

The General Unenforceability of Collective Agreements under Nigerian Labour Jurisprudence: The Paradox of Agreement without Agreement

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ABSTRACT

This study considers the status of collective agreements under Nigerian labour law, examining the extent of their enforceability under the extant laws. It considers the emerging trends in some more advanced jurisdictions of the world in that regard and comparatively portrays the anachronisms of the Nigerian law on the point. It takes the position that the current legal climate as regards the legal status of collective agreements under Nigerian law is potentially disruptive of industrial peace and harmony and is bound to occasion serious hardship on employees. The work suggests among others a jurisprudential shift in paradigm if the Nigerian labour jurisprudence must meet and be reflective of modern socio-economic realities.

Keywords: *Contract of employment, Nigerian labour law, employer, employee, jurisprudence*

INTRODUCTION

Every contract of employment whether entered in writing or otherwise contains terms which govern the relationship between the employer and the employee. The parties, in line with the doctrine of freedom of contract, freely negotiate the terms of the contract. But it is an obvious fact that at the negotiating table, the employer and the employee are not on the same pedestal. They have different bargaining powers and bargain from different backgrounds, the employer having an upper hand. So between an individual employee and a prospective employer, the doctrine of freedom of contract is more or less illusory. With this disequilibrium in bargaining power, it becomes needful for individual employees to seek in community that which they may not achieve individually. By bargaining in community, employees seek to equate their collective bargaining power with the stronger bargaining power of the employer, knowing that unless they do so, their survival stand to be gravely imperiled¹. That is the essence of collective bargaining which could result in a collective agreement.

Collective bargaining is the process or the exercise in which workers, through their trade unions, try to reach an agreement with their employers on wages payable, working conditions and terms of employment, relation between employers and workers and other benefits which they will enjoy in exchange for labour². Collective agreements result from a successful collective bargaining. The International Labour

Organization (ILO) defines collective agreements as:

*all agreements in writing regarding working conditions and terms of employment concluded between an employer, a group of employers or one or more employers' organizations, on the one hand, and one or more representative workers' organizations, or, in the absence of such organizations, the representatives of the workers duly elected and authorized by them in accordance with national laws and regulations*³ .

For Odunaiya, Collective agreements refer to any agreement for the settlement of disputes relating to the terms of employment and physical conditions of work concluded between an employer or a group of employers and one or more trade unions or organizations representing workers⁴. Collective agreements aim at raising the living standard of workers, give confidence and self-respect to workers as individuals, and eliminate ignorance and illiteracy which hold down workers in the developing countries of the world and enable them enjoy human dignity⁵. Because they more successfully guarantee industrial peace and harmony and ensure stability in labour management than compulsory measures enforced by legislation, collective agreements are said to be more acceptable to governments in their relation with labour unions⁶.

Collective agreements have proved to be a veritable instrument of industrial harmony and understanding, ensuring, more than anything else, that employees' interests in labour relations are protected through the bargaining process. The current position of Nigerian law as regards their enforceability has, however, in more ways than one, hindered their benefits to the Nigerian employee. It is the purpose of this work therefore to examine the circumstances under which collective agreements are enforceable under extant Nigerian law. The writer shall look at the position or status of collective agreements at common law, examine the position under Nigerian case law and consider developments in other jurisdictions.

COLLECTIVE AGREEMENTS AT COMMON LAW

At common law, collective agreements are considered ordinarily unenforceable or non-justiceable unlike every other agreement. Even though they are the outcome of painstaking deliberations between employers and employees, collective agreements are not justiceable at common law. The main reason for the unenforceability of collective agreements under common law is that common law have negative intentions to enter into legal relations by the parties in such agreements. Common law considers a collective agreement as a gentleman's agreement which is binding only in honour. This flows from the principle that no contract is legally enforceable unless there is inherent in it, an intention to create legal relations. Stressing the essentiality of an intention to enter into legal relations for the enforceability of a contract, Lord Stowell states that enforceable contracts "must not be ...mere matters of pleasantry and badinage, never intended by the parties to have any serious effect whatsoever."⁷

