EXAMINING THE SCOPE OF "IN THE COURSE OF EMPLOYMENT" AS A PREREQUISITE FOR ENTITLEMENT TO COMPENSATION UNDER THE WORKMEN AND EMPLOYEES' COMPENSATION ACTS

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Abstract

When a person is employed, the employee is expected to work or render services to the employer. During the employment, it is possible that the employee suffers injury which is expected to be compensated. The Workmen Compensation Act and the Employees Compensation Act are legislation that deals with compensation for work related injuries. Both Acts require that for an employee to be entitled to compensation for work-related injuries, the injury complained of, must have occurred 'in the course of the employment.' The issue is: when can an injury be said to have occurred in the course of the employment? This article adopts doctrinal method and relies on both primary and secondary data to examine the scope of this requirement under both laws and their extent of compliance with international best practices in the field of workplace-related injury.

Keywords: Compensation, Employer, Employee, Injury, Nigeria, Workplace

1. INTRODUCTION

Upon the creation of an employer-employee relationship, the parties derive rights and obligations.[1] The employee is expected to faithfully serve the employer using his/her

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skill, knowledge and expertise to further the employer's interest while the employer is expected to adequately remunerate the employee for work done or services rendered.[2] In the course of working, the employee is not unlikely to suffer injury due to the act/omission of the employer or none of this. Where injury is sustained, it is expected that the injured employee is catered for by the employer and not left to bear the brunt alone.[3]

Thus, to lay down a formidable legal framework that regulates this issue (i.e. award of compensation for work-related injuries), the Workmen Compensation Act[4] (WCA) was enacted and subsequently repealed by the Employees' Compensation Act[5] (ECA). Under both legislations, for an injured employee/workman to be entitled to compensation for work-related injuries, it is required that the injury ought to have occurred "in the course of employment." Regrettably, the meaning of this important requirement is not defined in both laws. The issues then are: when is an injury said to have occurred in the course of employment for an injured employee to be entitled to compensation under the Acts? In comparative terms, what is the scope of this requirement under both laws? What is the significance of this requirement and its impact on Nigeria's work-related injury regime? These questions form the crux of this paper.

By structure, this paper is divided into four sections. Section one is the introduction. Section two is an appraisal of the employer's duty of care as a corollary to the requirement for entitlement to compensation. Part three examines the scope, and significance of the "in the course of employment" requirement under both laws and their impact on Nigeria's work-injury related compensation practices vis-à-vis international best practices. Section four contains the conclusion and recommendations. The article adopts the doctrinal method and relies on both primary and secondary data such as the 1999 Constitution, the National Industrial Court of Nigeria Act, 2006, the Workmen Compensation Act, Employee's Compensation Act, case law, articles in learned journals, textbooks and online material which are subject to context and jurisprudential analysis.

2. EXAMINING THE EMPLOYER'S DUTY OF CARE

[1] CK Agomo, *Nigerian Employment and Labour Relations Law and Practice*, (Lagos: Concept Publications Ltd., 2011) 135.

[2] BC Okoro, *Law of Employment in Nigeria*, (Lagos: Concept Publications Limited, 2011) 29.

[3] *Andreas I. Koumoulis v. A. G. Leventis Motors Ltd.* [1973] 1 All NLR (Pt. 2) 144.

[4] Workmen Compensation Act 2004.

[5] Employees' Compensation Act 2010.

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From the outset, it should be noted that the duty of care is discussed as a precursor to examining the liability of the employer for workplace related injuries which is the basis for compensation.[6] Okene[7] has opine that understanding of this duty, is necessary for an eloquent and intensive discussion of the subject of compensation. The reason is that without the infraction or occurrence of injury (which is rooted in the duty of care), the issue of payment of compensation will not arise. It has been stated earlier on that upon the creation of an employer-employee relationship, rights and obligations concretises between the parties. In fact, section 7 of the Labour Act[8] requires that the employer, within three months from the date the employment contract is created, gives the employee written statement containing the terms and conditions of the employment.[9] Ogelle and Promise[10] have argued and rightly so in our view that this aforementioned provision of the LA is mandatory and not discretionary although, in some instances, employers obliterate from this duty with no consequences. One of the duties the employer has and inures throughout the employment contract period is duty of care towards the employee and even third parties. The duty of care is germane and paramount as it strikes at the root of the contract. It transcends physical to mental and psychological wellbeing of the employee. Duty of care is the legal obligation to prevent harm and protect others while they are in your care or employment, using your services, or exposed to your activities by putting in place necessary and reasonable safety measures while enforcing compliance by all and sundry. The concept is related to other legal responsibilities such as "ordinary care" or "reasonable care," which essentially mean "what is expected of most people in most cases.

By this duty, the employer is obligated to take all reasonable, foreseeable and logical protective measures whether the employer is acting personally or through his/her/its representative or assign, to ensure that the employee, in the course of the employment or arising therefrom, whether in his premises or outside, is protected from any harm/injury

[6] *Registered Trustees of Winners Chapel v. Ikenna* (2018) LPELR-45767 (CA).
[7] OVC Okene, *Labour Law and Industrial relations in Nigeria*, 4th Ed, (Port-Harcourt, Rivers State University Press, 2019) 95-98.
[8] Labour Act Cap. L1 Laws of the Federation of Nigeria (LFN), 2004.
[9] E Idubor and M D Osiamoje 'An Exploration of Health and Safety Management Issues in Nigeria's Efforts to Industrialise' (2013) 9 (12) *European Scientific Journal,* 154-169.
[10] O Ogelle, and G Promise "Revisiting the Legal Framework of Safety at Work and Compensation for Injuries in Nigeria" (2023) 14(2) *Nnamdi Azikiwe University Journal of Jurisprudence and International Law,* 1-25.

