

# REVIEW OF SUIT NUMBER SUIT NO: NICN/IB/111/2020; BETWEEN OFFOR VIVIAN CHEKWUBE V. AFRICAN FOUNDRIES LIMITED



## 1.0 Introduction

The National Industrial Court of Nigeria (“NIC” or Court”) delivered a notable judgment in Suit Number NICN/IB/111/2020; Offor Vivian Chekwube (“Claimant”) v African Foundries Limited (“Defendant”) on the 1<sup>st</sup> June, 2026 wherein the NIC re-echoed the principles of law on (i) the strict requirement for compliance with fair hearing, particularly where an employee is accused of misconduct (ii) liability of an employer for acts of sexual harassment committed by its employees, especially senior members of staff acting in a position of authority; (iii) Evolving principles on the assessment of damages for wrongful termination and award of punitive damages as an appropriate remedy in cases involving sexual harassment and conduct that undermines a safe workplace

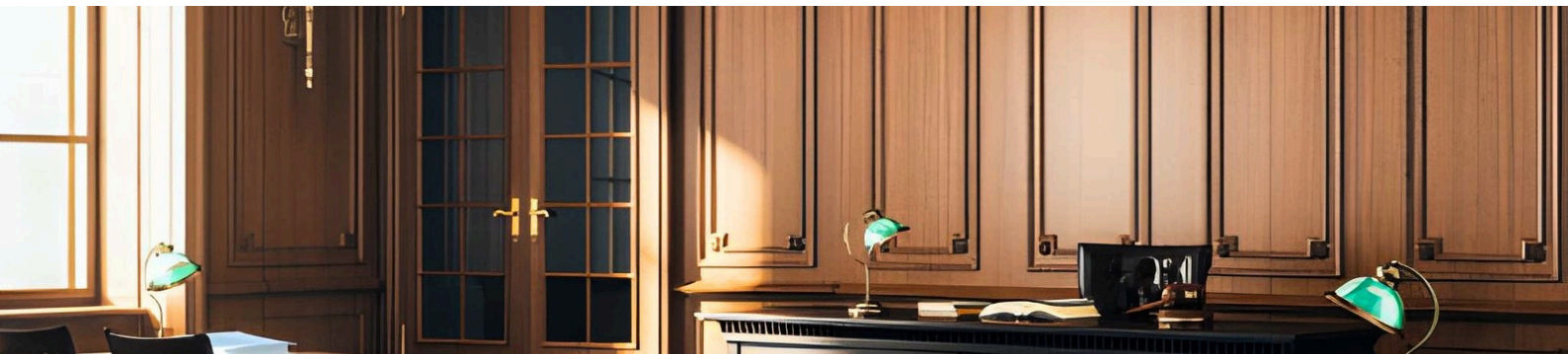
## 2.0 Summary of the Claimant's Case

The Claimant was employed by the Defendant as an Assistant Human Resource Manager. Her case was that barely two weeks into her employment, she became subjected to persistent sexual harassment by the Defendant's General Manager, Mr. Pedro Emuata (“Pedro”), which continued for approximately six months. She asserted that she reported the alleged harassment to the Defendant's Management via an e-mail dated 7 September 2020, but no investigation was conducted and no outcome or report was communicated to her. According to the Claimant, two days after her complaint, Pedro informed her that Management had requested that she resign honourably. She contended that these events demonstrated that the Defendant not only failed to address her complaint but actively condoned the alleged harassment. Following a demand letter written by her Solicitor seeking an apology for the treatment meted out to her, the Defendant terminated her employment by a letter dated 21 September 2020 without stating any reason for the termination. The Claimant further alleged that the Defendant failed to pay her salary for the month of September 2020 and one month's salary in lieu of notice.

### **3.0 Defendant's Position**

The Defendant's case was that upon receipt of the Claimant's complaint, a panel comprising some officers of the Defendant was constituted to investigate the allegations. The panel sat for about two days and interviewed relevant persons, including Pedro. The Defendant maintained that, acting on the panel's instruction, its witness, together with two other panel members, conveyed the Defendant's decision that the Claimant should resign. The Defendant, however, stated that it was unaware whether the panel eventually submitted a formal report and did not have any transcript or record of Pedro's response during the investigation.

The Defendant further contended that the termination of the Claimant's employment was not occasioned by her complaint of sexual harassment but was due to the discovery that she had falsified and doctored her employment records, as well as adverse reference checks received from her previous employer. The Defendant maintained that although the Claimant was given notice to make a presentation, she was never formally accused of falsifying her records and no query was issued to her regarding productivity. The Defendant also asserted that staff salaries were paid directly into employees' bank accounts, while terminal benefits were collected physically by employees in accordance with its established practice.



### **4.0 Decision of the National Industrial Court**

#### **4.1 Employer's Duty to Justify the Reason For Termination/Strict Adherence to the Principle of Fair hearing in cases of Termination of Employment Involving Misconduct**

The Court reiterated the principle that although an employer is not under any obligation to disclose the reason for terminating an employee's employment, where a reason is provided, the employer assumes the burden of proving the veracity of that reason. In the instant case, the Court found that the Defendant expressly stated in the Claimant's termination letter that her employment was terminated on the ground of alleged falsification of employment records.

