



**African Bar
Association**

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The Effect of Force Majeure on Employment and Workplace Agreements

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BACKGROUND

In law there is a general principle of absolute obligation; this flows from the law that once parties have voluntarily entered into a contract they are bound by the terms of the said contract.

BACKGROUND

The Law then evolved an exception to the principle of absolute obligation to take into consideration exceptional circumstances that:

“without the default of either party a contractual obligation has become incapable of being performed because of the circumstances in which performance is called for would render it a thing radically different from what was undertaken by the contract”

PER LORD RADCLIFFE IN DAVIS CONT V FAREHMAU. D. C (1956) A. C. 696

WHAT IS
FORCE
MAJEURE?

**FORCE MAJEURE
TRANSLATES
LITERALLY FROM
FRENCH AS SUPERIOR
FORCE.**

WHAT IS FORCE MAJEURE?

Force majeure is a common clause in contracts which provides that one or both parties can cancel a contract or be excused from either part or complete performance of the contract on the occurrence of a certain SPECIFIED EVENT OR EVENTS beyond the parties' control.

•SEE GLOBE SPINNING MILLS NIGERIA PLC V. RELIANCE TEXTILE INDUSTRIES LIMITED (2017) LPELR- 41433 (CA)

WHAT IS FORCE MAJEURE?

Force majeure is something that is unexpected and unforeseen happening, making nonsense of the real situation envisaged by parties."

PER NDUKWE-ANYANWU, J. C. A. (P. 27 , PARA. E) IN GLOBE SPINNING MILLS NIGERIA PLC V. RELIANCE TEXTILE INDUSTRIES LIMITED (2017) LPELR-41433 (CA)

THE RADICAL CHANGE OF OBLIGATION THEORY

Force Majeure, Frustration and destruction of the foundation of contract all fall within the ambit of the radical change of obligation theory as defined in Chitty on Contract

FRUSTRATION

The doctrine of frustration is applicable to all categories of contracts. It is defined as the premature determination of an agreement between parties, lawfully entered into and which is in the course of operation at the time of its premature determination, owing to the occurrence of an intervening event or change of circumstances so fundamental as to be regarded by law both as striking at the root of the agreement and entirely beyond what was contemplated by the parties when they entered into the agreement.

AG CROSS RIVER V. AG FED. & ANOR. (2012)
LPELR-9335(SC)

FRUSTRATION

- The Doctrine of frustration has also been codified in Section 7 of the Law Reform (Contract) Law CAP L81, Laws of Lagos State of Nigeria 2015
- It is noteworthy that Section 7(2) of the Law Reform (Contract) Law has made provision to save any part of a contract that is unaffected by the frustrating event.

APPLICATION OF THE DOCTRINE OF FRUSTRATION

RHODES - VIVOUR JCA (AS HE THEN WAS) IN DIAMOND BANK LTD V UGOCHUKWU (2008) 1NMLR (PT 1067)

Frustration would occur where it is established to the satisfaction of the Court that due to a subsequent change in circumstances which was clearly not in the contemplation of the parties, the contract has become impossible to perform.

APPLICATION OF THE DOCTRINE OF FRUSTRATION

Cont'd

The doctrine of frustration has been restricted by the Court to:

- a. Situations where the supervening event destroys a fundamental assumption and
- b. Where the force majeure clause are drafted into the contract.

It must be unjust to expect the parties to perform those rights. Some examples are:-

1. Where the subject matter of the contract has been destroyed or is no longer available
2. Death or incapacity of a party to a contract
3. The contract has become illegal to perform as a result of a new legislation
4. A contract can be frustrated on the outbreak of war
5. Where the commercial purpose of the contract has failed.

CONTRACT OF EMPLOYMENT

- This is an agreement made by two parties for the exchange of various types of services for payment of wages.

CONTRACTS OF EMPLOYMENT

- Indeed one will find that most contracts of employment do not contain force majeure clauses
- In those circumstances, the doctrine of frustration will be implied and invoked to define what the rights and or obligation of the parties will be in the circumstance.

CONTRACTS OF EMPLOYMENT

In *Daps Brown V Haco Ltd* (1970) 2 All NLR 47, the plaintiff brought an application against the Defendant for arrears of salary and repatriation expense from Lagos to Kano owing to the activities of the Biafra forces. The Defendants contended that since the parties had lost touch completely as a result of the civil war, the contract between them had been frustrated. The Court Coram Dosunmu J held that there had occurred such a change of circumstance, such as to frustrate the contract.

CONTRACTS OF EMPLOYMENT

In *Ajuna Uche Johnson V UAC Nigeria* (unreported High Court of Lagos Suit No. CO/1443/72 delivered on May 23, 1975), the Plaintiff brought an application against the Defendant for arrears of salary for the period when he had to return to the Eastern Region of Nigeria due to the Civil war as well as the salary for the unexpired term of his contract with the Defendant. The Defendants contended that the contract has become frustrated by civil war.

The Court Coram Kazeem J, held that the contract of employment had been frustrated by the civil war. However, he noted that accrued rights under the contract are not destroyed, though the right to sue for them will be suspended for the duration of the war.

CONTRACTS OF EMPLOYMENT

• In *Hare V Murphy Brothers Limited* (1974) ICR 603, Lord Denning MR held that the sentence of 12 months imprisonment terminated (frustrated) the appellants contract of employment. Lord Denning went on to state that the sentence constituted a frustrating event.

- INDEED, THE LIST OF EVENTS THAT CAN QUALIFY AS FRUSTRATION IS ENDLESS

WHAT IS THE EFFECT OF FORCE MAJEURE/FRUSTRATION ON CONTRACTS OF EMPLOYMENT

- **Suspension**
- **Postponement**
- **Renegotiation**
- **Termination**

WHAT CAN AN EMPLOYEE/EMPLOYER DO?

From the cited cases, it is quite clear that frustration and force majeure suspends, (if not terminates) the rights of parties to an employment contract. The implication of this for parties who intend to continue employment relations would be to attempt to renegotiate the terms of the contract otherwise the contract can be brought to an end by either party. In this case the parties have an obligation to ensure that that they have taken reasonable steps to minimise the effect of the frustration event on the contract. Otherwise a party may be liable for to an action for breach.


CONCLUSION

I am of the considered view that the “twin shocks” of the Covid 19 and the Presidential Orders directing that businesses are closed and citizen stay at home will definitely impact on the contracts of employment

THANK YOU!



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