

AN APPRAISAL OF THE RIGHT TO STRIKE AND ITS DEROGATIONS IN NIGERIA*

Abstract

The crux of this work is to appraise the Right to Strike and its derogations in Nigeria. Conflict between the employer and workers is inevitable in the workplace and many at times, it results to strike action. The right of workers to strike is an essential right recognized by the International Labour Organization. This right is also recognized by the Nigerian legal framework although the 1999 Constitution expressly made no provision for it but it is impliedly recognized by section 40 and other sections of the constitution. The Trade Union Act, Trade Union Amendment) Act, Trade Disputes (Essential Services) Act, Trade Disputes Act and Banks and Other Financial Institutions Act are the laws made pursuant to the 1999 constitution covering and regulating the right to strike by workers with derogations and restrictions contained therein. Though the Nigerian workers have the right to strike but the legal framework for the exercise of the right to strike is inadequate and a far cry from the standard by the world's apex labour body, the International Labour Organisation. This work examines in totality the derogations and restrictions on the right of workers to strike in Nigeria and also draws lesson from South Africa on its express provision for the right to strike in the Nigerian constitution.

Keywords: Right to Strike, Derogations, Trade Unions, Nigeria

1. Introduction

The right to strike is a tool used by workers all over the world to protect and promote the interests and welfare of union members. It is an essential element of a democratic society¹ and a key weapon in the arsenal of organized labour. The right to strike is also a paramount tool in any organised labour environment as workers use it to exert pressure collectively on their employers.² Strike is the most potent tool adopted or employed by workers³ in labour relations and it does the same role warfare plays in diplomatic negotiations.⁴ Industrial relation is an ever changing socio-economic process which often times involves conflict and conflict is an inherent and necessary 'evil' which streamlines the powers of industrial relations between the employers and workers in the work place or environment. The debate whether or not workers have a fundamental right to strike has been the focus of considerable academic deliberation and is a point which juristic opinions have been continuously expressed.⁵ It cannot be disputed that workers resort to strike actions for recognition, satisfaction of their needs, improvement of working lives, redress of wrongs and equitable salaries and wages. Strike does the same function in labour relations that warfare plays in diplomatic relations. Thus, the significance of the right to strike cannot be overemphasized to the extent that no society without this right can be democratic. Societies seeking to be democratic must secure that right.⁶ The right of workers to strike is an indispensable instrument in collective bargaining. That is, it is an indispensable article not of the union's bargaining process itself, but it is also a potent tool for the enforcement of rules and policies between the employer and the union. Therefore, the right to strike is one right which the government at all levels must respect as it promotes and strengthens labour relationships in the work environment.

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¹ O. Kahn-Freund and B. A. Hepple, 'Laws Against Strikes' (Fabians Research Series 1972) 4

² J. A. M. Audi, 'Strikes and the Law in Nigeria' (1991-2) (19-10a) *Ahmadu Bello University Law Journal*; 97

³ O. Ogunnniyi, 'Nigerian Labour and Employment Law in Perspective' (Folio Publishers 2004)

⁴ J. G. Getman and F. R. Marshall, 'The Continuing Assault on the Right to Strike', (2000-1) (79)(13) *Texas Law Review*; 703

⁵ O. V. C. Okene, 'The Status of the Right to Strike in Nigeria: A perspective from International and Comparative Law' (2015) (15)(11) *African Journal of International and Comparative Law*; 29, See also O. V. C. Okene, 'The Right of Workers to Strike in a Democratic Society: The Case of Nigeria' (2007(19)(1) *Sri Lanka Jil*; 193

⁶ L. Macfarlane, 'The Right to Strike' (London Penguin Books 1981) 12

2. Elucidation of Major Concepts

Right

Right is one concept that is constantly been discussed and deliberated upon by individuals, groups and governments universally. Right is very essential and of great relevance in any legal system. The concept of right is so essential to the extent that there is no human society with the total absence of certain rights given to both the natural and corporate persons. A lot of scholars, researchers, jurists and writers have attempted to define and give meaning to the concept of right. Right according to Wigwe is that which by just claim, legal guarantee or moral principle is due to a person.⁷ Salmond in his view conceived right as an interest recognized and protected by law. Right has been defined as the recognizable claims and entitlement of people enforceable by the state.⁸ The above definition is in tandem with the views of the Benefit theory of right which sees right as interest, benefit or advantage conferred on a person by the law. Furthermore, the Business Dictionary defines right as the recognized and protected claim, the breach of which is illegal.⁹ The above definitions are all apt. However, Rights to me are those inalienable claims and entitlements that are recognized and enforceable by the governing authority. It is most significant to state that there are different classifications of rights for example civil rights, political rights, group rights, labour rights, natural rights, property and personal rights.

