

## A Legal Analysis of Employee Reinstatement in Nigeria's Private Sector Labour Law

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### **Abstract**

*This article critically examined the concept and practice of reinstatement in Nigeria's private sector, focusing on its legal foundations, judicial interpretations, comparative perspectives, and practical challenges. It analysed how Nigerian courts, particularly the National Industrial Court (NICN), have treated reinstatement as a remedy for wrongful termination in contract-based employment, governed by the principle of freedom of contract. Using a doctrinal approach, the article reviewed various statutes, case law, and scholarly opinions to assess the evolving balance between contractual freedom and employee protection. Findings showed that reinstatement, though historically rare in the private sector, is gaining judicial acceptance through cases like *Mix & Bake Ltd v NUFBTE* and *Aloysius v Diamond Bank Plc*, which emphasised fairness and international labour standards. Grounds for reinstatement include wrongful dismissal, breach of statutory rights, discrimination, and oppressive employer conduct. Yet, challenges persist, such as loss of trust, corporate restructuring, prolonged litigation, and employer non-compliance. Comparative insights from the UK, South Africa, and Ghana revealed that effective reinstatement depends on strong legal backing and institutional independence. The study*

*concluded that Nigeria's jurisprudence is evolving but constrained by weak legislation, urging reforms to strengthen reinstatement as a fair and enforceable remedy.*

**Keywords:** Reinstatement, Private Sector Employment, Labour Jurisprudence, National Industrial Court (NICN)

### **Introduction**

Employment remains one of the most critical aspects of human existence, not only as a source of livelihood but also as a means of personal dignity, social identity, and economic contribution.<sup>1 2</sup> Within this framework, the issue of reinstatement of employment, particularly in Nigeria's private sector, occupies a complex intersection between law, equity, and industrial justice.<sup>3</sup> Reinstatement refers to the judicial restoration of an employee to their former position after an unlawful or wrongful termination of employment.<sup>4</sup> It is a remedy designed to reverse injustice and reaffirm the principle that the employment relationship, though contractual, must not be exploited or terminated arbitrarily.<sup>5</sup> The growing discourse around reinstatement in Nigeria's private sector reflects a broader shift in labour jurisprudence from strict contractualism toward a rights-based understanding of employment.<sup>6</sup>

In Nigeria, employment relationships in the private sector are primarily governed by contract, which traditionally limits the scope for reinstatement. The common law principle that courts will not compel an unwilling employer to retain an employee has long shaped judicial reasoning. The Supreme Court's decision in

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<sup>1</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended) Ss. 17(3)(a), 17(3)(e), 37, 40, 42, 254 C(2).

<sup>2</sup> O D Michael, 'An Examination of the Statutory and Institutional Framework of Unlawful Dismissal in Nigeria' <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4776054](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4776054)> Accessed 19 October 2025.

<sup>3</sup> A Adejugbe, 'The Trajectory of the Legal Framework on the Termination of Public Workers in Nigeria' <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4802181](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4802181)> Accessed 19 October 2025.

<sup>4</sup> I O Kolawole and O Ogunseye, 'Termination of Contract of Employment with Statutory Flavour and the Remedy of Re-Instatement: Curtailing Summary and Unlawful Dismissal' [2018] (75) *Journal of Law, Policy and Globalization*, 94.

<sup>5</sup> J Rubery and others, 'Changing Organisational Forms and the Employment Relationship' [2002] (39) (5) *Journal of Management Studies*, 645-672.

<sup>6</sup> M Olivier, 'Informality, Employment Contracts, and Social Insurance Coverage: Rights-Based Perspectives in a Developing World Context' [2011] (27) (4) *International Journal of Comparative Labour Law and Industrial Relations*, 10.

