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THE ROLE OF A LABOUR INSPECTOR IN LABOUR DISPUTE RESOLUTION IN THE PRIVATE SECTOR OF CAMEROON: A CRITIQUE[1]

INTRODUCTION

The acid test of a justice system lies not only in the decision arrived at in court but whether justice[2] is seen to have been done to the plaintiff, the defendant and the society. The core of employment relations is the contract of employment from which the relationship ensues. When one party's contract obligations are abridged by the other, the proper place of redress is a properly constituted justice system where judges dispense judgments based on just laws and impartiality.[3] In labour relations in Cameroon, this has been preserved by sections 131- 155 of the Labour Code 1992 (in case of individual dispute) and sections 157-164 of same (in case of collective disputes). Here alternative dispute resolution methods have been prescribed, followed by adjudication (court action) in cases where the competent labour inspector enters a statement of partial or non- conciliation. The code contains the substantive law on labour relations as well as the procedure for the settlement of labour dispute.[4]

Natural justice, which a worker can get for the legal injury suffered, can only be gotten from a judicial and/or quasi-judicial organ. However, it is opined that for a long lasting peaceful solution, the choice of method of dispute resolution should be that of the disputants by way of an agreement or a *compromise* adopting either adjudication or alternative dispute

*1. **Irene Fokum Sama-Lang** ,Senior Lecturer in Law, Department of Law, Faculty of Social and Management Sciences, University of Buea. E-mail: finds_1999@yahoo.com

2. Justice in this context is the "constant and unceasing will to render to each one his due." Elegibo, J.M., *Jurisprudence,* Spectrum Law Publishing, 1994, p.360.
3. As ordained by article 37(2) of the 1996 Constitution of Cameroon as revised, '….Magistrates of the bench shall, in the discharge of their duties, be governed only by the law and their conscience.'
4. Disputes could be defined as a kind of conflict which manifests itself in distinct, justiciable issues. It involves disagreement over issues capable of resolution by negotiation, mediation or third part adjudication. The differences inherent in a dispute can usually be examined objectively, and a third party can take a view to assess the correctness of one side or the other. See generally *ADR and Commercial Disputes*, Russel Caller (eds), London: Sweet & Maxwell, 2002, p.2.

resolution (ADR) methods. An assessment of the role played by the labour inspector, who is a government officer, in the statute-imposed dispute resolution mechanism is very crucial especially when viewed from a security of service perspective. From this premise, the resolution of disputes is therefore a very important feature in labour relations as the poor handling of matters arising therefrom may affect the social justice the worker gets from dispute resolution even after the termination of employment.

Adopting purely qualitative research method involving purely content analysis of cases and relevant statutes, this paper questions the effectiveness of the labour inspector in the resolution of labour disputes especially before powerful employers. In the course of doing so, it critically assesses and compare the arbitral system put in place by the Labour Code to ascertain if it guarantees security of service. This paper is grounded on the theory of justice and on the concept that the resolution of disputes by consensus and compromise contributes to the wellbeing of the work place compared to the adversarial system (litigation).[5]

Resolution of Labour Disputes within the context of Security of Service

It is questionable whether the road taken to resolve labour and industrial disputes is not flawed. Granted that the procedure for the resolution of dispute apparently does not give room for the disputants to choose how to resolve disputes, the respect of agreements may become problematic.

Labour actions, whether individual or collective, are commenced on the basis that there is a dispute between the contracting parties. Section 131 of the Labour Code,1992, defines a labour dispute as an individual dispute arising from a contract of employment between workers and their employers or from a contract of apprenticeship. In the case of a collective dispute, section 157(1) of the Labour Code defines it as including

‘ any dispute which is characterised by :

a) the intervention of a group of wage earners, whether or not the said workers are organised in trade unions; and

b) the collective nature of the intent at strike shall be deemed to be a

5. It is a fundamental precept of Roman Law that it was in the interest of the State to see an end to litigation to preserve and enhance personal and employment relationships. See generally Brown, H.J., &Mariott, A.R., *ADR and Practice,* Sweet& Maxwell, second edition, 2002.

collective labour dispute....'[6]

Yanou[7] citing the Supreme Court of Cameroon decision in *Total Fina Elf v. NoundaMartin,*[8] contends that it will be wrong to assume or treat as a collective dispute, workers cases filed individually against an employer, even if all of them are for the same grievance. However, as pointed out by Pougoue,[9] an individual grievance arising from a breach of a worker's right to participate in trade union activities may amount to a breach of a collective right/freedom to participate in trade union activities.