Labour Rights

As already seen, labour right is one of the classifications of rights. Labour Right has been defined as those human and legal rights in the labour environment between workers and their employer.¹⁰ Mantouvalou defined Labour Right as those entitlements that are essentially and specifically concerned with workers.¹¹ Allen gave a vivid description of labour right by describing it as the heart of the struggle for human right.¹² Thus, human rights are those claims and rights which every person claims or aspires to enjoy irrespective of colour, race, religion and status.¹³ Flowing from the above, Labour Rights to me are those claims and entitlements of both the employer and the employee that are enforceable by law within the workplace.

Strike

There is no doubt that much juristic inks have been expended in describing or defining the concept of strike. The concept of strike has no universal and acceptable definition or description as it has multifarious definitions. The Black's Law Dictionary¹⁴ defines strike as an organized discontinuance of work by workers to compel the employer to meet their demands or a collective refusal by workers to work for their employer, or to work at their usual rate of speed until their concessions are granted. Strike according to the Business Dictionary¹⁵ is defined as a collective and organised stoppage or deceleration of work by workers to secure the approval of their requests by the employer. In *Tram Shipping Corporation v. Greenwich Marine Incorp*,¹⁶ the great Lord Denning gave an apt definition of strike as the concerted cessation of work by workers done with the aim of enhancing their wages or employment conditions or giving vent to a grievance or making a protest about something or sympathising with other

⁷ C. C. Wigwe, 'Jurisprudence and Legal Theory' (Readwidwe Publishers 2010) 382

⁸ <www.yourarticlelibrary.com/essay/law/rights-meanings-features-and-types-of-rights/40373> accessed on 26 February 2026

⁹ <<http://www.businessdictionary.com/definition/right.html>> accessed on 26 February 2026

¹⁰ <https://en.wikipedia.org/wiki/Labor_rights> accessed on 2 June 2022

¹¹ <https://www.researchgate.net/profile/Virginia_Mantouvalou/publication/256013033_Are_Labour_Rights_Human_Rights/links/55f6a35308ae1d98039773b3/Are-Labour-Rights-Human-Rights.pdf> accessed on 26 February 2026

¹² <<https://www.amnesty.org.uk/press-releases/labour-rights-are-human-rights-25-years-solidarity>> accessed on 26 February 2026

¹³ U. O. Umozurike, 'The African Charter on Human and Peoples Rights' (Martinus Nijhoff Publishers 1997) 5

¹⁴ Black's Law Dictionary, Ninth Edition, 1558

¹⁵ Business Dictionary <<http://www.businessdictionary.com/definition/strike.html>> accessed on 26 February 2026

¹⁶ (1975) All ER 898, See also *Miles v. Wakefield Metropolitan District Council* (1987) 2 All ER 1081.

workers in such endeavour and different from discontinuance by bomb scare or fear of danger. Similarly, strike has also been defined as the withdrawal or cessation of labour by employees.¹⁷

Under the Nigerian law, the Trade Disputes Act¹⁸ statutorily defines strike as the discontinuation of work by workers acting in combination or a concerted refusal to work by workers in consequence of a dispute done with the view to coerce their employer to yield or not to yield to employment terms and conditions. The definition of strike by Lord Denning is narrow and wider in scope than that in the Trade Dispute Act. The first part of Lord Denning's definition hinges on trade dispute while the second part which excludes external factors such as bomb is in total agreement with the definition in the Act.¹⁹ Okene defined strike as the deliberate discontinuance of work by workers or a temporary withdrawal of services by workers.²⁰

It is significant to point out that depending on the purpose, strike can be categorized majorly into two (2) types; primary and secondary strikes.

- (a) Primary Strike: This is the type of strike embarked upon by workers against an employer with whom they have dispute.²¹ Stay away, go-slow, sit down etc are some of its forms. That is, a primary strike is targeted at the employer by workers.
- (b) Secondary Strike: A secondary strike also called solidarity action or sympathy strike is an industrial action by workers to support a strike undertaken by workers in a separate corporation but often in the same enterprise, group of companies, or connected firm.²² It is also a strike by workers who have no grievance but to show support to another group of striking or locked out workers.²³ In *Thomson (D.G) & Co. Ltd v. Derkin*,²⁴ the Court recognized the Bowater workers' right to initiate a strike in sympathy with the workers of Thomson Ltd who were then in a dispute with their employers.

