanding section 46(1) thereof. Thus, the Lagos State High Court ought to have transferred the matter to the NICN in 2010 and not continue with it till judgment was delivered in 2012.

<sup>40</sup> Unreported Suit No: NICN/AK.52/2015 Judgment delivered by Oyewumi J on 10<sup>th</sup> July, 2018 at 21-22.

<sup>41</sup> *Adewunmi Akinola v. Ocean Marine Solutions Ltd.* Unreported Suit No: NICN/LA/410/2019 Judgment delivered on the 25<sup>th</sup> of October, 2021 by Nweneka J at Paras. 51-57.

Despite this profundity, it is vehemently argued that the decision has not met the legitimate expectation and justice of the instant case gleaned from the traumatising experience of the claimant and the arrogance displayed by the defendant particularly in its persistent but futile attempt at abdicating from its obligation to the claimant by admonishing her to go on a fruitless and senseless voyage of making the health facility where she was commanded to go for the HIV tests responsible for the pre and post HIV test counselling. This issue and others, are discussed in the succeeding section of this paper under matters arising from the decision.

### 3. HIV/AIDS DISCRIMINATIONS AS A HUMAN RIGHTS VIOLATION

According to the United Nations Office on Drug and Crimes (UNODC), besides India and South Africa, Nigeria is the third country with the highest number of persons infected by HIV as it has about 1.9 million persons living and affected by HIV/AIDS<sup>42</sup>. Thus, it is needless arguing that there is prevalence of HIV/AIDS in Nigeria and most of the affected persons are within the working category<sup>43</sup>. When an employee's employment is terminated on account of his HIV/AIDS's positive status, several of the concerned employee's human rights are violently infringed. This section of the paper focuses on these rights and their interlock with the instant case. Sections 33, 34, 37 and 42 of the 1999 CFRN and sections 2, 5, 15 and 19 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act<sup>44</sup> (ACHPRR Act) deal with the rights to life, private and family life, freedom from discrimination and dignity of the human person of every Nigerian<sup>45</sup>. Both ILO Discrimination (Employment and Occupation) Convention, 1958 and Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111) in defining discrimination, provides that any preference, distinction or exclusion which tends to impair equality of opportunity or treatment in employment is discrimination. HIV related employment termination fits into this definition of discrimination<sup>46</sup>. Articles 2 and 3 thereof, enjoin member States to the convention and recommendation to pursue national policies that eliminate all forms of discrimination and in particular, enact laws to deal with the menace while promoting the principle of non-discrimination.

The right to respect the dignity of the human person of every Nigerian requires that, any action and, or, omission taken by a private person or a government official or agency, the dignity of the person towards whom the act and, or omission is made, must

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<sup>42</sup> UNODC, "HIV and AIDS in Nigeria" <https://www.unodc.org/nigeria/en/hiv-and-aids.html>> accessed 18 March 2022.

<sup>43</sup> Ekanem E.E, Gbadeqesin A. "Voluntary Counselling and Testing (VCT) for Human Immunodeficiency Virus: A Study on acceptability by Nigerian Women attending Antenatal Clinics" (2004) 8(2) *African Journal of Reproductive Health*, 91–100.

<sup>44</sup> African Charter on Human and Peoples Rights (Ratification and Enforcement) Act Cap. A9 Laws of the Federation of Nigeria, 2004.

<sup>45</sup> Monjok, E. Smesny, A. and Essien, J. "HIV/AIDS - Related Stigma and Discrimination in Nigeria: Review of Research Studies and future directions for Prevention Strategies" (2009) 13(3) *African Journal of Reproductive Health* 21–35.

<sup>46</sup> Article 1(b) ILO Discrimination (Employment and Occupation) Convention, 1958, Rec. 1(b) Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111)

not be devalued, impugned, or even eroded no matter how slight<sup>47</sup>. Akani<sup>48</sup> has posited that dignity is the right of a person to be valued and respected for their own sake, and to be treated ethically. In ordinary modern usage, the word denotes "respect" and "status", and it is often used to suggest that someone is not receiving a proper degree of respect, or even that they are failing to treat themselves with proper self-respect. Okene and Akani<sup>49</sup> assert that the basis of dignity can be said to lie in the autonomy of self and self-worth that is reflected in every human being's right to individual self-determination.

So long as the humanity of the person is not in question, the person must be accorded the respect and honour a human being deserves at all times subject to the dictate of the law<sup>50</sup>. Thus, any action and, or, omission that tends to undermine, prejudice or attack the dignity, human value of the person, is an act or omission that violates the human dignity of the concerned person<sup>51</sup>. A person's human dignity is neither traceable nor discoverable from status, class, social status, economic power, education level, sexual or political orientation, professional accomplishment or any other distinction or distinguishing feature but solely a function of the fact of being human<sup>52</sup>. Once it is adjudged that the object of any action and, or, omission is a human being, this right naturally crystallises<sup>53</sup>. Thus, any action considered inhuman/inhumane and degrading that tends to lower the worth of a human being in the eyes of reasonable members of the society, exposes one to shame and ridicule, lowers or extinguishes the self-worth of a person is a violation of the person's right to dignity of his human person which is inherent in every human being and is prohibited<sup>54</sup>. This right is guaranteed by section 34 of the 1999 CFRN. The act of terminating an employee's employment owing to his being HIV positive, is a violation of the dignity of the employee. The attendant ridicule and or pity that follows from such, is a degradation of the self-image or esteem of the victim which is prohibited by both the 1999 CFRN and ACHPRR Act. This was what was brazenly inflicted on the claimant by several actions and omissions of the defendant such as making known the HIV test result of the claimant to her co-employees without her knowledge and authorisation, refusing her entry to its premises while directing the gateman to give her a sealed envelope outside, subjecting her to HIV test without first seeking and obtaining her consent and failure to conduct pre and post HIV test counselling as mandatorily required. Violation of dignity

<sup>47</sup> Akani, N. K. "A Critical Appraisal of the Right to Human Dignity *Vis-À-Vis* the Rights of Women in Nigeria" [https://www.researchgate.net/publication/341464153\\_A\\_CRITICAL\\_APPRAISAL\\_OF\\_THE\\_RIGHT\\_TO\\_HUMAN\\_DIGNITY\\_VIS-A-VIS\\_THE\\_RIGHTS\\_OF\\_WOMEN\\_IN\\_NIGERIA](https://www.researchgate.net/publication/341464153_A_CRITICAL_APPRAISAL_OF_THE_RIGHT_TO_HUMAN_DIGNITY_VIS-A-VIS_THE_RIGHTS_OF_WOMEN_IN_NIGERIA) accessed 20 September 2022.

