

EQUALITY AND FREEDOM OF CONTRACTING PARTIES IN THE NIGERIA PROFESSIONAL FOOTBALL LEAGUE: A MIRAGE

“To renounce liberty is to renounce being a man, to surrender the rights of humanity and even its duties.” – Jean -Jacques Rousseau, *the Social Contract*.

It started as a quiet agitation. Today, the Nigerian league has blossomed into a somewhat unimaginable proportion. From the modest number of eight pioneering club sides in 1972, all featuring in a single division, the league has grown in stature and importance. Parading One Hundred and Three (103) club sides of Three Thousand Five Hundred and Three (3,503) players in the 1995 season, the national league, one of the busiest in Africa and a veritable source of talent for the European scene, ensured mass movement and participation, as teams engaged in power struggle.¹

The milestone in Nigerian football history was attained on the 12th day of May 1990, when sixteen (16) club sides were paid in the first professional league fixtures in the country. Professional football had kicked off in Nigeria One Hundred and Two (102) years after England pioneered the venture worldwide. By 1989, the year preceding Nigeria’s adoption of professional football, the venture had virtually swept across the globe. What could not be imagined some years back were unfolding²!

¹ Kunle Solaja (2014), *Going for Goals, Unfolding Nigerian Football’s Hidden Stories*. (Extra Time Communications Limited, Ikeja). p. 171.

² See Kunle Solaja op. cit. p. 181.

From the attainment of this great milestone in the Nigerian League up till this moment, one endemic malady prevails. The malady of professionalism in the all round contractual relationship between contracting parties in this case between the Club Management and Football Player. The methods adopted by parties who wish to establish contractual relationship in the League does not in any way guarantee equality and freedom especially on the side of the Football Player. One therefore wonders if the term “contract” is alien to the various Nigerian Football League Club Managements. We set forth to briefly look at the word “contract” with the vehement view that things be done right and in accordance with the dictates of social justice, equity and good conscience amongst all parties to a contract in the Nigerian Professional Football League.

In common law legal systems, a contract³ is an agreement having a lawful object entered voluntarily by two or more parties, each of whom intends to create one or more legal obligations between them. The elements of a contract are “offer” and “acceptance” by “competent persons” having legal capacity who exchanges “consideration” to create “mutuality of obligation”⁴.

³ Informally known as an agreement in some jurisdiction. Even here in Nigeria, the words “contract” and “agreement” are being used interchangeably mostly amongst non lawyers.

⁴ <http://contracts.uslegal.com/elements-of-a-contract/>, retrieved on 7/16/15.

When **Max Weber** stated that the function of the freedom of contract was to provide an opportunity for those who held property to utilize that property on the market as a means of acquiring power over others⁵, he was clearly advertent to the exercise of power associated with the imbalance within a contractual relationship.

Undoubtedly, **Vilhelm Aubert** had similar phenomenon in mind when he proposed that freedom of contract involved the legal order supporting the accumulation of value and contributing to the maintenance or increase of discrepancies with society⁶. According to Aubert freedom of contract means that legal norms do not positively fix the content of contracts.

Equality and freedom to contract arguably are the strongest cornerstone of the doctrine of free market libertarianism. It is through the liberal outstretched arms extended through freedom and equal powers to contract that individuals (in this case, Clubs versus Players) entail a general freedom to choose with whom to contract, whether to contract or not, and on which terms to contract.⁷

The relationship between Clubs and Football Players in Nigeria is founded on an employer-employee platform/relationship. The basis of employer-employee

relationship in most part is the contract of employment and the ordinary incidents of that relationship. The contract of employment which is the plank of the relationship is however a product of industrial revolution and the 19th century *laissez-faire* is its principal justification.⁸ The 19th century *laissez-faire* rested on two legs, the freedom of the contracting parties and the sanctity of contracts⁹. Even the Courts consider it a sacred duty to foster the freedom of contractual parties and vindicate the sanctity of contracts. Sir George Jessel aptly opined in 1875 that **“if there is one thing more than another which public policy requires, it is that men of full age and competent understanding shall have the utmost liberty of contracting and that their contracts, when entered into freely and voluntarily, shall be held sacred and shall be enforced by the court of justice”**.¹⁰

A British philosopher, Jurist and social reformer¹¹ commenting on the same idea emphatically posited that **“no man of ripe years and of sound mind, acting freely and with his eyes open ought to be hindered, with a view to his advantage, from making**

⁵ Max Weber, *Wirtschaft und Gesellschaft*, 4 Aufl., 1-2 Halbband, Tübingen 1956 p. 455. Cited in Thomas Wilhelmsson, *Contract and Equality*.