Worker/Employer

The term 'worker', 'employee' and 'workman' are terms which are been used interchangeably²⁵ and the importance of workers in labour globally cannot be disputed. A worker according to Davido includes a person into a contract of employment.²⁶ The term 'worker' has been described to include all persons who sell their labour and services.²⁷ A worker according to the Longman Dictionary of Contemporary English is a person who does a particular type of job.²⁸ Furthermore, a worker by the Nigerian Labour Act²⁹ is defined as any individual into works or into contract with an employer which contract may be express or implied or a contract of service or personal service but does not include persons employed except for the purpose of the employers business, persons doing administrative, executive, technical or professional functions as public officers or otherwise, representatives, agents and commercial travellers whose works are carried out outside the permanent place of the employer's firm, persons whose articles or materials are given out to be made, cleaned up, washed, altered, ornamented, finished or adapted for sale in his own home or on other premises not under the control or management of the

¹⁷ R. Bird, 'Osborn's Concise Law Dictionary' (7th Edn, Sweet & Maxwell 1983) 313

¹⁸ See Section 48 of the Act.

¹⁹ S.T. Hon, 'Rights of Organised Labour and Picketing Rights in Nigerian Constitutional Law and Jurisprudence' (Pearl Publishers 2004) 338

²⁰ O. V. C. Okene, 'The Legal Regulation of Strikes in Nigeria: A Critical Appraisal' (2001) <https://works.bepress.com/ovunda_v_c_okene/41/> accessed on 26 February 2026

²¹ <<https://dictionary.findlaw.com/definition/strike.html>> accessed on 26 February 2026

²² <https://en.wikipedia.org/wiki/Solidarity_action> accessed on 26 February 2026

²³ <<https://www.thefreedictionary.com/Secondary+strike>> accessed on 26 February 2026

²⁴ (1952) Ch. 646; (1952)2 All ER 361

²⁵ A. Emiola, 'Nigerian Labour Law' (Ibadan University Press 1982) 18

²⁶ G. Davidou, 'Who is Worker' (2005) (34) (1) *Industrial Law Journal*; 59

²⁷ B. Creighton and S. McCrystal, 'Who is a Worker under International Law' (2015-2016) (37) *Comp. Labour Law and Policy Journal*; 691 <<https://heinonline.org/HOL/LangPage=hein.journals/clip37&div=41&id=page=>>> accessed on 26 February, 2026

²⁸ Longman Dictionary of Contemporary English, New Living Edition (Pearson Longman) 1903

²⁹ See section 91 (1) of the Labour Act. See also section 54 of the Trade Union Act.

person giving out the article or materials and persons employed in vessels or aircrafts with legislations on merchant shipping and civil aviation applicable. An employer according to section 91 of the Labour Act, is defined as any person who has entered into contract to employ any other person as a worker either for himself or for the service of any other person, and includes the agent, manager or factor of that first mentioned person and the personal representatives of a deceased employer. The Black's Law Dictionary³⁰ defines an employer as a person who controls and directs a worker under an express or implied contract of hire and who pays the salary or wages of the worker. An employer has also been defined as a person or entity that hires another to perform service under an express or implied agreement and has control, or the right to control over the manner and means of performing the services.³¹

3. Factors Resulting to Strike Actions

It is one truth that employees in any organisation will not embark on strike action if there are no challenges faced by them. Thus, once there is any form of dissatisfaction or discontentment on the job of the workers, there is bound to be strike. Some of the factors resulting to strike actions are:

Violation of Labour Laws: The violation of labour laws is one of the factors resulting to strike actions by workers globally. The employer is required to obey all labour instruments and this is cannot be disputed. Thus, where there is a fragrant breach or violation of labour laws, workers resort to strike to redress such.

Breach of Company's Rules and Regulations: Workers in many cases have embarked on strike as a result of the violation of company's or organizational rules and regulations. The resort to strike action as a result of the breach of company's rules and regulations is to force the employer to comply with the laid down rules.

Lack of Regard and Non-Implementation of Collective Agreement: Lack of regard and non-implementation of collective agreement is the chief factor why there are recurring strikes by trade unions³² in Nigeria. For example, a notice of intention to embark on strike was served by ASUU regarding the 2009 collective bargaining agreement and 2014 Memorandum of Understanding not properly implemented.³³ In *Union Bank of Nigeria Limited v. Edet*,³⁴ it was stated that whenever there is a breach of term of an agreement by an employer, resort could be had to negotiation and ultimately to strike action should the need arise.