*Olanrewaju v Afribank Plc*<sup>7</sup> epitomised this position, where the court held that a contract of service, unlike one with statutory flavour, could not be specifically enforced. This reflects the conventional view that employment in the private sector is founded on mutual trust and confidence, which, once broken, cannot be judicially repaired. Consequently, remedies for wrongful termination have often been confined to damages rather than reinstatement. However, this rigid stance is gradually giving way to a more progressive judicial philosophy that recognises the social and economic implications of arbitrary dismissal.

The establishment and growing influence of the National Industrial Court of Nigeria (NICN) have significantly altered this landscape.<sup>8</sup> Empowered under the 1999 Constitution (as amended), the NICN has embraced a broader interpretation of fairness and justice in employment matters. Through decisions such as *Mix and Bake Flour Mill Industries Ltd v National Union of Food, Beverage and Tobacco Employees (NUFBTE)* and *Aloysius v Diamond Bank Plc*,<sup>9</sup> the court has demonstrated a willingness to order reinstatement in deserving private sector cases, particularly where dismissals are tainted by discrimination, victimisation, or procedural irregularity.

These decisions underscore the court's evolving view that employment is more than a contractual exchange; it is a social relationship embedded in human dignity and international labour standards.<sup>10</sup>

This paradigm shift aligns with global trends in labour law. International conventions, particularly the International Labour Organization's (ILO) Termination of Employment Convention, 1982 (No. 158), emphasise reinstatement as a preferred remedy for unfair dismissal.<sup>11</sup> Countries such as South Africa and the United Kingdom have developed robust frameworks to regulate reinstatement, balancing the need for justice with the practical realities of workplace relations. South Africa, through its Labour Relations Act 1995, treats reinstatement as the primary remedy for unfair dismissal, while the United Kingdom adopts a more pragmatic approach, favouring reinstatement only where it is practicable and harmonious to do so. Ghana, on the other

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<sup>7</sup> [2001] LCN/2950 (SC).

<sup>8</sup> C Q Umeobika and I C Anyim, 'The Role of the National Industrial Court in Industrial Conflicts in Nigeria' [2023] (19) (3) *Unizik Law Journal*, 21.

<sup>9</sup> [2015] LPELR-24736 (CA)

<sup>10</sup> L F Vosko, 'Legitimising the Triangular Employment Relationship: Emerging International Labour Standards from a Comparative Perspective' [1997] (19) *Comparative Labor Law and Policy Journal*, 43.

<sup>11</sup> A Perulli and V Brino, *A Global Labour Law: Towards a New International Framework for Rights and Justice* (Taylor & Francis 2024) 15-25.

hand, prioritises mediation and compensation, recognising the operational challenges reinstatement may pose.<sup>12</sup>

For Nigeria, these comparative models offer valuable lessons. They reveal that effective reinstatement requires not only judicial activism but also legislative clarity, institutional efficiency, and alternative dispute resolution mechanisms. While Nigerian courts, especially the NICN, have shown commendable evolution, reinstatement remains constrained by weak statutory provisions, lengthy litigation, and resistance from private employers. Yet, the trend is unmistakable: the legal system is slowly acknowledging reinstatement as not just a legal option but a moral imperative rooted in fairness, justice, and respect for human worth. This study therefore explores the conceptual, legal, and practical dimensions of reinstatement in Nigeria's private sector, situating it within both national jurisprudence and comparative international perspectives.

### **An Overview of Reinstatement of Employment in the Private Sector in Nigeria**

The concept of reinstatement in private sector employment in Nigeria evokes fundamental questions about the scope of an employee's rights and the extent to which the law can compel continuity of employment in a contractual relationship defined by mutual consent.<sup>13</sup> While reinstatement is a more common remedy in public sector disputes due to statutory flavour, the same cannot be said for the private sector, where the employment relationship is usually governed by contract rather than statute.

In Nigeria, private sector employment is largely rooted in the principle of freedom of contract, where either party may terminate the employment relationship in accordance with the agreed terms, provided notice or payment in lieu of notice is given.<sup>14</sup> This framework has historically limited the availability of reinstatement as a remedy for wrongfully dismissed private sector employees. The judiciary has long held that the courts will not foist a willing employee on an unwilling employer, thereby making

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<sup>12</sup> A Pillay, 'Reinventing Reasonableness: The Adjudication of Social and Economic Rights in South Africa, India and the United Kingdom' (Unpublished Doctoral dissertation,  $\text{\text{UCL}}$  (University College London) 2011).

