THE STATUS OF COLLECTIVE AGREEMENT IN THE NIGERIAN LABOUR AND INDUSTRIAL LAW: AN APPRAISAL*

Abstract

Collective Agreement in Nigeria, save for some new trending legal reprieve, have been that of unenforceability anchored on the old common law principles. These were principles developed in old English cases which subjected employees to helpless situations. These employees do not assert the same strength with their employers with regards to individually bargaining on the terms and condition of their employment. Sadly, even when agreements are reached from voluntary bargains between the employees or employees' organization and the employers or employers' organization, it is adjudged to be unenforceable and at best a gentleman's agreement premised on absence of privity and lack of intention to create legal relation. This paper examined Collective Agreement, and its enforceability under the Nigerian Labour and Industrial Relations Law. In doing this, the paper also critically examined certain recognized, albeit limited circumstances under which collective agreements would be enforceable by the courts. The new innovations arising from the Third Alteration of the Constitution of the Federal Republic of Nigeria and the powers conferred on the National Industrial Court was also discussed.

Keywords: Collective Agreement, Labour Law, Industrial Law, Appraisal, Nigeria

1. Introduction

The relationship between the employer and his employee constituted by the individual contract of employment is appreciated as the basic or primary aspect of industrial relations.[1] Prior to the advent of Trade Unionization in the Labour sector, bargaining on the terms and conditions of employment was reached solely between the employer and employee. Negotiation of the terms of employment were presumed to have been voluntarily negotiated on an equal level basis, between the parties to it, based on the doctrine of freedom of contract. Sadly, at the negotiating table, the employer and the employee are on different pedestal. They have different bargaining powers and so bargain from different backgrounds, the employer having an upper hand, thereby making the doctrine of freedom of contract more or less illusory.[2] The existence of these unequal bargaining power and divergent interests in the workplace, most times results in conflicts. This led to the development of other aspects of industrial and labour relations like collective bargains[3] and collective agreement. Section 25 of the Trade Unions Act[4] provided legal backing for unions to engage the employer or employer organization on behalf of their members. Collective agreement is reached following rigorous deliberations and negotiations involving proposals and counter offers thus, collective agreement is the by-product of collective bargaining. The challenge however, lies in the enforceability of collective agreement in Nigeria.

3. Collective Agreement

Collective agreement is a by-product of 'a voluntary negotiation between employers or employers' organizations and workers' organizations with a view to regulating the terms and conditions of employment'.[5] It represents the agreements (contracts) reached between an employer and a labour union

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[1] S. Erugo, *Introduction to Nigerian Labour Law* (2nd edn. Princeton Publishing Limited, 2019) p. 311.

[2] V. Iwunze, 'The General Unenforceability of Collective Agreements under Nigerian Labour Jurisprudence: The Paradox of Agreement without Agreement' [2013] (4)(4) *International Journal of Advanced Legal Studies and Governance*, 1.

[3] A.A. Adeogun, 'The Legal Framework of Industrial Relations in Nigeria*'* [1969] (3) *NLJ* 33.

[4] Trade Union Act, s25 provides that an employer must recognize a trade union upon registration, where persons in the employment of the employer are members of that trade union.

[5] ILO, *Right to Organise Collective Bargaining Convention,* (Convention 98, 1949) Article 4.

during the process of bargaining, which has been reduced into writing. Collective agreement also sets rules on how workers should be treated, to ensure that management decisions concerning workers meet the demands of justice and fairness.[6] It is aimed at protecting the socially weaker party against the socially stronger party to a contract.[7] However, it could be argued that power can shift and the weaker party could become the stronger party. In most cases, the employees are the weaker party. Situations however exist to the contrary like in cases where a union is negotiating with one employer, who is under the fear of losing production and thereby losing profit. Collective agreement is of two forms: the procedural and the substantive agreement. The procedural agreement deals with the procedure for reaching the substantive agreement. It involves the basic rules and procedure that enable smooth negotiation of the substantive issue that constitute substantive agreement. While the substantive agreements on the other hand are concerned with the substantive subject matter for bargaining and pertains to terms and conditions of employment. Parties to a collective agreement are guided by their respective interests, which are always conflicting because while the employer primarily pushes for efficient, productive workforce and increased profits, employees and their representatives usually push for better terms and conditions of employment.[8]It will be unrealistic to expect contrary from both parties. Collective agreement in some jurisdictions, is regulated by common law, in some by statutory law while in others, it is regulated by the practice of statutory and common laws.