Poor Safety and Bad Working Conditions: Poor safety and bad working conditions lead to strike actions by workers globally. Where there is poor safety in the work environment, the lives of workers are at risk. It is fundamental to state an employer owes an employee a safe working environment³⁵ and the failure in the discharge of this duty would endanger the lives of the workers in the work place. Poor safety and bad working condition were the cause of the industrial action embarked by the health workers in Lagos State.³⁶

Low Wages paid to Workers: The fight or struggle for the increment in wages is as old as nature itself. Low wages over the years occupies the top cause of industrial dispute due to the increasing cost of living and the ever dynamic socio-economic complexities. The most sensitive issue for workers in every industrial setting is the structure and increase in wages and the Nigerian workers are no exception. The demand for increment of wages and the implementation of #18,000 minimum wages in Nigeria led to

³⁰ (n 10) 604

³¹ <<https://definitions.uslegal.com/e/employer/>> accessed on 26 February 2026

³² A trade union is an association of workers in trade or profession with the aim of protecting and furthering the rights and interests of members.

³³ <<https://www.vanguardngr.com/2016/11/averting-another-asuu-mega-strike/>> accessed on 27 February 2026

³⁴ (1993)4 NWLR (pt. 287)288

³⁵ See *General Cleaning Contractors v. Christmas* (1952)2 All ER. 110

³⁶ <<https://allafrica.com/stories/201607050780.html>> accessed on 27 February 2026

the strike action by the Nigerian Labour Congress in 2010.³⁷ Also, the struggle, fight and anticipation for the increment in workers' wages under the Buhari Administration has led to the threat by the Nigerian Labour Congress to embark on strike should the Federal Government fail to implement the #56,000 minimum wage.³⁸ Furthermore, the Nigerian Labour Congress embarked on warning strike in 2018 over the minimum wage³⁹ although the strike was suspended. The union also issued threat to go on the main strike but the strike did not hold.⁴⁰

Employees' Debts owed by the Employers: Employees' debt has become a serious problem in the industrial settings in Nigeria. The reality in Nigeria is that some employees are being owed so much by the government to the extent that a lot number of them go into lending so as to fend for themselves and their families. The debts include the non-payment of salaries, allowances and arrears of salaries. Strike action arising from employees' debt was evident in Kogi State when workers threatened to resume strike over non-payment of salaries.⁴¹ Same was also the case in Osun⁴² and Benue⁴³ States. It is imperative at this point to state that the attitude of government over the non-payment of the allowances and arrears of salary of workers has been greatly criticised by eminent scholars.⁴⁴

Poor Communication within Employer Environment: Poor dialogue in the employer organisation is one of the causes of strike in most industrial settings all over the globe (Nigeria inclusive). Inherent in this is the lack of confidence between the employer and the workers as good communication flow is indispensable to the growth of the organisation. Therefore, all extraneous factors to strain such relationship must be totally avoided.

Refusal to Recognize a Trade Union as a Party in Collective Bargaining: The issue of trade union recognition as a party to a collective bargaining process is a crucial one.⁴⁵ The failure of employers to recognize a trade union in such process would defeat the purpose of trade unions and where an employer fails to give or withdraws recognition, the union will resort to industrial action as they will not be able to negotiate on behalf of their members. In *Stadium Hotel v. National Union of Hotels and Personal Services Workers*,⁴⁶ it was held that the chief cause of the strike was the appellants' non-recognition of the respondents. Similarly, in *Nigerian Sugar Company Limited v. National Union of Food, Beverages and Tobacco Employees*,⁴⁷ the court held inter alia that the strike action occurred due of the first party's blunt refusal to recognize the second party contrary to the union's constitution. However, it has been held in *Torquay Hotel Co. v. Cousins*⁴⁸ that a purely inter-union feud is clearly outside the ambit of the Act.

