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AN ANALYSIS OF THE LEGAL FRAMEWORK FOR OCCUPATIONAL HEALTH AND SAFETY IN NIGERIA

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Abstract

Industrial growth and development plays an important role in the overall national development of any country, particularly a developing country like Nigeria aspiring towards development. The 1999 Constitution of Nigeria recognises this fact as it empowers the National and State Assembly to make laws in respect of the health, safety and welfare of persons employed to work in factories or other premises.²⁸ In addition, it also reflects the ultimate objective of governance which is the health, welfare and safety of citizens. However, crucial to industrial growth and development is the need for an enabling work environment in terms of safety, health and overall welfare of the workforce. This is because the workers will be motivated to perform better when their health and safety is guaranteed. Thus, the focus of this article is to examine Nigerian statutes regulating the health, welfare and safety of workers since the Nigerian law labour is essentially statutory. This article adopts the doctrinal research methodology and finds that there is a robust framework for occupational health and safety via three statutes which are the Labour Act, the Factories Act and the Employees Compensation Act. Yet, this article argues that there is a need for amendment of some of the provisions of the three legislations. Specifically, the provisions of the factories Act as regards sanction and creating a framework for holding a corporate employer liable for violations of its regulations. Also, the Labour Act as it contains provisions which are sexist and discriminatory of women. Lastly, it argues that there is need to amend the Employees Compensation Act to reflect the reality of Nigerian societies of which polygamy is a feature.

Keywords: Constitution, Safety, Health, Labour, Compensation and Employees

1.0 INTRODUCTION

The idea of wage earning employment is alien to the indigenous Nigerian society. This is because prior the advent of European missionaries and traders in the 18th and 19th centuries, paid employment was non-existent in Nigeria. This is as a result of factors like the practise of slavery, cooperative and communal labour system, the practise of

²⁸ 17 and 19, Part II, 2nd Schedule, 1999 Constitution of Nigeria (as amended).

polygamy which translated into large families and perhaps also because money in modern form was not in existence.²⁹ As the 19th century progressed, the needs of the Europeans for indigenous labour became more hence the gradual introduction of wage earning employment.³⁰ This was consolidated by the eventual colonisation of Nigeria. Employment then was casual and temporary reflective of the seasonal nature of construction and infrastructural activities³¹ which formed the bulk of labour need then.

Its regulation was based on the British model; this was acquired through the Courts Ordinance of 1876 which received the English common law, doctrines of equity and pre-1900 statutes of general application into Nigeria.³² Recourse was made to the employer's common law duty to provide a safe work environment in the case of *Western Nigeria Trading Company v Busari/Ajao*.³³ the respondent was blinded while working with the defendant/appellant. He was on duty in the defendant respondent workshop where a fellow workman was cutting steel and a splinter of glass flew into the respondent's eye and in spite of medical treatment, he got blinded in the eye. He brought an action against the appellant on the ground that the appellant did not discharge its common law duty of care. He also alleged that protective goggles were not provided although this was denied by the appellant who said that it provided protective goggles. The trial court held that the appellant's common law duty of care was not only to provide protective goggle but to also ensure that same was used through reasonable supervision and therefore gave judgement in favour of the respondent. On appeal, the court held³⁴ that an injured employee can base his claim against an employer either on a breach of statutory duty or in the alternative base it on a breach of the common law duty of care which an employer owes his employee.

There has since been local legislations regulating employment relations, in fact, the Nigerian labour law is essentially statutory. Nevertheless, Nigeria's past history as a British colony means that the influence of the English common law is still evident in its legal system.³⁵ In fact, the employer's liability for the safety of his employees can be

²⁹ See AkintundeEmiola, *Nigerian Labour Law*, 4thedn,(Emiola Publishers Limited2008) 1-2.

³⁰ OlakunleOrojo, *Company Law and Practice in Nigeria*, 5thedn,(LexisNexis 2008) 3.

³¹ DafeOtobo, *State and Industrial Relations in Nigeria* (Malthouse Press, 1988) cited inAkintundeEmiola, *NigerianLabour Law*, 2.

³² See also *Lawal&Ors v. Younan&Ors* [1961] All NLR245.

³³ [1965] NMLR178.

³⁴ Per Fatayi Williams at 529.