The English case of *Ford Motor Co. Ltd. v. Amalgamated Union of Engineering and Foundary Workers*⁸ is very apposite as regards the position of Common Law on the unenforceability of collective agreements. Here, the plaintiff in 1955 negotiated an agreement with 19 trade unions which provided that: “at each stage of the procedure set out in this agreement, every attempt will be made to resolve issues raised and until such procedure has been carried through, there shall be no stoppage of work or other unconstitutional action”. In 1968 an application for injunction was brought to restrain two major industrial unions from calling an official strike contrary to the 1955 collective agreement. The main issue in the application was whether the parties intended the agreement to be a legally binding arrangement. It was held that there was no intention that the agreement would be legally binding on the parties. According to Geoffrey Lane J, there was at the time, “a climate of opinion adverse to enforceability”⁹ of collective agreements.

Another reason for the non-enforceability of collective agreements at common law is the absence of privity of contract between an individual employee and the employer or employers’ association since a collective agreement is always between employers or employers’ associations on the one hand and workers’ union on the other hand. An individual employee being no party to the agreement is prevented at common law from enforcing it. The classic exposition of the doctrine of privity of contract is contained in the judgment of Lord Haldane in *Dunlop Pneumatic Tyre Co. Ltd. v. Selfridge Ltd.*¹⁰ where the legal proposition was stated by the court in the following connection:

*My Lords, in the law of England, certain principles are fundamental. One is that only a person who is a party to a contract can sue on it. Our law knows nothing of a jus quaesitum tertia arising by way of contract. Such a right may be conferred by way of property, as for example, under a trust, but it cannot be conferred on a stranger to a contract as a right in personam to enforce the contract*¹¹.

Although at common law there are exceptions to the doctrine of privity of contract¹², the right of an individual employee to enforce a collective agreement entered between a trade union of which he is a member and his employer for his benefit is not one of them. In *New Nigeria Bank v. Egun*¹³, it was held that in the absence of privity of contract between the respondent employee and the appellant employer, the respondent could not claim under a collective agreement between his union and the appellant.

THE POSITION UNDER NIGERIAN LAW

Being a common law country, Nigerian courts have consistently followed the common law principle that, due to the absence of privity, collective agreements are not enforceable by the courts. Nigerian courts have, accordingly, in a retinue cases¹⁴ declined to enforce them as a matter of course when relied upon by an individual

employee. In the recent case of *Osoh & Ors v. Unity Bank Plc*¹⁵, the appellants' employments were terminated by the respondents on the ground that the appellants' services were no longer needed. The appellants contended that the termination of their employments was wrong because under a collective agreement between the appellants' trade union and the Nigerian Employers Association of Banks, Insurance and Allied Institutions (of which the respondent was a member), the respondent could only determine the appellants' employment on the ground of redundancy. The appellants also argued that under the same agreement, the respondent had wrongly computed their terminal benefits. The Supreme Court held that there was want of privity of contract between the appellants and the respondents and as such the appellants could not enforce the collective agreement against the respondents. The apex court proceeded further to distinguish a collective agreement from a contract in the following way:

*Even though the forgoing provisions of subsection 1 of section 47 of the Trade Disputes Act are plain and unambiguous and have talked of "any agreements" nonetheless these provisions have nowhere referred to the phrase "any agreements" as used in the Act as coterminous with "contracts" in the strict sense of the word. The reason is quite simple and obvious as collective agreements (even in this case construed from the backdrop of the instant agreements as contained in these exhibits) are known to cover many different kinds of agreements on topics and matters that are not really amenable to be described as contracts as they are not legally binding not having created legal relations. So that the phrase "collective agreement" is not in every case synonymous with the word "contract". Not having appreciated this distinction is the bane of the appellants' erroneous contention in this appeal by equating the instant agreements as per the said exhibits as legal contracts between the parties*¹⁶.