However, there was no evidence before the Court to establish that the Claimant had in fact falsified her records or that the Defendant had received any adverse reference report from her previous employer, as alleged.

The Court observed that the allegation of falsification was raised for the first time in the termination letter and that there was no evidence that the Claimant was ever confronted with the allegation, informed of the findings against her, or given an opportunity to respond. The Court held that, having relied on the outcome of reference checks and the alleged falsification of records as the basis for terminating the Claimant's employment, the Defendant was required to tender the relevant reports or feedback from the Claimant's previous employers to justify its decision. The Defendant's failure to produce such evidence meant that the reason advanced for the termination remained unproved. The Court further restated the principle that where an employee is accused of misconduct, the employee must be afforded an opportunity to be heard, and failure to comply with the requirements of fair hearing renders the termination wrongful. Accordingly, having failed to prove the reason for the termination and having denied the Claimant the opportunity to respond to the allegations, the Court held that the termination of the Claimant's employment was wrongful.

## **4.2 The Liability of an Employer For Sexual Harassment Committed by an Employee against another Employee**

On the issue of whether the Defendant was liable for sexual harassment, the Court acknowledged the limited development of local laws on sexual harassment and relied on the constitutional mandate of the NIC to apply international best practices and relevant ILO conventions. The NIC considered the definition of sexual harassment under CEDAW General Recommendation No. 19 (1992) and the Violence and Harassment Convention, 2019, which recognise the right of workers to a workplace free from violence and harassment, including sexual harassment and gender-based violence.



The Court held that upon receiving the complaint, the Defendant had a duty to conduct a fair and transparent investigation. However, despite assuring the Claimant that an investigation would be conducted, Pedro was sent by the Defendant's management shortly thereafter to request that the Claimant resign. The Court found that no investigation was conducted and no report was produced, thereby amounting to the Defendant condoning the alleged conduct.

The NIC adopted an expansive interpretation of the term "employer" under the Labour Act and held that Mr. Pedro, being a member of the Defendant's management team, acted as an extension of the Defendant.

Accordingly, the Court held that an employer may be liable for sexual harassment committed by its employees where it fails to take appropriate steps to investigate and address such conduct. The Defendant was therefore held liable, having failed in its duty to provide a safe workplace and having condoned the acts complained of.

### **4.3 Quantum of Damages for Wrongful Termination from Employment**

The NIC affirmed that while the traditional measure of damages for wrongful termination is payment of salary in lieu of notice, contemporary labour jurisprudence, as established in *Skye Bank Plc v. Adegun*, permits the Court to award higher and more appropriate compensation where the circumstances of a case warrant such an award. Consequently, the Court awarded the sum of ₦4,200,000, representing the Claimant's two years' salary, as damages for wrongful termination.

### **4.4 Award of Punitive Damages For Sexual Harassment**

The Court held that punitive or exemplary damages are awarded as a form of punishment, deterrence, and to express the Court's disapproval of the Defendant's conduct, in addition to compensating the Claimant for the loss suffered.

The Court found that the Defendant's conduct warranting such damages included its failure to investigate the Claimant's complaint of sexual harassment against its management staff, Mr. Pedro Emuata, the swift termination of the Claimant's employment, and its failure to provide a safe and healthy work environment. The Court held that Mr. Pedro's conduct, including his threat to make the Claimant's work environment unbearable, was carried out with the Defendant's support and resulted in an unsafe workplace. Consequently, the Court awarded punitive damages of ₦4,000,000 in favour of the Claimant.

## 5.0 Implications and Takeaways:

- i While an employer has the right to terminate employment, such termination must comply with laid-down procedures and must not violate the employee's right to fair hearing.
- ii In determining whether a termination on the ground of misconduct is lawful, the employer must demonstrate compliance with the principles of natural justice, particularly the requirement that the employee be given an opportunity to be heard (*audi alterem partem*) and that no person should be a judge in their own case (*nemo iudex in causa sua*).
- iii Where an employer provides a reason for terminating an employee's employment, the employer bears the burden of proving the reason stated.
- iii The Court will readily hold employers liable for acts of sexual harassment committed by their employees in the workplace, particularly where the employer fails to investigate, address, or otherwise condones the wrongdoing.
- v. The liability of an employer for workplace sexual harassment is usually based on the principles of vicarious liability, negligence, breach of statutory duty and failure to provide a safe workplace.
- vi. Employers are liable for sexual conduct of their employees committed not just within the work environment but sometimes outside of it.
- vii. Sexual harassment in the workplace is a serious issue that Nigerian courts continue to treat with utmost importance. Employers are reminded that they have a duty to provide a safe and healthy work environment and may be held liable where complaints of sexual harassment are ignored or inadequately addressed. To mitigate liability, employers are encouraged to establish clear reporting procedures and ensure that all complaints of sexual harassment are promptly, fairly, and thoroughly investigated, with appropriate action taken where necessary.

- viii. The Court can now award higher and more appropriate compensation where the circumstances of a case warrant such an award for wrongful termination.
  
- ix. The Courts are empowered to award punitive damages against erring employers in appropriate circumstances, particularly where workplace sexual harassment by an employee has occurred, not only as compensation to the victim but also as a form of punishment and deterrence against similar misconduct in the future.



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