³⁷<http://saharareporters.com/2010/11/09/minimum-wage-showdown-strike-goes-ahead-nlc-jonathan-meeting-deadlocked> accessed on 27 February 2026

³⁸<https://www.vanguardngr.com/2016/12/nlc-threatens-nationwide-strike-n56000-minimum-wage-not-implemented/> accessed on 27 February 2026

³⁹<https://www.premiumtimesng.com/news/headlines/286429-breaking-nlc-declares-indefinite-warning-strike-over-minimum-wage.html> accessed on 28 February 2026

⁴⁰<https://www.vanguardngr.com/2018/11/breaking-labour-suspends-planned-strike/> accessed on 28 February 2026

⁴¹<https://omojuwa.com/2016/04/kogi-workers-to-resume-strike-over-non-payment-of-salaries> accessed on 28 February 2026

⁴²<https://www.dailytrust.com.ng/labour-unions-issue-21-day-ultimatum-to-osun-govt-over-salary-arrears.html> accessed on 29 February 2026.

⁴³<https://guardian.ng/news/benue-workers-begin-warning-strike-over-unpaid-salaries/> accessed on 28 February 2026

⁴⁴ This view was expressed by E. E. Pantaleon, an LL.M student in Uniuyo who in his view stated that the welfare and security of the citizens should be the primary purpose of government.

⁴⁵ Section 25 of the Trade Unions Act makes recognition of trade unions obligatory on employers.

⁴⁶ (1978/79) NICLR 18

⁴⁷ (1978/79) NICLR 12-13

⁴⁸(1969) 1 All ER 522

Refusal to Yield to Union's Demands: Strikes tend to occur when the workers' demands for higher wages, benefits and other improvements are not met. Trade unions always demand and bargain for the improvements in their employment terms and conditions and the demand for increment in workers' salaries and wages is due to the constant inflation rates. Thus, where the employer refuses or fails to agree with the demands of the union or to bargain with them, workers will have no alternative than to resort to industrial action which will be inevitable for the achievement of the unions aim.⁴⁹

4. Derogation and Restrictions on the Right of Workers to Strike

Derogation on the right to embark on strike connotes that strike as a right may not be exercised at all or for a period of time deemed necessary.⁵⁰ The effect of derogation in law is that strike is totally prohibited. However, where a total elimination of the right is not allowed by law, any curtailment is only a restriction and not derogation. At this point, the derogations and restrictions in Nigeria will be examined.

Right to Strike and Essential Services: Essential services are services rendered by persons to individuals or the Government, the obstruction of which would cause danger to the life, health or personal safety of the whole or part of the population.⁵¹ Essential services have been defined as those services whose obstruction may cause hardship to the public⁵² or serious hardship to the communities.⁵³ Furthermore, Essential Services are services that are of importance and which must be maintained for the prevention of immediate and serious danger to the health, safety or welfare of the public. In Nigeria, the Trade Disputes Act⁵⁴ first schedule listed out essential services and employees in these services are barred from going on strike.⁵⁵ Suffice to state that the Trade Union Act in section 11 (1) prohibits members of the following establishments from forming or joining trade unions; Nigerian Army, Navy or Air force, Nigerian Police, Custom services, Immigration services and the Prison Services, Nigerian Security, Printing and Minting Company Limited, Central bank of Nigeria, The Nigerian Telecommunication etc. There is an outright prohibition of strike by section 31 of the Trade Union Act in the essential services. Teaching was included in the list of essential services by the Teaching (Essential Services) Decree 1993. As critically seen above, the essential services list consists of a whole lot of civil and public servants. Thus, in Nigeria, the right to strike is a theoretical or paper possibility and the concept of essential services has overtime been a tool which has curtailed the right to strike rather than qualifying it. It is fundamental also to state that despite the statutory provisions restricting those in services that are essential from embarking on strike, the National Emergency Management Agency (NEMA),⁵⁶ Academic Staff Union of Universities (ASUU)⁵⁷ and Nigerian Medical Association (NMA)⁵⁸ have one time or the other embarked on strike.

Right to Strike in Export Processing Zones: Exporting Processing Zones (EPZ) are areas within developing countries that offer incentives and a barrier-free environment to promote economic growth by attracting foreign investments for export-oriented production.⁵⁹

Exporting Processing Zones in Nigeria were established due to the increasing need of improving the Nigerian Economy. The Nigerian Export processing Zone Decree 1992⁶⁰ and Oil and Gas Export Free

⁴⁹ O. V. C. Okene, 'Labour Law in Nigeria: The Law of Works' (2n Edn, Claxton and Derrick Limited 2011) 223

⁵⁰ O.V.C. Okene, 'Derogations and Restrictions on the Right to Strike under International Law: The Case of Nigeria' (2009) (13)(4) *The International Journal of Humans* ;576