⁶ Vilhelm Aubert, *Rettens sosiale funksjon*, Oslo-Bergen-Tromsø 1976 p. 78. Cited in Thomas Wilhelmsson, *Contract and Equality*.

⁷ Underlining mine for emphasis.

⁸ Adeogun A.A. (1986) *From Contract to Status in Quest for Security*. Inaugural Lecture. Lagos State University Press, Lagos. P. 8.

⁹ We have argued in our earlier articles that sanctity of contract is a doctrine that is highly revered and involved stakeholders in the Nigerian Football Industry should not send it to the mud.

¹⁰ *Printing and Numerical Registering Co v. Sampson* (1875) L.R. 19 Eq 462 @ p. 465.

¹¹ Jeremy Bentham (1952): *Economic Writings* ed Stask London in Adeogun (1986) op cit. p.3 cited in A. Oyesola: *Foisting a willing employee on an unwilling employer: the remedy of re-instatement revisited* NJLIR Vol. 3 No. 2 (2009) p.2.

such a bargain in the way of obtaining money as he thinks fit, nor (what is a necessary consequence) anybody hindered from supplying him, upon any term he thinks proper to accede to”.

In this jurisdiction, over and over again, the courts have held that Contracts of employment like other contracts, their creation and termination are both subject of the general principles governing the law of contract. Hence when the contract is in writing, the parties are bound by the express terms and conditions so stipulated and nothing more.¹²

In all these, one is forced to ask: do club management and football players have equal rights on the letters and substance of contracts between them? Are the parties free in all respect or in any respect at all?

It is our humble view that the harsh economic and social reality facing an average Nigerian professional Footballer has placed the Nigerian footballer on the back heels when contracting with the club management. The player wants to play. He wants to earn. He wants to make a living no matter what is placed on the table. Yes, the player if placed on a comfortable and level platform with the club may choose a club other than the one he had chosen. Most players, if not all, in the Nigerian Professional Football League have one bizarre tale to tell or the other when issues pertaining to the contracts they entered over the years are concerned. As far as this clime

¹² *Olaniyan v. University of Lagos* (1985) 2 NWLR 559 @669. Justice Karibi-Whyte JSC (as he then was).

is concerned, the equality and freedom of the club managements and football players is a mirage. It is a fictitious, hollow and horrible concept in the Nigerian Professional League.

The average Nigerian Professional League football player is in chain when it comes to entering contracts between club managements because of the social and economic realities he is bedeviled with. Indeed, the freedom is not there and cannot be said to be there unless and until things and regulations are visibly made and tangibly executed and enforced to guarantee such freedom.

The Players’ Status and Arbitration Committee of the Nigeria Football Federation has litany of cases ranging from inequality between contracting parties, fraud, misrepresentation and the lack of freedom whilst contracting¹³.

We advocate that to bridge the unequal bargaining strength between the club and footballer in the Nigerian Professional Football League, the Nigeria Football Federation and the Virile League Management Company¹⁴ should mandate that the Player’s Union be massively informed and involved in all the stages of perfection of a player’s contract in the Nigerian Professional League. We look at

¹³ Some of the awards given by this Committee are yet to be enforced. One would be right to say that at the moment the Committee could be likened to a toothless bulldog.

¹⁴ Currently, the League Management Company (LMC) is headed by Chief Shehu Dikko, an astute administrator who knows his onion.

the apex League in Nigeria because of the great symbolism but wish to quickly state that the golden beam be extended to the Nigeria National League, the Nigeria Nation-wide League and indeed all league structures authorized by the Nigeria Football Federation and the necessary authorities.

Resent the situation as it might, the Football League in Nigeria now truthfully is improving as against when it was seen as the villain and simply walking away as was the case in the past is now out of the question.

Surely, when there is inequality and lack of freedom between contracting parties, disputes are bound to arise and when football disputes arise and are left unresolved or allowed to escalate to the

Arbital Panel or Courts, the result includes *inter alia* frustration, acrimony, underdevelopment and stagnation which we do not wish to experience now that the League is on a positive speed lane for in Jean -Jacques Rousseau's *the social contract* "The word 'slavery' and 'right' are contradictory, they cancel each other out. Whether as between one man and another, or between one man and a whole people, it would always be absurd to say: "I hereby make a covenant with you which is wholly at your expense and wholly to my advantage; I will respect it so long as I please and you shall respect it as long as I wish." Indeed, situations like this should be vehemently kicked against by all stakeholders in the Football arena in Nigeria and we urge them to so hold.

NOTE: *No part of this article should be relied upon as legal advice. It is only intended as a general guide on the subject and as such, we advise that you consult a specialist where legal advice is desired. For further information on the subject and any other sports law related questions, kindly contact us at info@lexsetters.com.*

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