

## COMPULSORY RETIREMENT OF RANKING POLICE OFFICERS ON APPOINTMENT OF AN INSPECTOR GENERAL: LABOUR LAW PERSPECTIVES\*

### Abstract

*Over the years, the issue of the compulsory retirement of ranking police officers on the appointment of a new the Inspector General of Police is an anomaly that has slowly become a tradition. This paper posits that there are far-reaching political, economic and social consequences to dumping highly experienced security officers based on a subjective industry norm or arbitrary prerogative of the Head of State. This practice is not backed by any law in Nigeria as shall be shown in an examination of the provisions of labour laws and judicial decisions. A number of victims of such compulsory retirement have sought legal redress and it is recommended that the National Industrial Court view this as an opportunity to create positive judicial precedent by applying the best labour law practices in determining such suits. Legislative and policy reforms are also recommended to curtail the influence of the Head of State over police affairs, especially as regard the politicization of the office of the Inspector General of Police.*

**Keywords:** Compulsory retirement; Deputy-Inspector General of Police, Assistant Inspector-General of Police, appointment of Inspector General of Police, presidential influence, statutory employment, Civil Service Rules

### 1. Introduction

The Police Act<sup>1</sup> and the Nigeria Police Regulations<sup>2</sup> are silent on the age and conditions of retirement for police officers in Nigeria. In the light of this, and being that the Nigeria Police Force is a Federal institution under the control of the Federal Government of Nigeria, the Federal Government Public Service Rules applies to the Nigeria Force. Going by the provision of the said rules, the compulsory retirement age for all grades in the service is 60 years or 35 years of pensionable service whichever is earlier<sup>3</sup>. No officer is allowed to remain in service after attaining the retirement conditions. In spite of what the rules clearly provide, a different situation occasionally obtains in the Nigeria Police Force (NPF). The situation in question is that officers who occupy ranking positions are forced into compulsory retirement on the appointment of a new Inspector General of Police (IGP). This is irrespective of whether or not they have reached the compulsory retirement age. Once an Inspector General reaches retirement age and is set to leave office, he leaves with all the Deputy Inspectors-General (DIG) in tow and occasionally, Assistant Inspectors-General (AIG). The retirement of these officers is usually sanctioned by the President. Sadly, this practise is not backed by any law and most importantly, it is of no benefit to the country. Mostly, seasoned officers with years of experience and trained both in Nigeria and abroad on taxpayer's money are lost and shifted into oblivion by this practise. No cogent reason has ever been advanced for this practise. Historically, this issue affects the Deputy Inspectors-General and Assistant Inspectors-General but does not trickle down to other members of the Police Force.

### 2. Establishment of the Nigeria Police

The Nigeria Police Force is charged with the prevention and detection of crime, the preservation of law and order, the protection of life and property and the due enforcement of applicable laws and regulations.<sup>4</sup> The Nigeria Police Force also has statutory powers to apprehend offenders, interrogate and prosecute suspects, grant bail to suspects pending completion of investigation, search and seize properties associated with crime amongst other functions.<sup>5</sup> Without an effective police force, the wider state, society and Nigeria's burgeoning economy will find it difficult to function effectively and maximally. Indeed world over, there no effective substitute for a professional, dedicated and well motivated police force to maintain law and order. Several laws regulate the formation and conduct of the police, chief of which is the Constitution.<sup>6</sup> The 1999 Constitution establishes the Nigeria Police as a monolithic

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<sup>1</sup> Cap P19 LFN 2004

<sup>2</sup> As subsidiary legislation of the Police Act

<sup>3</sup> Section 8 Paragraph 020810 of the Federal Government Public Service Rules

<sup>4</sup> S. 4 of the Police Act (Cap P19, Laws of the Federation of Nigeria 2004) for general duties and Part IV of the Police Act (ss. 23 – 30) for specific duties.

<sup>5</sup> *Ibid.* See also Ikenga K.E. Oraegbunam, 'The Nigerian Police and Problems of Cybercrime Investigation: Need for Adequate Training', *The Nigerian Law Journal*, Vol. 18 No. 1, 2015, pp. 1-28.

<sup>6</sup> Section 214(1) of the Constitution of the Federal Republic of Nigeria (CFRN) provides that 'There shall be a police force for Nigeria, which shall be known as the Nigeria Police Force, and subject to the provisions of this section no other police force shall be established for the Federation or any part thereof.'

