

# APPRAISING THE SCOPE AND LIMITATIONS OF CIVIL AND CRIMINAL LIABILITIES OF TRADE UNIONS IN NIGERIA

A. R. Olodude,<sup>1</sup> A. O. Oluwadayisi,<sup>2</sup> M.E. Jemialu<sup>3</sup> and E.L. Effiong<sup>4</sup>

<sup>1</sup>(LL.B (Unilorin), BL, LL.M (OAU), PGDE candidate at NOUN); <sup>2</sup>Lecturer, Commercial Law Department, Adekunle Ajasin University, Akungba-Akoko; <sup>3</sup>Senior Lecturer, Nigerian Law School Bwari-Abuja and <sup>4</sup>Senior Lecturer, Nigerian Law School Bwari-Abuja

---

## ABSTRACT

*A major purpose for the creation of a trade union is the protection of furtherance of members' common rights and interest. Trade Unions' right are therefore necessary agents of social and economic changes in social strata. As organisations of workers formed to protect the interests that are incidental to workers' employment are necessary agent of social economic change in the social strata. To this end, by virtue of their legal status, they are capable of suing and be sued in their registered name. Therefore, trade unions are not totally immune from liabilities, as they can be subject to both civil and criminal liabilities as the case may be. This paper seeks to examine the categories of civil torts and criminal offences to which the unions might be held liable in the event of breaching provisions of the law or their scope of operation. Trade unionist in exceptional cases are immune from civil and criminal liabilities as provided for in the labour legislations, however, this immunities can only be accorded if the course pursued is done within the contemplation and furtherance of a trade dispute. Furthermore, this paper tends to wonder, why the incessant increase in industrial action such as strikes, as there are laws meant to put in place to regulate the spate of industrial actions particularly in Nigeria. Thus, it further recommends amongst others, the need for subsequent legislations on labour law to address the meaning of the exception clause with regards to trade unionist immunity, as this would further help in adequately defining the limit and the scope of trade unionist operations.*

## 1.0 Introduction

Traditionally, trade unions are usually constituted for the prime purpose of regulating the terms and conditions of employment of workers.<sup>1</sup> Therefore, whether a union is a trade union

---

<sup>1</sup>See, British Trade Union Labour Relations (Consolidated) Act 1972, s.1; *Midland Cool Storage Ltd. v. Turner* [1972] 1 L.R. 773 for the definition of trade union. See also for the definition of the term 'Trade Union' section 1 of the Trade Unions Act Cap. T 14 Laws of the Federation of Nigeria, 2004. (Hereafter referred to as TUA) The TUA was enacted in 1973 and has gone through series of amendments since then. The 1973 enactment as amended in 1996 is the principal enactment. In 2005, the TUA as amended was further amended as the Trade Unions (Amendment) Act 2005. One of the principal issues addressed in the 2005 amendment is the voluntariness of the membership of trade unions. See section 2 of the Trade Unions (Amendment) Act 2005. The 2005 amendment has eleven sections and was passed into law on 30th of March, 2005. A soft copy of the 2005 amendment is available at [http://www.nigeria-law.org/tradeunion\(amendment\)act2005.htm](http://www.nigeria-law.org/tradeunion(amendment)act2005.htm) (accessed 11th of July, 2010).

or not, does not generate legal controversy.<sup>2</sup> However, in most developing countries, trade unions have been able to push the frontiers of their purpose beyond mere regulation of terms and conditions of employment of workers.<sup>3</sup> In Nigeria particularly, trade unions have been involved in myriads of activities which do not have the remotest connection with the terms and condition of employment of workers,<sup>4</sup> thereby becoming irresistible and indispensable instruments of social activism. It is of common knowledge and judicially noted that trade unions are hardly allowed to operate by any governments without any form of constraints. These constraints or control measures range from registrations<sup>5</sup> and duty to render financial accounts<sup>6</sup> to prohibitions and prosecution for certain activities declared to be offences by law and so on.<sup>7</sup>

This paper therefore seeks to examine the central issues as regarding the liability of trade unionist based on certain activities declared to be unlawful within the context of civil and criminal law.

## 2.0 Historical Background of Trade Union

The origins of trade unions can be traced to the 18th Century industrial revolution in Britain, where the rapid expansion of industrial society which was taking place as then, drew women, children, rural workers and immigrants into the work force in large numbers and in new roles. It should be noted however that this pool of unskilled and semi-skilled labour spontaneously organised in fits and starts throughout its beginnings, and would later be an important arena for the development of trade unions. Trade unions have sometimes been seen as successors to the guilds of medieval Europe, though the relationship between the two is disputed, as the masters of the guilds employed workers (apprentices and journeymen) who were not allowed to organise.

Trade unions and collective bargaining were outlawed from no later than the middle of the 14th century when the Ordinance of Labourers was enacted in the Kingdom of England. As collective bargaining and early worker unions grew with the onset of the Industrial

---

<sup>2</sup>See, Bowers J. & Honeyball S., *Text on Labour Law* (5th ed.) (Blackstone Press Ltd., London, 1998) 332.

<sup>3</sup>In *Union of Ifelodun Timber Dealers, Re* [1964] 2 ALL N LR, 63, the court held that Union of Ifelodun Timber Dealers was not a trade union because its main object was the protection and expansion of the timber trade and members' welfare and not the regulation of terms and condition of employment.

<sup>4</sup>The Nigeria Labour Congress, for instance, was known for challenging government policies once such policies had the slightest connection with the well being of Nigerians. More often than not, the NLC was accused of being besmeared in the moldy waters of Nigerian politics.

<sup>5</sup>See, TUA, s.2 to 8 on the procedure and requirements for registration of trade unions.

<sup>6</sup>See, for instance TUA, ss. 37 (5) & (6)

<sup>7</sup>Several provision of the TUA and the provisions of the Trade Disputes Act Cap. T 11 Laws of the Federation of Nigeria, 2004 attached trade unions and/or their members with criminal responsibilities.

Revolution, the government began to clamp down on what it saw as the danger of popular unrest at the time of the Napoleonic Wars. In 1799, the Combination Act was passed, which banned trade unions and collective bargaining by British workers.<sup>8</sup> Although the unions were subject to often severe repression until 1824, they were already widespread in cities such as London. Workplace militancy had also manifested itself as Luddism and had been prominent in struggles such as the 1820 Rising in Scotland, in which 60,000 workers went on a general strike, which was soon crushed. Hence, sympathy for the plight of the workers brought repeal of the Acts in 1824, although the Combination Act of 1825 severely restricted their activity.<sup>9</sup> By the 1810, the first labour organisations to bring together workers of divergent occupations were formed. Possibly, the first of such union was the General Union of Trades, also known as the Philanthropic Society founded in 1818 in Manchester. The latter name was to hide the organisation's real purpose in a time when trade unions were still illegal.<sup>10</sup>