³⁵ KhairatOluwakemiAkanbi, Perspectives on the Legacy of *Salomon v. Salomon* on the Nigerian and Malaysian Company Laws [2012] (1) (vii)*Legal Network Series*, 2.

said to have been derived from the common law doctrine of negligence laid down in the case of *Donoghue v Stevenson*³⁶ where the plaintiff sought to recover damages from the manufacturer of ginger beer because she found decomposed snail inside the bottle after she had consumed some of it. Prior to this case, the concept of duty of care was limited to only those within a contractual relationship. However, this case extended duty of care to all those who could be affected by one's actions or omissions. Lord Atkin's famous dictum set the test of the neighbourhood principle as follows:

The rule that you are to love your neighbour becomes in law, you must not injure your neighbour, and the lawyer's question who is my neighbour? receives a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then, in law is my neighbour? The answer seems to be persons who are closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question.³⁷

This common law principle has been given judicial validity in Nigeria in *Osemabor v Nigerian Biscuits Co*³⁸ where the court held that the manufacturer owed and breached its duty of care to the plaintiff who found a decayed tooth in the biscuit manufactured by the defendant company.

As stated, presently, the Nigerian legal framework for employment is essentially statutory as most of the "common law" rules like as stated above have been codified. Thus, the Labour Act,³⁹ the Factories Act, Trade Disputes Act, Trade Union Act and Employees Compensation Act are the main legislations regulating employment practice. However, the focus of this paper is on occupational health and safety, thus, the relevant legislations are examined as follows.

³⁶(1932)AC 562.

³⁷Ibid (n 7) 580.

³⁸[1973] NCLR 382.

³⁹LA Cap L1 LFN 2004.

2.1 The Factoris Act

The main legislation on occupational safety and health in Nigeria is the Factories Act. It provides for regulations for the safety of factory workers and all other professionals exposed to occupational hazards. The Act is administered by the Minister in charge of labour who may make further regulations in respect of factories.⁴⁰ Also, the Act makes provisions for Director of Factories and Inspectors who administer the provisions of the Act.⁴¹ There is also Factories Appeal Board which determines appeals submitted under section 6 of the Act.⁴² A factory is defined under the Act as any premises where one or more persons are employed for making, cleaning, and printing of any articles or locomotive. It also includes where any premises where a mechanical power is used in connection with a water supply and where engineering construction work is carried out.⁴³

As stated, the focus of the Factories Act is the regulation of safety at work. Thus, its provisions are mainly in the nature of regulations on the health, safety and welfare of workers. Part I of the Act provides regulations on registration of factories to the effect that every factory in Nigeria must be registered.⁴⁴ Part II contains general provisions on health of workers which include duties on the occupier of factory to keep the work premises clean,⁴⁵ to provide sufficient lighting,⁴⁶ to prevent overcrowding⁴⁷ and to provide good sanitary conditions.⁴⁸

Part III provides general regulations on safety of workers in the course of their work. For example, section 28 provides that before a factory is constructed, the building plan and other incidental documents should be submitted to the Director of Factories.⁴⁹ Also, section 21 imposes a duty on the seller or manufacturer of machines or equipment using mechanical power, to secure it in such a way as to prevent danger. In addition,

⁴⁰FA 2004, s.67, such regulations must however be laid before the Council of Ministers.

⁴¹FA 2004, s1 and 63.

⁴² An occupier or owner of a factory may appeal to the Board where his application for registration as factory required under Section 1 is refused by the Director of Factories.

⁴³FA 2004 s.88.

⁴⁴FA 2004 s.1-6.

⁴⁵FA 2004 s.7 (1).

⁴⁶FA 2004 s.10.

⁴⁷FA 2004 s.8.

⁴⁸FA 2004 s.12.

⁴⁹FA 2004 s.14-35 which provides generally that equipment and substances used should not jeopardise the safety of workers.

Part IV contains provisions on the welfare of workers⁵⁰ while Part V deals with general provisions on health, safety and welfare which include provisions to protect a worker where the nature of work done in the factory involves the use of poisonous substances.⁵¹ It also imputes responsibilities on workers to take care of the safety of other workers. Section 69 (2) provides that where a worker commits an offence by virtue of the provisions of the Act with regard to duties of the worker, the worker and not the owner or occupier of the factory will be liable unless it is proved that the owner or occupier did not take steps to prevent the offence.

Thus, the focus of this Act is limited to preserving the health, safety and welfare of workers. Sections 7-13 safeguards the health of workers, 14-39 protects the safety of workers while the provisions of sections 40-44 preserves the welfare of workers.