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federal government institution with a centralized command structure headed by the Inspector General of Police (IGP). Section 214(1) and (2) state that:

- (1) There shall be a police force for Nigeria, which shall be known as the Nigeria Police Force, and subject to the provisions of this section no other police force shall be established for the Federation or any part thereof.
- (2) Subject to the provisions of this Constitution –
  - (a) The Nigeria Police Force shall be organised and administered in accordance with such provisions as may be prescribed by an act of the National Assembly;

Section 215 provides that there shall be -

- (1)(a) an Inspector-General of Police who, subject to section 216(2) of this Constitution shall be appointed by the President on the advice of the Nigeria Police Council from among serving members of the Nigeria Police Force;
  - (b) a Commissioner of Police for each state of the Federation who shall be appointed by the Police Service Commission.
- (2) The Nigeria Police Force shall be under the command of the Inspector-General of Police and contingents of the Nigeria Police Force stationed in a state shall, subject to the authority of the Inspector-General of Police, be under the command of the Commissioner of Police of that state.

The Police Act of 1943 makes provision for the organisation, discipline, powers and duties of the police, the special constabulary and the traffic wardens. According to the Police Act, the duties of the police shall be the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged, and shall perform such military duties within or outside Nigeria as may be required of them by, or under the authority of this or any other Act.<sup>7</sup>

### **3. The Police Command Structure**

The Nigeria Police has a rigidly enforced command structure. Orders and directives flow from the IGP and the DIG's down the chain of command to any officer positioned to implement such orders. Disobedience or failure to carry out a directive attracts punitive sanctions.<sup>8</sup> Each of Nigeria's 36 states, as well as the Federal Capital Territory, is served by an administrative unit known as a State Command. Hence, there are 37 Commands plus the Force Headquarters. The Force Headquarters is the office of the Inspector General of Police. The state commands are grouped into 12 Zonal Commands—with two to four states in each zone—each under the supervision of an Assistant Inspector General of Police (AIG).<sup>9</sup> Each state command is headed by a Commissioner of Police (CP) who is directly accountable to the AIG in the respective zone.<sup>10</sup> State commands are divided into smaller areas manned by Assistant Commissioners; and police divisions each of which is headed by a divisional police officer (DPO). Within these police divisions, there may be any number of police stations, police posts, and village police posts.<sup>11</sup> On the administrative front, the tasks of the Police Force are carried out through various departments such as Administration and Finance, Operations, Works and Logistics, General Investigation and Intelligence, Training,

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<sup>7</sup> Section 4, Police Act

<sup>8</sup> Section 6 Police Act

<sup>9</sup> The country is divided into the following twelve zones: Zone One is made up of Kano, Jigawa and Katsina States, with headquarters in Kano. Zone Two has Lagos and Ogun States; its headquarters is in Lagos. Zone Three has its headquarters in Markudi; is made up of Benue, Nasarawa and Plateau States. Zone Five comprises Edo, Delta and Bayelsa States; its headquarters is located in Benin. Zone six comprises Rivers, Cross River, Akwa-Ibom and Ebonyi States; Calabar is where its headquarters is located. Zone Seven has its headquarters in Abuja and is made up of Federal Capital Territory, Kaduna and Niger States. Zone Eight has Kogi, Ekiti and Kwara State; its headquarters is in Lokoja. Zone Nine's headquarters is in Umuahia and is made up of Imo, Abia, Anambra and Enugu States. Zone Ten with headquarters in Sokoto; is made up of Sokoto, Kebbi and Zamfara States. Zone Eleven comprises Oyo, Osun, and Ondo States; Oshogbo is its headquarters, Zone Twelve has Bauchi, Borno and Yobe States; Bauchi is its headquarters. In the same vein, the State Commands are divided into a number of Police Areas and Divisions under the command of Assistant Commissioners of Police who oversees Police Stations and Police Posts within his Area or Division.

<sup>10</sup> Nigeria Police Force, 2009 Annual Report of the Nigeria Police Force, <http://www.nigeriapolice.org/police-annualreport.html>, accessed 27<sup>th</sup> August 2016, p. 81.

<sup>11</sup> *Ibid*, p. 94.