## 2.1 Brief History of Trade Unions in Nigeria

Before the advent of the Colonialists, there were in existence certain trade organisation in the various communities that make u the present day Nigeria. There was the association of craftsmen such as the iron mongers, bronse workers, blacksmith, wood carvers and so on.<sup>11</sup> However, modern trade unionism started in Nigeria in about 1912, following the formation of the Nigeria Civil Service Union. This was followed by the Railway Workers Union and the Nigeria Union of Teachers in 1931. In 1938, the Nigerian Government passed its first legislation on labour. It was titled Trade Union Ordinance. The Ordinance marked a significant beginning in the legal history of the evolution of trade unionism in Nigeria and forms the foundation of subsequent legislations on labour/trade union.<sup>12</sup>

The Trade Union Ordinance facilitated the rapid growth and expansion of trade unions throughout Nigeria. In 1973, the Trade Unions Ordinance was replaced with the Trade Unions Act.<sup>13</sup> And there was a proliferation of trade unions with some being polarised so

---

<sup>8</sup> Combination Act 1799

<sup>9</sup> Combination Act of 1825

<sup>10</sup> *ibid*

<sup>11</sup>Evolution of trade union appears to have a common background all over. In England, it evolved from the fraternity of journey men which came into existence on the decay of the guild system. See, Adeniyi Olatunbosun, 'The Place of Trade Unions and their Members under the Law of Contract' (2004) 1(2) *Ife Juris Review*, 289; James G. Moher, 'Trade Unions and the Law – History and a Way Forward' <http://www.historyandpolicy.org/papers/policy-paper-63.html> (accessed 2nd, July 2010).

<sup>12</sup>Since the enactment of the Ordinance in 1938, legislation on labour proliferated for example Trade Unions Act 1973; Trade Unions (Amendment) Decree 1978; Trade Union Amendment Act 1979

<sup>13</sup>The 1973 Act is considered to be the first most important piece of legislation on Trade Unions in Nigeria.

weak and small and others were polarised along Socialist,<sup>14</sup> Capitalist or Marxist theories. Labour union movement at this time became divided, with about 800 unions existing in Nigeria.<sup>15</sup> Subsequently, in 1978 the then military government Trade Unions (Amendment) Decree<sup>16</sup> and Trade Union Amendment Act 1979 were passed.

This 1979 Act prescribed all existing trade unions and substituted same with a new list of 70 trade unions. This was seen as an effort to organise, checkmate proliferation and face out those trade unions that were too small or weak. Unfortunately, this step was not completely achieved as most unions became more polarised and seriously submerged in politics. Elections into offices Nigerian Labour Congress (NLC) became arenas for violence.<sup>17</sup> This led to the Federal Government promulgating the National Economic Emergency Power Order in 1985.<sup>18</sup> Accordingly, a Sole – Administrator was appointed for NLC to organise a special delegate conference for the purpose of conducting election within 6 months of the appointment. This however did not stop the rift in trade union movement in Nigeria.

Beyond the internal conflict in trade unionism, the unions have also been involved in series of struggle against the government. From 1945 till date, trade unions acted more or less as the opposition have been involved in opposition against the Federal and State government anti-labour policies.<sup>19</sup> With Nigeria's reform to civil rule in 1999, a period under the leadership of President Olusegun Obasanjo, the NLC fought doggedly all Federal Government economically unfriendly policies with substantial positive results.<sup>20</sup> These included the fight against incessant increment in fuel price, increase in the percentage paid as Value Added Tax and the last minute sale of two refineries by the President.<sup>21</sup>

---

<sup>14</sup>11. On the Socialist view of trade union movement; See Karl Kautsky, 'Trade Unions and Socialism' (1901) *International Socialist Review*, available at <http://www.marxists.org/archives/kautsky/1901/04/unions.html> (accessed 2nd June 2010).

<sup>15</sup>*Udoh v. O.H.M.B* [1990] 4 NWLR (Pt. 142) 52, 67.

<sup>16</sup>No. 22 of 1978, later became the Act in 1979 under a democratic government.

<sup>17</sup>On the impact of violence of trade unions on development; See Atemie J.D., 'Labour Union and Industrial Violence in Nigeria' 1(2) (2007) *Nigeria Journal of Labour and Industrial Relations*, 125 – 147.

<sup>18</sup>This order was made by virtue of the powers conferred on the President under the National Emergency Power Order of 1985. Upon the making of this Order, the two factions of NLC before then were declared illegal and unlawful. The purported election of the National Executive Committee and conferences held by the factions were declared null and void before the appointment of a sole Administrator to run the congress for 6 months.

<sup>19</sup>In 1945, the Railway workers led by foremost labour leader, Dr. Michael Imoudu embarked on a 45 -day strike over cost of living allowance popularly referred to as COLA. This in turn triggered the struggle for independence in Nigeria. See Rosemary A. Danesi, 'Trade Union (Amendment) Act 2005 and Labour Reform in Nigeria: Legal Implications and Challenges' (2007) (1) *Nigeria Journal of Labour Law and Industrial Relations*, 98.

<sup>20</sup>The NLC also picketed some banks and organisations whose policies were anti-union and which violated economic and freedom of association rights. See P.A.K. Adewusi, "The Role of Trade Unions in the Enhancement of Civil Liberties in Nigeria" (2007) 3 *Nigeria Journal of Labour Law and Industrial Relations*, 92

<sup>21</sup>Labour Unionism during this period was not without challenges as the Government meted out punitive measures like press censorship, physical and psychological intimidation and termination of employments. These

Our discussion so far point to the fact that trade unionism have forcefully evolve over time and has developed from its restrictive scope of fighting for workers rights to a more globalised course of fighting against harsh government policies amongst others. To buttress this point, it would be recalled there was a demand for reduction of fuel pump price of petroleum products under the Buhari administration. This course could not be achieved and now form part of the basis for the current demands for increase in the minimum wage of workers due to the ongoing economic recession, negotiation table and which demand, is yet to be acceded to.

### 3.0 Legal Status of Trade Union

The legal status of a trade union is one of some importance, since it is the status that determines the legal capacity of the union. For example, whether a legal action can be taken by or against a trade union in its own name, the manner of holding the Unions' Properties as well as the liability of officers of the union, are all matters determined by the particular legal status imputed to the union. The question at this juncture is, whether a union has the legal status of an individual, of a partnership between individuals, of a statutory or private corporation, or has an exclusive category of status reserved to itself?

#### 3.1 Legal Status of Trade Unions under Common Law

At Common Law, a trade union is an unincorporated association. The implication is that it is not a separate legal entity from its members. Its property is vested in the hands of trustees.<sup>22</sup> Trade unions at common law are more or less of the same legal status with clubs or associations.<sup>23</sup> The best that was ascribed to a trade union at common law was stated in the decision of the Court in *Taff Vale Railway Company v. Amalgamated Society of Railway Servants*<sup>24</sup> where it was held that Unions could sue in tort.<sup>25</sup> However, the courts in Nigeria appear to be more definite on the issue of the legal status of a trade union. The Supreme Court, per Anigolu, JSC stated the point as follows:

A registered trade union is a legal person and the birth and death of legal persons are determined not by nature but by law. They came into existence at the will of the law and they endure during its pleasure. Their extinction is called dissolution and that is what section 2(1) of Decree No. 22 of 1978 did to the 1<sup>st</sup> Appellant.<sup>26</sup>

---

Animashaun refers to as 'state violence against trade unions.' See, Animashaun Oyesola O, "Revisiting State Violence against Trade Unions" (2007) 1 (2) *Nigeria Journal of Labour Law and Industrial Relations*, 140.