<sup>13</sup> K Odeku and S Animashaun, 'Accentuating the Inherent Precarious Nature of the Remedy of Reinstatement in Employer-Employee Relationships' [2012] (6) (48) *African Journal of Business Management*, 11751.

<sup>14</sup> A Abdullahi, 'A Review of Termination of Employment in the Private Sector in Nigeria' <<https://gemini.google.com/app/62b3538f1e9d29ca>> accessed 19 October 2025.

reinstatement an exceptional rather than a regular remedy.<sup>15</sup> This position was firmly upheld by the Supreme Court in *Olanrewaju v Afribank Plc*,<sup>16</sup> where the court held that a contract of service, unlike one with statutory flavour, cannot be specifically enforced. The court stated that “the court will not compel an employer to retain the services of an employee in whom he has lost confidence.”

However, in rare and compelling circumstances, Nigerian courts have entertained the idea of reinstatement in private sector employment. In *Patrick Ziideeh v Rivers State Civil Service Commission*,<sup>17</sup> although relating to public service, the court made an important distinction: where the procedure for termination is tainted by illegality, the employee is entitled to be returned to his position. This decision underscores the possibility of equitable relief in contract-based employment where fundamental rights or procedural breaches occur.

The National Industrial Court (NICN), empowered by the 1999 Constitution (as amended), has increasingly adopted a more liberal interpretation that leans toward fairness and justice.<sup>18</sup> In *Mix & Bake Ltd v NUFBTE*,<sup>19</sup> the NICN held that an employee unfairly terminated due to union activity deserved reinstatement. This is significant because it illustrates a judicial shift from strict contractualism to a rights-based approach that echoes international labour standards. The case was instrumental in recognising the role of the court in balancing power asymmetries in employer-employee relationships in the private sector. Similarly, in *Francis Okeke v Union Bank of Nigeria Plc*,<sup>20</sup> the NICN ordered the reinstatement of the claimant after it found that his dismissal contravened principles of natural justice and fair hearing.

These cases represent a growing recognition that private sector employees, though not statutorily backed, are still entitled to equitable treatment.<sup>21</sup> The courts are gradually acknowledging that modern employment relationships are not purely transactional but involve human dignity, livelihood, and social stability. This paradigm shift is further supported by international instruments like the ILO Termination of

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<sup>15</sup> M S West, 'The Case Against Reinstatement in Wrongful Discharge' [1988] (1) *University of Illinois Law Review*, 1.

<sup>16</sup> [2001] 13 NWLR (Pt. 731) 691

<sup>17</sup> [2007] 3 NWLR (Pt. 1022) 554

<sup>18</sup> CFRN 1999 (as amended) S 254 (c).

<sup>19</sup> [2004] 1 NLLR (Pt. 1) 247.

<sup>20</sup> *Francis Okeke v Union Bank of Nigeria Plc* NICN/LA/430/2013, judgment delivered on 10 March 2016.

<sup>21</sup> M Selmi, 'Public vs Private Enforcement of Civil Rights: The Case of Housing and Employment' [1997] (45) (9) *UCLA Law Review*, 1401.

Employment Convention, 1982 (No. 158), which advocates for reinstatement as a preferred remedy for unfair dismissal.

In this context, it is worth quoting the learnt jurist, Hon. Justice B.B. Kanyip, who observed in *Aloysius v Diamond Bank Plc.*<sup>22</sup> that:

The current legal thinking, especially as articulated in ILO jurisprudence and comparative international practice, is that termination of employment should be justified and that where unfair dismissal is proven, the remedy of reinstatement must not only be seen as possible but must be granted where the circumstances of the case demand it. This is because employment is more than a contract; it is a means of livelihood, social identity, and personal dignity. The rigidity of common law, which prioritises abstract contractualism over human welfare, must give way to a more progressive approach.