Thus, the Factories Act has robust provisions for the protection of health, safety and welfare of workers. However, the Act is not without some limitations. Firstly, it does not include provisions for the preservation of the health and safety of members of the public who are not workers within the definition of the Act but who can be affected by work activities. For example, the UK Health and Safety at Work Act 1974 extends its application towards protecting the health and safety of persons who are not workers but who can be affected by work activities.⁵² Thus, in the UK, an employer has a duty to third parties who may be affected by its activities.

Secondly, another limitation inherent in the Factories Act is with respect to offences and criminal liability. Section 69 is the only section which creates an offence under the Act and provides that whenever any provision of the Act is violated, the owner or occupier of a factory shall be guilty. Section 69 (5) also provides that when the owner/occupier of a factory is a corporate body, the director, manager, or secretary of such corporate body shall be liable. Thus, it seems that the Factories Act does not recognise that a corporate body can be personally liable by transferring its liability to its principal officers. This is contrary to the individualistic nature of the criminal law. Besides, it may not achieve both the deterrent and prohibitive goals of sanction since a corporate body will always escape liability and may continually sacrifice a member of staff upon a commission of an offence under the Act.

⁵⁰FA 2004 s.40 – 43.

⁵¹FA 2004 s.45-47.

⁵²UK HSWA1974 s.1.

Clearly, a corporate body who commits a violation of the law should be criminally liable for its acts and omissions. For example, Section 37 of the UK Health and Safety at Work Act provides that where an offence is committed by a corporate body with the connivance of a principal officer, both the corporate body and the principal officer will be jointly liable. Thus, in *Attorney General's Reference (No 2 of 1999)*,⁵³ Great Western Trains was prosecuted and convicted for the rail crash in Southall which killed seven passengers. The court held that the train company (Great Western Trains) failed to conduct its business in a way to ensure the health and safety of the travelling public contrary to section 3 of the Health and Safety at Work Act.⁵⁴

2.2 Labour Act

The Labour Act⁵⁵ provides general regulations on employment contract. It contains provisions for the protection of the welfare of employees in the course of their work. For example, it provides⁵⁶ that when the minister of labour declares an area as a labour area, an employer in that area have a duty to provide for its workers basic amenities like food, accommodation, toilet facilities, drainage and others as may be declared by the regulation. It is submitted that this provision is to ensure that the health and welfare of the workers is not compromised. In addition, in compliance with the provisions of 1999 Constitution in its section 34(1) c which provides that no one should engage in forced labour, section 73 of the Act provides that it is an offence for a person to require another to engage in forced labour. Therefore, every employment in Nigeria should be free and mutually agreed on. Also, section 7 of the Act requires that there must be written particulars of terms of employment when the contract of employment is made orally. If the contract of employment is written, then the terms listed in section 7 should be incorporated in it. These terms include the nature of employment, the wages and method of calculating it. It also includes the mode of terminating the employment.⁵⁷ Therefore, the requirement of the written particulars will guarantee the welfare of the employee. This is because at the start when negotiating a contract of employment, the employee is not always on the same footing with employer and can agree to unfavourable terms of employment if he is desperately in need of a job.

⁵³ [2000] Cr. App. R., 207.

⁵⁴ *Attorney General's Reference (No 2 of 1999)* (2000) 2 Cr. App. R. 207.

⁵⁵ LA 2004.

⁵⁶ LA 2004, s.66.

⁵⁷ See generally section 7.

The Act also has provisions to preserve the health, and overall welfare of employees, as it provides that an employee whose work hours is above six hours should take a break or rest in between the work and he is entitled to a day work free every seven days.⁵⁸ This is to prevent a situation where the employee is over laboured. Section 8 of the Act imposes a duty on the employer to finance a medical examination of an employee to ascertain the state of his health at the commencement of an employment.⁵⁹ This can serve as a guide to the employer to know the capacities and health challenges of the employee and guide him in ascribing duties and responsibilities to the employee. In the same vein, an employee who falls ill is entitled to sick leave and wages of up to twelve working days.⁶⁰ He is also entitled to annual holidays with his full wages and the employer cannot pay wages to the employee in lieu of the holiday.⁶¹

Section 75 places a duty on an employer to keep a record of wages and general condition of employment showing that the provisions of the Act is being complied with.⁶² In the same vein, the minister of labour may make regulations for a register of employers and any employer who fails to register can be prohibited from employing workers in Nigeria.⁶³ This will enable the government to be able to supervise and enforce the provisions of this Act.⁶⁴ Section 12 provides that an employer is personally liable for injuries sustained by its employee in the course of employment even if such injury was caused by another employee.⁶⁵ This means that common employment is not a defence to the employer's liability.