<sup>22</sup>See Bowers and Honeyball, *supra* note, p. 324.

<sup>23</sup> *Ibid*

<sup>24</sup>[1901] AC 426

<sup>25</sup>. Much later in *Bonsor v. Musicians' Union* [1956] AC 104, Lord Morton held the view that a union was a body distinct from the individual members who compose it, while Lord Parker referred to a trade union as "a near corporation.

<sup>26</sup> *Nigeria Nurses Association v. A. G. Federation* [1981] 12 N.SCC, 441. In this case, the Nigeria Nurses Association went to court to institute proceedings at a time when the Association had already been dissolved by

The Supreme Court further reiterated this point in *Fawehinmi v. NBA (No. 2)* when it said that “the principal and jural units to which the law ascribes legal personality are: (a) Human beings (b) Companies incorporated under the various Companies Act, (c) Corporate sole with perpetual succession, (d) Trade Unions (d) Partnership and (e) Friendly societies.”<sup>27</sup>

### 3.2 Legal Status of The Trade Union Union Act

Although, the TUA contains provisions for the registration of trade unions under the Trade Union Act, it is not statutorily settled whether a trade union by virtue of registration, is a legal person.<sup>28</sup> No provision of the TUA deals directly with the legal personality of a trade union. We observe however, that it does appear from a community reading of some sections of the TUA discloses that the draftsmen intended that Trade Unions be treated as one clothed with a garb of legal personality.<sup>29</sup> Therefore, the question is whether in the absence of express statutory provision, a particular unincorporated association has the status of an entity that can be sued as can be inferred from a status or a series of status, the court must go through the task of perusing meticulously through the statutes in order to determine the point.

Section 24 of the TUA for instance provides:

Any action against a trade union in respect of act alleged to have been done by or on behalf of the trade union shall not be entertained in Nigeria whether the action is instituted against the trade union in its registered name or against one or more persons as representatives of a trade union.

It does also appear that a trade union is capable of being convicted separately from its members for offences against the Act.<sup>30</sup> Under section 23 of the TUA, trade unions derive certain benefits upon registration which tend to support the argument in favour of legal personality. These benefits include:<sup>31</sup>

a. Ability to enter into contract.

---

Decree No. 22 of 1978. The Supreme Court held at page 457 further that “Corporations are undoubtedly legal persons and the better view is that registered trade unions and friendly societies are also legal persons though not verbally regarded as corporations”.

<sup>27</sup>See *Fawehinmin v. N.B.A (No. 2)* [1989] 2 NWLR (Pt 105) 558, 645. However, in *Abakaliki L.G.A. v. Abakaliki R.M.O.* [1990] 6 NWLR (Pt 155) 182, the court was of the view that mere registration under the Registration of Business named Act does not confer the attribute of suing and being sued co-nomine on the registered body. This decision is not out of place as it does not relate to trade unions. Businesses are required to sue and be sued in a particular way by the rules of court. However, a trade union is not a business organisation.

<sup>28</sup>26. In *Nigeria Civil Service Union v. Essien* [1985] 3 NWLR (Pt. 12) 306, 320 the term “Registered” under section 27(1) of the Trade Unions Act of 1973 was considered and the Supreme Court, per Nnaemeka-Agu JSC held the view that the use of the word as it relates to registration of trade unions having recourse to the Blacks Law Dictionary, is more or less “(entering) on record in some official register or record of list.”

<sup>29</sup>See for instance, sections 12(3), 15(2), 16, 22, 35(3), 39 etc. of the TUA.

<sup>30</sup>For instance, under section 21(4) of the T U A, if a trade union continues for more than 30 days without a registered office, the trade union is guilty of an offence.

<sup>31</sup>See *Udoh v. O.H.M.B* supra note at pg 67 on the interpretation to be accorded to the section on benefits of registration.



b. Capacity to sue and be sued in its registered name.<sup>32</sup>

Trade Unions may be prosecuted for offences in their own name and can have judgment, order or award made in any proceedings enforced against their property as if they were bodies incorporated. It can be sufficiently inferred from the TUA that a trade union is a legal entity at least for the purposes listed in section 23 of the Act though not a corporate legal entity. Despite the fact that a trade union is not an incorporated body, the TUA has conferred a status expressed by way of benefits on the union. This status elevates trade unions above other unincorporated bodies to the extent that trade unions can sue in their own name.

In England for instance, in order to achieve the aim of making unions pay for the consequences of their industrial action, the Industrial Relation Act of 1971 imposed corporate status on all unions.<sup>33</sup> What is more, a situation may even arise where a trade union may be regarded as the agent of its members.<sup>34</sup>

#### 4.0 Liabilities of Trade Unions

Trade Unions in Nigeria engage in a wide range of activities geared towards achieving their aims and objectives against employers. Certain actions or inactions by trade unions may ordinarily attract civil or criminal liability as the case may be. The law, however, deems it necessary to confer immunity on trade Union in respect of certain specific actions undertaken by trade unions.

Ordinarily, collective withdrawal of labour without appropriate notice will constitute a breach of contract, the Trade Union Act has conferred legal immunity on trade unions in cases where such actions are done *in contemplation or furtherance of a trade dispute*. Protection by law of Trade Unions may be regarded as a necessary evil in order to safeguard and preserve the rights of workers to engage in lawful means of industrial action. In this light, a philosopher aptly observes that the main pillar of the workers right to strike takes the form of these

---

<sup>32</sup>Note that any person with sufficient interest can also sue on behalf of a trade union. In *Sobade v. Imagie* [1989] 4 NWLR (Pt 114) 250, 261, the Court held that an injunction restraining any such application of funds of a trade union may be granted by the appropriate High Court upon the application of the Attorney- General of the Federation or of the Registrar or of any five or more members of the union. In *Elufioye v. Halilu* [1990] 2 NWLR (Pt 130), 22 the Court was of the view that to read the rule in *Foss v. Harbottle* into the Trade Unions Act is erroneous because there is no interpretation of the rule throughout the common wealth to the effect that without being a member of a company or union a third party cannot sue in the limited situation of prevention of wrongful dissipation of union's fund.

<sup>33</sup>See Bower and Honeyball supra note p. 324. The provision of the Industrial Relation Act 1971 conferring corporate status on trade unions in England was subsequently reversed by Trade Unions and Labour Relation Act 1974 thereby forbidding unions to register under the English Companies Act 1985.

<sup>34</sup>See *Edward v. Skyways Ltd* [1964] 1 All E.R. 494.

“immunities and privileges” recognised by law.<sup>35</sup> We shall examine the consequent civil and criminal liabilities of trade unions or unionism?.