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as argued by Maseko.[11] The elasticity of this duty has been graphically captured by the English Court of Appeal in *Wilson's and Clyde Coal Co. Ltd. v English*[12] in which the court held that "the whole course of authority consistently recognises a duty which rests on the employer and which is personal to the employer, to take reasonable care for the safety of his workmen, whether the employer be an individual, a firm or a company, and whether or not the employer takes any share in the conduct of the operations." It should be noted that while the employer is required to ensure safety of the employee, there is an irrebutable presumption that the employee possess the requisite knowledge and skill for the role he/she is being hire hence, is required to demonstrate reasonable care and skill in his/her performance of the work or rendering of services. Dickson J in *Nunnink v Constain Blanservort Orsoging Ltd*[13] amplifying the foregoing position emphatically stated thus:

> There is on his part an implied warranty that he is reasonably competent for the work which he is employed to undertake and if he proves incompetent, the employer is not bound to continue him in his service for the term for which he is engaged.[14]

Oji and Amucheazi[15] have in our view, rightly posited that on the part of an employee who has no particular or professional skill, the common law still requires him/her to take care in the performance of his work. His service may be dispensed with if there is serious breach of this implied term in the contract of employment. In fact, implied in the contract of employment is the belief that the employee is capable to perform the work being hired for with the level of expertise, professionalism and care its requires as no employer will hire a worker for the fun of being hire as hiring, is not a sport or field of practice but exhibition of competence through performance. Thus, in *Griffiths v Arch Engineering Co. Ltd.*[16] it was held that an engineer is expected to show the standard of care expected

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[11] O Maseko, "A Review of Employee Compensation under the Nigerian Laws" https://www.linkedin.com/pulse/review-nigeria-compensation-act-meseko-ll-m-aciarb-acis accessed 7 December, 2024.

[12] *Wilson's and Clyde Coal Co. Ltd. v. English* [1938] A.C. 57 at 84.

[13] *Nunnink v Constain Blanservort Orsoging Ltd.* (1960) L.L.R. 90 at 93.

[14] JE Aneji, "The Legal Framework for Compensation from Death or Injuries from Occupational Hazards in Nigeria – Part 1" https://www.bimakassociates.com/the-legal-framework-for-compensation-from-death-or-injuries-from-occupational-hazards-in-nigeria-part-1/ accessed 7 December, 2024.

[15] EA Oji, and OD Amucheazi, *Employment and Labour Law in Nigeria*, (Lagos: Mbeyi and Associates Nig. Ltd. 2015) 127.

[16] *Griffiths v Arch Engineering Co. Ltd* (1968) 3 ALL ER 217.

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of a reasonable competent engineer in the course of performance of work. The paramount nature of this duty cannot be overemphasised as it seems to impute a two way duty on the parties but with a greater degree on the employer of course. This duty requires the employer to ensure that the work environment and/or conditions of the employees is safe and free from foreseeable harm by taking all necessary safety measures to avoid the occurrence of accident/sustaining of injury.[17] Sections 65 and 66 of the Labour Act[18] makes the employer duty bound to provide and maintain a safe sanitary system for its employees by providing safety facilities and comply with safety regulations that might be issued by the Minister of Labour, Employment and Productivity (MLEP) from time-to-time as opined by Worugji.[19]

In fact, where the employee sustained injury in the process of performing work that is not his/her primary duty but incidental or arising therefrom for the benefit of the employer; the employer will nevertheless, still be liable to pay compensation to the injured employed. The foregoing position has received judicial sanctification and approval by Lord Wrenbury in *St. Helens Colliery Co. Ltd v Hewitson*[20] where the court held thus:

> The employment may be to do some defined manual work, say, hewing coal, but the accident need not arise when the man is actually using his pick. He may be going down the cage. He may be resting between shifts. He may be taking a meal. He may be standing by, waiting for the next job. All these, and such as these, are not "the employment" but are incidental to the employment. The man is in the course of his employment and is engaged in his employment in all such cases.

This duty makes the employer obligated to put in place safety measures such as emergency exits at his workplace, provision of safety wears for the employees, placing of warning/caution signs and mark at strategically dangerous/hazardous areas, etc.[21] Take for instance, an employer whose undertaking deals with hazardous substances that if inhaled or contact is made with the body, can cause injury; will be required to make

[17] T Adair, and G Satyanarayana, "Impact of compensation on employee performance" (2023) 6(4) Intercontinental *Journal of Human Resource Research Review* 1-7.
[18] Labour Act Cap. L1 Laws of the Federation of Nigeria, 2004.
[19] INE Worugji "Work Injuries Compensation under the Employee's Compensation Act in Nigeria: What is Next?" (2013) 10(2) *Journal of Law, Policy and Globalization* 23.
[20] *Supra* (n 47).
[21] C O Ajie 'Employee's Compensation Law in Nigeria: The Position So Far' (2017) 6(1) *The Journal of Property Law and Contemporary Issues,* 236.