<sup>48</sup> *ibid.*

<sup>49</sup> Okene, O.V.C. and Akani, N.K. "Human Dignity and Human Rights: The Nigerian Question" (2019) 19 *Maiduguri Law Journal*, 199-200.

<sup>50</sup> Shultzine, D., "Human Dignity in Judicial Decisions: Principles of Application and the Rule of Law" (2017) 25 *Cardozo Journal of International & Comparative Law* 435-481.

<sup>51</sup> Dada, J. A. and Ibanga, M. "Impediments to Human Rights Protection in Nigeria: From Rhetoric to Pragmatic Agenda" (2011) (1) (2) *African Journal of Law and Criminology*, 93.

<sup>52</sup> McCrudden C., "Human Dignity and Judicial Interpretation of Human Rights" (2008) 19(4) *European Journal of International Law*, 655-724.

<sup>53</sup> Anyanwu, I. and Anyanwu. L. O, "Discriminatory Property Rights against Women in Igbo Nigeria: The Victorious Case of Ukeje v Ukeje" (2017) (2)1 *Journal of Law and Global Policy* 1-10.

<sup>54</sup> Articles 6 and 7 of the International Covenant on Civil and Political Rights 1966.

or human dignity of a person, especially women, could take various forms<sup>55</sup>. The main categories of violations are degradation, humiliation, segregation, instrumentalisation or objectification, debasement and dehumanization. All these categories of violation of human dignity are involved or inherent in HIV/AIDS employment related discrimination especially acts such as termination of employment, indefinite suspension from work on account of an employees' HIV positive status, subjection to multiple medical screening and divulgement of the result to unauthorised third parties. These acts are capable of exposing the concerned employee to mental and psychological trauma, owing to the violation. This is contrary to minimum basic human rights expectations. Article 5 of the Universal Declaration of Human Rights (UDHR) provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment<sup>56</sup>. It is submitted that the various actions and omissions of the defendant against the claimant encapsulated above, are diametrically opposed to the foregoing provisions of the UDHR as they exposed the claimant to mental and psychological torture, inhumane, degrading and cruel treatment.

Freedom from discrimination on the other hand as enshrined in section 42(1) of the 1999 CFRN means that a person shall not be treated differently from others based on negative distinguishing considerations. By virtue of Article 1 of ILO Discrimination (Employment and Occupation) Convention, 1958 and Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111), discrimination entails making an unjust or prejudicial distinction in the treatment of different categories of people, especially on the grounds of race, sex, age, religion, ethnicity, tribe, colour, nationality, health status, disability, preference, distinction or exclusion that prejudices equal treatment or opportunity<sup>57</sup>. Thus, where a benefit is to be conferred by a person or an authority, a person who is qualified, deserving or falls into the category of beneficiaries, must not be disentitled based on any factor which others are not subjected to but only the affected person as this will amount to discrimination. Unfortunately, this is how people living with or affected by HIV/AIDS (PLWHA) are often treated by their employers and co-employees in Nigeria<sup>58</sup>. The termination of an employee's employment upon discovery that he is HIV positive is discriminatory especially where it has not been shown that the concerned employee is rendered incapable or unsuitable to perform the job by virtue of his status. Where the basis for termination is the HIV positive status of an employee, the termination is discriminatory because the employment would not have been brought to an end abruptly if not for the employee being HIV positive. This transcends beyond discrimination to unjustly certifying such an employee as less human hence, is a direct attack on the dignity or self-worth of the employee. Every act of discrimination, especially on account of health such as HIV has an inherent element of dignity diminution. It unjustifiably questions the human capacity of the victim<sup>59</sup>.

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<sup>55</sup> Article 5 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2003.

<sup>56</sup> Universal Declaration of Human Rights 1948.

<sup>57</sup> Aina-Pelemo, A. D and Others, "Sexual Harassment in the Workplace: Case Study of the Nigerian Legal Sector" (2019) 86 *Journal of Law, Policy and Globalisation*, 121-137.

<sup>58</sup> Eyongndi (note 5) 120.

<sup>59</sup> Ajayi, M.O. "The Inter-Jurisdictional Perceptions on Economic, Social and Cultural Rights of Women in the Development of Democracies in Nigeria" (2019) *Journal of Private and Comparative Law*, 59-79:60; Ajayi, M.O. and Eyongndi, D.T. "Legal Status of Casual Employees under Nigerian Labour Law: The Imperative for Legal Reforms" (2019) 19(1) *University of Benin Law Journal*, 164.

In fact, section 17(3) of the 1999 CFRN, implore the government to direct its policies in a way that without discrimination on any group whatsoever, all citizen are guaranteed the opportunity of securing adequate means of livelihood and adequate opportunity of securing suitable work. While the 1999 CFRN does not expressly recognise the right to work, it is argued that based on the inseparability and interdependence of human rights<sup>60</sup>, the aforementioned section of the Constitution (although not justifiable), should not be treated with levity as the enjoyment of the justiciable rights is intrinsically tied to the observance of the injusticiable rights. PLWHA do have a right to decent life which is only possible if they are gainfully employed especially when their ability to work is not impaired. Thus, it becomes imperative for their employment not to be tempered with or terminated arbitrary. Aside the fact that work is the main means through which human needs (such as food, shelter, clothing, etc.) are met, there is an inherent aspiration in man to work so as to fulfil the innate desire of contributing to the society. This desire should not be obstructed or truncated by anyone especially unjustifiably as it is the case when an employee's employment is terminated solely on the account of being HIV positive.

What is more, Section 3(1) of HIV and AIDS (Anti-Discrimination) Act, 2014 prohibits discrimination on the basis of real or perceived HIV status concerning access to and continued employment, conditions of employment, employment benefits, comprehensive health services, education, use of public facilities and other social services, provided by the employer, individual, community, government or any other establishment.