#### 4.1 Civil Liabilities

The Trade Unions Act states that acts done *in contemplation or furtherance of a trade dispute* are not actionable in torts when it involves inducing someone to break a contract of employment or it involves an interference with the trade, business or employment of some other person or with the right of some other person to dispose of his labour or it involves a trade union threatening to breach a contract of employment and threatening to induce others to do so.<sup>36</sup>

It is pertinent to note that the Nigeria’s law was fashioned after the English Trade Disputes Act 1906 particularly, Section 3 of the English Act that confers immunity on trade unions in respect to tort actions. In the notorious English case of *Rookes v. Barnard*,<sup>37</sup> the draughtsmen of the B.O.A.C through their union had agreed with the employers that neither should engage in strike or lockout. The workers went on strike in breach of the “no strike clause” in their contract of employment. The workers were held liable for using the threat of a strike in breach of the collective agreement and also because a wrong method was used i.e. intimidation. The House of Lords dismantled whatever protection the English Act might have afforded the British unions by deciding that a threat to withdraw labour in breach of a “no strike clause” in the workers contract of employment was actionable as being outside the protection offered by section 3 of the 1906 Act. A “threat to break a contract” their lordships decided was an “unlawful means” which deprived the workers of their legal immunity under the Act.

The above decision was bitterly criticised by scholars on labour law. Subsequently the House of Lords themselves seize the first opportunity they had to narrow down the ambit of the application of the rule in *Rookes v. Bernard* (Supra). In *Morgan v. Fry*<sup>38</sup> the Court of Appeal decided that in the absence of “no strike” clause in the contract and in the absence of unlawful means being used, the union was entitled to use strike as a weapon in an industrial conflict. The provisions of Section 3 of the English Trade Disputes Act of 1906 was reproduced in Section 7 of the Nigerian Act of 1939, later reproduced in S.42 (1) C of the Trade Unions Act of 1973.<sup>39</sup>

---

<sup>35</sup>Freund O.K., *Labour and the Law* (Stevens and Sons Ltd, London, 1972) 234

<sup>36</sup>Section 44 (1) Trade Unions Act, Cap T14 LFN 2004.

<sup>37</sup>[1964] A.C. 1129 (1964) 2 WLR 269

<sup>38</sup> [1964] 2 WLR 269

<sup>39</sup> Now re-enacted under Section 44 (1) of the Trade Unions Act 2004.



The provisions of Section 44 of the Trade Union Act have whittled down the effects of *Rookes v. Barnard*, but they have not given the trade unions or their officials a blank cheque for impunity. The provisions of subsection 2 of section 44 contains the necessary and inescapable inference that certain actions even though taken in *contemplation or furtherance of a trade dispute shall nevertheless be actionable if they do not fall within the parameters set by subsection 2*. Therefore, it must not be imagined for a moment that the Union has an absolute and unrestricted freedom to do anything regardless of consequences of the law. Any action outside these statutory exceptions becomes actionable in torts, the liability of the union being founded on the general principle of vicarious liability<sup>40</sup>.

Again, it has been said that these limitations have been very effective because failure to fulfill the conditions laid down by law for immunity is what gave rise to a variety of tortious actions like civil conspiracy, inducing a breach of contract and tort of intimidation. The law also clearly specifies the reason why acts which are not actionable in torts which must be in “contemplation” or “furtherance” of a trade dispute.

- i. Statutory immunity will not extend to cover cases where extraneous matters not related to a trade dispute are the sole cause of the action;<sup>41</sup>
- ii. It will not protect the action of a union in the case of coercive interference in which the intervener has his own self interest to serve; therefore action taken in such circumstances will not be regarded as being in contemplation or furtherance of a trade dispute.<sup>42</sup> To enjoy statutory immunity, the trade dispute motive must be the primary purpose of the action; there may well be other motives too, but the dominant purpose must be the trade dispute motive.
- iii. It is not absolutely necessary that there was a dispute in existence which the union was seeking to further by taking some action, it will just be enough that the union acted in contemplation of a dispute which it envisaged as likely to occur.

### Limitation of Civil Liability

There are however limitations to the extent to which a future dispute would afford protection, for example, anticipation of a dispute must be predicated on reasonable grounds and mere anticipation of a dispute at some future time (especially where such anticipation was not based on reasonable grounds) might not be enough to attract the protection provided by the

---

<sup>40</sup>Oguuniyi, O., *Nigeria Labour and Employment Law in Perspective* (Folio Publishers Ltd, Lagos 1991) 315, 44

<sup>41</sup> Ibid at 45

<sup>42</sup>Ibid.

statute. Also, some actions taken by a Trade Union can expose it to tortious liability with respect to actions such as civil conspiracy, including a breach of contract and tort of intimidation.

#### 4.1.2 Civil Conspiracy

When a trade union organises its members and ensures their combination as a group with the result that the combination constitutes a threat to the economic interest of others, it is known as the tort of conspiracy. It differs from criminal conspiracy because in this case actual loss must be suffered. Acts done in furtherance of trade union objectives (provided that these did not lead to doing of unlawful acts) are not actionable conspiracy. If however, the predominant purpose of the combination or agreement is to injure another in his trade and economic loss actually results, then the tort of civil conspiracy would have been committed as the conspirators have conspired for an improper reason. Unless the real and predominant purpose of the combination is to advance the defendant's lawful interest, in a matter where the defendant honestly believes that those interests would indirectly suffer if the action taken against the plaintiff was not taken, such a combination as a combination to damage a man in his trade, will be unlawful and therefore actionable.

Therefore, the significant thing is the "purpose" of the combination rather than the "result". In *Quinn v. Leatham*<sup>43</sup> liability for civil conspiracy to injure was established. The Plaintiff employed non-unionists. Officials of a trade union threatened the Plaintiff's customers because the Plaintiff had refused to dismiss non-union members of his staff. No unlawful action was shown but the union officials responsible were held liable for the tort of conspiracy as there was nothing to be achieved but the furtherance of a grudge against the Plaintiff.

It sometimes happen, however, that in the pursuit of a legitimate interest a group of persons may adopt an unlawful means of achieving that object. In *Oju v. Balogun*<sup>44</sup> members of a trade union constituted themselves into a nuisance by barricading the entrance to the plaintiff's house, the court held the defendants liable. Where the means used are thus unlawful, the conspiracy is actionable even if it be in pursuit of a legitimate object.

#### 4.1.3. Inducing a Breach of Contract

Perhaps the most important liability at common law is inducing a breach of contract. Unless there are express or implied terms permitting workers to go on strike, calling a strike amounts

---

<sup>43</sup>[1901] A.C. 495

<sup>44</sup>[1980] V 7-9, CCHCH. 261

to an inducement to breach a contract. This head of liability can hardly be justified or excused by showing legitimate trade motive and only in very rare instances can a defence of justification be allowed. In *Brimelow v. Casson*<sup>45</sup> chorus girls in a travelling theatrical company were paid such low wages that they had to resort to prostitution in order to supplement their income. It was held that the defendants who induced the workers to break their contracts with the company were not liable because their action was justified. The above case is the one case in which a defence of justification proved successful. Inducement covered, not merely active pressure, but even communication of information intended to produce a breach. Inducing a breach of contract is an important source of liability in the context of industrial disputes.