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available to the employees or persons visiting the undertaking, safety wears to cover the body or parts of the body that may come in contact with such hazardous substances.[22] Making available an employee compensation scheme available to all its employee(s); placing of warning signs on dangerous or risky implement/places within or around the work environment;[23] mandatory observation of rest/break period to enable the employee(s) relax and refresh while working, routine check-ups/maintenance of the equipments being used by the employees are all integral to this duty that inures the employer. By this duty, it is not enough that an employer provides safety wears, tools and implements but must ensure that the employee(s) actually uses them while effectuating the employment contract.[24] Just as this duty relates to the tools and physical environment of work, it extends to the calibre of person hired and their suitability to perform the job without exposing other workers to avoidable hazards contingent on incompetency. Thus, the employer must ensure that whoever he/she employs, is a fit and proper person with requisite competence, expertise and skill required to professionally perform the work without exposing co-employees to danger.[25] The implication of the foregoing is that the recruitment process must be rock-solid and water tight to ensure that the best, in terms of qualification, expertise, skill, experience, professionalism and knowledge is employed. Where the employer fails to do this, any injury inflicted on an employee by another owing to the lack of this basic ingredients, the employer would be held responsible as it amounts to abdication of responsibility.

This duty, although expansive, is not without boundaries. The liability of the employer is elated to known and reasonably foreseeable contingencies which he is expected to envisage and make adequate provisions and not to any and every imaginable contingency.[26] Thus, where novel circumstances which are not envisagable causes injury, the liability of the employer is more of a duty of conscience than law as it will be unfair to allow such an employee bear the brunt purely on human sentiment and morality.[27] The employer's duty of reasonable care does not cease simply because the employee works outside the business premises of the employer.[28] Thus, if the activities from which the

[22] *Bradford v Robinson Rentals* (1967) 1 ALL ER 267.
[23] *Hudson v Ridge Manufacturing Co. Ltd.* (1975) 2 QB 348.
[24] *Busari Ajao v Western Nigerian Trading Co. Ltd.* [1965] NMLR 178.
[25] *Iyere v Bendel Feed and Flour Mill Ltd.* (2008) 12 CLRN 1.
[26] *Charlton v The Forest Printing Ink. Co.* ((1980) IRLR 331.
[27] MI Anaheim, and PE Oamen, "Nigerian Employees' Compensation Act 2010: Issues Arising" (2017) 1(1) *African Journal of Comparative and International Law,* 53-63.
[28] *Wright v Dunlop Rubber Co. Ltd.* (1972) 12 KIR 255.

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employee sustains the injury were of a nature that the employer could have been responsible if they had been carried out on his premises, his obligation subsists especially if the employee was not on his/her own frolic but furthering the cause of the employer outside his business premises or regular work time. The foregoing is illustrated by the decision in *General Cleaning Contractors v Christmas.*[29] In this case, the employer was held to be liable for injury sustained by the employee for having failed to take precautionary measures to protect the employee, a window cleaner who was injured on his finger when one of the window sashes fell on his finger while he was working in the premises of the employer's customer. The folly of holding otherwise is apparent and same exposes an employee to avoidable hardship and pains.

Where an employee negligently or recklessly exposes him/herself to injury, no compensation will be paid by the employer as the law prohibits a person from benefiting from his or her own wrong.[30] The employer's duty of care is established under common law as well as statute as demonstrated above; it is essential for continuous employment and general wellbeing of the society. The duty of care, simply recognises the fact that leaving an injured employee to bear the brunt of an injury suffered as a result of being employed is inimical not only to the concerned employee but the society in general. As a result, whenever an employer fails to protect, he should be made to compensate as equity will not suffer a legal wrong to be without commensurate remedy is the timeless nature of law (this maxim is expressed in Latin as "ubi jus ibi remedium") as was held in *Bello v Attorney General, Oyo State & Anor*.[31]

3. THE SCOPE OF "IN THE COURSE OF EMPLOYMENT" REQUIREMENT UNDER THE WCA AND ECA DETERMINED

At the risk of repetition but for the sake of emphasis, it is apposite to reiterate that under the Workmen Compensation Act and the Employees Compensation Act, the legal prerequisite for an injured worker/employee to be entitled to compensation is that the injury suffered, must have arisen in the course of employment or connected thereto. This section of the article interrogates the scope of this requirement under both laws with a view to determining whether the latter is an improvement of the former or a mere

[29] *General Cleaning Contractors v Christmas.* (1953) AC 180.
[30] INE Worugji, "Workmen's' Compensation Act 1990: An Analysis" in ES Nwauche and FI Asoqwah (Eds) *Essays in Honour of Professor C. O. Okonkwo (SAN)* (Port-Harcourt: Jite Books, 2000) 147-150.
[31] *Bello v Attorney General, Oyo State & Anor*. [1986] LPELR-764 (SC).

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revision; its implications on Nigeria's employment compensation law and practice and the impact on employment relations in Nigeria generally.