Unlike in Nigeria,[10] dispute resolution under the Labour Code does not include disputes between workers *inter se* in the ordinary course of employment. This ought not to be so since the whole idea of alternative dispute resolution in employment contracts is to maintain peace which is required to boost production and turn-over.

Individual Labour Disputes

Individual labour disputes may arise from a variety of reasons including the non –payment for work done by the employee, wrongful dismissals, and late payment of wages. When this occurs, section 139 (1) of the Labour Code, 1992, mandatorily requires the disputants (employer or employee) to request for settlement by the competent labour inspector, who does so through conciliation.[11] The competent labour inspector for this purpose is one in the division in which the employee was working before the labour dispute. If one of the disputants is an international

6. According to ILO Industrial Relations Survey, 2006, 22.73% of collective disputes stem from job security, 30% on wages, 11.82% on trade unions relations.
7. Yanou, M.A., *op. cit* at p. 139.
8. Appeal No. 146/S/02-03 of 10th January, 2002.
9. Pougoue, P-G., Tchokomakoua,V., Kenfack, P-E., Seuna, C&Tchakoua, J.M., *Code du TravilCamerounaisAnnote,* Yaounde: PUA, 1997, P.227
10. Nigeria, for example, has included this category of relationship in its definition of Labour dispute. In fact, section 47(1) of Trade Dispute Decree No. 7 of 1976, Cap 432 defines a trade dispute as 'a dispute between employers and employees or between employees and employees which is connected with the employment or non-employment or the terms of employment and physical conditions of work of any person.
11. This is sometimes mistaken for mediation. It could be defined as alternative to dispute resolution where the third party makes proposals for settlement to the disputants and helps them to reach a resolution. In the civil system, this is seen as conciliation while in common law this is sometimes taken for mediation.

organisation which has a convention with the Cameroonian government, the Ministry of Labour will take the place of the labour inspector.[12]The labour inspector may after conciliation issue a statement of conciliation,[13] partial conciliation,[14] or non-conciliation.[15] As a rule of practice, the disputants together with the Labour Inspector must sign this statement so as to prevent any of the parties from introducing new claims not discussed during the conciliation process with the Labour Inspector.[16]

As provided in section 139(4) of the Labour Code, these resolutions, however, become enforceable only after the endorsement of the resolution by the court with competent jurisdiction. If a court fails to endorse, or endorses only after a long time, the aggrieved worker will continue to suffer grave injustice and hardship especially if the settlement included payment of money.[17]Statements of conciliation or non-conciliation by default are issued by the labour inspectors where one of the parties fails to appear at the labour inspectorate after service. This power is to be applauded because it strengthens security of service in that it prevents unscrupulous employers from frustrating the workers quest for justice,[18] as was held in the case of Njoko *Jean Claude v. Societe*

12. *CARFOP v. Kan Elroy Moses Payne.*Suit No. BCA/7.L/1998 (unreported).
13. Where through his encouragement, the parties agree to the terms of settlement.
14. Where the parties accept or reject some of the terms proposed by themselves or the labour inspector. In this wise therefore, the Labour Inspector is supposed to include in his statement of partial conciliation the terms agreed upon and those rejected.
15. The parties do not reach an agreement.
16. Yanou, M.A., *op.cit*at p. 137.
17. This position of the Code lend credence to the views of a Labour Inspector (Tabe Raymond interviewed on 13/12/2010 in Buea, South West Region) at the Regional Delegation of Labour that the code contemplates their activity as a fire brigade to quell down tempers of the disputants before the commencement of litigation. He contends that though conciliation is advised in labour relations, section 139(4) reduces them to a mere transmission zone, a vehicle to the courts. He added that if the Code had given them the opportunity to assert their authority by making the decisions arrived at binding, the desired effect and intends of conciliation, which is speedy redress, would have been achieved as it would have been faster than what obtains currently.
18. It is trite law that all parties to a suit be given fair hearing and equal opportunity whether it a court or a quasi-legal body like that operated by the Labour Inspector. Although Mbuagbaw JCA in *ChungongChristopher* v*Pecten Cameroon Company* Suit No. CASWP/ L.2/1992 at p, 269(unreported) held that the right to fair hearing included the right of the person to be affected to be present all through the proceedings and to hear all the evidence against him, by not hearing from the other party who wilfully and intentionally abstain from the proceedings when an opportunity to hear his side has been given does not necessarily go against one of the twin pillars of natural justice-*audi alteram partem*as was held in the unanimous judgment of the Court of Appeal South West delivered by Bawak JCA (as he then was) in *Cameroon Lonestar Fishingv.CaliGuiseppe* Suit No. CASWP/60/1997, 127 at p. 133.