Research and Planning, to mention the major ones.<sup>12</sup> When it concerns public safety and public order, the President may give to the Inspector-General (IGP) such directions with respect to the maintaining and securing of public safety and public order as he may consider necessary, and the Inspector-General shall comply with those directions or cause them to be complied with. Similarly, the Police Commissioner of a State shall comply with the directions of the Governor of the State with respect to the maintaining and securing of public safety and public order within the State, or cause them to be complied with; provided that before carrying out any such direction the Police Commissioner may request that the matter should be referred to the President for his directions.<sup>13</sup>

#### 4. Oversight of the Nigeria Police Force

The 1999 Constitution created two organs to supervise the police system: the Police Council and the Police Service Commission.<sup>14</sup> The Police Council is the highest policy making body on police affairs and is meant to play a supervisory role over the organization and deployment of police assets in the country. The Council also advises the President on the appointment of the Inspector-General of Police.<sup>15</sup> Its membership includes President of the Federation as its Chairman; Governors of each State, the Chairman of the Police Service Commission; and the Inspector-General of Police.<sup>16</sup> According to Nigeria's constitution, the president must 'consult' with the Nigeria Police Council prior to appointing or removing the inspector general.<sup>17</sup> However, the Police Council is generally regarded as ineffectual.<sup>18</sup> On the appointment of the Inspector General, the law is clear on its face and stipulates that any member of the Nigeria Police Force is eligible for the position of the Inspector General. This means that the President is not under any obligation to appoint the next in rank that is the Deputy Inspector General of Police to the office of the Inspector General. The duty of the Deputy Inspector General is to act for the Inspector General in his absence. Similarly, the Assistant Inspector General acts for the Inspector General in the absence of both the Inspector General and Deputy Inspector General<sup>19</sup>. Apart from the appointment of the Inspector General, the appointment and promotion of any other person to any rank or position in the Nigeria Police Force lies with the Police Service Commission.<sup>20</sup> In other words, the Deputy Inspector-General and Assistant Inspector-General are appointed by the Police Service Commission. The IGP reports directly to the president.<sup>21</sup>

#### 5. Legitimate Grounds For Retirement of Police Officers

The entire gamut of the Police Act and Police Regulations made no provision at all regarding the retirement of police officers. On the other hand, the Constitution defines 'Public Service of the Federation' to mean the service of the Federation in any capacity in respect of the Government of the Federation, and includes service as members or officers of the armed forces of the Federation or the Nigeria Police Force or other government security agencies established by law<sup>22</sup>. Therefore, since the Nigeria Police Force is in the service of the Federal Government, the Federal Government Public Service Rules applies to its members. The Public Service Rule state that the compulsory retirement age for all grades in the public service shall be 60 years of age or 35 years of pensionable service whichever is earlier<sup>23</sup>. Another ground for the compulsory retirement of a ranking police officer is set out in the Guidelines for Promotion in the Nigerian Police Force as prepared by the Police Service Commission.<sup>24</sup> According to the guidelines, one of the criteria for promotion from the rank of Commissioner of Police to Assistant Inspector-General and from the rank of Assistant Inspector General to Deputy Inspector General is that he /she must pass the National War College or National Institute for Policy and Strategic Studies courses or

<sup>12</sup> Ibid.

<sup>13</sup> Section 216(3) and (4) of the Constitution. These sections establish the political influence wielded by the President and Governors over police affairs which although necessary, may be subject to abuse.

<sup>14</sup> Section 153(1)(l) and (m) of the 1999 Constitution established the Nigeria Police Council and the Police Service Commission to oversee specific aspects of the Nigeria Police.

<sup>15</sup> Section L28 (a)(b)(c) of the Third Schedule to the 1999 Constitution.

<sup>16</sup> Ibid, Section L27.

<sup>17</sup> Ibid., sec. 216(2).

<sup>18</sup> 2008 Presidential Committee on Police Reform, Main Report; p. 168. According to schedule 3, part I, sec. L of the Constitution, the Nigeria Police Council is comprised of the president, the 36 state governors, the chairman of the Police Service Commission, and the inspector general of police.

<sup>19</sup> Section 7 & 8 of the Police Act

<sup>20</sup> Section 6 (1) (a) Of the Police Service Commission Act, 2001

<sup>21</sup> See Constitution of the Federal Republic of Nigeria, 1999, sec. 215(3).

<sup>22</sup> Section 318 of the 1999 CFRN

<sup>23</sup> Section 8 paragraph 020810 of the Federal Government Public Service Rules

<sup>24</sup> Section 6(1)(c) of the Police Service Commission Act Recall that the Police Service Commission is saddled with the responsibility of appointing and promoting police officers other than the Inspector General

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any other courses commensurate with the said courses. Failure to pass such courses would result in compulsory retirement.<sup>25</sup> Other than the rules set out above, there is no other legally justifiable means of compulsorily retiring a ranking Police Officer.