At this juncture, the definition of compensation is considered apt. The term "compensation" has been defined by scholars and even the court. Osborne Law Dictionary[32] defined compensation as a payment to make amend for loss or injury to a person or property, or as recompense for some deprivation. Garner[33] defines compensation as payment of damages, or any other act that a court orders to be done by a person who has caused injury to another, in theory, compensation makes the injured person whole. Ogunniyi[34] stated thus:

> Within the purview of the labour law, compensation can be described as a monetary payment made to an injured workman in respect of injury which he has sustained in the course of employment. Such compensation may be as agreed by the employer and the workman or as may be approved by the court.

By this pontification, compensation in employment relations is monetary in nature and contingent on the suffering of injury by an employee. With regards to the quantum, it could either be fixed by the parties prior to the occurrence of an accident culminating into injury or by the court upon a successful claim by the injured employee. Although, traditionally, compensation is usually granted in monetary terms, we cannot however foreclose the possibility of it being granted through other means than money. An injured employee may be compensated by conferment of benefits other than money such as payment of medical bills, gift of car, accommodation, etc.

In it in the vein of the foregoing that the Employee's Compensation Act[35] defines "compensation" to mean "any amount payable or service provided under this Act in respect of a disabled employee and includes rehabilitation." In Zango *v Government of Kano State*[36] the Court of Appeal per Akpata JCA (of blessed memory) defined compensation in a wider inference thus, "…compensation covers remuneration or satisfaction for injury or damage of every description."

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[32] M Woodley, *Osborn's* Concise *Law Dictionary* (11th Ed., London: Sweet and Maxwell, 2009) 101.
[33] BA Garner, *Black's Law Dictionary* (8th Ed., Texas: Thompson West, 2009) 301.
[34] Ogunniyi, O., (No. 11) *Op. cit.* P. 158.
[35] Section 73, Employee's Compensation Act, 2010.
[36] Zango *v Government of Kano State* [1986] 2 NWLR (Pt. 22) 409.

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One may rightly ask, why is it imperative that for an employee to be entitled to compensation, the injury must have arisen in the course of the employment? In answering this question, Prof Emiola[37] has stated that the basis for this requirement is because an accident or injury may occur in a way which had no causal connection with the employment and, if it did, it has not arisen from the employment. The need to ensure that an employer is not liable at large, is responsible for limiting the employer's liability to only injuries arising from the course of the employment as a man should only be held responsible for what he has authorised (expressly or by necessary implication), or has derived some benefit from.[38] We contend that the scope or understanding of injury within this context is or should not be restrictively limited to physical injury alone. An employee in the course of effectuating the employment contract could be subjected to mental anguish, post-traumatic stress, psychological/emotional stress or injury and as well as verbal abuses with attendant psycho-emotional effect. It is important to expand injury to all these possible shades especially as a result of post covid-19 work demands. It is possible that where an employee is meant to work remotely, there is the likelihood that the employee is made to work longer hours than usual if he/she had resumed work at the employer's premises and closed at the designated time. Due to such protracted hours of work, the employee could come down with mental stress which could result to several mental or even medical health issues such as insomnia, migraine or nervous shock. While there may not be any physical seeable injury as it is traditionally the case, these conditions are not less injurious to the overall wellbeing of the concerned employee thereby entitling him/her to compensation.

Regrettably, the WCA does not expressly define what is meant by an injury arising in the course of the employment. Thus, it became a question of fact which the court determines based on the peculiarity of each case exercising its discretionary adjudicatory power. Under the WCA, particularly section 3(1) thereof which contains this requirement, Nigerian courts have adopted a rather restrictive as opposed to liberal and purposeful interpretation with seemingly deleterious outcomes judging from decided cases. Thus, where an accident occurs at the close of work, either within or outside the business premises of the employer, the court have held that injury sustained from it did not arise from the course of employment or connected to the employment. One of such restrictive

[37] A Emiola, *Nigerian Labour Law* (4th Edn, Ogbomoso, Emiola (Publishers) Ltd. 2008) 308.
[38] A Olaosebikan "Employee Compensation Act 2010: Legal Considerations and Realities" https://trustedadvisorslaw.com/employee-compensation-act-2010-legal-considerations-and-realities-the-trusted-advisors/ accessed 7 December, 2024.

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and harsh interpretation of the aforementioned section of the WCA was in *Nagakam v Strabag (Nig.) Ltd.*[39] The court, guided by the position that accident and resultant injury occurring within or outside the employer's premises of the employer after close of work held that the death of a worker and others occasioned by the employer's bus conveying them home at the close of work but fell into a river, absolves the employer from liability. The reason is that the falling of the bus into the river and the concomitant deaths, occurred at the close of work and outside the employer's premises notwithstanding that they were being conveyed home. While this decision is hardly justifiable, it speaks to the unfairness and harshness of the restrictive interpretation adopted by the court a position which at present, is not only iconoclastic but otiose. This restrictive application with its concomitant harshness came to its crescendo in *Scandinavian Shipping Agencies v Ajide*[40] corm Taylor C.J. The learned Chief Justice surprisingly held thus:

In the present case, it has not been shown that the ferry was the only means of the deceased getting home, nor even that it was the only reasonable way to get from Apapa to Lagos. This aspect of the case was completely ignored both by the respondent in his evidence and the Learned Acting Chief Magistrate. I am of the view that this court would in these circumstances be bound to go further and take judicial notice of the fact that other means of conveyance from Apapa to Lagos exist than the launch.

