NICN – JUDGMENT

IN THE NATIONAL INDUSTRIAL COURT OF NIGERIA

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

BEFORE HIS LORDSHIP, HON. JUSTICE P. I. HAMMAN (VACATION JUDGE)

DATE: 21ST SEPTEMBER, 2022 **SUIT NO: NICN/ABJ/270/2022**

BETWEEN:

1. FEDERAL GOVERNMENT OF NIGERIA CLAIMANTS/

2. MINISTER OF EDUCATION APPLICANTS

AND

ACADEMIC STAFF UNION OF

UNIVERSITIES (ASUU) DEFENDANT/RESPONDENT

RULING

1.0. By a letter dated 8th of September, 2022 the Honourable Minister, Federal Ministry of Labour and Employment forwarded to this Court a Referral Instrument in respect of the trade dispute between the parties for adjudication pursuant to section 17 of the Trade Disputes Act, Cap. T8, Laws of the Federation of Nigeria (LFN), 2004. The questions for determination and the reliefs sought by the Claimants are as stated in the Referral Instrument dated 7th September, 2022 and the Claimants' supporting originating processes filed on the 12th of September, 2022.

1.1. This Ruling is in respect of the Claimants/Applicants' Motion on Notice for Interlocutory Injunction dated and filed on the 12th of September, 2022. The application which is brought pursuant to sections 6(a) and (b) and 254C(1)(C) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), section 7(1)(b) of the National Industrial Court Act, 2006, Order 17 Rule (1), (13) and Order 22 Rule 1(1) of the National Industrial Court of Nigeria (Civil Procedure) Rules, 2017, and under the inherent jurisdiction of this court prays for the following reliefs:

1. An order of this Honourable Court granting an interlocutory injunction restraining the Academic Staff Union of Universities, by themselves, members, agents, servants, privies or howsoever

called from taking further steps and doing any act or otherwise continuing with the indefinite strike or any strike action pending the hearing and determination of the suit/referral to this Honourable Court dated 8 September 2022 made at the instance of the Minister of Labour and Employment as a matter of national interest pursuant to his powers under Section 17 of the Trade Disputes Act.

2. And for such further order(s) as this Honourable Court may deem fit to make in the circumstances.

1.2. The grounds for the Application are as follows:

1. The Honourable Minister of Labour and Employment by virtue of the powers conferred on him by Section 17 of the Trade Disputes Act, Cap T8, Laws of the Federation of Nigeria referred to the National Industrial Court, for determination in the national interest, the dispute between the Federal Government of Nigeria and the Academic Staff Union of Universities (ASUU) in connection with the prolonged strike embarked upon by ASUU since 14 February 2022.

2. Section 18 (1) € of the Trade Disputes Act expressly provide that 'a worker shall not take part in a strike in connection with any Trade Dispute where the dispute has subsequently been referred to the National Industrial Court under Section 14 (1) or 17 of the Act.'

3. Section 254C (1)© of the Constitution of the Federal Republic of Nigeria 1999 (As Amended), Section 7(1) (b) of the National Industrial Court Act and the Rules of this Court, particularly Order 17 Rules (1), (14) and Order 22 Rule 1 confer on this Honourable Court the powers to grant an interlocutory order of injunction to restrain any person or body from taking part in any strike, lockdown, lockout or industrial action or any conduct in furtherance of a strike, lock down, lockout or any industrial action and matters connected therewith or related thereto. Also Order 17 Rule 13 of the Rules of this Honourable Court conferred on this Honourable Court the powers to act in any manner that it considers expedite on the circumstances in order to achieve the objectives of the Act and the Rules of the Court in the exercise of its powers and in the performance of its functions.

4. It is of utmost necessity and urgency that this application be granted having regards to the incalculable damages being done to innocent citizens of Nigeria from day to day locked out of public Universities and unquantifiable damages being done to educational development and infrastructure by the strike of the Academic Staff Union of Universities which has continued unabated.

5. Every single minute, hour and day counts in factual destruction of unquantifiable intellectualism and security risks associated with the deprivation to innocent students who are non-parties to the dispute between the parties in this referral.

6. The strike has occasioned tremendous and unquantifiable hardship putting the lives, values and wellbeings of millions of Nigerians and non Nigerians admitted in public universities in Nigeria in jeopardy forced to stay at home and in danger.

7. The balance of convenience is in favour of the Federal Government and in favour of innocent Nigerians in public universities who are from day to day deprived of education, livelihood, wellbeing and subjected to unquantifiable risks by the strike.

8. Only this Honourable Court can stop the irreparable losses and damages foisted on the public universities of the Federal Republic of Nigeria by the indefinite strike action and an interlocutory injunction shall stop the irreparable losses in the interlocutory pending the hearing and determination of the substantive suit/referral before this Honourable Court.

9. It is of extreme necessity to avert the continuing irreparable losses and dames(sic) against the Federal Government of Nigeria, against educational infrastructure and development in Nigeria which may occur before the final determination of the suit/referral directly before this Honourable Court is heard and determined.