⁵¹ <<https://www.ilo.org/legacy/english/dialogue/ifpdial/lhg/ch5/ex4.htm>> accessed on 19 August 2022

⁵² ILO Official Bulletin 44 1961, No. 3, 54th Report Case No. 179, para 55

⁵³ ILO Freedom of Association and Collective Bargaining, para 393

⁵⁴ Cap T39 LFN 2004, See also Section 7 of the Trade Disputes (Essential Services) Act

⁵⁵ O. V. C. Okene, 'International Law and the Prohibition of the Right to Strike in Essential Services in Nigeria (2009) < https://works.bepress.com/ovunda_v_c_okene/46/> accessed on 19/8/2022

⁵⁶ < <http://dailypost.ng/2018/06/11/nema-workers-begin-nationwide-strike-face-off-dg-maihaja/>> accessed 20 August 2022

⁵⁷ <<https://www.vanguardngr.com/2017/08/breaking-asuu-begins-indefinite-strike/>> accessed on 20 August 2022

⁵⁸ <www.nigerianmonitor.com/doctors-begin-nationwide-strike-today/> accessed on 20 August 2022

⁵⁹ < journals.sagepub.com/doi/10.1177/0276146707300070 accessed on 20 August 2022

⁶⁰ Federal Military Decree No. 63 of 1992

Zone Decree 1996⁶¹ led to the establishment of the export-processing zone and oil and gas export free zone respectively. Strikes at the export processing zones are prohibited in Nigeria. The prohibition of strike at the zone is at variance with the position under International Law. According to the International Labour Organization, such prohibition is at variance with the provision of the convention that provides that without distinction whatsoever, all workers shall have the right to establish organization of their choosing and organize their activities and formulate their own programmes.⁶² The incentives at the EPZ are to encourage more production and enhance more efficiency in the zones which ultimately will lead to the creation of more employment opportunities, attract foreign direct investment (FDI), technological advancement, managerial skills and knowledge spill over etc.⁶³ The EPZ is also a means of bringing foreign investors for infrastructural development and projects like airport, sea port, and roads.⁶⁴ Employees employed at the EPZ are totally not given the right to form unions, bargain collectively and to embark on strike. This is because the EPZ is so important to the nation's economy and the exercise of workers' right such as strike will have negative effects. The EPZ authority is given the power to resolve all employers/employees disputes arising from the work place and concerning contract of employment, instead of workers' organization or unions.

Restrictions on Picketing: Picketing is defined as that aspect of industrial action which consists of placing a picket, which comprises 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.⁶⁵ It is also an industrial action embarked upon by pickets (members of a labour union) who assemble in the company's front or employer's home and try to gather maximum support for strike.⁶⁶ Peaceful picketing is allowed under the Nigerian law. Section 43 (1) of the Trade Unions Act makes it lawful for a worker or more workers acting for themselves or for a trade union or recognized federation of trade unions or an employer or firm to picket as a result of trade dispute by obtaining or persuading peacefully any worker to work or not to work. Section 43 (2) of the Act further provides that the doing of anything declared under subsection (1) shall not be an offence under section 366 of the Criminal Code⁶⁷ or any other legislation in force in Nigeria. A critical and jurisprudential perusal of section 43(1) above points out that picketing is permissible in so far as it excludes rioting, breach of peace, assault, intimidation etc. In *Exchange Bakery and Restaurant Inc. V. Rifkin*,⁶⁸ the court held that picketing connotes no evil and it may be accompanied however by violence, trespass threat or intimidation express or implied.

As seen above, picketing under the Nigerian legal system includes getting or communicating information or peacefully inducing any person to work or abstain from work. However, the Act does not permit an intrusion into a person's premises or unlawful entry into a place of business.⁶⁹ Where there is an invasion into a person's premises or an unlawful entry into a place of business, such person may be held liable in tort. In *Ojo v. Balogun*,⁷⁰ the union members led by the defendant blocked the entrance of the plaintiff's premises in their alleged legitimate exercise of the right to picket. The plaintiff sought an injunction against the defendants who relied on Section 43 of the Trade Union Act. The court in granting the injunction held inter alia that section 43 does not cover acts in breach of the fundamental right of others. The amendment of section 43 of the principal Act by the Trade Unions (Amendment)

⁶¹ Federal Military Decree No. 8 of 1996

⁶² ILO Report of the Committee of Experts (RCE)1993, paras 58-61

⁶³ N. Ikeyi, 'The Export Processing Zone and Foreign Direct Investment', (1998) (42) *Journal of African Law*; 224 cited in O. V. C. Okene, 'Derogations and Restrictions on the Right of Workers to Strike under International Law: The Case of Nigeria' (2009) (13)(4) *The International Journal of Human Rights*;552-71