### **6. Incidences of Compulsory Retirement of Ranking Police Officers Contrary to Service Rules**

The earliest record of the compulsory retirement of a ranking police officer who was yet to attain the retirement age dates back to 1975, the time of Kam Salem as Inspector General.<sup>26</sup> Born in 1924, and joining the police in 1942, Mr. Salem had not served for the 35 years required by the Police Service Act, neither had he reached age 60 as required for retirement. He was nonetheless retired with a few of his contemporaries to make room for one Dikko Yusuf, a police officer seven years his junior to be appointed as the IGP. The trend of retiring high ranking experienced police officers to make way for the appointment of a favoured officer who is their junior has continued since then.<sup>27</sup> There was a brief respite in the trend when in July 2009 President Yar'Adua promoted the most senior Deputy Inspector General (DIG) Ogbonnaya Onovo to the Office of the IGP, following IGP Okiro's retirement. Onovo was also the senior DIG at the time of Okiro's appointment but for reasons that remain unclear, was passed over. President Goodluck Jonathan failed to emulate the fine example set by his predecessor when he appointed Mr. Mohammed Dikko Abubakar (an AIG) to the position of IG upon the retirement of Mr. Hafiz Ringim in 2012. Consequently, seven Deputy Inspectors General who ranked higher than the newly appointed Inspector General were retired on the orders of the President.<sup>28</sup> President Muhammadu Buhari oversaw the highest number of compulsorily retired senior police officers when he appointed Idris Mohammed, an Assistant Inspector General to the position of Inspector General of police following the retirement of IG Solomon Arase on June 21, 2016. The appointment of Idris to the position of Inspector General resulted in the compulsory retirement of over 24 ranking police officers made up Deputy Inspectors General and Assistant Inspectors General<sup>29</sup>. This mass exodus of ranking officers was unprecedented as such number of Police officers have never been so retired in that manner. This of course, raised eyebrows and criticisms poured in. The constant points of criticism were the callous disregard for the rights of the compulsorily retired officers and their families; the shame of sacrificing highly experienced security executives on the altar of political and personal sentiments to the detriment of the Nation's security; and that this mass retirement came at a time when Nigeria was experiencing waves of crippling insecurity at all levels. Critics also bemoaned the fact that taxpayers' monies were expended to train these officers in Nigeria and abroad and yet, they were being forced to leave the Police Force with all their years of learning and experience largely unutilized.<sup>30</sup>

### **7. Labour Law Perspectives on the Compulsory Retirement of Ranking Police Officers Upon Appointment of a Junior Officer IG.**

Section 318 of the 1999 Constitution as amended defines 'public service of the federation' to mean "the service of the government of the Federation in any capacity in respect of the Government of the Federation and includes service as members or officers of the armed forces of the Federation or Nigeria Police Force or other government security agencies established by law." It follows that members of the Police Force are public servants and are bound by Public Service Rules. Previously, public servants in British Colonial history were deemed to hold office at the pleasure of the crown and thus, could be dismissed from service at any time without remedy<sup>31</sup>. This was also the case in Nigeria until the case of *Shitta Bey v. Federal Public Service Commission*<sup>32</sup> where Idigbe JSC (as he then was), stated thus:

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<sup>25</sup>Rule 2.2.3.(iv & v) of the Guidelines for Promotion in The Nigerian Police Force (2006).

<sup>26</sup> M Adam & BK Olando, 'Honours from the Kanem-Bornu Empire' <https://www.facebook.com/kanembornukanuri/posts/kam-salem-igp-the-first-kanuri-inspector-general-of-the-nigerian-police-kam-salem/356560931442148/> accessed December 10 2019.

<sup>27</sup>Cheta Nwanze, 'The effect of Mass Retirement on Nigeria's Police' *The Guardian*(Nigeria, 27th August 2018) <https://www.google.com/amp/s/guardian.ng/news/the-effect-of-mass-retirements--on-nigerias-police/amp> accessed on December 10, 2019

<sup>28</sup>Odeworitsh Okafor, 'Jonathan Confirms Appointment of Abubakar as IGP, Sack of Ringim, DIGs' *The Eagle Online* (Nigeria) <https://www.google.com/amp/s/theeagleonline.com.ng/jonathan-confirms-appointment-of-abubakar-as-igp-sack-of-ringim-digs/> accessed on December 10, 2019

<sup>29</sup>Police IG, Ibrahim Idris asks President to sack 30 senior officers-report' *Pulse.ng* (Nigeria, 27/6/2016) <https://www.google.com/amp/s/www.pulse.ng/news/local/buhari-police-ig-ibrahim-idris-asks-president-to-sack-30-senior-officers-fscqiqk.amp> accessed on December 10, 2019.