10. It is of extreme necessity that this court intervenes.

11. The Honourable Court has the power to grant this application.

1.3. In support of the application is an affidavit of 21 paragraphs deposed to by Okechukwu Nwamba (a Legal Officer in the Federal Ministry of Justice on posting to the Federal Ministry of Labour and Employment as the Legal Adviser). The Claimants/Applicants also filed an Undertaking as to Damages of five (5) paragraphs deposed to by Okechukwu Nwamba (a Legal Officer in the Federal Ministry of Justice on posting to the Federal Ministry of Labour and Employment as the Legal Adviser) on the 12th of September, 2022. There is also an Affidavit of Extreme Urgency of 19 paragraphs deposed to by one Suleiman Jibril (a State Counsel with the Federal Ministry of Justice Abuja) on the 13th of September, 2022. Annexed to both the affidavit in support of the Application and the Affidavit of Extreme Urgency are the following documents:

i. Academic Staff Union of Universities (ASUU) letter titled: Re: Declaration of Four-Week Roll-over strike action dated 9th of May, 2022 -------- exhibit 1.

ii. Academic Staff Union of Universities (ASUU) letter titled: Re: Declaration of Four-Week Roll-over strike action dated 29th of August, 2022 -------- exhibit 2.

iii. Referral Instrument to this court dated 7th of September, 2022 and signed by Senator (Dr.) Chris Nwabueze Ngige, OON (Honourable Minister of Labour and Employment ------ exhibit 3.

1.4. In compliance with the Rules of this court, the Claimants/Applicants also filed a Written Address wherein the learned Senior Counsel to the Claimants/Applicants J. U. K. Igwe, SAN submitted these two (2) issues for the determination of the court, to wit:

i. Whether this Honourable Court has powers to grant the Reliefs sought by the Claimant/Applicant?

ii. Whether the Applicant has met the requirements for the grant of an Interlocutory Injunction in its favour?

1.5. It is submitted on issue one (1) that this court has the powers to grant the interlocutory reliefs being sought by the Applicants for the preservation of the res pending the final determination of the suit. The court was urged to exercise its discretion in favour of the Applicants and grant the application. References were made to section 254C(1)© of the 1999 Constitution, section 7(1)(b) of the National Industrial Court Act, 2006, Order 22 Rule 1 and Order 17(1)(1) of the Rules of this court 2017, as well as the case of Military Administrator, Federal Housing Authority & Anor V. Aro (1991) LPELR-3185(SC).

1.6. With respect to issue two (2), the learned silk for the Claimants/Applicants referred the court to the apex court decision in the case of Akinpelu V. Adegbore & 3 Ors (2008) 4-5 SC (Pt. II) pages 96-98 where the court listed the factors to be considered in an application of this nature for interlocutory injunction to include:

i. The Applicant must show that there is a serious question to be tried.

ii. The Applicant must show that the balance of convenience is on his side; that is, that more justice will result in granting the application than in refusing it.

iii. The Applicant must show that damages cannot be an adequate compensation for his damage or injury, if he succeeds at the end of the day.

iv. The Applicant must show that his conduct is not reprehensible, for example that he is not guilty of any delay

v. No order for an interlocutory injunction should be made on notice unless the Applicant gives a satisfactory undertaking as to damages save in recognized exceptions; and

vi. Where a court of first instance fails to extract an undertaking as to damages, an appellate court ought normally to discharge the order of injunction on appeal.

1.7. On the requirement for serious issues to be tried, learned silk drew the court's attention to the questions for determination and the reliefs in the substantive suit, and paragraphs 6 – 9 of the affidavit in support of the application, and argued that the Applicants have raised serious issues to be determined by the court by virtue of section 17 of the Trade Disputes Act which provides for reference to this court by the Minister of Labour and Employment. That the legal rights of both Nigerians and non-Nigerians in the public universities to receive education that they have paid for is being threatened by the Defendant. That the strike action has caused damages to dormant infrastructure in the public universities as well as damage to intellectualism and deprivation against innocent persons who are not parties to the suit and who the Applicants have the constitutional responsibility to protect. See The

Military Administrator, Federal Housing Authority & Anor V. Aro (supra) and Obeya Memorial Specialist Hospital V. Attorney General of the Federation (1987) 3 NWLR (Pt. 60) 325.

1.8. On the requirement of balance of convenience, learned Senior Counsel reproduced paragraphs 11 – 16 of the affidavit in support of the application, and argued that, apart from the Applicants the entire nation including innocent citizens and non citizens will lose tremendous and unquantifiable damages and wastage of academic and life advancement programmes that cannot be regained. That the balance of convenience is in favour of granting the Application because if the application is refused, irreparable hardship will be caused to the Applicants and innocent Nigerians and non Nigerians. See The Military Administrator, Federal Housing Authority & Anor V. C. O. Aro (supra) at pages 11 0 12 and Obeya Memorial Specialist Hospital & Anor V. Attorney General of the Federation & Anor (supra) at page 344.

1.9. With respect to the requirement of inadequacy of damages as compensation to the Claimant for injury caused by the Defendant if the Claimant succeeds at the trial, learned Silk referred to Grounds 4, 5, 6, 8 and 9 of the Application and paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 16, 19 and 20 of the affidavit in support of the Application, and submitted that the injury being inflicted on the Federal Republic of Nigeria and innocent citizens by the Defendant/Respondent is irreparable and no amount of damages can adequately compensate the Applicants and all students in public universities in the country should the defendant/respondent continue with the strike which started since 14th February, 2022. The court was urged to hold that the Applicants and innocent citizens the Applicants have the constitutional obligation to protect will suffer irreparable and unquantifiable damages if the Defendant/Respondent is not restrained from continuing with the strike action pending the hearing and determination of the substantive suit. See Obeya Memorial Specialist Hospital & Anor V. Attorney General of the Federation & Anor (supra) at page 344 lines C-D.

