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18/LAW01/050

LABOUR LAW (LPB204)

Question 1

The National Association of Workers in Oil Industry of Nigeria (TUWOIN) had a collective agreement with the Association of Oil Companies of Nigeria (Ogunpa Oil Company is a member) in 2012 which provided inter alia that all workers shall be paid a security allowance in view of the rampant kidnapping of oil workers. Madam Aja, a member of TUWOIN and an employee of Ogunpa Oil Company, sued her employer on the basis of the collective agreement for not being paid this allowance. The matter is before Justice Adamu who is not clear as to whether she can sue on a collective agreement. He has asked you as his research assistant to write a legal opinion/advice on whether she can validly sue on it and to consider all the issues involved so that he can make a sound judgment.

Question 2.

On the 5th of January 2020, Mr. Olabanjo drove into Esso Petroleum to fill his car tank. Ade one of the attendants at the fuel station beckoned to Mr. Olabanjo to come to his own pump to buy fuel. Mr. Olabanjo refused and stayed at the other pump, but his car was blocking other cars from going to Ade’s pump. Ade tried to signal to him to move his car but he refused, Ade insulted and made a hand gesture that was interpreted to mean Mr. Olabanjo was crazy. This resulted in a fight, Ade injured Mr. Olabanjo’s left eye, to a point where blood was gushing out. Mr Olabanjo lost his left eye. On the same day, Esso petroleum had a retirement party for one of its directors and all employees were invited. Eunice the attendant who was at the pump where Mr Olabanjo wanted to buy fuel was on the dance floor dancing, when Ade tried to lift her up, in the process she fell and had a serious sprain on her leg. She was in the hospital for 5 months.

Mr Olabanjo wants to bring an action against Esso petroleum and Ade, Eunice also wants to know if she can bring an action against Ade and Esso Petroleum.

Advise, Mr Olabanjo, Eunice and Esso Petroleum.

1. "Collective agreement'' means an agreement in writing regarding working conditions and terms of employment concluded between

(a) An organization of workers or an organization representing workers (or an association of such organizations) of the one part; and

(b) An organization of employers or an organization representing employers (or an association of such organizations) of the other part; (*Section 91 of the Labour Act*)[[1]](#footnote-1)

"Collective agreement" means any agreement in writing for the settlement of disputes and relating to terms of employment and physical conditions of work concluded between- (a) an employer, a group of employers or organizations representing workers, or the duly appointed representative of any body of workers, on the one hand; and (b) one or more trade unions or organizations representing workers, or the duly appointed representative of any body of workers, on the other hand; (*Section 48 of the Trade Disputes Act*)[[2]](#footnote-2)

A collective agreement can be enforced through [[3]](#endnote-1)

* Statutes: *(Section 3(3) of the Trade Disputes Act2* (3) Subject to the provisions of this Act, the Minister may, upon receipt of copies of a collective agreement deposited in accordance with subsection (1) of this section, make an order, the terms of which may in respect of that agreement specify that the provisions of the agreement or any part thereof as may be stated in the order shall, be binding on the employers and workers to whom they relate.
* Exercise of the Exclusive jurisdiction of the National Industrial Court *Section 7(1)(c) of the National Industrial Court Act[[4]](#footnote-3), Section 234(c) of the 1999 Constitution of the Federal Republic of Nigeria(as amended) Third Alteration Act 2010[[5]](#footnote-4)*

*Union Bank of Nigeria v. Edet*

In this case, Madam Aja who is a member of a trade union and an employee of an oil company wants to sue her employer for defaulting in his performance of his part of his agreement with the trade union (TUWOIN). The company came into an agreement with TUWOIN that they would pay a security allowance. This was not received by Madam Aja. She can however not sue her employer for this cause, this is because as seen in the case of *U.B.N v. Edet,* “As said by the Supreme Court in *Ikeazu v. African Continental Bank Limited:*

‘Generally, a contract cannot be enforced by a person who is not a party; even if the contract is made for his benefit and purports to give him the right to sue upon it.’[[6]](#footnote-5)

Therefore, Madam Aja cannot sue her employer because she is not a party to the contract. The contract was one between an organization representing employees with the inclusion of Madam Aja and the employer. However, it is for her benefit but she is not a direct party to the contract so she cannot sue her employer. She can however report to her trade to intercede on her behalf.

1. Vicarious liability in labour law is a doctrine that imposes strict liability on employers for the wrongdoings of their employees. Generally, an employer will be held liable for any tortious act while an employee is conducting their duties.

In the case above, the employer of Ade and Eunice, Esso Petroleum is vicariously liable for any tort committed by his employers in the performance of their assigned duties. Ade was performing his duty given to him by Esso Petroleum (i.e. selling fuel from his pump to the buyers of petroleum at Esso petroleum). He offered to sell to Mr. Olabanjo who ignored him and bought from another colleague. However this made Mr. Olabanjo obstruct Ade’s sales and he reacted in an offensive manner that led to a fight which in turn led to the loss of Mr. Olabanjo’s eye. The company, Esso Petroleum is vicariously liable of Ade while he is performing his duty. Therefore Mr. Olabanjo can bring an action against Esso Petroleum and Ade. This is because Esso Petroleum (the employer) is vicariously liable for Ade’s actions while performing his duty for Esso Petroleum.

The general principles were re-stated *in R.O Iyere V Bendel Feed and Flour Mill Limited (2008) 18 NWLR Part 1119 30* where the Supreme Court held that: The general disposition of the law is that an employer is liable for the wrongful acts of his employee authorized by him or for wrongful modes of doing authorized acts, if the act is one which if lawful will fall within the scope of the employee’s employment as being reasonably necessary for the discharge of his duties or the preservation of the employers interests or property or otherwise incidental to the purposes of his employment. Ade injured Mr. Olabanjo while performing his duty hence Esso Petroleum is liable for the actions of Ade and can have an action instituted against them.

However, Eunice on the other hand cannot bring an action against Esso Petroleum based of the injury gotten while she was carried by Ade. This because Ade was not on an official duty ordered by Esso Petroleum when he dropped Eunice. This means that because Esso Petroleum did not authorize his action to lift Eunice therefore they are not vicariously liable for his actions.

This means that Esso Petroleum is vicariously liable for the action of Ade in causing an injury to Mr. Olabanjo and can be brought before court by Mr. Olabanjo. Eunice on the other hand cannot institute an action against Esso Petroleum because they are not vicariously liable of his actions during the retirement party.

1. Labour Act [↑](#footnote-ref-1)
2. Trade Dispute Act [↑](#footnote-ref-2)
3. [↑](#endnote-ref-1)
4. National Industrial Court Act [↑](#footnote-ref-3)
5. 1999 Constitution of the Federal Republic=c of Nigeria [↑](#footnote-ref-4)
6. LawNigeria judgements.lawnigeria.com [↑](#footnote-ref-5)