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Who is the Real Employer?

Navigating Liabilities in Triangular Employment in Nigeria



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1.0 Introduction

An employment relationship is founded upon a contract between the person or body (called the employer) who seeks to retain the services of another (called the employee) effectively putting the employee under their payroll.¹ While this two-party, traditional relationship remains common, triangular employment is becoming more prevalent in Nigeria and globally. This structure involves a third party, such as a labour provider, outsourcing firm, or recruitment agency, particularly in industries like oil and gas, telecommunications, and manufacturing. It offers cost efficiency and flexibility but raises legal questions about employer identity, liability for breaches, and rights enforcement.

This article explores the concept of triangular employment, the legal framework governing it in Nigeria, and the challenges of liability allocation in such complex working arrangements.



2.0 Understanding the Triangular Employment Relationship

Triangular employment is said to occur when employees of an enterprise (the “provider”) perform work for a third party (the “user enterprise”) to whom their employer provides labour or services.² Traditionally, under the privity of contract principle, only parties to a contract could enforce its terms. This meant employees could only sue their direct employer, the provider, not the user enterprise. However, modern labour practices now recognize that under certain circumstances, the end-user may also be held liable, giving rise to a tripartite relationship involving: the employee, the provider/outsourcing agency and the user enterprise/client organization.

This structure typically involves three interconnected relationships:

- a.) A commercial agreement between the provider and the user enterprise*
- b.) An employment contract between the provider and the employee*
- c.) A secondment arrangement where the employee is placed with the user enterprise*

While triangular employment offers businesses flexibility and cost efficiency, allowing them to outsource operational tasks and reduce direct employment risks, it also raises legal concerns. These include liability for wages, workplace safety, wrongful termination, and statutory entitlements, making the allocation of responsibilities a potential source of disputes.

[1] Anyebe, J.U. “Ending an employment relationship – termination and dismissal”. Available at https://www.academia.edu/36498064/ENDING_AN_EMPLOYMENT_RELATIONSHIP_TERMINATION_AND_DISMISSAL accessed on 10th March 2025

[2] International Labour Conference – 91st Session 2003, Report V. @ pg. 37



3.0 The Legal framework governing Triangular Employment in Nigeria

Nigerian labour laws traditionally focus on the conventional employer-employee relationship, but the rise of triangular employment has required a broader interpretation to determine liabilities. The Labour Act³ Nigeria's primary labour legislation, arguably accommodates triangular employment under **Section 91(1)**, which defines an employer as:

“Any person who has entered into a contract of employment 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”



This definition suggests that triangular employment is not foreign to Nigerian labour jurisprudence, as it acknowledges the possibility of hiring for the service of another party. Also, the Employees Compensation Act (ECA) 2010, provides a broader definition of who an employee but does not explicitly mention

outsourced workers. Despite this, Nigerian courts have interpreted the law broadly to extend protections to such employees.⁴ For example, in **Abel v. Trevi Foundation Nigeria Limited**,⁵ the National Industrial Court (NIC) held that a contract staff who sustained injuries during employment was entitled to compensation under the ECA, recognizing the substance of the working relationship over the formal employment label.

4.0 Who is the Actual Employer in a Triangular Employment Arrangement—the Outsourcing Firm, the Client Company, or Both?

In a triangular employment arrangement, the legal issues that may arise for the employee is determining: Who is my employer? What are my rights? Who is responsible for ensuring them?⁶ The central question becomes whether the outsourcing firm (with whom the employee enjoys privity of contract), the client company (which controls the employee's work), or both bear legal responsibility. Unlike traditional employment, where the employer's identity is clear, triangular arrangements create uncertainty, which may jeopardize the employee's access to statutory protections. This uncertainty is particularly challenging when employees face issues like unpaid wages, workplace injuries, or insolvency of their direct employer. Unfortunately, the employee is the most vulnerable party in this arrangement and lacks the bargaining power to negotiate fair terms, whether with the agency or the end user.⁷

The principle of the primacy of fact governs these situations, meaning the actual working relationship takes precedence over formal agreements. If the client company exerts

[3] Cap. L1, LFN, 2004

[4] An employee is defined in Section 73 of the Employee Compensation Act as “a person employed by an employer under [an] oral or written contract of employment whether on a continuous, part-time, temporary, apprenticeship or casual basis and includes a domestic servant who is not a member of the family of the employer including any person employed in the Federal, State, and Local Governments, and any of the government agencies and in the formal and informal sectors of the economy”.

[5] (2014) Digest of Judgements of National Industrial Court pp.288-289

[6] ILO Conference Report, op. cit 37



The principle of the primacy of fact governs these situations, meaning the actual working relationship takes precedence over formal agreements. If the client company exerts significant control over the employee's recruitment, supervision, discipline, or termination, both the outsourcing firm and the client may be considered co-employers. In cases where the outsourcing firm acts as an agent of the client, the law may treat them as a single employer.