1.10. On the requirement of the Applicant's conduct, it was submitted that the Federal Government of Nigeria through the Minister of Labour and Employment took the appropriate step of invoking the provisions of section 17 of the Trade Disputes Act in referring the matter to this court for adjudication. That since the dispute was referred to this court on the 8th of September, 2022, any strike by the Respondent after the referral is illegal. The learned Silk reproduced the provision of section 18(1) of the Trade Disputes Act and argued that, where a statute prescribes for a particular way of performing an act or refraining from a particular conduct, only that course and no other is legitimate. That in this case since the Minister of Labour and Employment has transmitted notice of the dispute to this court pursuant to section 17 of the Trade Disputes Act, an injunction ought to be granted and enforced against any worker who is on strike. The court was finally urged to grant the Application. See Corporate Ideal Insurance Ltd V. Ajaokuta Steel Company Limited & 2 Ors (2014) 2 SC (Pt. 1), Wada & 2 Ors V. Bello (2016) 17 NWLR (Pt. 1542) 379 at 7453 lines D-F and Asika & 3 Ors V. Atuanya (2013) 7 SC (Pt. IV) 25 at 39 lines 10-30.

1.11. It is pertinent to note that at the hearing of this application on Monday 19th of September, 2022, the learned Senior Counsel for the Claimants/Applicants submitted by way of adumbration that paragraphs 1 – 8 of the Counter-Affidavit relate only to the substantive suit and therefore irrelevant to this application. That the presence of the Federal Government in the suit covers all the parties listed in the Referral Letter of 8th September, 2022. The court was urged to discountenance those paragraphs, relying on the case of University Press Ltd V. Martins (2000) 2 SC 125 at 129-130.

1.12. It was further argued that contrary to the arguments of the learned Senior Counsel for the Defendant/Respondent that paragraphs 7 – 20 of the supporting affidavit offend section 115 of the Evidence Act, it is paragraphs 3 – 8 of the Counter- Affidavit that are in violation of section 115 of the Evidence Act. Learned silk urged the court to depart from the provisions of the Evidence Act in line with section 12(2)(b) of the National Industrial Court Act, 2006, discountenance the Counter-Affidavit and grant the Application.

1.13. In opposition to the application, the Defendant/Respondent filed a Counter-Affidavit of 9 paragraphs deposed to by Prof. Victor Emmanuel Osodeke (a professor of Soil Science at the Michael Okpara University of Agriculture, Umudike and the President of the Defendant/Respondent) on the 16th of September, 2022. Annexed to the Counter Affidavit are the following documents:

i. Academic Staff Union of Universities (ASUU) document titled, "Highlights of Events and Demands in the Current Strike Action" --- exhibit ASUU 1.

ii. Agreement between The Federal Government of Nigeria (FGN) and The Academic Staff Union of Universities (ASUU) ----- exhibit ASUU 2.

iii. Agreement between The Federal Government of Nigeria (FGN) and The Academic Staff Union of Universities (ASUU), May, 2021 ----- exhibit ASUU 3.

iv. Memorandum of Action at the end of the conciliation meeting between representatives of Federal Government/Academic Staff Union of Universities held on September 18, 2017, at the Conference Room of the Honourable Minister of Labour & Employment, Abuja ------ exhibit ASUU 4.

v. Resolutions reached at the meeting between Federal Government and Representatives of the Academic Staff Union of Universities (ASUU) chaired by the President and attended by the leadership of the Nigerian Labour Congress (NLC) Trade Union Congress (TUC) of Nigeria held at the State House Abuja on 4th November, 2013 ----- exhibit ASUU 5.

vi. Letter of declaration of four-week roll-over strike action by ASUU dated 14th February, 2022 and addressed to the Hon. Minister, Federal Ministry of Education ---------- exhibit ASUU 6.

vii. Notice of Meeting by FGN/University-Based Unions 2009 Agreements Re-Negotiation Committee dated 11th August, 2022, and addressed to the President of ASUU ------ exhibit ASUU 7.

1.14. In compliance with the Rules of this court, the Defendant/Respondent also filed a Written Address wherein the learned Senior Counsel for the Respondent Femi Falana, SAN adopted and argued the two (2) issues submitted by the Claimants/Applicants. It is pertinent to note that learned silk also submitted this lone preliminary issue for the court's determination, to wit: Whether paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 19 and 20 of the Claimants Affidavit is not incompetent and as such ought to be struck out.

1.15. It was submitted on the preliminary issue that paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 19 and 20 of the Affidavit in support of the Application should be struck out because they contain legal arguments, opinion and conclusion, and are also hearsay because the deponent to the affidavit Okechukwu Nwamba did not introduce himself as a member of the defendant or someone that attends the meetings of the FGN/ASUU joint negotiation Committee, or even as a member of the University Community. That the said paragraphs of the affidavit only amount to conjectures, opinions and speculations. The court was urged to resolve the preliminary issue in favour of the Defendant/Respondent and strike out the said paragraphs of the affidavit in support of the application for offending section 115(1), (3) and (4) of the Evidence Act, 2011 (as amended). References were made to the cases of Bamaiyi V. State and Ors (2001) LPELR-731(SC) Pg. 22 para. B, Abiodun V. AGF (2008)(incomplete citation), Majekodunmi and Ors V. Ogunseye (2017) LPELR-42547(CA) Pg. 45-48 paras. C-F, Hakair Limited & Anor V. Sterling Bank Plc (2019) CA/L/709/2014, Ikenta Best (Nig) Limited V. Attorney General Rivers State (2008) LPELR-1476(SC), Buhari V. Obasanjo (2005) 13 NWLR (Pt.941) 1 at 317, Doma V. INEC (2012) All FWLR (Pt. 28) 813 at 829, Abubakar Sadiq Mohammed V. Hon. Abdullahi Mohammed Wammako & Ors (2017) JELR 54662(SC), Ikpeazu V. Otti (2016) 8 NWLR (Pt. 1513) 38 at 93, Senator Rashidi Adewolu Ladoja V. Senator Abiola A. Ajumobi & Ors (2016) 10 NWLR (Pt. 1519) 87 at 146, Maku V. Al-Makura (2016) 5 NWLR (Pt. 1505) 201 at 222, Obasi Brothers Ltd V. M.B.A. Securities Ltd, Onihylo V. Akibu (1982) 7 SC 60 at 62, Ucha V. Elechi, Lafia LG V. Gov. Nassarawa State (2012) 17 NWLR (Pt.1328) 95, Abiodun V. CJ Kwara State (2007) 18 NWLR 109, Haliru V. FRN (2008) All FWLR (Pt.425) 1697 at 1719 para. D and Otunba Oyewole Fashawe V. AG Federation & 3 Ors.