Collective Agreement under Common Law

Collective agreements are outcome of painstaking deliberations between employers of labour and their employees or employees' representative, yet under the common law they are considered non-justiciable. They are considered a gentleman's agreement which is binding only on honour.[9] Arguments usually canvassed to back this submission, is that; there is no inherent intention to create legal relations and no contract is legally enforceable unless there exists, 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'.[10] The English case of *Ford Motor Co. Ltd. v Amalgamated Union of Engineering and Foundary Workers*[11] is very apt as regards the position of Common Law on the unenforceability of collective agreements. The plaintiff in the above matter, 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'[12] of collective agreements. Looking at the above decision side by side with the words of Lord Stowell that enforceable contracts 'must not be '...mere matters of pleasantry and badinage, never intended by the parties to have any serious effect whatsoever', the question is whether collective agreement is arrived at based on mere matters of pleasantry and playful repartee, to make it unenforceable? Could it be said that the outcome of the painstaking deliberations between employers of labour and their employees or employees' representative are mere humuorous acts or remark. That obviously cannot be the case.

The absence of privity of contract is another reason canvassed. It is argued that the privity existing is, between employers or employers' associations on the one hand and workers' union on the other hand, and not between an individual employee. Therefore, the individual employee is prevented at common

[6] P.C. Weiler, *Governing the Workplace: The future of labour and Employment Law* (Cambridge: Harvard 1990), p. 181.
[7] O. Kahn-Freund, 'Collective Agreements' [1940] *Modern Law Review*,225.
[8] M. J. D. Akpan, 'Nature of Collective Agreements in Nigeria: A Panoramic Analysis of Inherent Implementation Challenges' [2017] (5)(6), *Global Journal of Politics and Law Research*, 19-28.
[9] *Ford v A.U.E.F.* (1969) 1 WLR 339.
[10] *Dalrymble v Dalrymble* (1811) 2 Hag. Con. 5 at 105. (emphasis ours)
[11] (1969) 1 WLR 339; See also *Nigerian Arab Bank v Shuiabu* (1991) 4 NWLR (Pt. 186) 450.
[12] Ibid at p. 355

law from enforcing an agreement entered for, on his benefit. The judgment of Lord Haldane in *Dunlop Pneumatic Tyre Co. Ltd. v Selfridge Ltd*.,[13] clearly represents the principles. According to the court, 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, and England law knows nothing of a *jus quaesitium tertia*[14] 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.[15] Common law recognizes some exceptions to the doctrine of privity of contract,[16] however 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. This is most surprising. The Question is whether the individual members of the union are actually strangers to an agreement they donated powers to representatives to reach on their behalf. Can the representatives' bargain and enter into agreements without the power and authority donated to them by the members who are now been denied the proceeds of the agreement on the ground of privity. There is actually only one conclusion that can be reached from these posits and that is no. We are not oblivious of the fact that the issue of what if the agreement reached was not in line with what they were told to agree on could be raised; however, the agency rule holds them, except they can prove otherwise. Notably, the privity rule is no longer in operation in many jurisdictions around the world. Some jurisdictions have enacted statutes to even allow a stranger to an agreement the right to enforce a term intended to benefit him.[17]

Collective Agreement under Nigerian Labour and Industrial Law

Under the Nigerian Labour and Industrial Law, the following laws defines collective agreement; the Labour Act,[18] the Trade Dispute Act[19] and the National Industrial Court Act.[20] Collective Agreement under the Labour Act is defined as an agreement in writing regarding working conditions and terms of employment concluded between: an organization of workers or an organization representing workers (or an association of such organizations) of the one part, and an organization of employers or an organization representing employers (or an association of such organizations) of the other part. The provision talks about working conditions and terms of employment of workers, and is similar to the definition of collective agreement under the National Industrial Court Act (NICA),[21] unlike the definition under the Trade Dispute Act,[22] which relates it to settlement of disputes on terms of employment and conditions of work. The central thread in the three legislations is on the terms and conditions of work. Nigeria is a common law country and its courts have consistently followed the common law principle that, collective agreements are binding only in honour and also not enforceable due to the absence of privity of contract. Nigerian courts have, in several cases declined to enforce them as a matter of course, when relied upon by an individual employee. In the case of *Osoh & Ors v Unity Bank Plc*,[23] 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