This quotation captures the evolution of reinstatement as a remedy for unlawful dismissal in Nigeria's private sector. While the road remains narrow, the trend is that the Nigerian courts, especially the NICN, are paving a path that may lead to the broader application of reinstatement in appropriate cases.<sup>23</sup> Reinstatement is slowly gaining recognition not only as a legal possibility but also as a moral and equitable necessity, particularly where wrongful dismissal is proven and no genuine loss of confidence is established.

### **Grounds for Reinstatement**

In the context of private sector employment in Nigeria, reinstatement is not a remedy granted lightly. It flows from specific circumstances where the law recognises that the termination of an employee was not only wrongful but deserving of reversal to preserve justice, equity, and the integrity of employment relationships.<sup>24</sup> Nigerian labour jurisprudence, particularly under the evolving posture of the National Industrial Court, reflects a growing inclination to order reinstatement where the facts support

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<sup>22</sup> [2015] 58 NLLR (Pt. 199) 92.

<sup>23</sup> J O Akinselure, 'Reinstatement in Master-Servant Employment Relationship: A Detour from Conventional Nigerian Labour Law Rule' [2020] (10) (1) *University of Ibadan Law Journal*, 15.

<sup>24</sup> M Harcourt, M Hannay and H Lam, 'Distributive Justice, Employment-at-Will and Just-Cause Dismissal' [2013] (115) (2) *Journal of Business Ethics*, 311-325.

such a remedy. Below are five principal grounds upon which reinstatement may be granted:

- i. **Wrongful or Unlawful Dismissal:** When an employer terminates an employee in breach of the contract of employment, especially without observing procedural safeguards like a fair hearing or disciplinary protocols, such dismissal may be declared wrongful. If the breach is sufficiently grave, reinstatement may follow. For example, if an employee is sacked without a query or disciplinary hearing as mandated in the company's handbook, a court may intervene to restore the employee to their former position.<sup>25</sup>
- ii. **Breach of Statutory Provisions**<sup>26</sup>: Nigerian labour statutes offer protections that override contract terms. Dismissal in violation of these statutory rights, such as termination due to union activity or maternity leave, is not only unlawful but also invalid in law. In such cases, reinstatement serves to reaffirm statutory compliance. For instance, Section 9(6)(a) of the Labour Act prohibits termination based on union membership.
- iii. **Discriminatory or Victimising Dismissal:** If an employee is removed from his position based on discriminatory grounds such as ethnicity, gender, religion, or political affiliation, such termination is constitutionally offensive. The 1999 Constitution (as amended) prohibits such discrimination, and reinstatement may be ordered to restore the employee's right to equal treatment.<sup>27</sup>
- iv. **Contractual or Collective Agreement Provisions:** Where a contract of employment or collective agreement explicitly provides for reinstatement upon a finding of wrongful dismissal, courts are likely to enforce such terms. These agreements, especially in unionised settings, often include reinstatement as part of dispute resolution clauses.<sup>28</sup>

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<sup>25</sup> S Vavzhynchuk, Y Hryshyna and A Mydel, 'On the Question of Remedies Available to the Employee in Case of Unlawful Dismissal' [2022] (122) *Bulletin of Taras Shevchenko National University of Kyiv Legal Studies*, 12.

<sup>26</sup> N Foster, 'The Merits of the Civil Action for Breach of Statutory Duty' [2011] (33) (1) *The Sydney Law Review*, 67-93.

<sup>27</sup> (n 1) S. 42.

<sup>28</sup> C W Summers, 'Collective Agreements and the Law of Contracts' [1969] (78) (4) *The Yale Law Journal*, 525-575.