There are two basic defences that can be pleaded in an action for inducing a breach of contract. The first is the common law defence of justification as illustrated in the case cited above and the other is statutory.

- a. Justification” is a complete defence to the tort of inducing breach of contract. Its success, however, depends on the merit of each case.
- b. The second defence is based on the provisions of section 23, 24 and 46 of the Trade Unions Act where the tort of “one or more persons on behalf of the trade union” is not to be actionable where the tort has been committed in “contemplation of or furtherance of a trade dispute”. *Torquay Hotel Ltd. v. Cousins & Ors*<sup>46</sup> is a very illuminating case on the point. It therefore deserves to be briefly discussed. The Transport and General Workers Union (T.G.W.U) acted on a dispute with the managing director of Torquay Hotel who had turned down a request by the union for a discussion, preferring to hold recognition talks with the Municipal Workers Union. They picketed Torquay Hotel over this recognition affair- a legitimate act. While the crisis was on, the manager of Imperial Hotel (owned by the plaintiffs) was credited with a certain statement, which incensed the transport workers who promptly sent pickets to the Imperial Hotel with a warning to Esso Petroleum Company who supplied the plaintiffs with fuel that a “labour war” was on at the Imperial Hotel. Whereupon Esso took advantage of a force majeure clause in the contract to stop supply as Esso's own workers, who belonged to the T.G.W.U, refused to deliver fuel to “Imperial”.

---

<sup>45</sup>[1924] CH 302, 479

<sup>46</sup> [1969] 1 ALLE.R 522; [1969] 2 W.L.R 289.

As a result, imperial had to buy fuel from expensive suppliers – Alternative Fuels Ltd- and notified the defendants, who were officials of the union, of the new contract and sought an assurance that the contract would not be interfered with. The defendants did not, in fact interfere but gave no undertaking not to do so. The Plaintiffs then brought this action of a *quia timet* injunction against the union's officials, and Stamp, J. granted an interlocutory injunction restraining the defendant union and certain of its officials from causing any supplier of fuel to break his contract to supply fuel oil and from picketing the Imperial Hotel to prevent the delivery of fuel oil. The Defendants appealed, and after reviewing several authorities, the Court of Appeal came to the conclusion that no action could be brought against a trade union for acts connected with a trade dispute nor against individual members who act in contemplation of or in furtherance of a trade dispute, but where there is “no dispute as to wages, conditions of labour or recognition”, an injunction could be issue against one of the parties.

#### 4.1.4 Tort of Intimidation

The Trade Union Act now in vogue does not define the meaning of the term “intimidation” but the Act of 1939 defined it as conduct which will cause in the mind of a person reasonable apprehension of injury to him or to any member of his family or to any of his dependents or of damage to any property.<sup>47</sup> Thus, intimidation may involve the use of threat of violence or illegal obstruction and this is not limited to physical violence. The scope of the tort of intimidation was given a full exposition in the case of *Rookes v. Barnard (Supra)* where the union threatened industrial action in breach of a no strike clause in the workers terms of individual employment unless the plaintiff who had withdrew his membership of the draughtsmen union was relieved of his employment by the B.O.A.C. The Plaintiff was eventually dismissed and brought an action against the respondent for using unlawful means to induce B.O.A.C to terminate his contract. The House of Lords held that this threat amounted to the tort of intimidation and was therefrom unlawful means, and that the Plaintiff was entitled to recover damages. In that case Lord Reid stated “to intimidate by threatening to do what you have a legal right to do is to intimidate by lawful means and intimidation of any kind appears to me to be highly objectionable”.

The decision in *Rookes v. Barnard* that a threat to procure a breach of contract amounted to intimidation certainly extended the scope of the tort to what was conducive for healthy

---

<sup>47</sup> Trade Unions Act Cap T14 LFN 2004, s.6 (2)

collective bargaining.<sup>48</sup> The enactment by the British parliament of the Trade Dispute Act of 1965 provided a legal shield to trade unions. In Nigeria, a similar provision is incorporated under Section 44 of the Trade Union Act such that intimidation by way of violence or threats of violence may be a criminal offence, but it will certainly not be actionable in tort if the threats are limited to the exertion of industrial pressure.

#### **4.2: The Golden Formula**

Immunities only apply to act that generates common law liability if its falls and has been committed “in contemplation or furtherance of a trade dispute”. This has become known as the golden formula. If the industrial action falls outside this formula, then, the said immunities will be suspended and an interlocutory injunction may be granted to halt the action and damages will be awarded against the organisers and the union. If the industrial action falls within this formula, then the immunities will apply unless they are withdrawn because the industrial action offends against one or more of the exceptions later hereunder.<sup>49</sup>

##### **a. Contemplation... (of a trade dispute)**

The classic meaning of these words is contained in the speech of Lord Loreburn in *Conway v. Wade*.<sup>50</sup> His Lordship said that, for the industrial action to be in contemplation... of a trade dispute, it is necessary for the dispute to be imminent and the act to be done in expectation of and with a view to it. Thus, where a union makes a genuine claim on an employer to improve the conditions or pay of its members and the employers reject the claim, a trade dispute is in contemplation even though no active dispute has yet arisen.

In *Cory Lighterage v. TGWU*,<sup>51</sup> the Court of Appeal had held that, where a dispute does not arise because the employer has unexpectedly acceded to union demands, any pre-emptive union action is not in contemplation of a dispute. In essence, this establishes the fact that an act, if resisted would have led to a trade dispute, is to be treated as being in contemplation of a trade dispute, even though no dispute has in fact arisen because the other party has submitted to the demand.

---

<sup>48</sup>Eniola A. Op. cit. p. 534

<sup>49</sup> Charles Barrow, *Industrial Relations Law* (Cavendish Publishing Limited, London, United Kingdom, 2<sup>nd</sup> Edition, 2002) p. 327

<sup>50</sup> [1909] AC 506

<sup>51</sup> [1973] IRLR 152

### **b. Furtherance of...(of a trade dispute)**

In order to further a dispute, it must already be in existence and acts taken in the course of the dispute must be discharged so as to support or aid and assist in the dispute. In a trio of cases- *Express Newspaper Ltd v Mcshane*, *NWL Ltd v. Woods*<sup>52</sup> and *Duport Steel v. Sirs*,<sup>53</sup> the Court of Appeal held that whether a particular act was 'furthering' a trade dispute should be interpreted objectively and must not be so remote that it has no real effect on the trade dispute. This meant that purely sympathetic secondary action, which did not in practical terms apply any pressure on the employer in the primary dispute, as unlawful. The reasoning of the Court of Appeal is illustrated by the Judgment in *Express Newspaper Ltd v. McShane*.<sup>54</sup>

Primary action was taken by the NUJ in Bolton to bring pressure to bear directly on the employers of journalist on local papers in that area. To make the action more effective, the NUJ called on its members in the Press Association to refuse to supply news to these local papers and, additionally, called on all members in national newspaper in national newspaper to boycott Press Association copy so as to raise the morale of those journalist of those journalist who had gone on strike and to persuade other journalists at the Press Association to join them.