SOFIDEX &Njoh Francois Maurice.[19]

Collective Disputes

Collective disputes are industrial disputes arising in situations where workers have a common industrial problem in their work place. Before any collective dispute goes to the competent arbitration board for arbitration, which in this instance seats in the Court of Appeal of the place of residence or employment of the employee,[20] the dispute must go through conciliation. As was held in the *Total Fina Case,* the collectiveness of the dispute must be ascertained. It is not assumed and it is not justified simply because of the collective interests of the workers. Collective disputes strengthen the security of service since workers who act as a group are more likely to protect their interest better than those who act individually. Besides, collective disputes reduce the time that will be spent on a dispute with the same facts had the complaint been lodged severally. On the other hand the procedure laid down in section 158(1)of the Labour Code may white wash the apparent security this section seems to afford in that, the Code requires the most diligent party to seize the competent labour inspector immediately, which is not the case more often than not. Besides, where the labour inspector is notified and there is partial or non-conciliation requiring a referral to arbitration, the Labour Code fails to specify where recourse will lie should the arbitration award be unacceptable.

An assessment of the role of the labour inspector in dispute resolution

The traditional process for resolving individual and collective labour dispute is through litigation in courtrooms or tribunals. This has not only proven to be time consuming, unpredictable, stressful, with enormous human and financial cost, it is also damaging to the employment relationship, which may create a hostile work environment especially for the worker, forcing him/her to eventually leave. That is why conciliation, which in strict legal concept is an independent, impartial and fair service and which tries to negotiate a compromise (rather than win a case) after examining the strength and weaknesses of the parties case and explore the options open to them.[21] Because of this, conciliation, which is more user-

19. This same position will be adopted should one of the parties be present but refuses to sign the settlement as decided in *CDC v Andrew S.N. Nfor* (1997) 1CCLR, 127 at p. 166.

20. Section 161(1) of the Labour Code 1992.

21. Bowers, J.,& Gill, M., 'Employment Disputes,' in *ADR and Commercial Disputes,* Russel Caller (eds), London Sweet & Maxwell, 2002, p 57-58.

friendly and less confrontational and informal, is adopted. In Cameroon, this soft-option is placed on the shoulder of the competent Labour Inspector whose function is therefore central to labour justice, as proceedings must first commence in his/her office under pain of being nugatory.

However, the question is whether within the context of article 37(2) of the 1996 Constitution of Cameroon as revised, and section 18(1) (c) of the Law on Judicial Organisation 2006, the labour inspector can properly discharge this function? This question assumes greater significance as the labour inspector is required by section 139(1) of the Labour Code to settle the individual disputes amicably and under section 158(2) of the Code to attempt a settlement where a collective agreement fails to do so. This is an onerous quasi- judicial responsibility. This responsibility demands that a labour inspector appreciate the fine legal details and intricacies in the dispute as well as be knowledgeable in industrial and trade relations. However, being a trained labour (civil) administrator and not a judicial officer trained in labour justice, the labour inspector may lack the requisite knowledge and experience to discharge this serious responsibility. This affects the quality of service offered by the labour inspector and thus impacts negatively on the security of service in private employment.

Besides, in a proper system of conciliation, the conciliator is supposed to be independent, neutral and impartial,[22] chosen by the disputants themselves. The labour inspector who is imposed on the disputants by section 139 of the Labour Code, 1992, unlike what obtains in classic ADR situations, cannot attract the confidence of the disputants like is the case in classic arbitration. This alone plays against the dispute resolution mechanism, since he/she is not their choice of referee, the disputants are most unlikely to adequately collaborate with him in negotiating a compromise as one party (the worker) may see him/her as taking side with the employer or *vice versa*.