As a result of this seemingly unequitable and hardly justifiable conclusion, the employer was absolve of liability despite the severe injury suffered by the employee. The decision in *Bewac Ltd. v Alimi Akanbi*[41] is in all fours with the aforementioned position that under WCA, the interpretation given to in the course of employment or arising from employment requirement, is limited to injuries sustained during work hours and in the premises of the employer.

In *M. Ade Smith v E. D. Lines Ltd*[42] the court came to the harsh conclusion that once an employee has finished working for the day, he/she is no longer in the course of employment hence, any injury sustained, will be at his peril and not compensated by the employer. In this case, the claimant was an employee of the defendant who worked at its ship at Apapa wharf, at the close of work and competing of the exit routine, he fell into the river while leaving for home and dislocated his shoulder in an attempt to jump into a

[39] (1960) F. S. C. 130/60.
[40] (1965) LLR 247.
[41] *Bewac Ltd. v Alimi Akanbi* (1972) 2 UILR 297.
[42] *M. Ade Smith v E. D. Lines Ltd.* (1944) 17 N.L. R. 145.

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tug belonging to the defendant. The Court, Coram Brooke J came to the conclusion that "the question to be determined is: when does the applicant's employment end? As a rule, it does not continue after he has left his place of employment but does not necessarily end when the employee leaves the actual place where he is working." By this decision, once work has closed, whether the employee is within or outside the employer's premises and sustains injury, the situation falls outside the requirement that the injury occurs "in the course of the employment" hence, the employer will not be liable to pay compensation. In *International Institute of Tropical Agriculture v Amrani*[43] although the workman sued for negligence, the court, after reviewing the record of proceedings at the trial court, found that the project engaged in by the plaintiff was not within the mandate of the defendant, and was being executed outside working hours despite being within the premises and permitted by the appellant. The court surprisingly held that the facts points that the claimant was at the time of the accident, on a frolic of his own and therefore, not entitled to compensation.

The reasonableness of this decision and others like it, is hardly ascertainable left not, appreciated. The court here, surprisingly took an extremely narrowed perspective of the ambit of the course of employment to the detriment of the concerned employees. It would seem that the court failed to rise and defend the vulnerable employees. One may wish to think that the court unwittingly held on to the common law view of employees being subservient to the employer wherein capital is usually protected against labour despite the two being factors of productions requiring equal protection. Thus, capital (employer) should never be protected or thought of being protected at the expense of labour (employees).

It should however be noted that the close of work, under the WCA, is not an absolute defence to a claim for compensation for injury sustained as was held in *Bewac Ltd. v Alimi Akanbi*.[44] In this case, the claimant was employed as a tractor driver charged with the onerous task of driving the tractor from Lagos to Benin City. He left Benin City for Lagos via public transport and was involved in an accident. He sought to lay claim for compensation pursuant to section 3(1) of the WCA. The defendant objected on the basis that the accident did not occur in the course of the employment or relates to it. The court out rightly jettisoned the argument that the accident did not arise from the course of the employment or relate to it as the injured employee, suffered injury running the errand of

[43] [1994] 3 NWLR (Pt. 332) 296 at 314.
[44] *Bewac Ltd. v Alimi Akanbi*. (1972) 2 UILR 297.

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the employer. This conclusion is *in tandem* with the one taken by the English Court in *R v. Industrial Injuries Commission ex parte A.E.U.*[45] The implication of the foregoing is that, the defence that the accident occurred after the close of work is neither absolute, sacrosanct nor untrammelled but subject to certain permissible exceptions. It is important to note that accident or death resulting from the performance of a statutory duty or other regulations applicable to the workman's employment or in the execution of the orders given by the employer or its agent, will be deemed to have arisen in the course of and out of the employment of the concerned employee as was held in *British Railway Board v. Liptrot.*[46]

It is crystal clear that that the interpretation and application of section 3(1) of the WCA by the courts, is unjustifiably restrictive and capable of foisting unimaginable hardship. The state of affair requires urgent attention as its continuous subsistence is capable of bringing about unintended and unimaginable hardship to vulnerable employees while unjustifiably exculpating employers from liability.

Thus, in 2010, with a desire to improve on the compensation regime, the National Assembly (NA) enacted the Employees Compensation Act, 2010 which Eyongndi and Ebokpo[47] has described as a welcomed development as it has revolutionised employees compensation regime in Nigeria beyond the narrow ambience of the WCA. Worugji[48] has argued that the ECA has to a reasonable and commendable extent, improved upon the shortcomings of the WCA with regards to work-related compensation scheme.

The ECA like its predecessor (i.e. the WCA), makes provision for when an employee will be entitled to compensation for work-related injuries. Seeking to cure the anomaly that has been associated with the interpretation of section 3(1) of the WCA, Section 7(2)(a)-(c) of the ECA has laid down guidelines or circumstances in which an injured employee, would be said to have suffered the injury in the course of or arising from the employment. By virtue of this section, an employee is entitled to payment of

[45] *R v. Industrial Injuries Commission ex parte A.E.U.* [1966] 1 All E.R. 705.
[46] *British Railway Board v. Liptrot* [1967] 2 All E.R. 1072.
[47] DT Eyongndi & IJ Ebokpo, "Employee Compensation Act 2010 as a Pathfinder for an Enhanced Employee Compensation Regime in Nigeria" (2018) 2(2) *Niger Delta University Law Journal* 81-102.
[48] INE Worugji, "Employee's Compensation Act, 2010" in B Atilola (Ed) *Themes on the New Employees' Compensation Act* (Lagos: Hybrid Consult, Lagos 2013) 85.