<sup>30</sup>ibid

<sup>31</sup>*Riodan v. The War Office* (1959)3 ALL ER 552

<sup>32</sup>(1981)1SC 40

The Civil Service Rules of the Federal Public Service govern the conditions of service of federal public servants and they made pursuant to the powers conferred on the respondent by virtue of constitutional provisions. These rules therefore have constitutional force and they invest the public servant over whom they prevail with a legal status, a status which makes their relationship with the respondent employer and the government, although one of master and servant, certainly beyond the ordinary master and servant relationship.<sup>33</sup> The court in that case upheld the decision of the trial court declaring the purported termination of employment of the appellants, a civil servant, to be null and void for failing to comply with the rules of the Federal Public Service. By extension, we must infer that any compulsory retirement of a ranking police officer that does not comply with the Federal Public Service Rules is wrongful. The incongruity is that despite the fact that compulsory retirement of ranking officers has become a recurrent issue that is gradually becoming a tradition, there are almost no cases in court instituted by the victims. The officers who were compulsorily retired in 2016 are arguably the first to actively take the step of initiating an action in the National Industrial Court.<sup>34</sup> Their suit is against the President, the Police Service Commission, Attorney-General of the Federation (AGF) and the Inspector-General of Police in which they contend that their compulsory retirement runs contrary to their constitutional rights. The officers prayed the court to interpret certain parts of the constitution which are binding on the Police Service Commission as regards its retirement processes.<sup>35</sup> That matter is still pending court at the moment. In as much as there are very few cases where a police officer has challenged this issue in court, labour law perspectives will be drawn from judgments in compulsory retirement cases involving other armed security agencies such as the Nigerian Army, Directorate of State Security, Nigerian Customs, etc. Due to the principle of *stare decisis*, the decision of a superior court in similar circumstances is binding on a lower court and in the cases of courts having concurrent jurisdiction, it has strong persuasive value.

The case of *Comptroller Abdullahi Gusau v. Comptroller General of Customs & Ors*<sup>36</sup> is quite instructive. The facts are that the appellant was transferred from the service of the Sokoto State Government to the service of the Nigerian Customs Service in 1990 where he gradually rose to the rank of Comptroller of Customs. On 21st December 2009, the appellant was among thirty-one other Comptroller of Customs who were compulsorily retired from the service of the 2nd respondent (Nigerian Customs). Aggrieved, the claimant instituted an action praying among other things for an order of the court setting aside his purported retirement by the respondents as unlawful, malicious, irregular and a violation of his right of employment until the mandatory retirement age. The lower court dismissed the case of the appellant, placing reliance on a service reform of the 2nd respondent. In response, the appellant then filed an appeal at the Court of Appeal. In his appeal, the appellant urged the court to determine among other issues whether policy guidelines on reform can be used to circumvent the supremacy of the Public Service Rules 2000 and the Constitution, and whether his retirement by the respondent on grounds of advanced age and extended tenure of 10 years as comptroller of customs was not unlawful, malicious, irregular and flagrant violation of section 2 of the Nigerian Customs Condition of Service and section 1 paragraph 16 of the Public Service Rules. The court in deciding this matter found that by relying on Section 2 paragraph 2 of the Conditions of Service of Nigerian Custom Service that the retirement of the appellant in 2010 as against 2016 by age of retirement or 2018 by years of service was premature. The lower court had made the same finding stated above but went ahead to dismiss the case of the appellant, placing reliance on Policy Guidelines on the Nigerian Customs Service Reform. The Appellate Court found that though the respondent has powers to formulate general policy guidelines for the Nigeria Customs Service, the Public Service Rules still apply to the respondent. Hence, a statement of policy, general or otherwise, cannot wipe away or overrule specific provisions of the Public Service Rules especially where such policies are not written into the terms of the contract of the employee, as in the instant case. In addition, the court referred to the provisions of section 318 of the Constitution which defines public service of the Federation to mean the service of the Federation in any capacity in respect of the government of the Federation including member or staff of any authority established for the Federation by the Constitution and by and Act of the National Assembly. The appellant's

<sup>33</sup>*Ibid.*

<sup>34</sup>By section 254C of the 1999 Constitution of the Federal Republic of Nigeria (Third Alteration Act) 2010, the National Industrial Court has exclusive jurisdiction to deal with matters of labour and employment. In this way, matters are dealt with expeditiously. This means that persons who are victims of compulsory retirement in the force are not left without a remedy.