1.16. With respect to issue one (1), the learned Silk for the Defendant/Respondent argued that, injunction which is meant to preserve the res pending the determination of the suit is an equitable remedy and therefore discretionary. The discretion must be exercised judicially and judiciously. See Akinpelu V. Adegbore (2008) 10 NWLR (incomplete citation), Globe Fishing Ind. Ltd V. Coker (1990) 7 NWLR (Pt. 162) 265, Akibu V. Oduntan (1991) 2 NWLR (Pt. 171) 1, Sotuminu V. Ocean Steamship (Nig) Ltd (1992) 5 NWLR (Pt. 239) 1, Ogbonnaya V. Adapalm (Nig) Ltd (1993) 5 NWLR (Pt. 292) 147, 7-Up Bottling Co. Ltd V. Abiola and Sons (Nig) Ltd (1995) 3 NWLR (Pt. 383) 257.

1.17. With respect to the requirement of the existence of legal right, the learned Silk for the Respondent argued that it is the serial breach of the claimants of negotiated and binding Collective

Agreements that led to the industrial action the subject of this suit. That the right to industrial action is statutory as provided in section 30(6)(9) of the Trade Union (Amendment) Act, 2005, Article 8 of the International Covenant on Economic, Social and Cultural Rights and Convention No. 87 on Freedom of Association and Protection of the right to Association. That the right to strike is the last resort in ensuring that collective agreements are enforced. That the Claimants/Applicants have not shown any educational right that has been breached by the Defendant, and have failed to establish the existence of a legal right in this Application. See section 40 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and the case of Union Bank of Nigeria Plc V. Edet (1993) 4 NWLR (Pt. 287) 288.

1.18. On the requirement of substantial issue to be tried, it was submitted that in considering an application of this nature for interlocutory injunction, the court is not to delve into facts the resolution of which might lead to a determination of the substantive suit. That the reliefs in the application are the same issues to be decided in the substantive suit which cannot be determined at this interlocutory stage of the proceedings. That the procedure adopted by the Hon. Minister of Labour and Employment in 'directing' this court to issue order for members of the defendant/respondent to resume work is wrong, scandalous and contrary to sections 251(1), 6(6)(b) and 36(1) of the 1999 Constitution (as amended). References were made to the Referral from the Hon. Minister of Labour and Employment and the cases of American Cynamid Co. V. Ethicon Ltd (1975) 1 All ER 504 AT 510 para D, Nigerian Civil Service Union V. Essien (1985) 3 NWLR (Pt. 12) 306, Onyeshoh V. Nnebedum (1992) 2 SCNJ 129, Odutola Holding Ltd V. Ladejobi (2006) 12 NWLR (Pt. 994) 321 SC, Duwin Pharmaceutical & Chemical Co. Ltd V. Beneks Pharmaceutical & Cosmetics Ltd & 2 Ors (2008) Vol. 33 NSCQLR 239 at 276, Iwara V. Itam (2009) 17 NWLR (Pt.1170) 337 at 377, Lexington International Insurance Co. Ltd V. Sola Holding Ltd (2006) 7 NWLR (Pt. 216) 124, University Press Ltd V. Martins (Nig) Ltd (2000) 4 NWLR (Pt. 654) 584, Biocon V. Kudu Holdings Ltd (2000) 4 NWLR (Pt. 691) 493, UBA V. Immarches (Nig) Ltd (2003) 6 NWLR (Pt. 817) 529, W.A.A. Co. Ltd V. Akinsefe (1999) 13 NWLR (Pt. 636) 600, Adenuga V. Odumeru (2003) 8 NWLR (Pt.821) 163, Okeke V. Okoli (2000) 1 NWLR (Pt.642) 641 and Suit No. NIC/LA/15/2009 Between Engr. Femi Omokungbe V. The Governing Council, Yaba College of Technology.

1.19. On the requirement of Balance of Convenience, the learned Senior Counsel posited that the defendant and its members are not the only unions in the university community and they therefore lack the capacity to shut down the university system. That there would not have been the need for any industrial action had the Claimants honoured their obligations under the various MOUs and MOAs willingly and collectively entered into by the parties to this suit. That since the Claimants are the aggressors in this suit and responsible for the protracted industrial disharmony, the court should hold that the balance of convenience is in favour of the Defendant/Respondent. See Egbe V. Onogun (1972) LPELR-1034(SC) and Margaret Stitch V. AGF (no citation is given).

1.20. With respect to the requirement of irreparable damage or injury, Falana SAN contends that an irreparable damage is an injury that is substantial and cannot be adequately remedied or atoned for by damages. That the Applicant must show in the affidavit evidence that if the injunction is not granted he will suffer serious and substantial damages which cannot be remedied by monetary compensation or damages. See Saraki V. Kotoye (supra). That the victims in this suit are the members

of the Defendant whose action has not caused any damage to the Claimants to warrant the payment of damages to them.