[13] 10 (1915) A. C. 847.
[14] It means rights on account of third parties.
[15] Ibid at 853
[16] 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 Sweet & Maxwell, 1995) at 576-587; Itse Sagay, *Nigerian Law of Contract*, (Spectrum Books, 1993) p. 489.
[17] See the English Contract (Rights of Third Parties) Act 1999, for a discussion of the Act; P Kincaid, 'Privity Reform in England' [1999] (116) Law Quarterly Review, 43 cited in E Chianu, *Employment law* (Bemicov Publishers, 2006) p. 78
[18] Section 91
[19] Section 48
[20] Section 54
[21] Ibid
[22] Section 48 of the Trade Disputes Act, defined Collective Agreement as, 'An agreement in writing for the settlement of disputes and relating to terms of employment and physical conditions of work concluded between a) An employer, a group of employers or organizations representing workers, or the duly appointed representative of any body of workers, on the other hand; and b) On or more trade unions or organizations representing workers or the duly appointed representative of any body of workers on the other hand'
[23] (2013) 9 NWLR (pt.1358) 1

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 further distinguished a collective agreement from a contract thus;

> 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.[24]

The distinction by the Supreme Court in *Osoh & Ors v Unity Bank Plc*,[25]seems to be neither here nor there. It is not enough to say that the provision of subsection 1 of section 47 of the Trade Disputes Act which talked about 'any agreements' is not coterminous with 'contracts' in the strict sense of the word merely because according to them, they are known to cover many different kinds of agreements on topics and matters that are not really amenable to be described as contracts. The issue is, are there ones that could be described as contract and why can't they be enforced? In *Gbadegesim v Wema Bank PLC*,[26] the National Industrial Court in interpreting who can sue for breach of collective agreement held that:

> A party can take the benefit of a collective agreement only when it is a party to it; but as regards individual employees who are members of a union, they can take the benefit only through their unions of it, if the union is not minded to sue on their behalf, then they must show evidence of membership of the union in question.

The above cases show the position of the Nigerian court with regards to justiciability of collective agreements and on who can derive benefit from it.

4. Enforceability of Collective Agreement in Nigeria

A collective agreement as already noted under the Nigeria labour and industrial law, is ordinarily not regarded as a binding document, but considered as gentlemen's agreement only binding in honour.[27] The argument backing the assertion, is that collective agreements do not have the essential ingredient of 'intention to enter into a legal relationship', and therefore not enforceable. An argument which the writers consider unsubstantiated, in view of the efforts put into the bargaining which metamorphosed into the collective agreement. It is different, if the agreement clearly states that, it is not justiciable. Additionally, where an agreement is made in a commercial context, the law raises a presumption that the parties do intend to create legal relations by the agreement. Intention is implied by the fact that it is not expressly denied. If expressly denied (as in a so-called gentlemen's agreement) it could then be argued that the contract may not be enforceable. In *Rose & Frank Co. v J. R. Crompton & Bros. Ltd.*,[28] Scrutton L.J, held thus:

> Now it is quite possible for parties to come to an agreement by accepting a proposal with the result that the agreement concluded does not give rise to legal relations. The reason of this is that the parties do not intend that their agreement shall give rise to legal relations. This intention may be implied from the subject matter of the

[24] Ibid at p. 29
[25] (2013) 9 NWLR (pt.1358) 1
[26] (2012) 28 N.L.L.R (pt. 80) 304
[27] In *African Continental Bank PLC v Benedict Nbisike* (1995) 8 NWLR (pt. 416) 725.
[28] [1923] 2 K.B. 261 at 288, Cited in *Esso Petroleum v Commissioners of Customs & Excise* [1976] 1 WLR 1.

> agreement, but it may also be expressed by the parties. In social and family relations such an intention is readily implied, while in business matters the opposite result would ordinarily follow.[29]

Collective agreements reached by employers' union and employees' union or employee, are agreements reached with regard to business matters, as such the implication is that, even if not expressly stated, the intention to create legal relation is implied into it. This ordinarily should be the position of our labour law on collective agreement. Most unfortunately this is not the case. Intention to create legal relation simply means the intention to be bound and nothing more, there is therefore no known reason why collective agreements should not be binding, except where specifically stated, of which is most unlikely. Some jurisdictions have provided that for it to be legally binding it has to be stated in the agreement that it is legally enforceable.[30] The question is why is it not the other way round? Why should it not be clearly stated that it is not intended to create legal relation, in view of the implied position on enforceability of commercial transaction? The issue of unenforceability of collective agreements should have been in obvious cases of collective agreements reached contrary to public policy or an existing law amongst others. However, the Nigerian case law and statutes appear, to recognize certain limited circumstances under which collective agreements would be enforceable by the courts. These circumstances which are discussed hereunder are:

Incorporation of the Collective Agreement into the Contract of Employment

A collective agreement based on the doctrine of privity of contract does not translate to an employment/a contract, neither does it create one. An individual employee who intends to rely on it in claim of a right, or to derive a benefit must show that it has been incorporated into his contract of employment. However, once the latter is incorporated into a contract of employment, by the act of the parties, then it becomes binding on them and therefore enforceable. This principle came into play, in *Anaja v UBA Plc*,[31] where the Court of Appeal held thus:

> a Collective Agreement on its own does not give an individual employee the right of action in respect of any breach of its terms unless it is accepted to form part of the terms of employment. This is because, the agreement is not between the employer and his employee and as such, a non-party cannot (legally) enforce a contract even if it was made for his benefit. Thus, a Collective Agreement is at best a gentleman's agreement, an extra-legal document totally devoid of sanctions.

This position of the law was also aptly illustrated by the case of *Union Bank of Nigeria v Edet*,[32] where the Court of Appeal *per* Uwaifo J. C. A, held that 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.[33] This position of the Nigerian law on incorporation into an individual contract of employment creates a rather impossible situation.[34] It fails to take into consideration situations where a collective agreement postdates the employee's contract of employment. In such situation, it is impossible for the collective agreement to form part and parcel of the employee's contract of employment, except there is a review to incorporate same. This arose in *Texaco (Nig.) PLC v Kehinde*,[35] where the employee's contract of employment commenced in 1981. However, 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. Another issue is the determination of what stage incorporation takes effect for the purposes of knowing the terms of employment at every point.

[29] Emphasis ours.
[30] English Trade Union and Labour Relations (Consolidation) Act 1992, sections 179(1) and (2)
[31] (2011) 15 NWLR (Part 1270) 377.
[32] 18 (1993) 4 NWLR (pt. 287) 288.
[33] Ibid at p. 291.
[34] V. Iwunze *(n. 2)* 5.
[35] (2001) 6 NWLR (pt. 708) 224.

Incorporating a collective agreement into a contract of employment, must be done in clear terms, failure of which, it might be held to be unclear whether there is an intention to incorporate same into the employment contract. However, exceptions exist where it can operate as an implied term even when the contract of employment is silent on it. This is discussed in the heading below.

By Custom, Trade Practice and Usage in an Industry: Estoppel to the rescue

Collective agreement which has overtime become the practice of an industry may be implied into an employee contract of employment by virtue of custom and usage.[36] The same applies to terms of collective agreement acted upon by both parties to it. This would appear to be 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 on is unenforceable by the employee because it is not incorporated into his contract of employment. In *Cooperative and Commerce Bank (Nig.) Limited v Okonkwo*,[37] 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 arguing that the agreement was unenforceable. In *African Continental Bank v Nwodika,*[38] Ubaezeonu JCA 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.[39] 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.

By the Provision of Section 3 of the Trade Disputes Act:[40]

Section 3(1) of the Trade Disputes Act provides that where there is a collective agreement for the settlement of a trade dispute, at least three copies of the agreement are to be deposited by the parties thereto with the Minister, who has a discretion to make an order regarding enforceability of the agreement or a portion of it. The effect of this provision is that for an agreement reached for the settlement of a trade dispute to become binding, it will need the consent/approval of the Minister, who may decide otherwise or on the part he deems fit. 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.[41] The above raises some concerns. What if it had to do with a collective agreement reached with a government establishment, the question shall be, the minister been a government representative, in exercising his discretion, will justice be served? Will there be an unbiased decision? It obviously represents the phrase, 'a judge in his case'. It deserves pointing out that, it is a view shared by some scholars that given the numerous industrial crises that have occurred in Nigeria over the years in both

[36] *Daniels v Shell BP Petroleum* (1962) 1 All NLR 19, where it was held that a custom or trade practice may be presumed to have been incorporated into the terms of employment where no express provision is agreed.

[37] 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 see *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.

[38] (1996) 4 NWLR (Pt. 443) 470

[39] Ibid, at pp. 473-474

[40] Cap T8, Laws of the Federation, 2004.

[41] Ibid s.3(3).

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.[42] This requirement whittles down the efficacy of collective bargaining as a tool for resolving matters arising from trade disputes in Nigeria. From the constitutional point of view, does not it offend the right to liberty and association, if citizens given the right to association, are precluded from enforcing agreements they entered into. Will it be sustainable for a law to take away that power and hand it over to someone else? That obviously is not the intention of the constitution, in bestowing the constitutional right to associate.