Private and family life of an employee as contained under section 37 of the 1999 CFRN entails that private affairs of the employee is treated with utmost confidentiality by the employer<sup>61</sup>. Privacy has been defined as the right to be left alone<sup>62</sup>. Another definition is that privacy is "the right of the individual to be protected against intrusion into his personal life or affairs, or those of his family, by direct physical means or by publication of information or any other communicative means"<sup>63</sup>. Privacy flows from the autonomy of the human person which dignity requires respect and protection<sup>64</sup>. Conceived in this way, an individual is allowed to lead his life without unjust interference or disturbance. Thus, the health status of the employee is not a matter that should be made public as it is the case where an employer makes public, the result of an employee's HIV test contrary to section 37 of the 1999 CFRN. The defendant actions of subjecting the claimant to HIV test and multiple confirmation tests thereafter without informing her of the nature of the tests she was undergoing, failure to seek and obtain her informed consent before

<sup>60</sup> Imasogie, M.O., "Human Rights, Women Rights: So Long a Journey" (3<sup>rd</sup> Bowen University Inaugural Lecture 2017) 2-4; Nasr, L, "Are Human Rights Really 'Universal, Inalienable, and Indivisible?'" <https://blogs.lse.ac.uk/humanrights/2016/09/14/are-human-rights-really-universal-inalienable-and-indivisible/> accessed 20 September 2022.

<sup>61</sup> Salau, A. O. "Data Protection in an Emerging Digital Economy: The Case of Nigerian Communications Commission: Regulation without Predictability?" 7th International Conference on Information Law and Ethics, 22-23 February 2016 [http://icil.gr/download.php?fen=years/2016/downloads/documents/icil\\_2016\\_proceedings\\_book.pdf](http://icil.gr/download.php?fen=years/2016/downloads/documents/icil_2016_proceedings_book.pdf) accessed 10 October 2022.

<sup>62</sup> Brandeis J in *Olmstead v United States* 277 US 438 478.

<sup>63</sup> Report of the Committee on Privacy and Related Matters 1990 Cmnd. 1102, London: HMSO at 7.

<sup>64</sup> Nwauche, E. S., "The Right to Privacy in Nigeria" Review of (2007 1 (1) *Nigerian Law and Practice* 64-65.

carrying out the tests on her, failure and or refusal to undertake pre and post HIV test counselling, refusal to disclose to her the result of her HIV tests carried out without her consent but disclosing same to her co-employees and unauthorised third parties, refusing her entry to its premises, etc., contravenes sections 5 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act which guarantees her right to privacy and family life. As well as section 34 of the 1999 CFRN. The fact that an employee is infected with HIV, does not erode his or her human dignity and privacy hence, such an employee or anyone for that matter, should not be exposed to any form of privacy breach or discrimination<sup>65</sup>.

The act of an employer compelling an employee to undertake HIV test as a prerequisite for continuous employment, making known the result of the employee's HIV status, preventing the employee from entering its business premises on account of being HIV positive are acts that tend to diminish or abase the dignity of the human person of the employee<sup>66</sup>. The NICN in *Mr. Emmanuel Ejiogu Enuhikemi v. Srimdu Nigeria Ltd.*<sup>67</sup> held that the act of directing an employee to undergo HIV testing, disclosing of the result to third parties and consequent termination of employment contingent on the employee's HIV positive, violates the employee's right to dignity of human person and freedom from discrimination guaranteed by the combine provisions of sections 34(1) (a) and 42(1) of the 1999 CFRN.

From the foregoing, where an employer terminates the employment of an employee owing to the employee's HIV/AIDS status, the right to human dignity and freedom from discrimination of the concerned employee is violated<sup>68</sup>. The question is, if not for the fact that the employee is HIV positive, would his employment been terminated? The answer is negative. In fact, discrimination against any employee predicated on HIV/AIDS status is a form of violation of the right of human dignity of the employee. It could be safely argued that, in terms of importance, the right to dignity of human person and freedom from discrimination may only rank second to right. This is based on the trite natural law position that human rights are universal, interrelated and interdependent<sup>69</sup>. When an employee's dignity is attacked and eroded, the employee's human essence is not only attacked but

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<sup>65</sup> Okongwu, O. C, "Perception of Sex Discrimination and Sexual Harassment among Employees in Nigeria: A Comparative Study of Nigerian and the British Employee Protection Laws" (PhD Thesis, De Montfort University, and Leicester 2017) 89.

<sup>66</sup> Oyediran K, Oladipo O, Anyanti J. "HIV/AIDS Stigma and Discrimination in Nigeria" Paper presented at XXV International Population Conference, International Union for the Scientific Study of Population (IUSSP); July 18–23, 2005; Tours, France. <http://www.iussp2005.princeton.edu/download.aspx/submissionID=51685> accessed 20 December 2021.

<sup>67</sup> Unreported Suit No: NICN/LG/265/2015 Judgment delivered on the 15<sup>th</sup> day of July, 2016.

<sup>68</sup> *Maiya Incorporated Trustees Clinton Health Access Initiative & Ors.* [2012] 27 N.L.L.R. (Pt. 76) 110.

<sup>69</sup> Neves-Silva, P., Giselle, I. M., and Heller, L., "Human rights' Interdependence and Indivisibility: A glance over the Human Rights to Water and Sanitation" (2019) 19(14) *BMC International Health and Human Rights*, 1-8; Hess, A., and Knotts, B., "Universal, Indivisible, and Interdependent Human Rights" <https://www.uua.org/international/blog/universal-indivisible-and-interdependent-human-rights> Accessed 18 September 2022.

devalued and invariably extinguished<sup>70</sup>. Discrimination inflicts an indelible wound on the personality and self-worth of an employee especially, when same is contingent on HIV positive factor which should ordinarily attract empathy and support. Stigmatisation and discrimination in the workplace on any ground especially, on account of HIV/AIDS status are inimical to decent employment and counterproductive as they hinder the dire needed prevention efforts.

Nwakwe and Aloh<sup>71</sup> graphically captured the plight of people living with HIV and affected by AIDS in Nigeria thus:

In Nigeria, PLWHA suffer from all sorts of discrimination, stigmatization, isolation, detention, quarantine and their right to privacy and confidentiality are breached with impunity. They are tested for HIV without their consent and worst still without pre and post counselling. Considering the serious nature of the HIV testing, it is inhuman and may amount to torture to test one for HIV/AIDS without proper counselling before and after the test. In terms of employment, PLWHA are either denied employment or have their employments terminated by their employers on the basis of their HIV statuses, such action is a sheer act of discrimination against PLWHA which may hasten or facilitate their deaths. More so, pregnant women and vulnerable groups are tested without their consent and without being counselled thereby exposing them to other negative consequences, ranging from being subjected to violence or being battered by their spouses and stigmatized by their communities. The cruellest aspect is that they are not offered or given any treatment after testing HIVpositive.