In Cameroon, whether correctly assumed or otherwise, a worker's success in career is measured by the administrative positions held and maintained. A labour inspector obtains his qualification after post-graduate studies at

22. The central pillars of any Alternative Dispute Resolution mechanism. According to Supreme Court Judgment No.9/CS of 22 November 1973 in Pougoue*et al,op. cit* at p. 229, he is a privileged witness of the eventual agreement.

EcoleNationaled'AdministrationetMagistrature. He/she is a civil servant, a labour administrator[23] vying for administrative appointments, which are given only to those who do not only maintain a cordial relationship with their administrative and political superiors but also act according to their dictates. The function of a labour inspector as a conciliator[24] must therefore be seen from this premise. Where a labour inspector has a case involving a government organ, his/her impartiality, fairness and neutrality in arriving at a proper settlement, is questionable .[25] This has tremendous negative impact on the security of service.

The case of *Simon Tamanjong& 6 others v. Cameroon Tea Estate*[26] illustrates this point. Here, workers of the Cameroon Development Corporation(CDC) who were transferred from Ndu and Djutissa to Tole were terminated on the 17/04/2004 and 26/2/06 respectively. They were paid off in September 2006 without repatriation dues as required by section 94 of the Labour Code. The terminated workers continued to stay in the accommodation at their CTE camps in Tole since their employers had not put the usual lorry to transport them back to Ndu at their disposal. They complained about this to the employers but never received any reply.

After they were driven out of the camps where they do not pay rents, electricity and water, these destitute workers complained to the local labour inspector. The matter went to the arbitration board which awarded the complainants 200.000frs each for their transportation. Rather strangely and contrary to section 94(4) of the Labour Code, the inspector failed to award them their remuneration up to when the transport was to be provided.

In a subsequent letter written by the workers to the representative of the International Labour Organisation in Yaounde, Cameroon, dated 19th

23. Section 105(1) of the Code defines a labour Inspector as "civil servants of the labour administration corps placed at the head of the Labour and Social insurance Inspectorate or his delegate".
24. According to section 11(2) of the Magistrates' Courts (Southern Cameroon) Law 1955, every administrative officer shall ex officio be a justice of peace for the area of the Southern Cameroon to which he is for the time being appointed as such an officer. In this wise, a Labour Inspector appointed to an area *ipso facto* becomes a justice of peace in the execution of his function as a conciliator. See Wackai JCA in *Ndop v. Yenkong* (1994) CAJ-CLC 56-74.
25. This is so even though section 105(3) of the code guarantees their independence.
26. Suit No. CASWP/L.8/2007 (unreported)

September 2010, the ex-workers complained that not even the Regional Delegate of Labour and Social Security (a labour inspector) could make the employer respect the arbitral award. It is indeed interesting that the workers concluded that the labour inspector was afraid to submit any claim against CTE to any court in Cameroon because any official who does so is penalised by the powers that be. In desperation, they urged the Cameroon government, which ordered the privatisation of CTE to pay them otherwise they will not receive justice.[27] This shows the weakness of security of service of a worker when employed by a powerful employer.

Furthermore, after attempting a settlement of the labour dispute as required by section 139(1) for individual dispute and section 158 for collective disputes, the Labour Inspector is required by section 139(4) of the Labour Code and section 159 (1) of the same Code to reduce his/her settlement into total conciliation, partial-conciliation and non-conciliation for collective disputes. He/she is further required by sections 139(6) and 140 to send a copy of the settlement signed by him/her and the disputants, to the President of the competent court for endorsement and enforcement.