<sup>35</sup> International Center for Investigative Journalism 'Retired Police Officers Sue Buhari, PSC,' <https://www.icirnigeria.org/retired-police-officers-sue-buhari-psc/>, Peters Ifeoma, '30 Retired AIGs, Other Senior Officers Sue Buhari, Police' *DNL Legal and Style*, <https://dnlegalandstyle.com/2017/30-retired-aigs-senior-officers-sue-buhari-police>, accessed 10<sup>th</sup> December 2019.

January 23, 2017

<sup>36</sup>LPELR (2014) 23367 (CA). See also *Comptroller General of Customs v. Gusau* (2017) 18 NWLR (PT 1598) pg 353 @387-388.

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empolymment had statutory flavour, hence he was a public servant who did not hold office at the pleasure of the 2nd respondent. His premature retirement was accordingly held to be unlawful, null and void.

Miffed by the judgment of the Court of Appeal, this appeal was filed to the apex Court. In a unanimous decision, the Supreme Court held the appeal to be lacking in merit. The judgment of the Court of Appeal was upheld. The National Industrial Court missed an opportunity to create a similarly sound judicial precedent in the case of *Marilyn E. Ogar v Attorney General of the Federation & 2 Ors.*<sup>37</sup> The Claimant (Ogar) was, prior to her compulsory retirement in September 2015, an Assistant Director and spokesperson of the Department of State Security Service (DSS). Born on 7th July 1963, Ogar joined the service of the DSS in October 1988 so at the time of compulsory retirement, still had about 7 years to her official retirement date. No misconduct or any infraction of any rules of the Service in the discharge of her duties was alleged against her neither was she asked to face any disciplinary panel for any misconduct. The Claimant sought a declaration that her employment with the DSS has a statutory flavour and same may only be lawfully determined strictly in accordance with the relevant provisions of the Public Service Rules. As such, she prayed that her compulsory retirement from the service of the DSS be declared null and void and of no legal effect. The 2nd and 3rd Defendants (The DSS and the Director, DSS) filed a notice of preliminary objection<sup>38</sup> to the claimant's suit on the grounds that Her action was filed more than three (3) months after the claim had arisen and was therefore statute barred under Section 2(a) of the Public Officers Protection Act 2004. The Claimant responded that she had initially filed Suit NICN/ABJ/369/2015 by way of originating summons on 26th November 2015 against the same defendants and on the same subject matter and seeking the same reliefs. However, the originating summons was not served on the 2nd and 3rd Defendants until the life span of the summons expired. It was subsequently struck out on account of its expired summons and so the Claimant subsequently filed this instant suit on 17th April 2018. In upholding the defendant's preliminary objection, The Court reasoned that:

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It is settled law that where a statute prescribes a time limit for the institution of an action, no valid proceedings can be instituted after the time prescribed by the statute. This is because an action brought outside the prescribed period is contrary to the provision of the law and does not give rise to a cause of action. By the effect of Section 2 (a) of POPA, the Claimant's suit is clearly statute barred having been filed outside the statutory period. The action is no longer maintainable and this court lacks jurisdiction to continue to entertain it.<sup>39</sup>

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On the same date, the Industrial Court dismissed a spate of analogous suits filed against the DSS by ranking officers on similar complaints.<sup>40</sup> It is unfortunate that these suits were dismissed without a chance to deliberate on the main issue of compulsory retirement of members of the security forces. It is most respectfully submitted that the National Industrial Court allowed itself to become unnecessarily enmeshed in legal technicalities. As in the *Ogar* case, each of the complainants originally filed actions within three months of date that the cause of action arose but these cases were struck out due to non-service of the originating summons on the defendants. Service of summons is the responsibility of court bailiffs, not complainants/plaintiffs in an action. The penalty for failure to serve summons timeously should not be visited on a complainant provided that he/she did all that was required for such service to be effected. One must also not overlook the possibility of intimidation of court bailiffs and/or evasion of service by the very senior officers who were defendants in these suits. Bearing these in mind, the Court should have allowed the earlier cases of the complainants to stand rather than striking them out as being expired. In *Col. Danladi Ribah Hassan (Rtd) v Nigerian Army & 8 Ors.*,<sup>41</sup> the National Industrial Court was to decide whether the compulsory retirement of the claimant from service was proper, valid and sustainable in law. The claimant was enlisted into the Nigerian Army on 5th September 1994 as 2/Lt and rose to the rank of Colonel. As a