National Industrial Court Act[43] Section 7(1) (c)(i)[44] and Constitution of the Federal Republic of Nigeria (3rd Alteration) Act, 2010.

The Third Alteration to the Constitution has brought modification to the applicability of a collective agreement to the benefit of an individual employee, and also to the extent to which an employee can rely on such agreement.[45] Under the provision of section 254(1)(j)(i) of the constitution, the National Industrial Court has been bestowed with the jurisdiction to interpret any collective agreement. The provision of Section 7(1)(c)(i) of the National Industrial Court Act which provides that 'The court shall have and exercise exclusive jurisdiction in civil causes and matters – relating to the determination or any question as to the interpretation of any collective agreement', also gave jurisdiction to the Industrial court to interpret collective agreements. The Court is required to carry out this jurisdiction, in line with the provision of section 7(6) of NICA,[46] by considering good or international best practice in labour. Looking at the above provision, the issue that arises is whether we can fully rejoice at the provisions above, provisions which seem to have constrained the court to only the power of interpretation? Also talking about international best practice in labour, are there exact metrics or series of metric to know and determine the best? What constitutes it, seems too broad an issue, considering that labour relations of different countries vary. However, having said this, we not fail to acknowledge that it is a step in the right direction, which needs additional inputs in other to achieve efficiency. Recently, the courts have begun to jettison the strict application of the privity rule in interpretation of collective agreement. They now hold that an employee can seek a benefit under a collective agreement. The employee must however, first provide evidence and convincing prove of membership of the trade union.[47] This rule which now appears settled is analogous to the privity rule in the general law of contract.

One important thing to note is that mere evidence of deductions of check-off dues is not enough proof,[48] neither is the fact that membership was pleaded and not disputed by the other party enough evidence.[49] The stand taken by the court is that proof required has to be by direct documentary evidence. This stand of the court, in our opinion, puts unnecessary extra burden on the employer. Proof of direct deductions of check off dues by employer and remittance to a trade union, should ordinarily be sufficient evidence of membership of that trade union, without more. With this shift, can the provision of 23(2)(d) of the Trade Unions Act, which prohibits the court from entertaining any legal proceeding instituted for the purpose of directly enforcing 'any agreement such that every party thereto is one or other of the following, that is to say a trade union, a federation of trade unions or the central labour organisation', in the face of the provision of section 254C of the Constitution, on the jurisdiction of the National Industrial Court over collective agreements be said to be redundant. It might seem so, but not completely. By Section 16 (1) of the Trade Disputes Act, the National Industrial court has the power to

[42] V. Iwunze, *Ibid.* (n 2) 6.
[43] 2006.
[44] It provides that a court shall have and exercise jurisdiction relating to the determination of any question as to interpretation of any collective agreement
[45] In *Onuorah v Access Bank Plc* (2015) NLLR (Pt. 186) 90-91 paras. H-B; *Akindoyin v. Union Bank of Nigeria Plc* (unrep.), Suit No. NICN/LA/308/2013, judgement delivered on the 15 April 2015.
[46] 2006, which provides that; 'the court shall in exercising its jurisdiction or any of the powers conferred upon it by this Act or any other enactment or law, have due regard to good or international best practice in labour or industrial relations and what amounts to good or international best practice in labour or industrial relations shall be a question of fact
[47] *Onuorah v Access Bank PLC* (Supra) (n 54), where it was held that 'Actual proof of membership is the key to recovery under a collective agreement.'
[48] *Habu v NUT Taraba State* (2005) 4 FWLR (Pt. 283) 646,
[49] Ibid 90 B-E

give a final and conclusive interpretation to any term or provision of a collective agreement. The National Industrial Court has a lot of contribution to make with the enormous power given to them, in changing the status of collective agreement in Nigeria. Collective agreements should also be enforced based on principles like:

The Doctrine of Estoppel

The principle of estoppel is a common law principle, which has been enshrined in Section 169 of the Evidence Act, and it provides that a court may preclude or estop a person from going back on his word or alleging facts that are contrary to his previous action. The principle simply stops a person(s) who has made a representation, from reneging from it, most especially when it can be shown that the people the representation was made to, acted upon it, or took a decision based on that.[50] An employer or employer's union, just as an employee's union, who has during bargaining made a representation, which was acted upon by the other party, by this principle can be estopped from reneging from it, most especially, where it has altered the position of the other party.