This role is a pre-condition to the realisation of the legal redress sought by a worker because the enforcement of whatever settlement arrived at is hinged on whether the labour inspector performs the above fundamental role. Meanwhile, the absence of a time bar for the inspector to forward the settlement to the competent court, leads to the possibility of delays in transmitting the conciliation decisions with negative effects on the security of service. The facts of *Abakem v. Labour Inspector Meme Division*[28] shows clearly that the labour inspector's role could be used against the worker. Here, the Labour inspector refused to issue the dismissed worker partial conciliation to commence his action in court. The worker had to compel him to issue it by a *mandamus.*

According to Yanou,[29] article 37(2) of the 1996 Constitution as revised has made the Supreme Court, the Court of Appeal and tribunals the only

27. Cameroon Claims to be a country which respects Dicey's three principles of the rule of law. The second principle provides that "everyman, whatever be his rank or condition, is subject to the ordinary law of the realm and amendable to the jurisdiction of the ordinary tribunal." This assertion of the plaintiffs does not in any way reflect this fundamental tenet of constitutional law.
28. Suit No. HCK/L.9/1984 (unreported)
29. *Supra* at p. 3

courts with authority to exercise judicial power. He argues that, this has taken away the powers of the High Court to check the excesses of the labour inspector. This compelling argument is supported by the unanimous decision of the South West Court of Appeal delivered by Fonkwe JCA in *The Liquidator, National Produce Marketing Board v. Egbe Stephen Batuo.*[30] Here, the court held that the powers of the high court to issue prerogative writs commanding public officers to do their duties have been abrogated by the Law No. 89/019 of 29/12/89[31] on Judicial Organisation and so any such motion is a 'legal fallacy emanating out of void proceedings.' This is further supported by section 18(1)(c) of the Judicial Organisation Ordinance, 2006 which gives powers to the High Court to issue such orders only in non-administrative functions. Clearly, since the labour inspector's function is administrative, it does not come within the contemplation of this subsection. This means that where a labour inspector fails to perform his function, the only redress for a worker is to go to the Administrative Bench of the Supreme Court.[32] This over centralisation of judicial power, removes justice from a poor worker who because of distance, language and the environment of the Supreme Court,[33] will out of fear abandon his quest for justice.[34] This does affect security of service.

Conclusion

If justice is to be done to the "parties" then the powers of the High Court to grant prerogative writs to check abuse of powers by the labour inspector should be restored. Although ADR is preferred over litigation, it should not be mandatory. The parties in a labour dispute should legally have the choice to either approach the courts directly or resort to ADR. This is all the more so because access to court is a fundamental human right. Amending the Labour Code to offer both parties this discretion will

30. Suit No CASWP/44/97, CCLR part 8 p. 185 at p. 198. Similarly, the Bamenda Court of Appeal in *Ngwayi& 2 Others v Nyam*Appeal No. BCA/13/89 (unreported)where the appellants who brought an action against the Municipal Administrator Nkambe for destruction of their property. It was held that an action against a municipal authority before any other court but the Supreme Court would be barred for want of jurisdiction.
31. Now Law No 2006//015/29/12/2006 on Judicial Organisation.
32. With decentralisation of the Administrative Bench to the regional headquarters, it may ameliorate the situation, although it is desirous that the administrative bench be taken to sub-divisions, in order to bring the courts nearer to the people.
33. Yanou , *supra at p. 5*
34. Take for example the case of a worker at Ndu who works in the Cameroon Tea Estate who has been wrongfully terminated and the local Labour Inspector refuses to execute his function. The distance, cost and poor roads is enough to make the worker abandon the case.

enhance security of service in our context as a developing country. Besides, it is important for the parties even if they do chose ADR that they should be able to decide on which of the ADR to adopt, which will better suit their type of contract relationship and further a conducive and .amicable atmosphere at the workplace post-dispute.

Ideally, it is recommended that an industrial arbitration board be put in place to resolve labour and employment disputes independent of the courts as it is now the case. The assistance of the courts could be brought in for administration of arbitration and for interim measures of protection.[35]

35. See generallyRedfern, A. & Hunter, M. *Law and Practice of International Commercial Arbitration*, Thomson :Sweet& Maxwell, pp 388-415. Particularly Lord Mustill in *CoppeeLevalin NV v. Ken-Ren Fertilisers and Chemicals*[1994] 2 Lloyds Rep.109 1t 116 HL where he stated that: " there is plainly tension here. On the one hand the concept of arbitration as a consensual process reinforced by the ideas of transnationalism leans against the involvement of state through the medium of a municipal court. On the other side there is the plain fact, palatable or not, that it is only a court possessing coercive powers which could rescue the arbitration it is in danger of foundering."