Both Nigerian case law and statute appear, however, to recognize certain limited circumstances under which collective agreements would be enforceable by the courts. These circumstances are where the collective agreement is incorporated into an individual employee's contract of employment; where under the Trade Disputes Act¹⁷ the Minister orders that a collective agreement or any part thereof be enforceable between employers and employees; and where a party to the collective agreement has already relied on and claimed a right under it. These circumstances are discussed *seriatim* hereunder.

Incorporation of the Collective Agreement into the Contract of Employment

To be enforceable in Nigeria, a collective agreement must be incorporated into the contract of employment of the individual employee who seeks to rely on it in claim of a right otherwise the claim cannot stand. This is based on the doctrine of privity of contract. The individual employee being no party to the agreement he is not

allowed to enforce same even though the agreement was made for his benefit. This position of the law is aptly illustrated by the case of *Union Bank of Nigeria v. Edet*¹⁸. The Respondent's employment was terminated with one month's notice. He contended that under a collective agreement between his union and the appellant he was supposed to be given three written warnings before his employment could be terminated and that the requirement of the agreement was not complied with by the appellant. The Court of Appeal in dismissing that contention held, per Uwaifo J. C. A, as follows:

*Collective agreements except where they have been adopted as forming part of the terms of employment, are not intended to give, or capable of giving individual employees a right to litigate over an alleged breach of their terms as may be conceived by them to have affected their interest nor are they meant to supplant or even supplement their contract of service*¹⁹.

It is submitted that the position of Nigerian law that the collective agreement is not enforceable by an individual employee unless it is incorporated into his individual contract of employment creates a rather impossible situation. This impossibility is to be found in a situation where a collective agreement postdates the employee's contract of employment. In such situation it is not possible for the collective agreement to form part and parcel of the employee's contract of employment. This situation arose in *Texaco (Nig.) Plc v. Kehinde*²⁰. In that case, the employee's contract of employment commenced in 1981. The employee sought to claim under a collective agreement between the employer and his union entered much later after his employment had commenced. It was held that the claim was not maintainable because the collective agreement was not incorporated into the employee's contract of employment.

Where a Party Had Already Relied on the Collective Agreement

It would appear that there is a progressive paradigm shift in judicial attitude on the issue of enforceability of collective agreements. In a couple of cases, the courts have held that where the employer has placed reliance on the collective agreement in arguing his case, he would not be heard to say that the agreement upon which he has already relied is unenforceable by the employee because it is not incorporated into his contract of employment.

In *Cooperative and Commerce Bank (Nig.) Limited v. Okonkwo*²¹, the employee was dismissed by the bank and the letter of dismissal alleged that the employee was dismissed for flouting a clause in a country-wide collective agreement. At trial, the employee sought to rely on the same collective agreement but the employer objected on the ground that the collective agreement was unenforceable. The Court of Appeal held, that having relied on the collective agreement to dismiss the employee, the employer was estopped from urging that the agreement was unenforceable. In fact, in *African Continental Bank v. Nwodika*²²,

Ubaezeonu J. C. A. made effort to move the law beyond the traditional question of whether the collective agreement was incorporated into the contract of employment. The learned justice held that the question whether or not a collective agreement would bind an employer in an individual employee's action should depend on a variety of factors, namely: if it was incorporated into the contract of employment, if one exists; the state of the pleading; the evidence before the court; and the conduct of the parties.²³ By this multiple approach the court is not to consider only the question of incorporation of the collective agreement into the employee's contract of employment in isolation in the determination of whether the collective agreement is enforceable. It is only a factor among others to be considered by the court.

Similarly, where the provisions of a collective agreement have been acted upon by management in the past in a manner that suggests that it is binding, such as taking benefit of it in the past against an employee, the agreement would be enforceable without the necessity of it being incorporated into an individual employee's contract of employment. In *Adegboyega v. Barclays Bank of Nigeria*²⁴, Akibo Savage, J held that where an employer had acted on a collective agreement in such a way as to give the impression that it is binding, the agreement would be taken to have been impliedly incorporated into an individual employee's contract of employment. This is because the court will not allow a party to approbate and reprobate at the same time²⁵.