The Labour Act also has special provisions in respect of the employment of women and young persons. A woman is not permitted to work in an underground mining undertaking except if she is a health and welfare officer or in a management position or if she is there for the purpose of training.⁶⁶ She is also restricted from engaging in night

⁵⁸ LA 2004 s.13.

⁵⁹ LA 2004 s.8(2) however provides that the requirement for medical examination may be exempted by the Government for certain categories of workers.

⁶⁰ LA 2004, s.16.

⁶¹ LA 2004, s.18.

⁶² In case of an employer of a young person, the employer should keep a register as prescribed under section 62.

⁶³ LA 2004, s.68.

⁶⁴ In fact, section 78 provides that an authorized labour officer is can enter any premises for the purpose of ensuring that the provisions of the Act are complied with.

⁶⁵ LA2004, s.12.

⁶⁶ LA 2004, s.56.

work except as a nurse or in a management position.⁶⁷ Maternity protection is also given to women and they should still be paid at least half of the wages during the period of confinement.⁶⁸ These provisions (sections 55 and 56) can be described as sexist and discriminatory of women. If a man is not under any restrictions on the basis of his gender, it violates the idea of equality if a woman is restricted not on the basis of her capacity but on as a result of gender and suggests the flawed assumption that a woman has less strength and/or capacity than men. Similarly, it is argued that there should be paternity protection given to the men.⁶⁹

A child is prevented from working except if he is employed by a member of his family and the work must be of a light nature and should not require lifting of heavy things.⁷⁰ It provides further that a young person under the age of fifteen years should not be employed in an industrial undertaking except for the purpose of training in a technical school and in which case, supervised by the ministry of education.⁷¹ Also, where a young person under the age of fourteen years is employed, the employment must be of a day to day basis which affords the young person to return home on a daily basis.⁷² Generally, a young person is prevented from engaging in an employment that is dangerous to his health or his morality.⁷³ The essence of these limitations is to prevent a young person from being engaged in an employment that can jeopardise his physical and mental growth and development.⁷⁴ Thus, from the above provisions, it is safe to assert that the labour Act has a comprehensive provision for the promotion of the welfare of the worker.

It must be stated that the Act creates offences in its sections 21, 45, 46, 47, 53, 58, 64, 72 and 73. These offences are mainly to ensure compliance with the Labour Act. Section 21 makes it is an offence under the Act for an employer to enter into an employment contract contrary to the provisions of the Act. This will prevent instances when an employer will attempt to exploit or take advantage of a desperate employee

⁶⁷LA 2004, s.55.

⁶⁸LA 2004 s.54. A female employee is also allowed a break of thirty minutes twice a day to nurse her child.

⁶⁹ It is commendable the recent adoption of a paternity leave by the Lagos State Government.

⁷⁰LA 2004, s.59(1).

⁷¹LA 2004, s.59(2).

⁷²LA 2004, s.59(3).

⁷³LA 2004 s.59(6).

⁷⁴LA 2004 s.59(5)(8) disallows a young person under sixteen years from being engaged in underground work and from working longer than four hours consecutively. Similarly, sections 60 and 61 restrict a young person working at night and in a vessel.

into making agreements that can compromise the general wellbeing of the employee. Sections 45 and 47 provide that it is an offence to fraudulently or by misrepresentation or coercion induce a worker to enter into an employment under Part II of the Act⁷⁵ and recruiting contrary to the provisions of the Act. Also, section 46 provides that it is an offence for an employer to ill-treat or neglects his employee. Similarly, sections 52 and 53 provide that it is an offence to employ a woman contrary to the provisions of the Act⁷⁶ and to remove an apprentice from Nigeria without the written authority of the minister of labour. In addition, section 64 provides that it is an offence to employ a young person contrary to the provisions of the Act. Thus, the Labour Act provides a robust regulation of employment relations between employers and employees in Nigeria. Therefore, the offences created under the Act are for violation of its regulations.