1.21. On the requirement concerning the conduct of the parties, learned Silk argued that since there is an undue delay on the part of the Claimants in bringing the instant Application about seven (7) months since the commencement of the industrial action, the Application should be refused. That the Claimants have only observed in breach every agreement willingly entered into with the Defendant. That the provisions of section 18 of the Trade Disputes Act relied upon by the Claimants/Applicants do not apply to this suit. It was also argued that the court does not restrain a completed act, and an industrial action commenced since 14th of February, 2022 is not one ordinarily open to injunction. See Peter V. Okoye (2002) 3 NWLR (Pt. 755) 529 at 552, Ojukwu V. Military Governor of Lagos State (no citation), Angadi V. P.D.P. (2018) 15 NWLR (incomplete citation).

1.22. The court was urged to refuse the application, or in the alternative make an order for expeditious trial of the suit in line with the provisions of Order 22 Rule 4(1) of the Rules of this Court, 2017.

1.23. At the hearing of the application on Monday 19th September, 2022, Falana, SAN for the Defendant/Respondent further argued by way of adumbration that the court should not accede to the request in item 'F' of the Referral letter because it is a directive by the Hon. Minister of Labour and Employment to this court. That once a Referral has been filed before the court no party is allowed to go outside the Referral. References were made to the cases of Nigeria Seafarers Collaborative Union V. NUPENG (2013) 3 NLLR (Pt. 88) 137. That since the relief in the Application for Interlocutory Injunction is the same as relief 'F' in the Referral which is the substantive suit, same cannot be granted at this interlocutory stage. See National Headquarters of Nigerian Union of Civil Service, Typists, Stenographic and Allied Staff V. Federal Branch of NUCSTSAS (2010) 21 NLLR (Pt. 58) 24.

1.24. It was further argued by learned senior counsel that since the deponent to the affidavit in support of the application did not attend any of the meetings leading to this suit, his evidence is hearsay and cannot be cured by section 12 of the National Industrial Court Act 2006.

1.25. With respect to item 'F' of the Referral letter, the learned silk argued that it is only individuals that have direct access to this court, and where unions and employers are involved they must go through the Industrial Arbitration Panel (IAP). That the Hon. Minister of Labour and Employment failed to comply with the provisions of Part 1 of the Trade Disputes Act. Rerefences were made to the additional cases of Uzo V. Dangote Cement Plc (2013) 31 NLLR (Pt. 82) at 229, PENGASSAN V. Schlumberger (2008) 11 NLLR (Pt. 29) 164 at 188, NUSDE V. SEWUN (2013) 35 NLLR (Pt. 106) at 606 and Olurotimilayo V. AG Federation (2015) 62 NLLR (Pt. 217) 31.

1.26. That while the Referral letter dated 8th September, 2022 has four (4) parties, the application has only three (3) parties. That the learned silk for the Claimants/Applicants has no powers to change the parties. That the Referral asks for only accelerated hearing of the suit without any request for interlocutory injunction, hence the alleged urgency in the application is self-induced. That since the Claimants/Applicants have not approached the court with clean hands, the application should be

dismissed, and the court should rather make an order for accelerated hearing of the suit in the interest of justice, fair hearing and national interest.

COURT'S DECISION.

2.0. Having pored over the processes in respect of the application for interlocutory injunction filed on the 12th day of September, 2022 including the submissions of both learned Senior Counsel to the parties, this court shall determine the application on the basis of issue two (2) formulated by the Claimants/Applicants which was adopted and argued by the Defendant/Respondent; to wit: Whether the Applicants have met the requirements for the grant of an Interlocutory Injunction in their favour?

2.1. I have however seen that the learned senior counsel for the Defendant/Respondent raised a preliminary issue regarding the competence of paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 19 and 20 of the affidavit in support of the application on the grounds that they offend section 115(1), (3) and (4) of the Evidence Act, 2011 (as amended) and also hearsay.

2.2. I have carefully gone through the said paragraphs of the supporting affidavit and seen that they only relate to the events that spurred the instant suit before the court, and the effect of the strike action on the lives, values and wellbeing of the students in the public universities in this country. While I agree with Falana, SAN that by section 115 of the Evidence Act, 2011 an affidavit is not to contain extraneous matters by way of objection, prayer, legal argument or conclusion, I have however not seen where the said paragraphs of the affidavit in support of the application offend section 115 of the Evidence Act as contended by the learned silk.

2.3. With respect to the argument that the facts deposed in the supporting affidavit are hearsay because the deponent did not participate in any of the meetings of the parties in this suit, let me restate the position of the law that by sections 37 and 38 of the Evidence Act read together, hearsay evidence is inadmissible in law. See the case of Edward Nkwegu Okereke V. Nweze David Umahi and Ors. (2016) LPELR-400035(SC) where the apex Court per Kudirat Motonmori Olatokunbo Kekere-Ekun, JSC at page 55 paras B – C held that, "Hearsay evidence, oral or documentary, is inadmissible and lacks probative value. See section 37 of the Evidence Act, 2011 particularly sub-section (b). See Buhari V. Obasanjo (2005) 13 NWLR (Pt.941) 1 @ 317; Doma V. INEC (2012) All FWLR (Pt. 628) 813 @ 829." See also Mohammed Dauda V. Federal Republic of Nigeria and Ors. (2021) LPELR-53829(CA).