The Court of Appeal held that both the primary action and the first secondary action was in furtherance of the trade dispute, as both were bringing pressure to bear on the employer in Bolton. But the second instruction, to boycott all Press Association, was not in furtherance of the dispute as it would have no influence on the employer in Bolton. The House of Lords,<sup>55</sup> with Wilberforce dissenting, disagreed with this analysis. Their Worships asserted that furtherance.. of a trade dispute should be examined in the context of what the union subjectively believed. Thus, this meant did they actually believe the act will further the union objectives? If so, they were said to be acting in furtherance of a trade dispute.

---

<sup>52</sup> [1979] IRLR 321

<sup>53</sup> *ibid*

<sup>54</sup> [1979] ICR 210

<sup>55</sup> [1980] ICR 42 as noted by Lord Wedderburn [1980] 43 MLR 319



### 4.3 Conditions for Loss of Immunity

The trade dispute immunity is lost in six specific circumstances as follows;

- a. The industrial action takes places without a valid ballot or without giving appropriate notice of action<sup>56</sup>
- b. The industrial action consists of prohibited secondary action<sup>57</sup>
- c. Unlawful picketing takes place during the industrial action.<sup>58</sup>
- d. The industrial action is taken to impose a closed shop.<sup>59</sup>
- e. The industrial action takes places to enforce recognition of a union or the use of union only labour.<sup>60</sup>
- f. The industrial action is taken because of dismissal of unofficial strikers.<sup>61</sup>

### 4.4 Criminal Liabilities

Trade Unions in the course of their actions or inactions may incur criminal responsibility punishable under the relevant criminal laws. The criminal offences trade unions may be held criminally liable includes criminal conspiracy, assault, common nuisance, breach of the peace and criminal breach of contract.

#### 4.4.1 Criminal Conspiracy

The term conspiracy“ means an agreement by two or more persons to do an unlawful act or to do a lawful act by unlawful means.<sup>62</sup> Both the criminal and penal codes contains provisions on criminal conspiracy. The Criminal Code provides that any person who conspires with another to commit an offence, commits criminal conspiracy.<sup>63</sup> Despite the prohibition of strikes by the Trade Disputes Act, strikes are still on the increase in Nigeria. Conspiracy is one offence an employee may commit either by agreeing to take a strike action or by actually partaking in it. Therefore, when employees go on strike they can be prosecuted not only for

---

<sup>56</sup> Trade Dispute Act, ss.226A and 234A; Requires the union to take reasonable steps to ensure all employers whose employees are entitled to vote have 7 days written notice of any ballot. Industrial Action must be taken within 4 weeks of the ballot, unless another ballot will have to be rescheduled.

<sup>57</sup> Trade Dispute Act, s.224; Secondary industrial action occurs where employees who are not involved in the primary dispute take action against their own employer, to cut supplies to the employer in that dispute. Such action interferes with the business of a secondary employer who is not a party to the dispute

<sup>58</sup> Trade Dispute Act, ss.229

<sup>59</sup> Trade Dispute Act, s.222; Statutory immunity does not apply where the reason or one of the reasons industrial action has been taken is due to the fact that a particular employer is employing, has employed, or might employ a person who is not a member of a trade union; or is failing, has failed or might fail to discriminate against such a person.

<sup>60</sup> Trade Dispute Act, s.225

<sup>61</sup> Trade Dispute Act, s.223

<sup>62</sup> *Balogun v. Attorney General of Ogun State* [2001] 14 NWLR PT 733, p. 335

<sup>63</sup> Criminal Code Act, Cap C 38 LFN 2004, ss. 516 – 517

going on strike but also for criminal conspiracy. The offence of criminal conspiracy may be committed even where the conspiracy is not necessarily to commit an offence. The Criminal Code provides other categories of conspiracies which includes conspiring to prevent the enforcement of any law to cause injury to the person, or depreciation in the value of a person's property; or to prevent the free and lawful disposition of any property by the owner, or to injure any person in his trade; or to effect any unlawful purpose or any lawful purpose by unlawful means.<sup>64</sup>

A writer aptly commented on the above provision that there are no cases to show that this provision has ever been applied to employees on industrial action and that this may be proof enough that the section has no immediate relevance to industrial disputes.<sup>65</sup>

Under the penal code when two or more persons agree to do or cause to be done an illegal act or an act which is not illegal by illegal means such an agreement is called criminal conspiracy but no agreement shall amount to such unless some act is done by one or more parties in pursuance of such agreement.<sup>66</sup> There is no criminal conspiracy under the penal code unless the conspirators have carried the illegal act into effect. Both the criminal and penal code removed criminal conspiracy from the ambit of trade disputes. The criminal code stipulates that the provisions of sections 516 to 517 do not apply to agreements between persons to do any act in furtherance of a trade dispute if such act committed by one person would not be punishable as an offence. Therefore, where employees engage in industrial action in contemplation of a trade dispute they can be charged for criminal conspiracy only when they carry out an act which if done by one employee would be punishable as an offence.

Trade unions or their officials may be prosecuted under the criminal code which provides that any person who conspires with another by deceit or any fraudulent means to effect the market price of anything sold publicly or to defraud the public or to extort any property from any person is guilty of an offence.<sup>67</sup> In *Ogundipe v. R.*,<sup>68</sup> the appellants, officials of a union of labourers who demanded higher rates of pay from contractors who required the services of the labourers were charged under the section for conspiracy to extort. They were held not liable only because the court was unable to find that the appellants conspired to achieve their aim by any deceit or fraudulent means.

---

<sup>64</sup> Criminal Code Act, Cap C 38 LFN 2004, s.518

<sup>65</sup>Uvieghare E.E. *Op. Cit.* p.448

<sup>66</sup>Penal Code Law, s.96

<sup>67</sup>Criminal Code Act, s.42

<sup>68</sup>[1954] 14 WACA 465 88; Garner, *Black's Law Dictionary*, (7th Edition, 1999) 1167

#### 4.4.2: Picketing

Picketing is a demonstration by one or more persons outside a business or organisation to protest the entity's activities or policies and to pressure the entity to meet the protesters demands.<sup>69</sup> Picketing is one way of exerting economic pressure on an employer in the hope of achieving the desired goal. Picketing may involve public demonstration and one of the reasons that strikers picket is to solicit public attention and support for their cause. Inherent in the right to picket are freedom of assembly and freedom of expression.