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<sup>37</sup> Suit No: NICN/ABJ/102/2018, judgment delivered: 2018-10-02 by Hon .Justice O.Y. Anuwe.

<sup>38</sup> Brought pursuant Section 2 (a) of the Public Officers Protection Act (POPA) which provides that any suit against a public officer must be brought within three months of the occurrence of the action complained against.

<sup>39</sup> See *Elebanjo vs. Dawodu (2006) All FWLR (Pt. 328) 604; INEC vs. Okoronkwo (2009) All FWLR (Pt. 488) 227 at 247; Ebiogbe vs. NNPC (1994) 5 NWLR (Pt. 347) 649 and Kasandubu vs. Ultimate Petroleum Ltd (2008) 7 NWLR (Pt. 1086) 274.*

<sup>40</sup> *Abdullahi O. Ahmed v Attorney General of The Federation & 2 Ors.*, Suit No: NICN/ABJ/105/2018 delivered: 2018-10-02 by Hon. Justice O.Y. Anuwe; *WidiLiman v Attorney General of The Federation & 2 Ors.*, Suit No: NICN/ABJ/103/2018 delivered: 2018-10-02 by Hon. Justice O.Y. Anuwe; *Ndubisi Obiaagwu Larry v Attorney General of The Federation & 2 Ors.*, Suit No: NICN/ABJ/104/2018; Delivered: 2018-10-02 by Hon. Justice O.Y. Anuwe.

<sup>41</sup> Suit No: NICN/ABJ/316/2017 Judgment delivered: 2019-01-08 by Hon. Justice Sanusi Kado

regular officer, the claimant was commissioned to serve for 18 years but with an option of re-engagement, subject to approval by the appropriate authority. Vide letter dated 9th day of June 2016, the claimant was compulsorily retired on ground of serious offence(s).<sup>42</sup> However, in their joint statement of defense the defendants argued that the compulsory retirement of the claimant was predicated on his overstay, that the claimant had signed to serve for 18 years in accordance with the Armed Forces Act,<sup>43</sup> but over-served by 8 years. The defendants maintained that the claimant had no locus to complain of his compulsory retirement as he overstayed and did not apply for re-engagement of his service. Under cross examination, the claimant countered that he had indeed applied for re-engagement but failed to tender a document in proof. Acknowledging the statutory flavor of the soldier's employment, the Court held that once the employment is protected by statutory provisions, appropriate procedure must be adopted in bringing the relationship to an end, there is no short cut. Any deviation in following the appropriate procedure by the authority or body charged with responsibility of taking the disciplinary action against the employee will vitiate the entire process.<sup>44</sup> The Court found that defendants failed to refer the court to any of the provisions of the Armed Forces Act or the Harmonized Terms and Condition of Service for Officers 2012, (Revised), where overstaying or serving beyond 18 years in the military was made to be a disciplinary i.e serious offence. According to the learned judge:

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It is trite law that in determining contract of employment an employer is not bound to give reasons for determining the contract. But where reason has been given the onus of proving the reason lies squarely on the employer. The defendants having stated vide exhibit CW1A 1-3, that the claimant was compulsorily retired based on ground of disciplinary i.e serious offences are duty bound to adduced credible evidence in proof of that reason and not offer different reason contrary to what was stated in exhibit CW1A 1-3. The defendants have not pointed out to the court in exhibit CW1A 1-3, where 'not following procedure for re-engagement' is stated to be a serious offence in either the Armed Forces Act or in the Harmonized Terms and Conditions of Service for Officers 2012 (Revised) or in exhibit CW1B, the letter of commissioning.

The decision in *Hassan's* case is commendable as the NLC foiled the attempt of the defendants to pull the wool over the Court's eyes by alleging a legitimate grounds for compulsory retirement in the letter of retirement given to the complainant and when they realized they could not prove those grounds, by presenting a bogus and unrelated grounds for compulsory retirement in their statement of defense. This case buttresses the fact that compulsory retirement of members of the state security services (the Nigeria Police inclusive) must abide by the statutory guidelines regulating such employment.