However, the Act has some limitations. As stated, the provisions of sections 55 and 56 as regards the employment of women are sexist and discriminatory and have no place in the 21st century where there is more consciousness on the need for equality of gender. Another limitation is in the area of sanction. Fine and imprisonment are the only sanctions recognised under the Act. Fine as provided under the Act is inadequate as the amount is mostly too small to achieve any of the aims of sanction. For example, section 53 provides that the sanction for employing an apprentice contrary to the provisions of the Act is a fine of two hundred naira; this is less than one dollar. Also, section 46 provides that an employer who neglects or maltreats a worker is guilty of an offence and punishable with a fine not more than five hundred naira or not more than one year imprisonment or both.⁷⁷ Another limitation is that the provisions of the Act cannot be applied to a corporate employer. On the face of it, the Labour Act is applicable to both natural and corporate persons. Section 91 defines an "employer" as any person who enters into an employment contract to employ another person as a worker for himself or for another. Section 18(1) Interpretation Act⁷⁸ includes any body of persons corporate or unincorporated. Thus, the combined effect of section 18(1) of the Interpretation Act and section 91 of the Labour Act is that the Labour Act is applicable to a corporate

⁷⁵ Part II of the Act provides for procedures for recruiting a citizen of Nigeria for an employment in Nigeria or outside Nigeria.

⁷⁶ It should be emphasized that as stated the restrictions on employment of women are discriminatory and unnecessary.

⁷⁷ Five hundred naira is less than three dollars.

⁷⁸ Interpretation Act Cap 123, LFN 2004.

body. However, the provisions of the Act are inadequate for holding a corporate employer liable for the commission of an offence under the Act.

Generally, most of the offences created under the Labour Act are strict liability offences which do not require the proof of a mental element.⁷⁹ For example, section 21(1) A provides that it is an offence for an employer to enter into a contract of employment contrary to the provisions of the Act. Similarly, section 64 provides that it is an offence to employ a young person contrary to the provisions of the Act. It is submitted that the application of these offences to a corporate employer is easy because the Companies and Allied Matters Act already provides the acts and omission that should be regarded as acts and omissions of a corporate body.⁸⁰

However, the offences created under sections 45 and 72 require the proof of a mental element and the Nigerian criminal jurisprudence have not developed the means of determining the mental element of a corporate body. Section 45 provides that it is an offence for a person to *fraudulently* or by *coercion* or *misrepresentation* induce a worker to enter into a contract contrary to the provisions of Part II of the Act. Also, section 72(1) provides that it is an offence for any person with *intent to deceive*, give false particulars for the purposes of regulations under the Act. Thus, the provisions of sections 45 and 72 cannot be applied to a corporate body. Therefore, to this extent, the provisions of the Labour Act are inadequate especially considering that corporations are also a major employer of labour.

2.3 Employee's Compensation Act

This provides regulation for the compensation of injured employees or in case of death, to their dependants. Part of its objectives includes the rehabilitation of injured employees and the enforcement of occupational safety and health standards in order to prevent workplace injuries.⁸¹

The Act is influenced by the International Labour Organisations Conventions on workmen compensation like 1934, 1935 and 1964 conventions.⁸² It represents a

⁷⁹LA 2004, ss.46, 53, 58 and 64.

⁸⁰LA 2004, ss.63, 65 and 66.

⁸¹EA 2004, s.1.

⁸²I.N.E Worugi, Work Injuries Compensation under the Employee's Compensation Act in Nigeria: What is Next? [2013] (10)*Journal of Law, Policy and Globalization*, 30.

comprehensive approach to tackling compensation issues in Nigeria. The scope of the application of the Act is extended to employees both in the public and private sector.⁸³ This is similar to the Article 4(1) of ILO Convention C121 which provides that legislations on employment injuries should apply to both employees of both private and public sectors.

Secondly, the definition of an employee given in the Act is all encompassing including varying categories of employee. In fact, it also covers persons engaged in a contract of apprentice and domestic servants.⁸⁴ In the same vein, the definition of the employer is also wide and it includes an individual or body corporate.⁸⁵ By this definition, it means every person engaged in a contract of employment of whatever form comes within the ambit of the Act.

As stated, this Act deals mainly with compensation of employees or their dependants as the case may be, therefore, section 56 establishes employee's compensation fund which is administered by the Nigerian Social Insurance Trust Fund Management Board.⁸⁶ Employers are made to contribute into this fund.⁸⁷ The Board is empowered to assess and classify employers based on their risk factors in determining the rate of contribution.⁸⁸

Section 56 (2) a also provides that the Federal Government shall provide a take-off grant for the fund. Other sources of the fund include the proceeds of investment of the fund, fees charged pursuant to the Act or any other regulations of the Act, grants and gifts from international and national organisation and any other money that accrues to the fund from other sources. It is from this fund that the compensation needs of employees are met. Section 58 further provides that the fund can be used to rehabilitate employees with work related disabilities and also for supportive services for the prevention of work related hazards and the general promotion of occupational health

⁸³ EA 2004, s.2. However, military members of the armed forces are exempted from the application of this Act in section 3.