UNDER THE TRADE DISPUTES ACT

Where the Minister Orders that a Collective Agreement or Any Part Thereof be Enforceable Between Employers and Workers

Under section 3(3) of the Trade Disputes Act²⁶ the Minister may make an order specifying that the provisions of a collective agreement or any part thereof be binding on the employers and workers to whom they relate. Before the Minister could make such order, however, the parties to the collective agreement must have deposited at least three copies of the agreement with the Minister²⁷. The collective agreement must also relate to the "settlement of a trade dispute"²⁸ before the Minister can make an order under section 3(3) of the Act. A collective agreement which or part of which does not relate to the settlement of a trade dispute will not come within the ambit of section 3 of the Act. A trade dispute refers to any dispute between employers and workers or between workers and workers, which is connected with the employment or non-employment, or the terms of employment or physical conditions of work of any person²⁷. It deserves pointing out that given the numerous industrial crises that have occurred in Nigeria over the years in both the public and private sectors, and giving thought to the doubtless inclination of government to the prevention of such crises, one could safely surmise that the Minister will not frequently order collective agreements or parts thereof to be binding between employers and workers.

OTHER JURISDICTIONS

England

An appropriate jurisdiction to consider first in the comparison between Nigeria and other jurisdictions is England where the doctrine of privity of contract originated before it became part of Nigerian law by reason of colonization. There, the doctrine has, through legislation, been reversed since 1999²⁹. Today in England, the doctrine that a third party cannot enforce a contract has ceased to be the law. A third party can now enforce a contract in two situations: firstly, if the third party is mentioned in the contract as the person authorized to enforce it and, secondly if the contract purports to confer a benefit on the third party. Despite that the doctrine has been buried in England from whence it came to Nigeria, it still, unfortunately, rules us in Nigeria from its grave in England.

Today, collective agreements are enforceable in the United Kingdom once the parties include in the agreement, a provision that it would be legally binding on the parties. Under the English Trade Union and Labour Relations (Consolidation) Act, 1992³⁰, a collective agreement is enforceable where it is in writing and provides expressly that the agreement is *legally* binding on the parties thereto. Thus, the anachronistic doctrine of privity of contract no longer weighs down collective agreements in England and such agreements become automatically enforceable between the parties if they are reduced into writing and are stipulated to be legally binding.

The United States of America

In the United States of America, collective agreements are enforceable by individual employees. There, the privity rule is circumvented through two theories. The first is referred to as the “custom and usage” theory which is to the effect that, if an employee sues an employer for breach of the terms of a collective agreement, he is only saying that the terms of his employment, by custom or usage, equates to those bargained for by his union. That is to say that by custom and usage the terms of his employment cannot be different from those contained in a collective agreement entered between his union and the employer. The second is the “agency” theory. This theory stipulates that a trade union acts as the agent of its principals who are members of the union so that whenever it bargains with the employer it is in fact bargaining for the members³¹. Accordingly, in the United States, all collective agreements are enforceable³².

The Netherlands

In The Netherlands, no distinction is drawn between an individual employee’s contract of employment and a collective agreement entered into between his union and the employer. In fact, any agreement between an individual employee and the employer is void if it derogates from an existing collective agreement. There, if an individual employee and an employer agree contrary to the provisions of a collective

agreement, the collective agreement prevails³⁴. This means that in The Netherlands a collective agreement to which an employee's union is a party will cover the employee whether the agreement predates or postdates his individual contract of employment. Under sections 12 and 13 of the Collective Agreements Act, 1937, collective agreements are legally binding in The Netherlands on the parties thereto.