The above ugly description is the reality of those infected with HIV or affected by AIDS in Nigeria<sup>72</sup>. The psychological and emotional trauma inflicted by HIV/AIDS discrimination and stigmatisation could instigate an employee to commit suicide<sup>73</sup>. Thus, discrimination aside being an affliction upon the dignity of an employee, is a threat to right to life. Anyone who is HIV positive is generally regarded as being promiscuous despite the fact that HIV could be contracted by means other than sexual intercourse, so being infected is considered as the reward for promiscuity or waywardness. This perception which stem mainly from ignorance is unfortunate, tragic and traumatising. The case of *Mrs Georgina Ahamefune v. Imperial Centre and Anor.*<sup>74</sup> demonstrates the

<sup>70</sup> *Ejike Maduka v. Microsoft Incorporated Nig. Ltd. & 2 Ors.* [2014] N.L.L.R. (Pt. 125) 67.

<sup>71</sup> Uwakwe, FC and Aloh, JN “Cultural Practices and Human Rights Implications on HIV/AIDS Discrimination and Other Related Issues in Nigeria”(2019) 10(1)*Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 20-31.

<sup>72</sup> Alubo O, Zwandor A, Jolayemi T, and Omudu E., “Acceptance and Stigmatization of PLWA in Nigeria” (2002) (14) 1 *AIDS Care*, 117–120.

<sup>73</sup> Utulu S.N, Lawoyin T.O. Epidemiological features of HIV Infection among Pregnant Women in Makurdi, Benue State, Nigeria. (2007) 39(3) *Journal of Biological Science*, 397–408.

<sup>74</sup> (2017) LCN/10078 (CA).

agonising plight of people living with HIV or affected by AIDS in Nigeria and we take the liberty to present its brief facts giving its profundity to the present discuss. The Respondent was an auxiliary nurse employed by the 1<sup>st</sup> appellant. Sometime in 2005, she became ill and was referred to the 1<sup>st</sup> appellant's retained medical facility for treatment whereupon several diagnostic tests were carried out including HIV screen without her consent first sought and obtained. The result of the test was not made known to her but directed to the 1<sup>st</sup> appellant. The 1<sup>st</sup> appellant gave her a sealed envelope to a Consultant at Lagos State University Teaching Hospital (LUTH). She and her husband were invited by the Consultant at LUTH and blood sample were taken; they were not informed of the nature of test to be conducted on them. After the test, she was informed that she is HIV positive while her husband was negative. She returned to the 1<sup>st</sup> appellant who referred her to the 2<sup>nd</sup> appellant for treatment who refused on the ground that he does not want her to contaminate the medical instruments of the 1<sup>st</sup> appellant and without treatment nor counselling, her employment was terminated. She sued the 1<sup>st</sup> and 2<sup>nd</sup> appellant at the Lagos State High Court arguing that her termination was discriminatory and unlawful as same violated her right to freedom from discrimination and dignity of human person. During trial, the respondent counsel, urged the court to grant the case accelerated hearing while the appellants counsel argued that to guarantee public safety and health, a medical report by an expert must be produced by the respondent (as claimant then) to show that it was safe for her to attend court and give evidence. The court upheld the objection. Being dissatisfied, the claimant appealed the ruling of the trial court contending that same was discriminatory and therefore, unlawful. The Court of Appeal upheld the appeal by upturning the ruling of the trial court. The Court of Appeal noted that it was unconstitutional to deny the claimant access to court to ventilate her grievances on account of her HIV status.

Before the Federal Government of Nigeria enacted the HIV and AIDS (Anti-Discrimination) Act, 2014 to stem the tide of HIV/AIDS employment related discrimination, the Lagos State Government had enacted the Lagos State Protection of People Living with HIV and affected by AIDS Law, 2007. Section 10 of the law provides that segregation, stigmatisation and discrimination at the place of employment particularly with reference to nature of work, right to transportation, training and provision of other benefits including but not exclusive to health and insurance and compulsory and mandatory HIV testing for all employers of labour are regarded as discrimination against persons living with HIV and affected by AIDS. By section 11 thereof, every person living with HIV or affected by AID has the right to gainful employment either in public or private establishments subject to being qualified and availability of vacancy. Every person living with HIV and affected by AIDS must be assured of freedom from unlawful termination of his employment on account of his/her HIV/AIDS status and all employers (private/public) must put in place HIV/AIDS policy for the benefit of its employees who are living with HIV or affected by AIDS. By virtue of section 18(4) of the law, any employer who contravenes the provisions of section 11 thereof, shall be liable upon conviction to a fine of N150, 000:00 (One Hundred and Fifty Thousand Naira) only or a term of imprisonment not exceeding two years and any person that contravenes section 10 shall be liable to a fine of N 50,000:00 (Fifty Thousand Naira) only or a term of imprisonment not exceeding two years or



both fine and imprisonment while this provisions seek to curb the unwholesome and worrisome practise of HIV/AIDS employment related discrimination and termination by making employers responsible, one would have expected that the punishment imposed for failure to abide by the provisions of the law especially sections 10 and 11 thereof, would have been more stringent to achieve deterrence. It would seem that being punished with an imprisonment term especially short term might not be considered to be consequential by some persons just as the sum of One Hundred and Fifty Thousand Naira may be regarded as meagre. Thus, imposing a heavier punishment like three to four years imprisonment or a fine of ten million naira or both is likely to achieve deterrence than the one imposed.

#### 4. MATTERS ARISING FROM THE DECISION IN *ADEWUNMI AKINOLA V. OCEAN MARINE SOLUTIONS LTD.*

The court at various point in the judgment found that the defendant had breached its statutory obligations towards the claimant and had exposed her to unquantifiable hardship, ridicule, stigma and deprivation. The defendant had surreptitiously rendered the claimant a permanent casual staff by refusing to issue her letter of employment in accordance with section 7 of the Labour Act despite her demanding for it several times. The defendant did not only failed to disclose the nature of the medical test the claimant and other employees were commanded to go and undertake, she was neither offered pre or post-testing counselling as required by law; the result of the test was neither made available to her by the medical facility or the defendant upon receipt of same from its agent (the medical facility), left not bothered to discuss same with her but deemed it fit to make her HIV status a matter of public knowledge and interrogated her ominously with further directive to take confirmatory test as if she was worthless and a coin to be toss at will as a decider in a football match. She soon became an object of unsolicited sympathy from her co-employees on her “acquired deadly status” of being HIV positive and subsequently, despite her entreaties, her employment was terminated arbitrarily with impunity by the defendant with its attendant hardship. Despite this, the Court made reference to other cases as a guide on the quantum of damages which were decided some significant years before the instant case and awarded the sum of N 2, 100, 000 (Two Million, One Hundred Thousand Naira) out of the sum of N 30, 000,000:00 (Thirty Million Naira) claimed.