2.4. In resolving the issue of hearsay evidence, it is apposite to reproduce paragraphs 1 – 4 including the introductory paragraph of the affidavit in support of the application for the purpose of lucidity:

"I, Okechukwu Nwamba, Male, Christian and Nigerian Citizen of Federal Ministry of Labour and Employment, Central Business District, Abuja, hereby make oath and state as follows:

(1) I am a Legal Officer in the Federal Ministry of Justice posted to the Federal Ministry of Labour and Employment as the Legal Adviser.

(2) By virtue of my position, and my schedule of duties, I am conversant with the facts of this matter and facts herein deposed.

(3) I have the consent of the Federal Government of Nigeria to depose to this affidavit.

(4) The facts deposed to herein are facts within my personal knowledge and also facts gathered from documents that came into my possession in my official capacity except where I state otherwise and where the facts I depose to is from a third source, I have also stated the full particulars of the source of the facts."

2.5. By section 115(1), (3) and (4) of the Evidence Act, 2011 (as amended), every affidavit for use in a court shall contain only a statement of facts and circumstances to which the witness deposes, either of his own personal knowledge or from information which he believes to be true; and where the information is received from another person, the name of the informant including reasonable particulars of such informant shall be stated, as well as the time, place and circumstance of the information.

2.6. It is obvious from the paragraphs of the supporting affidavit reproduced above that the deponent Okechukwu Nwamba who is the Legal Adviser of the Federal Ministry of Labour and Employment is a very senior officer of the Ministry, and a member of the Management of the Ministry. By virtue of his position as the Legal Adviser he is expected to have access to and keep custody of legal documents in the Ministry, and also gives legal opinion to the Hon. Minister on all legal issues that may arise in the Ministry. I do not see how the information in the affidavit in support of the application amounts to hearsay. The paragraphs of the supporting affidavit are competent and shall be countenanced in this decision. In any event, section 12(2)(b) of the National Industrial Court Act, 2006 and Order 5 Rule 6 (b) of the Rules of this Court 2017 allows this court to depart from the Evidence Act in the interest of justice, fairness, equity and fair-play. See the case of Mr. Victor Adegboyu V. United Bank for Africa (unreported) Appeal No. CA/IL/20/2021, a decision of the Court of Appeal Ilorin Judicial Division delivered on the 14th day of April, 2022, where the Court of Appeal applied section 12(2) of the National Industrial Court Act 2006 and departed from the provisions of the Evidence Act 2011.

2.7. I have also seen that the bulk of the other submissions of Falana, SAN relate to the competence of the Referral dated 8th September, 2022 and the substantive suit which have been argued in the Notice of Preliminary Objection filed on the 16th day of September, 2022. Since the court is neither considering the Notice of Preliminary Objection nor the substantive suit, it will be premature to delve into those arguments at this stage of hearing the Application for Interlocutory Injunction. Those issues can only be considered at the point of hearing the Notice of Preliminary objection and the substantive suit. See the case of Attorney-General of the Federation V. Attorney-General of Abia State and Ors (2001) LPELR-24862(SC) where the apex Court enjoins courts to say less at preliminary stage of a case so as not to fall into the trap of prematurely making observations that may prejudge the issues in the substantive suit.

2.8. With respect to the lone issue identified for determination in this Application, it has been held in a legion of cases that an interlocutory injunction which is usually granted at the discretion of the court is an equitable remedy granted before or during trial to prevent an irreparable injury from

occurring before the court has the opportunity to finally determine the case before it. Its main purpose is to keep the parties to an action in status quo in which they were before the judgment on the act complained of; to protect the applicant against injury which damages cannot be adequate compensation if at the end of the trial the applicant succeeds in obtaining judgment in the suit. See Globe Fishing Industries Limited and Ors V. Chief Folarin Coker (1990) LPELR-1325(SC), Chief Samuel Adebisi Falomo V. Oba Omoniyi Banigbe and Ors (1998) LPELR-1237(SC) and Dekit Construction Co. Ltd. & Anor. V. Musibau Adebayo & Ors. (2010) LPELR-4030(CA).

2.9. The onus is therefore on an applicant(s) seeking an injunctive relief from the court to satisfy the court by way of affidavit evidence and other relevant materials that he/they is/are entitled to the injunctive relief(s) being sought from the court. See The Attorney-General of Anambra State V. The Attorney-General of the Federal Republic of Nigeria & 35 others (2005) 9 N.W.L.R (Part 931)572 at 634 paras. C – E.

2.10. The law is banal as rightly argued by both learned Senior Counsel in this suit that for an applicant seeking injunctive reliefs to succeed, he must satisfy some conditions which must be shown in the affidavit in support of the application. In the case of Mr. Francis Temewei & Others V. Mr. Tom Benbai & Others (2015) LPELR-25131(CA), the Court of Appeal per Bada, J.C.A. held as follows on the conditions for the grant of an interlocutory injunction: "Black's Law Dictionary 6th Edition page 714 defined Injunction as an order prohibiting someone from doing some specified act or commanding someone to undo some wrong or injury. In Adenuga Vs Odunewu (2001) 2 NWLR Part 696 Page 184, the Supreme Court per Karibi-Whyte JSC defined injunction at Page 185 as follows: "an equitable order restraining the person to whom it is directed from doing things specified in the order or requiring in exceptional situations the performance of a specific act." The preservation of the subject matter i. e. "res" in dispute or the maintenance of the "status quo" is achieved through the judicial process of the equitable order of injunction. And since injunction is an equitable remedy, it is usually granted at the discretion of the court which must be exercised judicially and judiciously. For the court to exercise its discretion in favour of an applicant, certain conditions must exist and this must be shown in the affidavit accompanying the motion on notice. The conditions for grant of interim and interlocutory injunctions are basically the same except for the element of urgency in interim injunction which is not pronounced in interlocutory injunction. The conditions include:

a. Existence of a legal right

b. Substantial issue to be tried

c. Balance of convenience

d. Irreparable damage or injury

e. Conduct of the parties

f. Undertaking as to damages."See also Union Beverages Limited V. Pepsicola International Limited & Ors (1994) LPELR-3397(SC), Obidiegwu Onyesoh V. Nze Christopher Nnebedum and Ors (1992) LPELR-2742(SC) and Oba James Adeleke and Ors V. Nafiu Adewale Lawal and Ors (2013) LPELR-20090(SC).