⁸⁴ EA 2004, s.73.

⁸⁵ Ibid.

⁸⁶ The Board shall among other things formulate strategies for the compensation and rehabilitation of employees and it shall also approve the investment of money in the fund. EA 2004, ss.31 and 32.

⁸⁷ Section 33 provides that every employer shall make a monthly contribution of 1.0 per cent of its total monthly payroll to the Fund.

⁸⁸ EA 2004, s.33(1). It is further provided in section 38 that the Board may ask an employer to provide security in order to secure payment of the assessed fee.

and safety. The network of funds available for compensation under the Act is therefore wide and should be able to enhance speedy dispensation of compensation claims.

Part II of the Act provides for procedures for making claims. Section 4 provides that an injured employee or in the case of death, his dependant should inform the employer of the injury or death within fourteen days of the occurrence of the incident. The employer should within seven days report to the Board or National Council for Occupational Safety and Health office nearest to him.⁸⁹ It is submitted that the limited time frame within which to report the occurrence of injury or death is good because it will facilitate the quick payment of compensation and reduce hardship on the part of the employee or his dependants as the case may be. Section 6 provides further that the application for compensation must be filed within one year of the occurrence of the injury or death otherwise; compensation will not be paid unless the Board is satisfied that there are special circumstances which prevented the application within the one year.⁹⁰

The scope of injuries compensable under the Act is also quite wide as it covers both physical and mental injuries. It includes accidents, fatal injuries, hearing impairments, occupational diseases and mental stress.⁹¹ It is submitted that almost every form of discomfort or injury or accident that can occur to an employee in the course of employment is covered by this Act. Section 7 (1) also provides that it is immaterial whether the injury occurs outside the workplace so long as it occurred out of or in the course of employment. But the injury must be a disabling injury i.e it must of a nature that prevents the employee from earning his wages. Section 7 (2) provides that accidents that occurs in the course of employment is also compensable whether occurring between the place of work and employee's residence, where he takes his meals and receives salary. This means that *every physical movement of an employee in relation to performing his work*⁹² will come under the provisions of this Act.⁹³ It must however be stated that section 7 (2) will obviously not apply to accidents which occur to the employee on his social engagements. Clearly, the implication of section 7 as a whole is that physical and mental injuries and accidents that occur out of employment and in respect of matters incidental to the employment will be compensable under this Act.

⁸⁹ EA 2004, s.5.

⁹⁰ But this must still be within three years.

⁹¹ EA 2004, ss.7-10.

⁹² Emphasis mine.

⁹³ This is in tandem with the Article 7 International Labour Organization Convention C121.

Specifically, section 11 makes compensable, injury occurring outside the normal place of work in some circumstances.⁹⁴

There are provisions on the quantum of compensation to be paid and this in tandem with Article 26 and Schedule 1 of International Labour Convention C121 is dependent on the gravity and nature of the injury. Section 17 (1) provides that where death occurs, the dependant of the employee are entitled to the compensation. The dependants are further divided into wholly dependants who are the widow or widower. If the dependant is left with two or more children, the quantum of compensation to be paid will be a monthly payment of about ninety per cent of the monthly remuneration of the deceased, if the deceased left one child, the quantum of compensation will be eighty five per cent of the deceased monthly remuneration.⁹⁵

It provides⁹⁶ further that where the widow or widower is left without a child and is over fifty years old or is an invalid, he or she shall be entitled to a monthly payment of sixty per cent of the deceased monthly remuneration. It however provides that where the dependant widow or widower is less than fifty years and is not an invalid and has no child, he or she shall be paid monthly a sum equal to the product of percentage which shall be determined per cent from sixty per cent for each year for which the age of the dependant is less than fifty years. It is submitted that the quantum of compensation provided in section 17 is reasonable and practical. The dependant widow is paid according to the perceived responsibility or burden which he or she will have to bear. A dependant with more children is paid more than one without a child. Even, where there is no child, where the dependant is an invalid or deemed to be no longer productive as a result of age, the compensation to be paid is higher than where such dependant is viewed as capable of fending for him or herself.