## 8. Conclusion

The position of the Assistant Inspector General and Deputy inspector General of Police enjoys statutory flavour. This is because, the procedure for appointment and termination of these offices are provided for by the law. Therefore any steps taken in relation to the occupants of such offices must be in accordance with the rules already set down. The courts should not hesitate to nullify acts to the contrary. What we see in reality is that despite the position of ranking police officers being such that enjoys statutory flavour, the President with the sweep of a pen and without recourse to the rules, arbitrarily retires ranking police officers for purely subjective reasons. It is recommended that persons in authority including the President ought to follow laid down rules that are provided as guidelines for taking certain actions. This is to prevent anarchy. The Public Service Rules regarding the retirement of ranking police officers must be followed. In addition, Police DIG's and AIG's who are victims of compulsory retirement are enjoined to seek relief from the National Industrial Court, to institute actions in pursuit of their rights.

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<sup>42</sup> In pursuance of the provisions of paragraph 09.02c(4) of the Harmonized Terms and Conditions of Service for Officers, 2012 (Revised). According to the provision of regulation 09.02 there are several grounds based on which an officer can be compulsorily retired from service such as: on disciplinary grounds, on account of ill-health, on ground of medical unfitness, disability, failed promotions 3 times, disciplinary grounds on serious offences, undeployability as a result of restructuring and/or lack of establishment, on attaining the age ceiling of his rank, incompetence, indolence, disloyalty to constituted authority and failure at staff course. From the content of exhibit CW1A 1-3, the claimant was compulsorily retired from service on disciplinary ground, i.e serious offences, regulation 09.02c(4).

<sup>43</sup> Section 30 of the Armed Forces Act

<sup>44</sup> See *Iderima v Rivers State Civil Service Commission* (2005) 7SC Pt.III 135, *Shita-Bay v Public Service Commission* (1981) 1SC 26, *University of Lagos v Olaniyan* 1985 1 SC 199, *CBN & Anor v Igwilllo* (2007) 4-5, SC 154.

## **IBEKWE & SUBAI: *Compulsory Retirement Of Ranking Police Officers On Appointment Of An Inspector General: Labour Law Persepectives Musa***

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Police officers have successfully obtained court orders overturning their premature retirements and reinstating them back into the Police Force on other reasonable grounds.<sup>45</sup>When a judicial pronouncement is obtained overturning the unlawful or *ultra vires* actions of the executive arm of the government, it acts as a constant reminder on the need for persons in positions of authority to be cautious in dealing with individuals. The courts are open and matters at the National Industrial Court are treated with relative dispatch. Hence, there is no reason why victims should not assiduously seek for their rights to be enforced in circumstances where they are neglected.

Most importantly, the judiciary should be alive to its role of interpreting the rights of employees who are compulsorily retired either without due process, or for unreasonable grounds. There is an opportunity to make laws that send a signal to the executive arm, more specifically, the muscular arm of the Nigeria Police that the rights of the dedicated senior officers who spend their lives in service to the nation must be respected. The Police Service Commission (PSC) as the body responsible for police personnel management should be more involved in the promotion, postings, investigation, retirement, discipline and dismissal of police officers. They ought to act in good conscience to approve the premature retirement of any officer before such decision can have the force of law. They must not act as stooges of the executive arm of government. Members of the PSC are urged to secure a tenured and nonrenewable office for the IGP and set minimum standards concerning the intellectual, physical and experiential qualifications of each IGP candidate. By carrying out their duties courageously, they can significantly decrease presidential influence over the operational activities of the Nigeria Police Force. This would go a long way to decrease the high turnover rate of IGP's and make redundant the practice of compulsorily retiring senior police officers who out-rank a newly appointed IG.

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<sup>45</sup>Daily Post, 'Court Orders IGP to Reinstatement Compulsorily Retired ACP', <https://dailypost.ng/2014/06/20/court-orders-igp-reinstatement-compulsorily-retired-acp/>. In this 2014 case decided by Justice Rabiuh Gwanduh of the National Industrial Court, Jos the Court ordered the Inspector-General of Police (IGP) to immediately reinstate ACP George Ozioko, who was compulsorily retired from service in 2009. The judge further ordered the police to calculate and pay the claimant all his monthly salaries and allowances as an ACP from April 2010 till the date of judgment.