Malaysia

A collective Agreement is absolutely legally binding and enforceable in Malaysia under the Industrial Relations Act, 1967. The position there is that the terms and conditions of every collective agreement shall be implied in the contract of employment between workmen and employers bound by the collective agreement unless varied by a subsequent agreement or a decision of the court³³. Once the collective agreement has been recognized by the court, it shall be deemed to be an award and shall be binding on the parties to the agreement. Where a party to the agreement is a trade union of employers, all members of the trade union to whom the agreement relates and their successors, assigns and transferees and all workmen who are employed or subsequently employed in any undertaking to which the agreement relates shall be bound by the agreement³⁴.

Denmark

In Denmark, collective agreements are regarded as civil agreements which are binding on the parties thereto. Remarkably, unlike in Nigeria, collective agreements under Danish law do not require the approval of any public authority before they could be binding³⁵. Where an employer has voluntarily complied with a collective agreement, such voluntary compliance may, in certain cases, give rise to his being deemed to have accepted the collective agreement³⁶. Under Danish law any breach of a collective agreement is subject to a penalty, which may be ordered by conciliation, the industrial arbitration courts and the Danish Labour Court³⁷.

Finland

Under Finish law, collective agreements are statutorily binding on all employers and employees who are parties thereto and such employers and employees "shall be required to observe the provisions of the collective agreement in all contracts of employment concluded between them"³⁸. An individual employee's contract of employment under the Finish law is therefore not permitted to derogate from the terms of any collective agreement to which his union is a party. In the event that any part of the contract of employment of an individual employee derogates from the terms of a collective agreement, such part of the contract of employment shall be invalid and superseded by the corresponding provisions of the collective agreement³⁹. The Finish Collective Agreements Act, 1946 could be said to be one of the most comprehensive and employee-friendly legislations on collective agreements worldwide. Under the Act, an employer bound by a collective agreement is precluded from concluding any contract of employment containing clauses which are at variance with the collective agreement with an employee who is not bound

by the collective agreement, provided that such employee performs work covered by the collective agreement⁴⁰. Thus, while under Nigerian law, collective agreements willingly entered into by employers and employees are generally unenforceable, the Finish law extends the benefit of a collective agreement to a worker who, though not bound by the agreement, carries on work of a nature subsumable under it. Under the Act, a party to a collective agreement in violation of the agreement would be liable to pay a compensatory fine to the other party for the violation. A violation by the employer attracts a compensatory fine of EUR 23,500 while a violation by an employee renders him liable to a compensatory fine of EUR 230⁴¹. The compensatory fine may be repeated until the circumstances which are contrary to the collective agreement cease to exist⁴².

Israel

In Israel, collective agreements are classified into special collective agreements and general collective agreements.⁴³ While special collective agreements relate to such agreements in a particular undertaking between employers and employees therein⁴⁴, general collective agreements relate to such agreements covering the whole state or a part thereof between employers and employees⁴⁵. Whether special or general, all collective agreements are vested with contractual force by statute⁴⁶. The provisions of a collective agreement relating to terms of employment and termination of employment, rights granted and obligations imposed on the employer and the employees shall be regarded as a contract of employment between the employer and each employee to whom the agreement applies⁴⁷. This means that stipulations in an individual employee's contract of employment are not permitted to be at variance with the provisions of a valid collective agreement applicable to the employee.

Where any provision of a contract of employment varies from a personal provision of a collective agreement applying to the parties to the contract, the provisions of the collective agreement are to prevail⁴⁸. Where, however, the variation is favourable to the employee, the provision of the contract of employment shall prevail unless anything contained in the collective agreement expressly precludes the variation⁴⁹. In order to protect the employee who, as earlier pointed out, bargains from a weaker position, section 20 of the Israeli Collective Agreements Act, 1957 provides that personal provisions of a collective agreement cannot be waived by agreement by the parties. Invariably, while collective agreements are permitted to add to the rights of an employee as laid down by law, they are prohibited from derogating therefrom⁵⁰. Aside from the Collective Agreements Law vesting collective agreements with contractual force in Israel, the Contracts (General Parts) Law, 1973 also did away with the anachronism of the privity doctrine. Under that Law, "an obligation assumed by a person in a contract in favour of a person who is not a party to the contract ...confers to the beneficiary the right to demand fulfillment of the obligation, if the intention to confer that right on him is apparent from the contract"⁵¹.