Agency Principle

Collective agreements can also be enforced by an individual employee by virtue of the agency principle, which involves an arrangement in which an entity (Principal) appoints another (agent) to act on its behalf, without any conflict of interest. The agent, by the agency rule is acting on behalf of the principal, and must carry out the assigned task with the principal's best interest as priority. Normally, by the agency principle, the principal is bound by the action of the agent, just as he derives benefit from same. The trade union is made up of individual employees who have come together to protect their interest and these individual employees elect the leaders of this trade unions who normally represent them during collective bargaining. The decisions taken by these representatives on the bargaining table, are normally based on what the trade union as a body comprised of these employees want. The representatives are mere mouth piece of the trade union as a body. By implication, they stand as agents to the individual employees who make up this trade union. Therefore, the members of the union should be able to derive benefit from any agreement reached by their representatives. This principle is applicable in the United States. According to them, a trade union acts as agent of the principals who are members of the Union, so that whenever it bargains with the employer, it is in fact bargaining for the members,[51] and therefore can be enforced by individual members.

6. Conclusion and Recommendations

With the developmental and statutory changes in the status of collective agreement in other jurisdictions, the failure of Nigeria to take adequate steps, to make collective agreement which is reached by virtue of a painstaking deliberation and negotiation between the concerned bodies, enforceable is most unfortunate. The position of our labour statutes is more like a codification of the common law principle. It is a sign of an attempt to stifle the progress of the Nigerian Labour and Industrial law in that area. Why Nigeria should continue to dwell in the shadow of this common law principles with regard to collective agreement, even when it has been buried, in the jurisdiction where it came from,[52] is a question that begs for an answer. The steps been taken of recent by the National Industrial Court in line with section 254 C of the Constitution and the provision of section 7(1)(c)(i) and section 7(6) of NICA, for an employee to take benefit of an agreement reached on his/her behalf, is a commendable and a much expected one, however there is the need for a lot more to be done. There is indeed an urgent need for a jurisprudential shift to make a clear provision for the justiciability of collective agreement and make the enforcement of collective agreement more flexible.

Enacting of a Labour Relations and Employment Rights Act: There is need for a statutory change in our labour and industrial law. There should be a reform of our labour law to align the Nigerian labour and industrial relations law with international best labour practices and global trends in international

[50] Acting upon it, could mean a lot, including the fact that the employee continued working in that establishment despite better offers from another establishment, etcetera.

[51] C. O. Gregory, 'The Enforcement of Collective Agreements in the United states' [1968] *Current Legal Problems* 168; C. W. Summers, 'Collective Agreements and the Law of Contract' [1969] (78) *Yale Law Journal* 525.

[52] See United Kingdom, Contracts (Right of Third Parties) Act 1999.

relations. One of the ways to achieve this is the enactment of a new labour law to be known as the Labour Relations and Employment Rights Act. The contents of this Act should be in line with international best labour practices and decent work agenda. It shall put into consideration global trends in International Relations. This Act should amongst others clearly provide for the interpretation and justiciability of collective agreement. It should also clearly provide for the right of parties to the agreement and the right of an individual member of the union to claim benefit under it. The NICA has tried, but there is the need for more clarity in that area. The change should also consider the right of a third party to whose benefit a right enures in a collective agreement to which he is not a party, to claim under the agreement. This should receive legislative imprimatur in Nigeria. This is the trend in the more advanced jurisdictions like England, United States of America, amongst others who have enacted legislations, 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 enured in their favour. There should also be a review on the provisions on strike, as the present provision appears more like an attempt to frustrate the enforcement of collective agreement.

While we wait for the clear statutory legislation on the justiciability of collective agreements, the court should in resolving cases, be able to improvise and apply the severance rule[53] in the general law of contract, such that provisions in a collective agreement which admit of immediate enforcement can be enforced while leaving out those that are merely aspirational and futuristic. The court should also begin to apply the doctrine of estoppel, which has received statutory affirmation in our laws, whereby a court may preclude or estop a person from going back on his word or alleging facts that are contrary to his promises or representation. The application of this principle in the interpretation of the collective agreement and the intention of the parties thereto ordinarily will make collective agreement justiciable and applicable to parties to it and individual employees who desires to claim a right under it. All such employee needs to show, is that he believed the representation of the other party to be true and acted upon it. These steps if taken will help bring an end to industrial disharmony and poor employer-employee relation in Nigeria.

[53]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.