--It is provided further that where there the deceased is not survived by a spouse but left a child, the child shall be entitled to forty per cent of the amount that is payable in case of permanent disability. Where there are two children, the amount payable shall be monthly payment of sixty per cent of the amount payable in case of permanent

⁹⁴ These are when the nature of the business of the employer extends beyond the usual place of work, where the nature of the employment is such that the employee can work both in and out of the place of work or where the employee has the permission of the employer to work outside the place of work.

⁹⁵ EA 2004, s.17(1)(a)i and ii.

⁹⁶ EA 2004, s.17 (1) (a) iii.

disability, and when there are three or more children, the amount payable is raised to eighty per cent.⁹⁷

Section 17(1) e provides for where the deceased does not leave behind a dependent child or spouse but had other dependants wholly dependent on him, the amount of compensation to be paid shall be determined by the Board and proportionate to the pecuniary loss suffered by such dependants.

The second categories of dependent recognised under this Act are dependent who are not solely dependent on the deceased irrespective of their relationship with the deceased. Therefore, where a deceased leaves behind a spouse and or children but who are not solely dependent on him, the amount of compensation to be paid shall be determined by the Board and shall be in form of a monthly payment.⁹⁸ The payment of monthly payment is commendable as it provides a consistent source of income to an injured employee unable to earn a living or his dependents as the case may be.

Section 21 provides for compensation for the employee himself where the injury has resulted in a permanent and total disability. He shall be entitled to a monthly payment equal to ninety per cent of his remuneration. But if the injury is permanent and partial, he shall be paid periodically amount equal to ninety per cent of the estimated remuneration he lost as a result of the injury. This provision has however been criticised, that the payment of ninety per cent is a way of making the employee share in the cost of the injury.⁹⁹ The goals of giving adequate compensation will be achieved more if the employee is entitled to his full wages. Section 24 and 25 provides for where the injury is temporary and total or partial respectively. In both instance, the compensation shall be in form of a lump sum determined in accordance with the second schedule of the Act or in accordance with any other regulation made pursuant to the Act. But for an injury to qualify as temporary under these provisions, it must not last more than twelve months.

⁹⁷It is provided in s.17(1) b, i, ii, iii. (1) c that the payment of compensation to children is until they reach the age of twenty one or complete their undergraduate studies whichever comes first. But by virtue of (1) d where the child is disabled, the period shall be determined by the Board.

⁹⁸EA 2004, s.17(1)(f).

⁹⁹Worugi, 40.

Conclusively, the provisions of this Act is comprehensive and it provides a form of social security for employees and non- employees who may be affected by the death, incapacity or illness of an employee in Nigeria.

However, the application of this Act has not been well tested since it is relatively new as it came into effect only in 2010. In fact, the then Managing Director of the Nigerian Social Insurance Trust Fund, *Umar MunirAbubakar* once alluded to this fact in an interview with Vanguard Newspapers two years after the commencement of the Act.¹⁰⁰ Thus, it is submitted that there seems to be a general lack of awareness of the provisions of the Act by the people. It is hoped that the appropriate authorities will take steps in sensitising the people so that the Act can be meaningful.

Another challenge in the Employees Compensation Act is as regards the requirement of dependent spouse which is limited to only one person based on the concept of monogamy.¹⁰¹ This can cause problems for polygamous marriages where there is more than one wife and it is hoped that appropriate amendments will be made to accommodate situations where the deceased employee has more than one wife. Beyond these two limitations, it is submitted that the Employees Compensation Act is a comprehensive legislation that further seeks to guarantee the health, safety and welfare of employees in Nigeria.

Having discussed the Nigerian legislations regulating occupational health and safety, the UK Health and Safety at Work Act 1974 will be examined as follows in order to draw lessons for Nigeria.

3.1 UK Health and Safety at Work Act 1974

The principal legislation on occupational health and safety in the United Kingdom is the Health and Safety at Work Act 1974. The Act establishes the Health and Safety Commission and Executive to administer the Act.¹⁰² It also provides for the maintenance of an Employment Medical Advisory Service¹⁰³ which provides expert opinion and advice on health in relation to employment. The Act also imposes duties on employers and occupier of premises to ensure the health, safety and welfare of workers

¹⁰⁰(*Vanguard Newspapers*) 15th November, 2012.

¹⁰¹Worugi,40.

¹⁰²HSWA 1974, ss.10-14.