THE NEED FOR A JURISPRUDENTIAL SHIFT

There is no doubt that one of the shortcomings of the Nigerian labour jurisprudence is the position that an employee, a member of a labour union with which his employer has entered into a collective agreement cannot claim under same. The present position of the law, no doubt, impacts negatively on the right of the worker to take advantage of provisions contained in an agreement by a workers' union of which he is a member.

Aside from the hardship employees could be put to, the fact of unenforceability has over the years conduced to industrial disharmony and poor employer-employee relation in Nigeria. More often than not, industrial actions in Nigeria, especially in the public sector are attributable to failure on the part of employers to abide by the terms of collective agreements voluntarily reached with workers' unions. The numerous cases involving the Academic Staff Union of Universities (ASUU) and the Academic Staff Union of Polytechnics (ASUP) on the one hand and the Federal Government of Nigeria on the other hand which usually disrupted tertiary education are instructive.

The right of a third party to whose benefit a right insures in a contract to which he is not a party to claim under the contract should receive parliamentary imprimatur in Nigeria. This is the trend in the more advanced jurisdictions. In England⁵², New Zealand⁵³, Queensland⁵⁴, Western Australia⁵⁵, and Israel⁵⁶, legislations have been enacted which have effectively nullified the common law doctrine of privity of contract so that in those jurisdictions third parties could claim under such contracts which, though they are no parties to, some benefit insured in their favour.

Pending legislative intervention, the time has come for the courts to revisit the common law position that there is no intention to enter into legal relations in a collective agreement as espoused by Lane, J., in *Ford Motor Co. Ltd. v. Amalgamated Union of Engineering and Foundary Workers*⁵⁷. If in 1969 when that case was decided collective agreements were not intended to create legal relations, today they obviously are. Collective agreements today, as pointed out by Chianu⁵⁸, are preceded by heated dickering and bickering to be regarded as "mere matters of pleasantry and badinage, never intended by the parties to have any serious effect whatsoever"⁵⁹. The issue of intention to create legal relations has occasioned so much injustice and hardship on employees particularly that the Supreme Court needs to seize the earliest opportunity that presents itself to revolutionalise the law in this regard. It is an aspect of the Nigerian law that calls for urgent, radical, judicial activism. It is rather ridiculous to say that collective agreements are never intended to create legal relations between employers and employees when regard is had to the time and energy put into today's collective bargaining. With the growing importance of collective agreements globally, the need has arisen for a comprehensive collective agreement legislation that essentially caters for the needs of enforcement. This will, in no little measure, reduce industrial frictions which

usually arise in labour relations in Nigeria consequent upon the violation of collective agreements voluntarily reached between employers and employees. Even the International Labour Organization (ILO) of which Nigeria is a member as early as 1951 recommended that nations should take measures to ensure that collective agreements are binding not only on the signatories thereof, but also on those on whose behalf they were concluded⁶⁰.

Collective agreements usually contain provisions that are aspirational in nature such as those relating to increased wages for workers as income rises in future, and provisions that are factual and capable of immediate implementation such as those laying down the procedures to be complied with in determining a worker's employment. While the former are futuristic, the later are factual, positive, direct and immediate.

CONCLUSION

Collective agreements enable employees to pursue and realize as a collectivity that which they cannot realize as individuals. It provides a means for employers and employees to reach consensus through bargaining process and ensures, among other things, industrial harmony. But the benefits of collective agreements would appear to be whittled down by the common law doctrines of privity of contract and intention to create legal relations. Consequent upon want of privity, individual employees lack *locus standi* to enforce collective agreements validly reached on their behalf by their unions, and for a supposed absence of intention to create legal relations unions are unable to enforce collective agreements reached with employers or employers' associations.