Picketing is that aspect of industrial action that consists of placing a "picket", which may comprise of a single individual or more persons, at or near the place where employees are employed for the purpose of communicating with persons on the subject matter of the action which must also be in contemplation or furtherance of a trade dispute.<sup>70</sup> The Trade Union Act further provides that doing any act that constitutes lawful picketing shall not constitute an offence under section 366 of the Criminal Code. The Criminal Code makes it an offence for any person to hinder any person from doing any act which he is lawfully entitled to do by threatening such a person or persistently following such other person; hiding any tools or property used by such other person; or watches or besets the house or place where such other person resides; or follow such other person with others in a disorderly manner and induces such person to believe that he will be an object of displeasure. Though Section 42 (2) of the Trade Unions Act has provided legal protection for lawful picketing and exemption from criminal liability under section 366 of the criminal code, the right to picket is however a precarious one as a number of offences may be committed while picketing. It is settled law that section 42 (1) of the Trade Unions Act only protects lawful picketing. A combination to effect an unlawful act or do a lawful act by unlawful means constitutes criminal conspiracy and is therefore outside the protection of Section 42 (1) of the Act despite Section 42 (2) stipulating that "it shall not constitute an offence under any law in Nigeria and in particular shall not constitute an offence under section 366 of the Criminal Code or any corresponding law in any part of Nigeria. In the course of picketing the following offences may be committed:-

#### 4.4.3 Assault

The Criminal Code provides that any person who strikes, touches or otherwise applies force of any kind to the person of another; either directly or indirectly or who by any bodily gesture

---

<sup>69</sup>Bryan Garner, *Black's Law Dictionary* (7th Edition) (West Publications, 1999, USA) 1167

<sup>70</sup> Trade Unions Act, Cap T14 LFN 2004, s.43 (1)

attempts or threatens to apply force of any kind is said to commit the act of assault and an assault is unlawful and constitutes an offence unless it is authorised by law.<sup>71</sup> Assault can be committed in the course of persuading a worker to abstain from work. The Trade Unions Act protects only a peaceful persuasion to work or abstinence; where violence or threat is employed, the picket will lose the protection of the Act. It is trite law that violence will render criminal an otherwise lawful act of peacefully persuading any person to work or abstain from working. In the case of *Salawu Ajao v. Karimu Ashiru & Ors (Supra)* the Defendants formed a picket line and forcefully entered the plaintiff's residence thereby seizing his mill and beating up his servant. The Supreme Court opined that what the unionists had done amounted to "forcible entry" and the beating up of the plaintiff's servant was a clear case of assault and is not protected by statute.

#### 4.4.4 Common Nuisance

Nuisance is another offence pickets can easily commit. Under the T.U.A pickets may only attend at or near a house or place where a person resides or works or carries on business. However, a place where a person happens to be is not limited to a place where the person habitually frequents. It includes any place where an employee or other person is found however casually.

The use of the highway is always an area where pickets might commit an offence. There is no reason why pickets may not use the highway for the purpose of picketing. Everyone has a right to the use of the highway. The Irish Supreme Court pointed out in the case of *Ferguson v. O'Gorman*<sup>72</sup> that when the legislature declared it lawful for persons to attend at or near a house or place it cannot reasonably have contemplated that such a house or place would be situated in a no man's land. The usual approach to a residence or place of business is a public highway and unless the right to attend is a right to attend on a public highway, it is difficult to see how the right to picket can be exercised at all.<sup>73</sup>

However, pickets may quite easily commit offences and even torts while using the highway. Under the Criminal code any person who prevents the public from having access to any part of the highway by an excessive and unreasonable temporary use commits an offence.<sup>74</sup> It is generally a question of fact whether use of the highway is excessive and unreasonable. In *Tynan v. Balmer*<sup>75</sup> forty pickets formed and moved around in a circle on the highway in front

---

<sup>71</sup>Criminal Code Act, ss.252 and 253

<sup>72</sup>[1937] IR. 620

<sup>73</sup>Ibid

<sup>74</sup>Criminal Code Act, s.234

<sup>75</sup>[1961] All NLR 13; Criminal Code Act, s.305(A)

of the main entrance to the picketed factory. The police asked the defendant to stop his fellow pickets from circulating as that was causing obstruction and intimidation, but he refused. The defendant was convicted of obstructing a policeman in the execution of his duty and dismissing his subsequent appeal, it was held that the picket's conduct amounted to common law nuisance and an unreasonable use of the highway. It is generally a question of fact whether use of the highway is excessive and unreasonable.

#### 4.4.5 Criminal Breach of Contract

Unionists may be criminally liable for criminal breach of contract. In 1947, an amendment was effected to the Criminal Code that accorded breaches of certain contract of services with criminal liability.<sup>76</sup> Similarly, the Penal Code states that whoever being an employee engaged in any work connected with the public health or safety or with any service of public utility ceases from such work in pre-arranged agreement with two or more other such employees without giving his employee *fifteen days notice of his intention*, shall if the intention of such cessation is to interfere with the performance of any general service connected with public health, safety or utility to an extent which will cause injury or grave inconvenience to the community commits an offence.<sup>77</sup>

#### 4.5 Effectiveness of Criminal Sanction on Trade Unions in Nigeria Under the Trade Union Act

Section 17(1) of the Trade Dispute Act,<sup>78</sup> prevents workers from going on strike, and employers from imposing a lock-out while negotiations or arbitral proceedings are in progress. The section also prevents the initiation of any industrial action after the National Industrial Court<sup>79</sup> has given its award. A worker who goes on strike is liable on conviction to a fine of N100.00 or six months imprisonment while a corporate body is liable to a fine of N1,000.00.<sup>80</sup>

Furthermore, the TUA prohibits the application of the fund of trade unions to legal proceedings relating to the election or appointment into any office of a trade union. The

---

<sup>76</sup> Criminal Code Act, s.305(A)

<sup>77</sup> Criminal Code Act, s.185,

<sup>78</sup> Cap. T. 8 Laws of the Federation of Nigeria 2004

<sup>79</sup> The decision of the National Industrial Court (NIC) under the Trade Dispute Act was final. See section 21 of the Trade Dispute Act. The National Industrial Court has been re-established under the National Industrial Court Act, 2006. The 2006 Act has generated a lot of controversies mostly as to the scope of the jurisdiction of the NIC. See, Brown E. Umukoro, 'The New National Industrial Court: Another still Birth in Industrial Dispute Resolution in Nigeria' (2006) *Warri Bar Journal*, 36 – 50; Adetokunbo Kayode, SAN, 'The Role and Place of the National Industrial Court in the Nigerian Legal System: The Journey so Far', A paper presented at a 3 – day conference organised by the NIC, at Sheraton Hotel and Towers, Abuja, 2003. See also Adejumo B.A., 'Opportunities for Effective Utilisation for National Industrial Court' (Being a paper presented at NBA Conference, Ilorin, 2006) 7.

<sup>80</sup> Unfortunately this as not helped out as workers still go on strike.

punishment for this offence is N5,000 upon conviction. Where a trade union fails to remit 10% of contribution received from members as required by the Act, the trade union is guilty of an offence and liable on conviction to a fine of two times the said sum. Furthermore, where no punishment is specified for any offence under the Act, the punishment generally is a fine of N50 upon conviction.