¹⁰³HSWA 1974, s.55.

and to make sure that premises are safe and without risk to the health and safety of others.¹⁰⁴ It provides further that trade unions may appoint health and safety representatives in accordance with any regulations made by the Secretary of State and that the employer should consult such representatives in drawing up policies that will facilitate the health, safety and welfare of workers.¹⁰⁵

This Act also creates a self-regulation approach to ensuring the health, safety and welfare of workers. Section 2(3) provides that an employer should have a health and safety policy which the employer should bring to the notice of every person employed by it. Some of its improvements over the Nigerian legislation will be discussed in order to draw lessons for Nigeria.

Firstly, the UK Health and Safety at Work Act (HSWA), unlike the Factories Act is not limited to protecting the health and safety of workers alone. Rather, it extends to protecting persons who are not workers but who can be affected by work activities. Section 1 of the HSWA provides that its objectives include securing the health and safety of persons at work and also protecting other people from the risk associated with activities of persons at work.¹⁰⁶ Thus, it provides that an employer has a duty to protect third parties who may be affected by its activities even if it means giving the third parties information about the likely risks to their health, safety and welfare by virtue of work activities. Another improvement of HSWA over the Factories Act is the establishment of an employment medical advisory committee to provide expert advice on health especially in relation to occupational disease. This is absent under the Factories Act.

However, similar to the provisions of section 61 of the Factories Act, workers are also under a duty to ensure the safety of themselves and that of other workers. Section 8 of the HSWA provides that no person should recklessly or intentionally interfere with anything that can affect his health, safety and welfare and those of others.

Also, the HSWA has a robust framework for holding a corporate employer liable for a violation of any of its provisions. Section 37 (1) provides that where an offence under the Act is committed by a corporate body, and such offence is proved to have been done

¹⁰⁴ HSWA 1974, ss.2 and 4.

¹⁰⁵ HSWA 1974, ss.2(4) and (6), in addition, s.2(7) provides that a safety committee to review the health, safety and welfare policies may also be established upon recommendation of the health representatives.

¹⁰⁶ It also includes the control of the use of explosive, highly flammable and dangerous substances. s.1.

by or with the connivance and consent of a director, secretary or manager of such a corporate body, both the corporate body and such director, secretary or manager will be jointly liable. This is unlike the position under section 69 of the Factories Act which provides that only the director, secretary or manager of a corporate body will be severally liable for an offence by a corporate body. In addition, the requirement of a self-regulation approach in section 2(3) of the HSWA Act is commendable and will enable a corporate employer have a culture of compliance. Since the ultimate aim of regulation is not to sanction but to have "persons" (both natural and artificial) behave responsibly and in accordance with the laws of the land. Thus, a self-regulation will help achieve this aim faster and better.

4.1 Conclusion and Recommendations.

Conclusively, the Nigerian legal framework for occupational health and safety is in need of some reforms. For example, the UK Health and Safety at Work Act is a single, yet a more comprehensive legislation. Firstly, it has a wider application as it also applies to members of the public who may be affected by activities of workers done in the course of and incidental to employment. In relation to corporate employers, the UK Health and Safety at Work Act recognises corporate criminal liability based on the provision of its Section 37 while the Nigerian Factories Act does not recognise corporate criminal liability but rather vests liability for corporate violation on individual members who are the directing mind and will of the corporation. This approach is against the very nature of criminal law which is based on individual liability. It seems unfair to hold an individual liable for wrongs which are clearly that of a corporation. Similarly, some provisions of the Labour Act cannot be applied on the corporate employer. For example, sections 45 and 72 of the Labour Act creates an offence that requires the proof of a mental element and the Nigerian criminal jurisprudence have not yet developed the means of determining the mental element of an offence. Also, sections 55 and 56 of the Labour Act are sexist and discriminatory of women. Another limitation common to both the Labour Act and the Factories Act is in the nature of sanctions. Essentially, fine and imprisonment are the only sanctions recognised under the two Acts; in most instances the fines stated are too low to achieve any of the aims of sanction.

In addition, there is the need to strengthen of the protection of the temporary
compensation for especially the dependent of dependent spouse which is limited to
only one person based on the concept of dependency. This can cause challenges in
polygamous marriages as it becomes as soon as one amongst the wives will qualify as
the spouse for the purpose of the Act. Also, it is hoped that relevant legislations can
create more provision on the issue of employment rights especially right to compensation
in appropriate circumstances.