2.11. I have examined the depositions in the various affidavits and the exhibits in respect of the application, and it is obvious that by exhibits 1 and 2 attached to the affidavit in support of the application the Defendant/Respondent rolled over the industrial action which Dr. Oludayo Tade in his publication in the Punch Newspapers of 2nd March, 2022 and The Nation Newspaper of 24th February, 2022 tagged "Valentine Strike" commenced on the 14th of February, 2022 for a further period of twelve (12) weeks w.e.f. Monday 9th May, 2022, and subsequently to a comprehensive, total and indefinite strike action w.e.f. 19th of August, 2022.

2.12. With respect to the requirement for serious question to be tried, I hold that by paragraphs 5, 6, 7, 8 and 13 of the supporting affidavit, paragraphs 3, 5, 6 and 7 of the Counter Affidavit and exhibit 3 annexed to the supporting affidavit, as well as exhibits ASUU 1 to ASUU 7 annexed to the Counter-Affidavit, there are serious issues to be tried in this suit by the court. Those issues also relate to the legal rights of the defendants who are the owners of the Federal Public Universities to approach this court for adjudication.

2.13. On the requirement of balance of convenience, there is no doubt that the balance of convenience tilts in favour of the Claimants/Applicants who are the owners of the federal public universities where the members of the Defendant/Respondent have been on strike for over a period of seven (7) months now. The Claimants/Applicants stand to lose more if the application is not granted. It may be appropriate to state here that, in the circumstance of the trade dispute between the parties in this suit, this court has also taken into consideration the larger interests of the public, particularly the innocent students in the public universities most of whose parents and guardians cannot afford the enormous amount of money required to either send them to private universities within the country or take them outside this country for undergraduate or graduate studies. These innocent students who are the victims of the protracted strike have been out of school for more than seven (7) months now in a country where age is a major factor in virtually everything including employment. The point being made is that, even where the lost academic semesters/sessions are covered upon resumption, the increase in the age of these students who are being deprived of the opportunity to complete their studies as and when due cannot be reversed. Section 2 (2) of the National Youth Service Corps Act for example prohibits any person who is over the age of thirty (30) at the date of graduation from being enlisted into the Service Corps. Many individuals who would have graduated before the age of 30 and have their lifetime ambition of serving their fatherland as corps members achieved have been denied and deprived of the opportunity as a result of the prolonged industrial action due to no fault of theirs. Even in the area of employment for instance, part of the requirement of persons who want to enlist into the Nigerian Army Direct Short Service Commission Course 26/2022 is to be between the ages of 20 and 30 years and 25-40 years of age for Medical Consultants. The same age requirement applies to the enlistment into the Nigerian Air Force Direct Short Service Commission Course, to mention but a few instances. See recruitment.army.mil.ng and careersngr.com

2.14. In the case of Florence Owolabi Enterprises Ltd V. Wema Bank Plc (2011) LPELR 4168 (CA), the Court of Appeal held that, "In determining the balance of convenience in the consideration of an application for interlocutory injunction, the trial court is expected to pose one or two questions: who will suffer more inconvenience if the application is granted? Who will suffer more inconvenience if the application is not granted? The trial court has a duty to provide an answer to the questions, and in doing so it must allow itself to be guided by the facts before it. The balance of convenience between the parties is a basic determinant factor in an application for interlocutory injunction. In the determination of this factor, the law requires some measurements of the scale of justice to where the pendulum tilts. While the law does not require mathematical exactness, it is the intention of the law that the pendulum should really tilt on the Applicant." I therefore hold on the requirement of balance of convenience that the balance of convenience tilts in favour of granting the application.

2.15. With respect to the requirement for inadequacy of damages and undertaking as to damages, it is manifest from the circumstances of this suit that the amount of damages and injury being caused to the education sector of this nation and the innocent students in the public universities as a result of the lengthened strike action is irreparable, and no amount of compensation can be enough or adequate for the losses. I have also seen that apart from paragraph 17 of the affidavit in support of the application where the Claimants/Applicants undertake to indemnify the Defendant/Respondent for any damage that may occur if at the end of the day it is found out that the application should not have been granted, they have also filed before this court an affidavit of undertaking as to damages containing 5 paragraphs deposed to by Okechukwu Nwamba on the 12th day of September, 2022.

2.16. On the requirement of the conduct of the applicants, I have seen that contrary to the submission of Falana, SAN that the Applicants have delayed in bringing the application because the strike started on the 14th of February, 2022, and that the urgency in the application is self-induced, it is obvious from exhibits ASUU 1 to ASUU 7 annexed to the Counter-Affidavit that parties have been negotiating in line with the requirements of the Trade Disputes Act till 1st of September, 2022 when the Defendant/Respondent wrote to the Chairman of the Committee of Pro-Chancellors of Federal Universities. The Referral to this court was made on the 8th of September, 2022, while the instant application was filed on the 12th of September, 2022. I therefore hold that the conduct of the Claimants/Applicants have not been reprehensible as there is no undue delay on their part.