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compensation for an accident which occurred while on the way between the place of work and-

(i) The employer's principal or secondary residence;
(ii) The place where the employee usually takes meals;
(iii) The place where he usually receives remuneration, provided that the employer has prior notification of such place.

Section 11 of the ECA, also provides further circumstances that falls within the circumference of "in the course of the employment" thus:

Where the injury to the employee occurs while the employee is working outside the normal workplace which would otherwise entitle the employee to compensation under this Act if the injury occurred in the workplace, compensation shall be paid to the employee under this Act if (a) the nature of the business of the employer extends beyond the usual workplace; (b) the nature of the employment is such that the employee is required to work both in and out of the workplace; or (c) the employee has the authority or permission of the employer to work outside normal workplace.

Morocco-Clarke[49] has rightly opined that "this provision expands the compensation field provided under the old Workmen's Compensation Act which did not stretched its provisions to cover injuries sustained in accidents which occurred within the point denoted in Section 7(2)(a)-(c) of the ECA. This is a welcomed provision because it is imperative for most employees to journey to their places of employment from where they reside and often take at least one meal within hours of their work in a place other than the employer's premises. Also, it is not unheard of that people are involved in accidents, sometimes on the way to or from work, and it is not good practice to shut an employee out of receiving some form of compensation only on the ground that at the material time of the accident, he was not physically present at his workplace. This becomes more compelling when one considers that the injured employee was making his way to or from this same place of employment." Noticeable and laudable about the above provisions of the ECA is its expansiveness in comparison to the WCA. The above provision, is a replica and domestication of section 5 of the ILO Recommendation 121 of 1964 which deals with the scope of employment for the purposes of compensation for work injuries.

[49] A Morocco-Clarke, "Lots of Bark and Very Little Bite? Deciphering the Real Ambit of the Employees' Compensation Act, 2010" in B Atilola (Ed) *Themes on the New Employees' Compensation Act* (Lagos: Hybrid Consult, 2013) 12.

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Regarding the provision of section 3(1) of the WCA, the courts have been extremely reluctant and unyielding to extend them to the situation captured under the ECA as can be seen in the decision of *Smith v Elder Dempster Lines Ltd.*[50] It will be impracticable to expect that an employee would work all day usually from 8am to 4pm without taking a meal usually outside the employer's premises. Most employer do not even have canteen or other places within their premises where their employees could relax and eat off work. Thus, where an employee, goes to an available place outside the employer's premises and sustains injury either while on his/her way there, while there or even coming back to his workplace, it will not be only unconscionable but illogical to deny him/her compensation. Same explanation goes for leaving his/her home and going to work or *vice versa*. It is amoral and unjustifiable that an accident which occurred either while going or returning from work is left uncompensated. One would wonder how an employee will get to the employer's premises or leave there for his/her house at the close of work. Making an employer liable to pay compensation for injuries sustained while on the way to receive remuneration or returning home after receiving from a place which is known to the employer, it is reasonable that the employer is liable for any injury suffered while going, or the employee is there or returning to his/her home as was held by the English court in *Lowry v The Sheffield Coal Co. Ltd*.,[51] The circumstances enumerated under the ECA are not only reasonable and justifiable but accords with prevailing employment situation globally.

Aside this expansion, section 7(1) of the ECA, has cured the hardship/defect inherent in section 3(2) (b) of the erstwhile WCA which provides that where an injury occurs due to the serious and wilful misconduct of the workman, save where it results to death or serious incapacitation, the workman will not be entitled to compensation.[52] At present, under the referred section of the ECA, negligence of the employee which results to injury, is not a defence against entitlement to compensation once same occurred in the course of employment. By this, the ECA has removed the fault exculpatory factor that had hitherto worked against the employee under the WCA. It would seem that the rationale for this provision is that if not for the fact that the employee was at the place he was due to his employment, the accident that occurred (although due to his/her negligence), would not have occurred to him/her. Having been compelled to be where the accident happened to

[50]*Smith v Elder Dempster Lines Ltd.* (1944) 17 NLR 1.
[51]*Lowry v The Sheffield Coal Co. Ltd*. [1907] 24 TLR 142.
[52] *Ogunnusi v Lagos City Caretaker Committee* Suit No. YB/216/69.