Courts assess evidence of control through the following key factors:

- (I) Recruitment - did the end user actively participate in the recruitment of the employee?
- (ii) Supervision and Direction - does the end user, give directives to the employee also including prescribing the employee's remuneration, benefits and job type?
- (iii) Discipline – does the end user carry out disciplinary action without recourse to the outsourcing agency and
- (iv) Termination - Is the end-user on his own, absolutely responsible for the termination of employment of the employee?⁸

Where substantial control by the client is proven, the triangular arrangement may be deemed a **sham**, holding both parties accountable as **employers**.

5.0 Judicial Interpretations and Case Laws

Section 254 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) (“the 1999 Constitution”) vests the National Industrial Court (NIC) with the exclusive jurisdiction to entertain and determine all matters regarding labour and employment. By the combined provisions of **Section 7(6) of the NICA 2006 and Section 254(C) (1) (f & h) of the Constitution** the NIC is empowered to have due regard to international best practices in labour and to also interpret and apply international labour standards when exercising its jurisdiction. The NIC has consistently interpreted these provisions to recognize triangular employment relationships, where an employee formally employed by one entity works under the control and supervision of another. This interpretation reflects the evolving nature of modern employment arrangements and ensures legal protection for employees working within complex labour structures.



[7] Ojukwu, D. S. “Triangular Employment Relationship In Nigeria: The Employees' Legal Trepidations” Electronic copy available at: <https://ssrn.com/abstract=3598899>. Accessed on 20th March 2025 @ Pg. 179

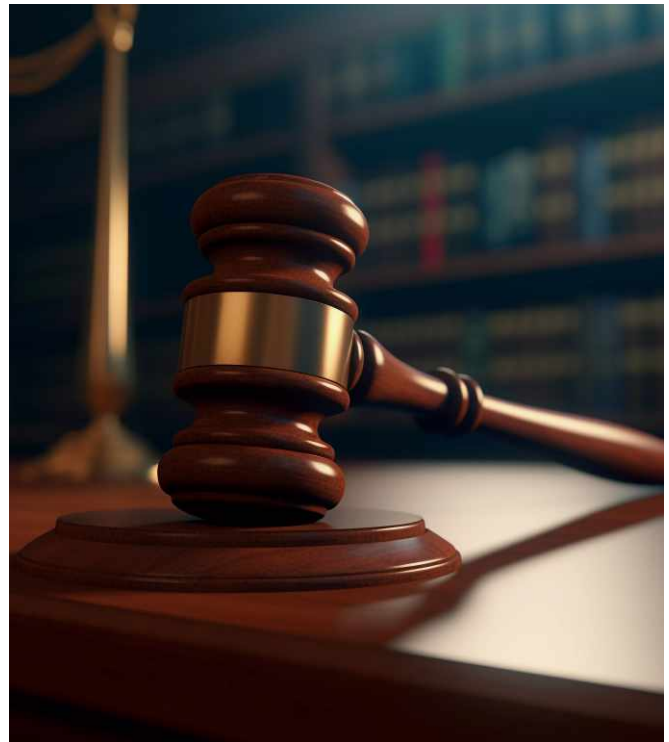
[8] Ugo v. Halogen Security Company Limited & Anor. Judgment delivered on 25th November 2024.



In **Ogoloma v. Memose International Ltd & Anor.**⁹, the Claimant argued that he was employed by the 1st Defendant and seconded to the 2nd Defendant (Weatherford Nig. Ltd) before his dismissal. The 2nd Defendant denied being his employer, asserting that his contract was with the 1st Defendant, who also terminated his employment.

The Court, however, found that while the Claimant was formally employed by the 1st Defendant, he worked under the control and direction of the 2nd Defendant. It held that when an employee is seconded to another entity, the receiving entity becomes integrated into the employment relationship. In this case, the 1st Defendant was deemed an agent of the 2nd Defendant, making both parties co-employers within the triangular employment framework.

In **Asaka v. First Bank of Nigeria Limited**,¹⁰ the Claimant argued that he was employed by the Defendant through its Human Capital Management Department, In-Sourcing Limited, and was not fully paid until his resignation in 2018. The Defendant claimed that In-Sourcing Limited was a separate entity and the sole employer. However, the Court found that the Defendant, through In-Sourcing Limited, hired the Claimant, issued his staff ID, and paid his salary. It held that In-Sourcing Limited acted as the Defendant's agent, making the Defendant the actual employer.



6.0 Recommendations and Conclusion

To mitigate legal risks in triangular employment, a balanced approach is crucial. This includes legislative reforms to explicitly regulate triangular employment, clear contractual agreements by employers to define responsibilities and ensure compliance, and employee awareness of their rights and obligations. As triangular employment grows in Nigeria, courts increasingly recognize end-user companies as co-employers when control is evident. Ensuring legal clarity, ethical employment practices, and informed employees is vital to maintaining a fair and legally sound employment framework.

[9] Suit No: NICN/PHC/06/2019 – Judgment delivered on 16th July 2024

[10] Suit No: NICN/MKD/65/2018 – Judgment delivered on 7TH June 2024



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