Realizing the difficulties and hardship the doctrines have occasioned on individual employees and unions alike, especially where a worker's employment had been determined in a manner at variance with the express provisions of a collective agreement, steps have been taken in some jurisdictions to do away with those doctrines having become legal burdens and anachronisms. With the departure in England from a strict application of the doctrine of privity, especially as it relates to collective agreements, it is a lot of wonder why the doctrine has found religious observance and persistence in Nigeria. It is hoped that, in the interest of industrial harmony and stability, Nigeria will not tarry to borrow a leaf from other jurisdictions and bring the Nigerian law on enforceability of collective agreements in conformity with present global realities. It is the view of this work that Nigerian courts should be able, in deserving cases, to improvise and apply the severance rule⁶¹ in the general law of contract so that provisions in a collective agreement which admit of immediate enforcement can be enforced while leaving out those that are merely aspirational and futuristic.

NOTES

- ¹O Kahn-Freund, "Collective Agreements," *Modern Law Review*, (1940) p. 225; B. Simpson, "British Labour Relations in the 1980s: Learning to Live with the Law" 49 *Modern Law Review*, (1986) pp.798–799.
- ² See art. 2 of the Collective Bargaining Convention, 1981 (No. 154); V A Odunaiya, *Law and Practice of Industrial Relations in Nigeria*, Lagos: Passfield Publishers, 2006, p. 325. See generally also Bernard Gernigon, Alberto Oderoy and Horacio Guido, COLLECTIVE BARGAINING: ILO standards and the principles of the supervisory bodies, Geneva: International Labour Office, 2000.
- ³ ILO Recommendation 91, Para. 2
- ⁴ Ibid
- ⁵ Ibid
- ⁶ See Report of the Commission on the Review of Wages, Salaries and Conditions of Service of the Junior Employees of the Government of the Federation and Private Establishments, 1963 – 1964, Paragraph 8; T MYusuf, "Legal Aspects of Labour Relations in Nigeria (2)", 1965 *International Comparative Law Quarterly*, Supplementary Publication, p. 94. See also Emeka Chianu, *Employment Law*. Akure: Bemico Publishers, 2004, p. 73.
- ⁷ *Dalrymple v. Dalrymple* (1811) 2 Hag. Con. 5 at 105.
- ⁸ (1969) 1 WLR 339
- ⁹ Ibid at p. 335
- ¹⁰ (1915) A. C. 847
- ¹¹ Ibid at 853
- ¹² The exceptions to the doctrine include agency, assignment of contractual obligations, novation, contracts running with the land, contracts of insurance, charter parties and trust. See G. H. Treitel, *Law of Contract* (9th edn. London, Sweet & Maxwell, 1995) at 576-587; Itse Sagay, *Nigerian Law of Contract*, Ibadan: Spectrum Books, 1993, p. 489
- ¹³ (2011) 7 NWLR (Pt. 711) 1; *Union Bank of Nigeria Limited v. Edet* (1993) 4 NWLR 288
- ¹⁴ See *Chukwurah v. Shell Petroleum Nigeria Limited* (1993) 4 NWLR (pt. 289) 512; *Abalogu v. Shell Petroleum Nigeria Limited* (1999) 8 NWLR (pt. 613) 12; *New Nigeria Bank Plc v. Osoh* (2001) 133 NWLR (pt. 729) 232.
- ¹⁵ (2013) 9 NWLR (Pt. 1358) 1
- ¹⁶ Ibid at p. 29
- ¹⁷ Cap T8, Revised Edition, Laws of the Federation, 2004
- ¹⁸ (1993) 4 NWLR (pt. 287) 288
- ¹⁹ Ibid at p. 291
- ²⁰ (2001) 6 NWLR (pt. 708) 224
- ²¹ (2001) 15 NWLR (Pt. 735) 114. Cf. *African Continental Bank Plc v. Nbisike* (1995) 15 NWLR (Pt. 416) 725 where both parties relied on the same collective agreement and the Court of Appeal, per Edozie J.C.A. held that the contract was not enforceable. Also *African Nigeria Plc v. Osisanya* (2001) 1 NWLR (pt. 642) 598 where both the employer and the employee relied on the collective agreement but the court held that the dismissal procedure contained in the collective agreement was not binding on the employee as the collective agreement was not justiceable.
- ²² (1996) 4 NWLR (Pt. 443) 470
- ²³ Ibid, at pp. 473-474
- ²⁴ (1977) 3 CCHCJ 497
- ²⁵ *Halsall v. Brizell* (1957) Ch. 197
- ²⁶ Cap T8, Laws of the Federation (Revised Edition) 2004
- ²⁷ Ibid, section 3 (1)