⁶⁴ See E. Pow and M.J. Moser, 'Law and Investment in China's Special Investment Areas 'in *Foreign Trade and Investment Laws of the People's Republic of China*' ed M. J. Moser (Oxford: Oxford University Press 1987) cited in O. V. C. Okene (n 75)

⁶⁵ E. E. Uvieghara, 'Labour Law in Nigeria' (Malthouse Press Limited 2001) 450

⁶⁶ < <https://thelawdictionary.org/picketing-2/> accessed 22 August 2022

⁶⁷ Cap C38 LFN 2004

⁶⁸ (1927)245 N. Y .260, 157 N.E. 130

⁶⁹ Okene (n 75) 565

⁷⁰ (1980) 7-9 CCHJ 261; See also *Salawu Ajao v. Karimu Ashiru & Ors* (1973) All NLR 708

Act⁷¹ has constrained the right to picketing and same has also restricted the scope of the right to strike in Nigeria. The Act provides that no trade union or registered federation of trade union or registered federation of trade union or any member thereof shall in the course of any strike compel any person who is not a member of its union to form any strike or join any strike or in any manner whatsoever, prevent aircraft from flying or obstruct public highways, institutions or premises of any kind for the giving effect to that strike.

Restriction on Right to Strike in the Oil and Gas Industries: The Petroleum Production and Distribution (Anti-Sabotage) Act⁷² makes it a crime for anybody who does anything willfully with intent to obstruct or prevent the production, distribution or the procurement of the petroleum products for distribution in any part of Nigeria.⁷³ Sabotage is defined by the Black's Law Dictionary⁷⁴ as the truthful and malicious destruction of any employer's normal operations especially during a labour dispute. From the provisions of the Act, strikes in the oil and gas industries are prohibited. Thus, the Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN) strike initiated in 2016⁷⁵ was illegal because the cessation of work had seriously affected the production, distribution or procurement of petroleum products. It is imperative to state that the oil and gas industry employees fall within meaning of essential services in the Trade Disputes (Essential Services) Act and Trade Union (Amendment) Act in Nigeria.⁷⁶ The offence of sabotage has the penalties of death sentence or imprisonment for a term not exceeding 21 years.

Political Infiltration of Labour Unions: Labour unions have been greatly infiltrated by politicians and this has immensely affected the ability of these unions to maintain a common ground on critical issues like strike over the years. It is very common to hear some workers in the same labour sector preparing to go on strike while others in that same sector are against such move.

Multiplicity of Trade Unions: The constant multiplication or proliferation of labour unions in Nigeria has done more harm than good to unionism as the power of trade unions to call, mobilize and embark on strikes is greatly affected. Proliferation of trade unions is a limitation because the aggregation of workers interest is far becoming impossible.

Restriction on Disputes of Interest: The Trade Union (Amendment) Act⁷⁷ only permits strikes on disputes of right. On the other hand, it means that strike on disputes of interest is totally prohibited. A dispute of right is a conflict between a worker or workers and their employer regarding the breach of an existing commitment embodied in the law, collective agreement or under a contract of employment.⁷⁸ A dispute of interest is a dispute between employers and workers where neither party has existing rights to that which it wants. It is also a dispute between workers and their employer on future rights and obligations under employment contract. It is very fundamental to state that the court in *Federal Government of Nigeria v Adams Oshiomhole*⁷⁹ in distinguishing disputes of right and disputes of interest stated that the Nigerian Labour Congress lacked the right to mobilize workers on strike against the general economic and political decisions of the federal government as such has nothing to do with the violation of individual contracts of employment with various employers as contemplated in the Trade Dispute Act. From the above, it is manifest that the trade unions can lawfully strike in relations to

⁷¹ Section 9(1)(b) of the Trade Union (Amendment) Act

⁷² Cap P12 LFN 2004

⁷³ See Section 1(a), (b) and (c)

⁷⁴ B.A Garner 'Black's Law Dictionary' Ninth Edition;1362

⁷⁵ <<https://www.premiumtimesng.com/news/headlines/206513-nigeria-oil-workers-insist-strike-vow-shut-operations.html> > accessed on 23 August 2022

⁷⁶ The interruption work by employees in the oil and gas industry has often time affected the Nigerian Economy. The oil and gas sector is an essential sector to the nation and this cannot be argued.