From the foregoing, one may be tempted to think that the increase of fine by the 2005 Act would bring deterrence through the criminal sanctions on trade unions. The contrary appears to be the case. According to Emiola<sup>81</sup> Attaching criminal sanctions to a lawful withdraw of labour... does not help the development of healthy industrial relations, on the contrary, it will embitter workers the more. While trade unions may comply somewhat with certain regulatory provisions of labour statutes, experience has shown that strike and lock-out will continue to exist. It is also of interest to note that if the government must imposed fines, then most of the fines imposed by the TUA are inadequate having regards to present day economic realities. When we say criminal sanction does not necessarily prevent industrial actions, it is worst when the fines are ridiculously too low. A fine of a thousand naira in Nigeria for the violation of any offence in the 21<sup>st</sup> Century, to say the least at this time and age, is ridiculous.

## 5.0 Conclusion and Recommendations

The paper has explored and examined the gamut legal framework It is to be noted that trade union performs significant roles in industrial relations as they serve as catalyst in the struggle for a living wage, good conditions of service and as defender of the interest of the working class and the under-privileged or down-thrown in the society. Thus, by virtue of being a legal personality, they can sue and be sued. This in essence makes the Trade Union itself and members liable for their wrong doings both in civil and criminal cases, thus, they are not completely exonerated. Though, they tend to be exonerated in certain instances where immunity clause covers their acts, this comes within the exception under the law that the act being carried out must fall. One of the remarkable conditions as noted above is that the act must be in reasonable contemplation and furtherance of a trade dispute.

This paper contends that that this golden rule of exception might be difficult to arrive at and determine, as the laws does not spell out in clear terms, the condition that are needed to be met to fall within this context. It is for this reason that this paper seeks and recommends that

---

<sup>81</sup> Emiola A., *Nigerian Labour Law* (2nd ed.) (1982) p. 239. See Adeogun A.A., 'The Enforcement of Labour Laws and Economic Development' (Being a paper presented at the National Seminar on Revitalisation of the Economy and Economic Development, Organised by the Nigeria Institute of Advanced Legal Studies Lagos from 1-3 February, 1984).



there should be a more clearer and well defined definition of the golden rule of immunity clause as this will help the court arrive at justifiable determination of trade dispute.

### 5.1 Recommendations

Flowing from the above, it is therefore recommended that:

- i. sensitisation programmes be carried out to enable trade union members know the scope and limit of their liabilities under the Nigerian labour law.
- ii. the subsequent legislation on Trade Union in Nigeria should define with clear terms the legal status of a trade union whether it be a corporate legal entity or not.
- iii. the immunity clause “contemplation and furtherance of trade dispute” should be well defined in the subsequent Trade Union legislation as this will help define the scope of trade disputes.
- iv. proper measure for enforcement and compliance with labour laws be ensured.
- v. ridiculous fines should be jettisoned and enormous sanction fines be implemented to enforce compliance.
- vi. government should provide conducive atmosphere for trade union to enable them vent out their grievances and provide possible solutions.
- vii. government should desist from unnecessary interference in trade union activities and affairs in order to allow trade union to make best decisions within its caucus and not politically driven.

### Bibliography

Abdulmutalib Umar, ‘An Appraisal of the Role of Trade Unionism Under Nigerian Law: A Case Study of the Nigeria Labour Congress’ (LLM Research Thesis, Ahmadu Bello University, 2015) available at [www.google.com](http://www.google.com) (accessed on 5<sup>th</sup> February 2018)

Adejumo B.A., ‘Opportunities for Effective Utilisation for National Industrial Court’ (Being a paper presented at NBA Conference, Ilorin, 2006)

Adeniyi Olatunbosun, ‘The Place of Trade Unions and their Members under the Law of Contract’ (2004) 1(2) *Ife Juris Review*.

Adeogun A.A., ‘The Enforcement of Labour Laws and Economic Development’ (Being a paper presented at the National Seminar on Revitalisation of the Economy and Economic Development, Organised by the Nigeria Institute of Advanced Legal Studies Lagos from 1–3 February, 1984).

Adetokunbo Kayode, SAN, ‘The Role and Place of the National Industrial Court in the Nigerian Legal System: The Journey so Far’, A paper presented at a 3 – day conference organised by the NIC, at Sheraton Hotel and Towers, Abuja, 2003.

Adewusi P.A.K., “The Role of Trade Unions in the Enhancement of Civil Liberties in Nigeria” 3 (2007) *Nigeria Journal of Labour Law and Industrial Relations*.

Animashaun Oyesola O, “Revisiting State Violence against Trade Unions” 1(2) (2007) *Nigeria Journal of Labour Law and Industrial Relations*.

Atemie J.D., ‘Labour Union and Industrial Violence in Nigeria’ 1(2) (2007) *Nigeria Journal of Labour and Industrial Relations*.

Bowers J. & Honeyball S., *Text on Labour Law* (5th ed.) (Blackstone Press Ltd., London, 1998)

Brown E. Umukoro, ‘The New National Industrial Court: Another still Birth in Industrial Dispute Resolution in Nigeria’ (2006) *Warri Bar Journal*.

Brown E. Umukoro, Esq., LL.M, Criminal Liabilities of a Trade Union in Nigeria, *Labour Law Review NJLIR* Vol. 5 no.1, 2011 [www.google.com](http://www.google.com) (accessed on 5<sup>th</sup> February 2018)

Bryan Garner, *Black’s Law Dictionary* (7th Edition) (West Publications, 1999, USA)

Charles Barrow, *Industrial Relations Law* (Cavendish Publishing Limited, London, United Kingdom, 2<sup>nd</sup> Edition, 2002)

Emiola A., *Nigerian Labour Law* (2nd ed.) (1982)

Freund O.K., *Labour and the Law* (Stevens and Sons Ltd, London, 1972)

Hassan A.R, Liability in Torts of a Trade Union and its Members, *Labour Law Review, NJLIR* Vol. 4 No. 2, 2010 available at [www.google.com](http://www.google.com) (accessed on 18 July 2017)

James G. Moher, ‘Trade Unions and the Law – History and a Way Forward’ <http://www.historyandpolicy.org/papers/policy-paper-63.html> (accessed 2nd, July 2010).

Karl Kautsky, ‘Trade Unions and Socialism’ (1901) *International Socialist Review*, available at <http://www.marxists.org/archives/kautsky/1901/04/unions.html> (accessed 2nd June 2010).

Leonard C. Opara, The Legal Frame Work of Trade Union Activism and the Role of National Industrial Court (NIC) in Handling Trade Disputes, *International Journal of Humanities and Social Science* Vol. 4 No. 3; February 2014 available at [www.google.com](http://www.google.com) accessed on February 9, 2017

Nkemdili Nnonyelu, 'The State and Trade Unions: A Dialectical Framework for Understanding Industrial Relations in Nigeria, Society for Business Research Promotion' available at [www.google.com](http://www.google.com) (accessed 8th February 8, 2017)

Oguuniyi, O., *Nigeria Labour and Employment Law in Perspective* (Folio Publishers Ltd, Lagos 1991)

Rosemary A. Danesi, 'Trade Union (Amendment) Act 2005 and Labour Reform in Nigeria: Legal Implications and Challenges' (2007) (1) *Nigeria Journal of Labour Law and Industrial Relations* (United Kingdom, 2<sup>nd</sup> Edition, 2002)