While it is conceded that a court of law is not a father Christmas and even a father Christmas, only give gifts on Christmas day<sup>75</sup> which the day the judgment was deliver was not, this notwithstanding, the legitimate and reasonable expectation is that the peculiarity

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<sup>75</sup> *Ladokev, Oladoye*[1992] 8 NWLR (Pt. 261) 605. It was stated that “It is the law that the court is not a Father Christmas and so ought not to go about granting to parties, reliefs which they have not asked for. A court is powerless to award to a claimant what he did not claim or grant an unsought relief.” See also *Adetoun Oladeji Nig.Ltd v. N.B Plc.*[2007] 5 NWLR (Pt. 1027) 415. Abayomi, A. A., “Is a Court of Law Truly not a Father Christmas?”<https://barristerng.com/is-a-court-of-law-truly-not-a-father-christmas/> accessed 20 September 2022.

of this case as outline above and giving the prevailing economic situation, an amount more than that what was awarded (i.e. N 2, 100, 000), maybe not less than N 10, 000, 000:00 (Ten Million Naira) would have at least, met the justice of this case. The amount awarded by the Lagos State High Court in *Mrs. Georgina Ahamefule v. Imperial Medical Centre & Anor.*<sup>76</sup> and the NICN in *Owolabi Susan v. Aso Savings & Loans Plc.*<sup>77</sup> which were both decided in 2012 and 2018 respectively cannot be a correct precedent giving the fact that the socio-economic situation of this times (i.e. 2012 and 2018) and even the value of naira are not the same with what is obtainable in 2021 as Naira has seriously depreciated in value and inflation rate has astronomically increased. It is argued that aside this, the amount awarded is incapable of serving as deterrent to the dastard act occasioned by the defendant against the claimant.

The jurisprudence of damages as a remedy under Nigerian law is well established having been pronounced upon by both the Court of Appeal and the Supreme Court in plethora of cases. The Court of Appeal in *Ecobank Nig. Plc. v. Elder Daniel Dominic Ekperikpe*<sup>78</sup> stated that the object of damages especially in breach of contract, is to put the claimant in the position he would have been in, if the contract had been satisfactorily performed. Also, with regards to the measurement of damages, Alobo<sup>79</sup> opined that the general rule is that the party in breach is liable in damages in the amount which flows directly and naturally from his failure to keep his own part of the contract or bargain provided that such damages could reasonably have been within the contemplation of the parties at the time when the contract was made. The above position of the Court of Appeal has been given judicial approval by the Supreme Court in *G.K.F.I. (Nig.) Ltd. v. NITEL Plc.*<sup>80</sup>. The foregoing adumbrations of the two appellate courts, typically relates to damages known as general damages which are awarded once the claimant shows that he has been prejudiced by the action or omission of the defendant<sup>81</sup>. The damages is left to the assessment of the Court based on the peculiarity of the case. Aside general damages, according to Oyewo<sup>82</sup> the court can also award special damages which is damages that is the actual, but not necessarily, the result of injury or harm complained of, and which in fact follow such injury or harm as a natural and proximate consequence in the particular case, that is, by reason of special circumstances or conditions. The import of the foregoing is that this class of damages does not arise from the wrongful act/omission itself, but depends on circumstances peculiar to the infliction of each respective injury<sup>83</sup>. Besides these two species of damages, while the law lean against double compensation, the fact leading to or the injury itself could justify the court awarding damages beyond the injury suffered. Such damages is what is known as exemplary or aggravated damages which is another

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<sup>76</sup> Unreported Suit No: ID/1627/2000 Judgment delivered by Y. O. Idowu on the 27<sup>th</sup> day of September 2012.

<sup>77</sup> Unreported Suit No: NICN/AK.52/2015 Judgment delivered by Oyewunmi J on 10<sup>th</sup> July, 2018 at pages 21-22.

<sup>78</sup> [2011] 4 NWLR (Pt. 1237) 223.

<sup>79</sup> Alobo, E. E., *Law of Contract*, 2<sup>nd</sup> Ed., (Lagos: Princeton & Associates Publishing Co. Ltd., 2016) 434.

<sup>80</sup> [2009] 13 NWLR (Pt. 1164) 305.

<sup>81</sup> *Adecentro v. Council of Obafemi Awolowo University* [2005] All NLR 58.

<sup>82</sup> Oyewo, O., *Modern Administrative Law and Practice in Nigeria* (Lagos: University of Lagos Press and Bookshop Ltd., 2016) 380.

<sup>83</sup> *West Africa Examination Council v. Umeakuka* [2013] 15 WRN 172.

type of damage the court may award in deserving cases. According to Oyewo, exemplary damages are usually awarded whenever the defendant's conduct is sufficiently outrageous to merit punishment, such as in instances where malice, fraud, cruelty, insolence, flagrant disregard of the law are disclosed. The Supreme Court underscored this point in *Allied Bank (Nig.) Ltd. v. Akabueze*<sup>84</sup>. This specie of damage is on an increased scale over and above actual, general or special damages, awarded strictly in aggravated circumstances and they remain punitive in nature capable of achieving deterrence<sup>85</sup>. A claim and award of exemplary damages is an indication that the act of the defendant is such that the awarded damages are intended to punish the defendant and vindicate the strength of the law serving as a warning to general public against the act/omission perpetuated by the defendant and not merely as compensation for the injured claimant<sup>86</sup>. It is apposite to note that in justifying an award of aggravated or exemplary damage, it is not sufficient to show that the defendant has committed the wrongful act or make the omission complained of, but that the conduct was high-handed, outrageous, inhumane, callous, insolent, vindictive, oppressive or malicious, and showing contempt of the claimant's right or disregarding every principle which actuates the conduct of a civilised person and has thereby exposed the claimant to serious and unquantifiable injury<sup>87</sup>. The case of *Alaboh v. Boyes*<sup>88</sup> where a thirteen year old child and her father were brutally battered and detained by policemen justified the award of exemplary damages as their action was not only despicable but flagrant disregard of the law.