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him/her by his employment, he/she should be entitled to compensation regardless as was held in *Tanko Maikujeri v Provincial Engineer*.[53] This position was affirmed by the House of Lords in *Thompson v Sinclair*.[54] This has brought the law in Nigeria *in tandem* with global best practices as prescribed by the ILO. Morocco-Clarke[55] has commended this provision of the ECA as it has standardised Nigeria's compensation regime in the following manner:

> This approach is indicative of international best practice and mirrors the position of the International Labour Organisation in its 'Employment Injury Benefit Recommendation' in which it provides that "accident regardless of their cause sustained during working hours at or near the place of work, or at any place where the worker would not have been except for his employment should be treated as industrial accident. [56]

Based on the foregoing, the decision of Brook C.J. in *M. Ade Smith v Elder Dempster Lines Ltd.*[57] to the effect that an employee's employment does not commence until he has reached his place of work would have been decided differently if the position under the ECA had been followed. If the cases of *Nagakam v Strabag (Nigeria) Ltd*[58] and *Scandinavian Shipping Agencies v Ajide*[59] were to be decided under the guidance of the ECA, it is clear that the outcome would have been different as the dependants of the victims, would have been entitled to compensation to at least, assuage their irreparable loss and pains of the demise of their loved ones.

In Nigeria today, Leigh[60] have noted that there is an unprecedented increase in precarious forms of employment under the umbrella of casualisation of employment and such employees, do not usually work within the premises of the employer. This position of Leigh reverberates with the findings of Eyongndi[61] that employers in Nigeria are increasingly filling permanent positions in their employ with casual employees as a cost

[53] *Tanko Maikujeri v Provincial Engineer*. (1976) NCLR 441, 445.
[54] *Thompson v Sinclair* (1917) A.C. 127, 145.
[55] Morocco-Clarke, A., (No. 46) *Op. cit.* P. 11.
[56] See Section 5(a) of the Employment Injury Benefit Recommendation No. 121 of 1964.
[57] (1944) 17 N.L. R. 145 at 148.
[58][1960] F.S.C. 130.
[59][1965] LLR 247.
[60] OA Leigh, "Casualisation of Employment in Nigeria" (2014) 3 Ife *Juris* 650 – 678.
[61] DT Eyongndi, "An Analysis of Casualization of Labour in Nigeria" (2016) 7(4) *The Gravitas Review of Business and Property Law* 102-116.

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cutting measure while exposing them to various labour abuses within and without the employer's workplace. This in our view, would require the expansion of the ambits of the course of employment to adequately protect these vulnerable employees who may not have the luxury of permanently working in the premises of their employers.

It is apposite to note that beyond the traditional physical injury for which compensation is claimed, the ECA has expanded the scope of injury to non-physical injuries. Hence, by Section 8 of the ECA, an employee shall be entitled to compensation for mental stress[62] not resulting from an injury for which the employee is otherwise entitled to compensation.[63] An employee will be so entitled if the mental stress is an acute reaction to the sudden and unexpected traumatic event arising out of or in the course of the employee's employment; or diagnosed by an accredited medical practitioner as a mental or physical condition amounting to mental stress arising out of the nature of work or the occurrence of any event in the course of the employee's employment.[64] For instance, where an employer fails to put in place or ignores to enforce its anti-bullying or mental health policy, and an employee is bullied leading to emotional or psychological trauma, such an employee can maintain an action for compensation for mental stress. Same is applicable where the employee is made to work longer than it is expected especially remotely which has become the in-thing for most organisation post-covid19.

It must be noted that even the ILO has realised the restrictiveness in the use of 'workplace' in relation to employment effectuation and for matters such as entitlement to compensation and the likes. Once the entitlement to any benefits, right or being responsible towards an obligation is tied to the workplace, it means that such can only be enjoyed or claimed within the confines of the employer's work premises although, work usually takes place both within and without the employer's workplace/premises. Thus, in place of workplace, particularly after the outbreak of covid-19 with its attendant remote work alternative, ILO has replaced the workplace with world of work which encompasses anywhere an employee effectuates the employment contract whether within the four walls of the employer's premises or outside thereof. Hence, under the headline of world of work, the location of an employee becomes immaterial as the only consideration is

[62] A Atilola, "Compensation for Mental Stress under the New Employees' Compensation Act (2010): Implications for Human Resource Management" in Atilola, B., (Ed.) *Themes on the New Employees' Compensation Act*, (Lagos, Hybrid Consult, 2013) 202-204.
[63] Subsection (2) of section 8.
[64] Oji and Amucheazi (Note 8). 71.

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whose or which work was being done as at the time the injury was sustained. It would appear that the expansion of the hitherto restrictive scope of course of employment under the WCA by the ECA is in compliance with the ILO world of works mantra which is commendable. The geographical location of an employee should not be elevated above the fact that what made the employee to be in a particular location or while he/she was there, he/she was effectuating or effectuated the contract of employment. That would amount to elevating form over substance which is counterproductive to the system.