⁷⁷ See Section 6(6) of the said Act

⁷⁸ B. B. Kanyip, 'Overview of the Trade Disputes Act and its Application to Trade Disputes Settlement in Nigeria' cited in D. Otobo, 'Reform and Nigeria Labour and Employment Relations in Perspective: Issues and Challenges' (Malthouse Press Limited 2016) 415

⁷⁹ (2005) 1 NWLR (pt. 907) 414 at 436

disputes of right. However, in some countries,⁸⁰ labour unions can lawfully strike in relation to right of interests but strike is unlawful in relation to dispute of right.⁸¹

Use of the Judiciary to Undermine Strike: Although there are exceptions, the judiciary in Nigeria has principally been used as a tool by the executive to restrict the workers' right to strike. A new trend has emerged whereby the government runs to the court to get injunction against planned strike by labour unions. This is evident in the recent order obtained against the Nigerian Labour Congress by government on the planned strike of 6th November, 2018.⁸²

5. Right to Strike in South Africa: Lesson to be drawn from by Nigeria

Another fundamental right codified in the constitution of South Africa⁸³ is the right to strike following their adoption and ratification of the International Labour Organization Conventions 87⁸⁴ and 98.⁸⁵ The recognition of the right to strike is enshrined in the South African constitution which states that every worker has the right to form and join a trade union, to participate in the activities and programmes of a trade union and to strike.⁸⁶ Suffice to state that the Labour Relation Act of 1995⁸⁷ also provides that employees have right to strike and picketing⁸⁸ and lockouts are lawful. However, such strikes have to be lawful and certain procedures complied with under section 64 (1).⁸⁹ It is a paramount to point out that there must be compliance with section 64(1) of the Act before strike actions can be embarked upon. That is, under section 64(1)⁹⁰ a strike is lawful if the disputed issue is referred to the Bargaining Council for reconciliation, a certificate must have been issued by the council showing that the dispute remains unresolved and the union must have issued the employer seven (7) days notice of its members intention to go on strike. The crucial role of the right to strike was eulogized by the South African court in *NUMSA & Ors v. Bader BOP (pty) & Ors*⁹¹ where it was held the right to strike was essential to the process of collective bargaining.

6. Conclusion

Komfield once said that everything that has a beginning has an end⁹² and this is one universal truth that even the blind believes in. There is no doubt that much have been written in the course of this work on the right to strike in Nigeria. Thus, it is submitted that right to strike plays a pivotal role in the workplace as it promotes industrial harmony. Also, the right to strike by workers is a crucial weapon in the arsenal of organized labour, a fundamental right recognized by the International Labour Organization and the extant laws in Nigeria and a vital element to the process of collective bargaining. The exercise of the right to strike by workers in Nigeria is a theoretical possibility as the definition of essential services encompasses virtually all the sectors of the public and civil service. Thus, Nigeria is far behind the International Labour organization standard in the protection of this right. Having exhaustively looked the right to strike in Nigeria and the extant statutory provisions giving workers the right to strike, it is recommended there is an urgent need to overhaul the 1999 constitution to expressly provide for the right to strike by workers as seen in the South African Constitution.

⁸⁰ For example, the United States of America, Sweden and Germany.

⁸¹ N. F. Duffy and C. Mulvey, 'The Source of Union Power', Policy Paper No. 11(Australia Institute for Public Policy, Perth. 1987) 52

⁸² <<https://www.vanguardngr.com/2018/11/minimum-wage-why-court-stopped-nlc-tucs-planned-strike-action/>> accessed on 25 August 2018

⁸³ *Constitution of the Republic of South Africa, 1996*

⁸⁴ Freedom of Association and Protection of the Right to Organize No. 87 of 1948

⁸⁵ Right to Organise and Collective Bargaining No. 98 of 1949

⁸⁶ See Section 23 of the South African Constitution

⁸⁷ The Labour Relation Act seeks to advance economic development, social justice, labour peace and democratization of workplace

⁸⁸ See section 69 of the Labour Relations Act

⁸⁹ Ibid

⁹⁰ Section 64(1) contains limitations to the right to strike which is contained in the South African Constitution.

⁹¹ (2003) (3) SA 513

⁹² J. Komfield, 'Buddha's Little Instruction Books Quotes' <<https://www.goodreads.com/work/quotes/565581-buddha-s-little-instruction-book>> accessed on 29 February 2026