Within the prism of labour and employment relationship, the NICN has adopted and justifiably applied the above stated position even at the expense of being iconoclastic as far as award of damages is concerned. The position is that in wrongful termination of employment, the claimant is only entitled to what he/she ought to have received if the employer had rightly terminated the employment as was held in *Isheno v Julius Berger Nig. Plc.*<sup>89</sup>. However, in *Sahara Energy Resources Ltd. v Mrs. Olawunmi Oyebola*<sup>90</sup> where the claimant employment was wrongfully terminated on allegation of bribery and dishonesty which were proved to be false. The NICN contrary to settled position on the quantum of damages awardable in the case of wrongful termination, awarded the claimant two year salary which was over and above the amount generally entitled to. The decision of the court was informed by the peculiarity of the case and the action of the defendant who in terminating the claimant's employment, failed to follow its code of conduct and the allegation pursuant to which the termination was based, was not investigated left not proved. The Court thereby came to the conclusion that the way and manner the defendant had acted is malicious, oppressive, inhumane and in total disregard to the law

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<sup>84</sup> (1997) 6 SCNJ 166.

<sup>85</sup> *G.K.F.I. (Nig.) Ltd. v. NITEL Plc.* [2009] 13 NWLR (Pt. 1164) 305.

<sup>86</sup> *University of Calabar v. Orji* [2012] 3 NWLR (Pt. 910)418; *Allied Bank of Nig. Ltd. v. Jonas Akabueze* (1997) 6 SCNJ 166.

<sup>87</sup> *Maritime Management ASSOCIATES Inc. & Anor. v. National Maritime Authority* [2012] 18 NWLR (Pt. 1333) 506 at 544; *Anthony Odiba v. Tule Azege* (1998) 7 SCNJ 119.

<sup>88</sup> (1984) 5 NCLR 830.

<sup>89</sup> [2012] 2 NLLR (41) 127.

<sup>90</sup> (2020) LPELR-51806 (CA).

warranting stiffer sanctions than ordinary compensatory propitiation. The NICN had apply international best practice pursuant to its enhanced jurisdiction under the 1999 Constitution of the Federal of Nigeria (Third Alteration) Act, 2010 in common to the conclusion it came. The decision of the NICN was affirmed by the Court of Appeal, in fact Ogakwu JCA held as follows:

In circumstances where the employee is unlawfully dismissed, it should attract substantial damages, where claimed, in line with international best practices and not based on the hitherto existing principles<sup>91</sup> that pre-dates the advent of the innovative provisions of the Third Alteration to the 1999 Constitution. Section 254C (1) (f) and (2) of the 1999 Constitution empowers the lower court to apply international best practices in labour, and conventions, treaties, recommendations and protocols ratified by Nigeria. The High Courts were not so empowered in exercise of jurisdiction in labour matters which culminated in the principles of the superior courts on the measure of damages... the innovative provisions necessarily demand a rethink of the principle in the light of changed circumstances in the law. Accordingly, I will be deferential to the general damages awarded by the lower court in exercise of its jurisdiction to apply international best practices... I therefore uphold the award by the lower court of the equivalent of two years' salary as general damages for the unlawful dismissal of the Respondent<sup>92</sup>.

Looking at the fact of *Adewunmi Akinola v. Ocean Marine Solutions Ltd.*<sup>93</sup> particularly the various actions taken by the defendant such as subjecting the defendant to HIV/AIDS testing without her consent, refusing her ingress into its premises after the test result was known to it, making public the HIV test result of the claimant to her co-employees which exposed her to unwarranted ridicule and opprobrium, failure to direct its agent to offer pre and post HIV testing counselling to the claimant and attempting to exonerate itself from that duty by shifting that responsibility to its agent, directing its security personnel to give the claimant money in an envelope outside its premises, refusal to attend reconciliatory meetings by the Lagos State Citizen's Right Office are acts that amounts to flagrant breach of the law particularly sections 42, 38 of the 1999 CFRN, Section 8 of the Labour Act, Sections 3(1), 9, 16 of the HIV and AIDS (Anti-Discrimination) Act, 2014 and National Guidelines for HIV Counselling and Testing. Aside the facts that these acts/omissions of the defendant violates Nigerian law, without equivocation, are oppressive, inhumane, malicious, dastard, and high-handed. Based on this, they qualify for the court to have awarded damages over and above the ordinary quantum as the injury the action of the defendant inflicted on the claimant cannot be quantified in monetary terms. Being HIV/AIDS positive is a situation that naturally attract societal opprobrium, the patient is dreaded and treated like an outcast or an accursed person whom the society would not wish to have anything to do with, the

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<sup>91</sup> The Court was referring to the dictum of Garba JCA (as he then was) in its earlier decision in *Oaks Pensions Ltd. Olayinka* [2017] LPELR-43207 (CA).

<sup>92</sup> *Sahara Energy Resources Ltd. v Oyebola* (2020) LPELR-51806 (CA) at Pp. 35-36.

<sup>93</sup> Unreported Suit No: NICN/LA/410/2019 Judgment delivered on the 25<sup>th</sup> of October, 2021 by Nweneka J.

person is covertly an overtly segregated and prospect of securing employment is slim if not practically impossible. The emotional and psychological trauma that this experience brings to bare on its victims is better imagined than experienced but this is what the claimant was brazenly exposed to. The defendant was unsympathetic to her pleas even when she brought her child to attract sympathy, she was despised and a retinue of false witnesses was assembled against her. The defendant urge to humiliate and inflict irrecoverable pains on the claimant as demonstrated in boundless. It is therefore perplexing that the court did not deem it fit to grant at least half of the amount sought as damages but a paltry sum. The amount granted by the court seems insignificant to deter employers from treading the ignoble path which the defendant trod. All hands must be on deck to eradicate the epidemic of HIV/AIDS employment discrimination and stigmatisation especially by Non-Governmental Organisations (NGOs) through organising HIV/AIDS public enlightenment programmes. Giving the propensity of stigmatisation that they suffer, protecting their identity where they take the bold step of challenging the violation of their rights in court should be granted them. The court should be interested in shielding them and preserving their dignity by not uncovering the veil on their name by making them use their real name to challenge the infraction of their rights. Some of these persons, spend a lot to maintain themselves although antiretroviral drugs are distributed free, prosecuting a case in Nigeria especially with attendant appeal is cost intensive. The legal Aid Council and other humanitarian stakeholders should avail persons living with HIV or affected by AIDS whose rights have been infringed upon, particularly by unlawful termination of their employment to free legal services.