2.17. Section 18 of the Trade Disputes Act under which the application is brought provides as follows:

"18 (1) An employer shall not declare or take part in a lock-out and a worker shall not take part in a strike in connection with any trade dispute where-

(a) The procedure specified in section 4 or 6 of this Act has not been complied with in relation to the dispute; or

(b) A conciliator has been appointed under section 8 of this Act for the purpose of effecting a settlement of the dispute; or

© the dispute has been referred for settlement to the Industrial Arbitration Panel under section 9 of this Act; or

(c) An award by an arbitration tribunal has become binding under section 13(3) of this Act; or

€ the dispute has subsequently been referred to the National Industrial Court under section 14(1) or 17 of this Act; or

(f) the National Industrial Court has issued an award on the reference."

2.18. There is no doubt that the use of the word "shall" in section 18(1)€ of the Trade Disputes Act reproduced above connotes mandatory obligation or duty on the part of employers and employees not to declare or partake in any lock-out or strike when a dispute has been referred to this court, and where such lock-out or strike is ongoing at the time of the Referral to this court, it shall cease or abate pending the determination of the suit. That is the only literal interpretation or construction to be given to the clear and unambiguous provision of section 18(1)€ of the Trade Disputes Act. In the circumstance of this suit, since the issues in dispute have been referred to this court by the Hon. Minister of Labour and Employment vide the Referral Letter and Instrument dated 8th of September, 2022 and 7th of September, 2022 respectively pursuant to section 17 of the Trade Disputes Act, section 18(1)€ mandates the members of the Defendant/Respondent not to take part in any strike pending the determination of the suit. The argument of Falana, SAN that the act of the Defendant/Respondent sought to be restrained has been concluded is of no moment, and flies in the face of exhibit 2 dated 29th August, 2022 attached to the affidavit in support of the application, where the Defendant/Respondent communicated to the Hon. Minister of Labour and Employment their decision to roll-over the strike to a comprehensive, total and indefinite one beginning from 12:01am on Monday, 29th August, 2022. It is clear that even as at the time of reading this decision today 21st of September, 2022, the strike action embarked upon by the Defendant/Respondent on the 14th of February, 2022 has not ended.

2.19. In the case of Dr. Arthur Agwuncha Nwankwo and Ors V. Alhaji Umaru Yar'Adua and Ors. (2010) LPELR-2109(SC), the apex Court held as follows on the interpretation to be accorded the word 'shall' in a statute, "The word shall when used in a statutory provision imports that a thing must be done. It is a form of command or mandate. It is not permissive, it is mandatory. The word shall in its ordinary meaning is a word of command which is normally given a compulsory meaning as it is intended to denote obligation. Bamaiyi V. A.G. Federation (2001) 12 NWLR Pt. 722 pg. 468 Ifezue V. Mbadugha (1984) 1 SCNLR pg. 427 Chukwuka V. Ezulike (1986) 5 NWLR pt. 45 pg. 892, Ngige V. Obi (2006) 14 NWLR pt. 991, pg. 1." See also Chika Madumere and Anor V. Barrister Obinna Okwara and Anor (2013) LPELR-20752(SC).

2.20. To further bolster my decision that section 18(1) of the Trade Disputes Act connotes an obligation and is mandatory which leaves no room for discretion, section 18(2) of the Trade Disputes Act criminalizes any contravention of section 18(1) by imposing a fine of N100 or imprisonment of six months for an individual, or a fine of N1000 for a body corporate.

2.21. In the circumstance, and on the strengths of section 254C(1)© of the Constitution of the Federal Republic of Nigeria 1999 (as amended), section 18(1)€ of the Trade Disputes Act, sections 7(1)(b), 16 and 19€ of the National Industrial Court Act 2006, I hold that this application is meritorious and same is hereby granted. The lone issue identified for determination is resolved in favour of the Claimants/Applicants. The request of Falana, SAN for the court to grant an accelerated hearing of

the application in place of an injunctive relief is of no moment since by Order 25 of the Rules of this court 2017 the case qualifies as one to be placed on Fast-Track for speedy trial.

2.22. In the final result, the Court hereby orders as follows:

An order of interlocutory injunction is hereby granted restraining the Defendant/Respondent (Academic Staff Union of Universities, ASUU) by themselves, members, agents, servants, privies or howsoever called from taking further steps and doing any act or otherwise continuing with the indefinite strike or any strike action pending the hearing and determination of the suit/referral to this Honourable Court dated 8th September 2022 made at the instance of the Minister of Labour and Employment as a matter of national interest pursuant to his powers under Section 17 of the Trade Disputes Act.

Ruling is entered accordingly.

I make no order as to costs.

Hon. Justice P. I. Hamman

Judge

REPRESENTATION:

J. U. K. Igwe, SAN for the Claimants/Applicants. With him are Distinguished Senator Ita Enang, Chukwulo Moedu, A. O. Egalese (Principal State Counsel, Federal Ministry of Labour and Employment, Mathias Agboni, Imo Bassey, Obi-Nwabuine Valentine, T. D. Agbe (Principal State Counsel, Federal Ministry of Justice), Suleiman Jibril (Senior State Counsel, Federal Ministry of Justice) and M. Edozie.

Femi Falana, SAN for the Defendant/Respondent. With him are Prof. Joash Amopitan, SAN, Prof. Alphonsus Alubo, SAN, Prof. Patrick Uche, Dr. Edor Edor, Femi Adedeji and Abubakar Marshal.

Atinuke Adejuyigbe for the parties seeking to be joined.