- ²⁸ Ibid
- ²⁹ Section 1 Contracts (Right of Third Parties) Act 1999
- ³⁰ See section 179(1) and (2) of the Act. In England, it is not enough to stipulate the collective agreement shall be binding since this could mean that it shall be binding in honour. It must stipulate that the agreement shall be *legally* binding. See *N. C. B. v. N. U. M* (1984) I. C. R. 192, 195.
- ³¹ See C. O. Gregory, "The Enforcement of Collective Agreements in the United States" *Current Legal Problems*, (1968) p. 160; C. W., Summers, "Collective Agreements and the Law of Contracts" 78 *Yale Law Journal*, (1969) p. 525
- ³² See National Report Presented by Judge Arnold Zack at the XIVth Meeting of European Labour Court Judges, Paris, 4 September, 2006.
- ³³ Section 17 (2) Industrial Relations Act, 1967
- ³⁴ Ibid section 17 (1)
- ³⁵ Jorn Anderson, "COLLECTIVE AGREEMENTS" paper presented at the xivth meeting of European Labour Court Judges, Paris, September 4, 2006, p. 6. *Cf*: the provisions of section 3(3) of the Nigerian Trade Disputes Act under which a collective agreement is enforceable only if it is declared by the Minister as binding.
- ³⁶ Ibid.
- ³⁷ Ibid, p. 6
- ³⁸ Section 4 (3) of the Collective Agreements Act, 1946 (as amended). See further the Finnish Report on Collective Cgreements presented by Judge Jorma Saloheimo at the XIVTH MEETING OF EUROPEAN LABOUR COURT JUDGES, Paris, September 4, 2006.
- ³⁹ See section 6 of the Finish Collective Agreements Act, 1946.
- ⁴⁰ Ibid.
- ⁴¹ Ibid section 7
- ⁴² Ibid
- ⁴³ Section 2of the Israeli Collective Agreements Law, 1957
- ⁴⁴ Ibid section 2(1)
- ⁴⁵ Ibid section 2(3)
- ⁴⁶ Ibid section 19
- ⁴⁷ Ibid
- ⁴⁸ Ibid section 22.
- ⁴⁹ Ibid. This provision is in conformity with Recommendation 3(3) of the ILO Recommendations Concerning Collective Agreements, 1951.
- ⁵⁰ Ibid section 21
- ⁵¹ Ibid section 34
- ⁵² Section 1 Contracts (Right of Third Parties) Act, 1999
- ⁵³ Contracts (Privity) Act, 1982
- ⁵⁴ Property Law Act, 1974
- ⁵⁵ Property Law Act, 1969
- ⁵⁶ Contracts (General Parts) Law, 1973
- ⁵⁷ (1969) 1 WLR 339
- ⁵⁸ Chianu (n 6) at p. 75
- ⁵⁹ *Dalrymble v. Dalrymble*, *supra*
- ⁶⁰ See Recommendation 3(1) of the ILO Recommendations Concerning Collective Agreements, 1951 (Recommendation 91)
- ⁶¹ Under the severance rule, where a contract has parts which are void and others which are not, the court could excise the void part and enforce the other parts: *Hopkins v Prescott* (1847) 4 C. B. 578; *Goodinson v. Goodinson* (1954) 2 Q. B. 118; *Adesanya v. Otuewu* (1993) 1 NWLR (Pt. 270) 414.