## **5. CONCLUSION**

It is trite that Nigerian law prohibits workplace discrimination on the basis of an employee's HIV status. Aside the 1999 CFRN, the HIV and AIDS (Anti-Discrimination and Prohibition) Act 2014 and the National Guideline for Testing Counselling 2011 were put in place to ensure that the rights of HIV positive employees are protected. While Section 8(1) of the Labour Act empowers an employer at his cost, to undertake pre and even post-employment routine medical testing of its employees, same must not be done arbitrarily in violation of the rights of an employee. The NICN has taken a protectionist stance in cases of employment discrimination on the basis of an employee's HIV status declaring wrongful termination based on same. Award of damages in such situation, is beyond the traditional quantum calculated based on the amount the employee is entitled in accordance with the length of notice to be given for the employment to be lawfully terminated. This is usually done in regard of the unquantifiable hardship, deprivation, humiliation and stigmatisation which the act of discrimination has exposed the employee to and as a deterrent.

## **6. RECOMMENDATIONS**

Based on the findings about and the need to stem this negative tides of workplace discrimination based on HIV status, the following recommendations are hereby made

1. The quantum of damages awarded in cases of HIV positive status instigated employment termination should be punitive to have deterrent effect. It is further recommended that whenever the NICN has the opportunity to

adjudicate on the issue of quantum of damages to be awarded in cases of termination due to employee's HIV status, its decision herein should be jettisoned as a precedent because as far as award of damages is concerned, the decision is not a good precedent as it cannot achieve the end of deterrence.

2. If there is an appeal by the defendant to the court of Appeal which is the final court on such matters, the claimant should cross appeal seeking for an upwards review of the damages awarded by the trial court.
3. Furthermore, to stem the ugly tide of HIV discrimination at the workplace, employers should put in place workplace policy that prohibits discrimination on account of an employee's HIV status.
4. Moreover, the Legal Aids Council of Nigeria (LACN) and other humanitarian bodies within the justice sector should avail free legal representation to employees who have had their employments terminated on account of their HIV/AIDS status. This is to absolve employees or persons whose employment have been terminated on account of their HIV/AIDS positive status from the cost of litigation which could be cumbersome and may likely restrain them from seeking legal redress.
5. To protect the dignity of employees whose employment have been terminated because of their HIV positive status, giving the tendency of them being stigmatised, the court should consider allowing them bring and maintain actions against their employers under pseudo names instead of their real names; such cases should be heard in the chambers of the judge or in camera.
6. Also, both public and private stakeholders within and without the medical sector, should engage in rigorous public enlightenment on the negative effects of HIV/AIDS discrimination/stigmatisation to ensure that people appreciate the ills of these vices.
7. Moreover, adequate support should be given to person infected or affected by HIV/AIDS by NGOs and Government agencies such as National Action Committee on Aids.

## REFERENCES

- Adejumo, B.A, 'The Role of the National Industrial Court in Dispute Resolution in Nigeria' (Faculty of Law Public Lecture of University of Abuja organized by the Law Student Association of Nigeria, UNIABUJA Chapter, 15 September, 2008).
- Agua E, Esonwanne O. F, Onyia S. U, and Modebe I, Assessment of Workplace Stigma and Discrimination among People Living With HIV/AIDS attending Antiretroviral Clinics in Health Institutions in Enugu, South East Nigeria. (2015) 65(1) *The West Indian Medical Journal* 1-21. <https://doi.org/10.7727/wimj.2014.228>
- Aina-Pelemo, A. D and Others, "Sexual Harassment in the Workplace: Case Study of the Nigerian Legal Sector" (2019) 86 *Journal of Law, Policy and Globalisation*, 121-137.

- Ajayi, M. O. “The Inter-Jurisdictional Perceptions on Economic, Social and Cultural Rights of Women in the Development of Democracies in Nigeria” (2019) *Journal of Private and Comparative Law*, 59-79:60.
- Ajayi, M. O. and Eyongndi, D.T. “Legal Status of Casual Employees under Nigerian Labour Law: The Imperative for Legal Reforms” (2019) 19(1) *University of Benin Law Journal*, 160-186.
- Akani, N. K. “A Critical Appraisal of the Right to Human Dignity *Vis-À-Vis* the Rights of Women in Nigeria” [https://www.researchgate.net/publication/341464153\\_A\\_CRITICAL\\_APPRAISAL\\_OF\\_THE\\_RIGHT\\_TO\\_HUMAN\\_DIGNITY\\_VIS-A-VIS\\_THE\\_RIGHTS\\_OF\\_WOMEN\\_IN\\_NIGERIA](https://www.researchgate.net/publication/341464153_A_CRITICAL_APPRAISAL_OF_THE_RIGHT_TO_HUMAN_DIGNITY_VIS-A-VIS_THE_RIGHTS_OF_WOMEN_IN_NIGERIA) accessed 20 September 2022.
- Akeredolu, A. E. & Eyongndi, D. T. “Jurisdiction of the National Industrial Court under the Nigerian Constitution Third Alteration Act and Selected Statutes: Any Usurpation?” (2019) 10(1) *The Gravitas Review of Business and Property Law, University of Lagos* 1-16
- Akintayo, J.O.A and Eyongndi, D.T. “The Supreme Court of Nigeria Decision in *Skye Bank Ltd v Victor Iwu: Matters Arising*’ (2018) 9(3) *The Gravitas Review of Business and Property Law* 110;
- Alobo, E. E., *Law of Contract*, 2<sup>nd</sup> Ed., (Lagos: Princeton & Associates Publishing Co. Ltd., 2016) 434.
- Alubo O, Zwandor A, Jolayemi T, and Omudu E., “Acceptance and Stigmatization of PLWA in Nigeria” (2002) (14) 1 *AIDS Care*, 117–120. <https://doi.org/10.1080/09540120220097991>
- Anyanwu I and Anyanwu L O, ‘Discriminatory Property Rights against Women in Igbo Nigeria: The Victorious Case of *Ukeje v Ukeje*’ (2017) (2)1 *Journal of Law and Global Policy*, 1-10.
- Ayeni, V.O. “Criminal Jurisdiction of the National Industrial Court of Nigeria: Constitutional Watershed or Another Fly in the Ointment?” in Akinseye-George, Y., Osamolu, S. and Oluwadayisi, A.O. (eds) *Contemporary Issues on Labour Law, Employment and National Industrial Court Practice and Procedures Essays in Honour of Hon. Justice Babatunde Adeniran Adejumo*, (LawLords Publications 2014) 75.
- Atilola, B, M Adetunji, and M Dugeri, “Powers and Jurisdiction of the National Industrial Court of Nigeria under the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010: A Case for Its Retention” (2012) 6(3) *Nigerian Journal of Labour Law and Industrial Relations* 30-33;
- Dada, J. A. and Ibanga, M. “Impediments to Human Rights Protection in Nigeria: From Rhetoric to Pragmatic Agenda” (2011) (1) (2) *African Journal of Law and Criminology*, 93.