It should be noted that as from 2010 when the Constitution of the Federal Republic of Nigeria, 1999 (Third Alteration) Act, 2010 was enacted and same came into force, the National Industrial Court of Nigeria (NICN), has and exercises exclusive original civil jurisdiction over labour and employment disputes including but not limited to compensation of injury.[65] Bearing in mind the evolving and prevailing employees' protectionist stance of the NICN as the court has chiselled down several anachronistic common law rules which are adverse to the employees, it is not unexpected that the court will gallantly espouse the provisions of the ECA to protect Nigeria's endangered employees. For instance, while the common law allows an employer to terminate the employment of an employee for any reason (good or bad) or for no reason at all, the NICN, in line with international labour standards enshrined by the International Labour Organisation (ILO), has held that it is no longer fashionable to terminate the employment of an employee for any reason or no reason at all save it relates to the employer's undertaking needs or competence of the employee as it held in *Mr. Ebere Onyekachi Aloysius v Diamond Bank Plc.*[66] Commendably, in *Sahara Energy Resources Ltd. v Mrs. Olawunmi Oyebola*[67] the NICN, contrary to seemingly established but obsolete and inadequate common law position that where the employment of an employee in a master-servant employment is wrongly terminated, the amount of damages entitled to, is the monetary equivalent of the period of notice that ought to have been given. The Court held that in deserving cases, like where the wrongful termination affects the reputation or future employment chances of the employee, the damages that would be awarded, will be more than the period of notice. Seeing that the compensation portfolio under the ECA is enhanced, it is necessary that stakeholders within the employment sector, aggressively sensitise employees so that they can take advantage of the ECA. The Minister of Labour,

[65] Section 254C (a) and (k) 1999 Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010.
[66] *Mr. Ebere Onyekachi Aloysius v Diamond Bank Plc.* [2015] 58 N.L.L.R. (Pt. 199) 92.
[67] *Sahara Energy Resources Ltd. v Mrs. Olawunmi Oyebola* (2020) LPELR-51806 (CA).

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Employment and Productivity (MLEP) is the Chief Executive Office in charge of implementing the ECA thereby ensuring that its aims and objectives are achieved. Thus, the Minister must take proactive steps to ensure that employers comply with the provisions of the ECA so that affected employees are not exposed to undue and avoided hardship.

Regrettably, despite the laudableness of the ECA, filing of petition for compensation, has to be within a year or a time extended by the Board according to section 6 thereof. This may negatively impact the aim and objectives of the ECA. It is vehemently argued that a longer period (ideally, two years), would have been reasonable. A family that loss a love one to death, may not be psychologically balanced to file for compensation within a year of the demise however, two years is logical enough for the family to have wiped their wounds, mourn their dead and do the needful. One cannot rule out the effect of illiteracy or ignorance on the part of the deceased beneficiaries with regard to their entitlement to compensation which may cause some delay in kick-starting the process. Thus, to avoid a situation where the beneficiaries or estate of a deceased does not go forward to claim compensation due to their ignorance or illiteracy, it is important that the ECA placed an obligation on the employer to inform the deceased estate or immediate family members or the next of kin, their right to file for possible compensation. Adeojo and Leigh[68] have argued and rightly so in our view that poverty is passive in Nigeria and t is not uncommon to see the dependants of a deceased employee wallow in abject poverty and lack due to the absence of their breadwinner. This unfortunate situation can be avoided by making the employer obligated to inform them of their right to file for compensation where that is the case. Thus, it should also be stipulated that the period within which a claim for compensation will start to run, will be from the time the employer fulfil the obligation to inform the estate of the deceased/beneficiary/next-of-kin under the ECA and not when the injury occurred.

4. CONCLUSION AND RECOMMENDATIONS

From the above, it is clear that the law in Nigeria, recognises and makes provision for compensation for work-related injuries. Under both the WCA and ECA, entitlement to compensation is tied to the requirement that the injury which is sought to be compensated, arose from the course of employment. Under the WCA, this requirement is not defined

[68] OO Adeojo, and OA Leigh, "Combatting the Challenges of Poverty and Unemployment: The Option of Entrepreneurship and Small & Medium Scale Enterprises in Nigeria." (2016) 1*Crescent University Law Journal*, 75-90.

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and the courts adopted a restrictive interpretation with harsh outcomes as cases where compensation ought to have been paid, the injured employees, were rendered helpless and hopeless on the account that their injury was not sustained during working hours and within their employer's business premises. However, under the ECA, this requirement has been expansively expatiated upon and is clear enough. Thus, compensation under the ECA, is elaborate and clear and has taken compensation beyond the orthodox rein of physical harm. It is important to expand the circumference of the scope of employment requirement under ECA beyond the four head count indicia to the all-encompassing world of works situation introduced by the ILO which became necessary to address work related injuries that occurred during the periods of intra and post covid-19 work patterns. Based on the foregoing, it is recommended that the ECA should be amended to enlarge the timeframe for filing petition for compensation for injuries suffered while working. Thus, two years period is recommended as being reasonable and fair as the time within which to file a claim for compensation.

Also, the NICN should through its employees' protectionism jurisprudence, espouse the provisions of the ECA to cover beyond the reach of the WCA. There is the need to enlighten employees of their rights under the ECA by trade unions and employees' groups so that they can maximally take advantage of the enhance compensation regime under the ECA.

Moreover, the NICN in interpreting the province of injury arising in the course of employment, where the four indicia under the ECA is inadequate to grant an employee compensation where physical, mental, psychological or emotional injury has been suffered owing to the limited scope of the requirements, recourse should be had to the ILO "world of works" indicia which is more encompassing to remedy the wrong. This is preferable, instead of leaving such an employee without any remedy since equity will not suffer a legal wrong to subsist without a remedy.

Furthermore, owing to the possibility of illiteracy/ignorance, the ECA should be amended to impose an obligation on the employer to inform in writing, the estate/immediately family of a deceased employee who is entitled to compensation as lack of knowledge, may deprive them from making a claim.

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