- Dahlui, M. Azahar N, Bulgiba, A., Zaki, R., Oche O. M., Adekunjo F. O, "HIV/AIDS Related Stigma and Discrimination against PLWHA in Nigerian Population" *PLoS ONE* (2015) 10(12): e0143749. <https://doi.org/10.1371/journal.pone.0143749>
- DAKAS, C.J.D. (2010) 'HIV/AIDS and Workplace Discrimination in Nigeria: Prejudice, Stigmatization and Legal Shenanigans' Available at: <http://www.ialsnet.org/meetings/labour/papers/Dakas-Nigeria.pdf> accessed 8 December 2021.
- Ekanem E.E, Gbadeqesin A. "Voluntary Counselling and Testing (VCT) for Human Immunodeficiency Virus: A Study on acceptability by Nigerian Women attending Antenatal Clinics" (2004) 8(2) *African Journal of Reproductive Health*, 91–100. <https://doi.org/10.2307/3583183>
- Eyongndi, D. T. "Towards Repositioning the Industrial Arbitration Panel (IAP) for the Effective Settlement of Trade Disputes in Nigeria" (2019) 9 *University of Ibadan Law Journal* 114-129.
- Eyongndi, D.T. & Onu, K.O.N. "The National Industrial Court Jurisdiction over Tortious Liability under Section 254C (1) (A) of the 1999 Constitution: Sieving Blood from Water" (2019) 10 *Babcock University Socio-Legal Journal* 243-270.
- Eyongndi, D.T. & Oyagiri, B.I., "Paradigm Shift on Remedies for Wrongful Termination of Master Servant Employment in Nigeria" (2019) 1(3) *International Review of Law and Jurisprudence, Afe Babalola University* 37-42.
- Eyongndi, D.T., (2020) 'An Appraisal of HIV and AIDS (Anti-Discrimination) Act, 2014 and the Tides of Employment Discrimination in Nigeria' 8(1) *Africa Nazarene University Law Journal*, 11-127. <https://doi.org/10.47348/ANULJ/v8/i1a5>
- Imasogie, M. O., "Human Rights, Women Rights: So Long a Journey" (3<sup>rd</sup> Bowen University Inaugural Lecture 2017) 2-4; Nasr, L, "Are Human Rights Really 'Universal, Inalienable, and Indivisible?'" <https://blogs.lse.ac.uk/humanrights/2016/09/14/are-human-rights-really-universal-inalienable-and-indivisible/> accessed 20 September 2022.
- Monjok, E. Smesny, A. and Essien, J. "HIV/AIDS - Related Stigma and Discrimination in Nigeria: Review of Research Studies and future directions for Prevention Strategies" (2009) 13(3) *African Journal of Reproductive Health* 21–35.
- Neves-Silva, P., Giselle, I. M., and Heller, L., "Human rights' Interdependence and Indivisibility: A glance over the Human Rights to Water and Sanitation" (2019) 19(14) *BMC International Health and Human Rights*, 1-8; Hess, A., and Knotts, B., "Universal, Indivisible, and Interdependent Human Rights". <https://www.uua.org/international/blog/universal-indivisible-and-interdependent-human-rights> Accessed 18 September 2022.
- Nwana, C.R. (2005) 'Social Consequences of HIV/AIDS: Stigma and Discrimination in the Workplace in Nigeria' being a Paper presented at the XXV International Population Conference held at the Vinci Convention Centre, Tours, France, 18 – 23, 1-20.



- Nwauche, E. S., “The Right to Privacy in Nigeria” Review of (2007 1 (1) *Nigerian Law and Practice* 64-65.
- Odimegwu, C. O. Akinyemi, J. O. and Alabi, O.O., “HIV-Stigma in Nigeria: Review of Research Studies, Policies, and Programmes”. <https://www.hindawi.com/journals/art/2017/5812650/> Accessed 20 September 2022.
- Ogunyemi, A. O., Adubiaro, F. M., Oluwole, E. O., Somefun, E. O., and Olubodun, T., “Stigma, Discrimination and Non-disclosure among Young People Living with HIV in Lagos, Nigeria” (2022) 41(106) *Pan African Medical Journal* 1-12.
- Okene, O.V.C. and Akani, N.K. “Human Dignity and Human Rights: The Nigerian Question” (2019) 19 *Maiduguri Law Journal*, 199-200.
- Okongwu, O. C, “Perception of Sex Discrimination and Sexual Harassment among Employees in Nigeria: A Comparative Study of Nigerian and the British Employee Protection Laws” (PhD Thesis, De Montfort University, and Leicester 2017) 89.
- Onyemelukwe, C, “Discrimination on the basis of HIV Status: An Analysis of Recent Developments in Nigerian Law and Jurisprudence” (2017) 17(3) *International Journal of Discrimination and the Law* 160-179. <https://doi.org/10.1177/1358229117727415>
- Otuturu, G. G. “Powers and Jurisdiction of the National Industrial Court in the Resolution of Labour Disputes in Nigeria” (2010) 9(1) *Nigerian Journal of Labour Law and Industrial Relations* 35;
- Oyediran K, Oladipo O, Anyanti J. “HIV/AIDS Stigma and Discrimination in Nigeria” Paper presented at XXV International Population Conference, International Union for the Scientific Study of Population (IUSSP); July 18–23, 2005; Tours, France. <http://www.iussp2005.princeton.edu/download.aspx/submissionID=51685> accessed 20 December 2021.
- Oyewo, O., *Modern Administrative Law and Practice in Nigeria*. Lagos: University of Lagos Press and Bookshop Ltd., 2016.
- Utulu S.N, Lawoyin T.O. Epidemiological features of HIV Infection among Pregnant Women in Makurdi, Benue State, Nigeria. (2007) 39(3) *Journal of Biological Science*, 397–408. <https://doi.org/10.1017/S0021932006001489>
- Uwakwe, F.C. and Aloh, J. N. “Cultural Practices and Human Rights Implications on HIV/AIDS Discrimination and Other Related Issues in Nigeria” (2019) 10(1) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 20-31.

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