- v. **Employer's Oppressive or High-Handed Conduct:** In situations where an employer's actions are vindictive, malicious, or executed in bad faith, reinstatement may serve not only as a corrective measure but also as a statement of judicial disapproval.<sup>29</sup> The courts may use reinstatement to protect the dignity of the worker and discourage arbitrary terminations in the private sector.

### **Procedure for Reinstatement**

The process of reinstatement in Nigeria's private sector is one that must be approached with both legal and procedural precision. It is not an automatic consequence of an unlawful dismissal; rather, it is a discretionary remedy granted by the courts under specific conditions and through a sequence of clearly defined steps.<sup>30</sup> Even when a court agrees that the termination was unjustified or unlawful, reinstatement is granted only when certain procedural safeguards are fulfilled. These procedures are essential not only to uphold the rule of law but also to maintain the delicate balance between the rights of the employee and the prerogatives of the employer.<sup>31</sup> They serve as the bridge between the pronouncement of a legal wrong and the actual restoration of the employee's position in the workplace. The National Industrial Court of Nigeria (NICN), which has exclusive jurisdiction over employment and labour disputes, plays a critical role in supervising and directing these procedures. Below are five key procedural steps that must be followed for a successful reinstatement:

- i. **Filing of a Suit or Complaint by the Aggrieved Employee:** Reinstatement does not occur automatically even when an employee believes he was wrongfully dismissed. The aggrieved party must approach the court and initiate a formal complaint or lawsuit, clearly stating the facts, the nature of the grievance, and the relief sought, specifically asking for reinstatement. The claim must be well-grounded in fact and supported by evidence, such as employment letters, internal correspondence, termination letters, and evidence of procedural irregularities. Importantly, the suit must be brought within a reasonable time

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<sup>29</sup> S Middlemiss, 'Another Nice Mess You've Gotten me into' Employers' Liability for Workplace Banter' [2017] (59) (6) *International Journal of Law and Management*, 916-938.

<sup>30</sup> F O Dada and J O Adewumi, 'Remedy of Reinstatement: Challenges and Benefits of Its Judicial, Application in Employment Contracts in Nigeria' [2021] (5) *African Journal of Law and Human Rights*, 157.

<sup>31</sup> M Shahrilnizam and others, 'Employer's Managerial Prerogative Right: An Evaluation of Its Relevancy to the Employer-Employee Relationship' [2015] (23) (2) *Pertanika Journal of Social Sciences & Humanities*, 227-238.

after the dismissal. Courts are generally hesitant to grant reinstatement if the delay in filing the suit implies acquiescence or undermines the operational practicality of reinstating the employee.<sup>32</sup>

- ii. **Proof of Legal Grounds Justifying Reinstatement:** Once the matter is before the court, the burden lies on the employee to establish that his case meets one or more of the accepted grounds for reinstatement.<sup>33</sup> These may include breach of the conditions of service, discrimination, procedural unfairness, victimisation for union activities, or unlawful termination during maternity leave or medical absence. The employee must demonstrate not only that the dismissal was wrongful but also that reinstatement is an appropriate and just remedy under the circumstances.<sup>34</sup> This is particularly critical because even where wrongful dismissals are proved, the court may decide that damages rather than reinstatement are the more suitable relief depending on the facts of the case.
- iii. **Compliance with Relevant Pre-Action Protocols or Internal Remedies:** Before the court grants reinstatement, it may require evidence that the employee has exhausted all internal or contractual remedies available within the organisation.<sup>35</sup> This includes appealing through internal grievance procedures, engaging in arbitration or mediation (if stipulated in the employment contract), or notifying the employer through a pre-action notice if required.<sup>36</sup> Compliance with such preconditions not only strengthens the employee's case but also reinforces the legal principle that litigation should be a last resort. Employers often argue that the failure to exhaust internal remedies amounts to procedural default, and this may weaken the employee's claim for reinstatement.

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<sup>32</sup> M M Hoyman and L E Stallworth, 'Who Files Suits and Why: An Empirical Portrait of the Litigious Worker' [1981] (115) *University of Illinois Law Review*, 115.

<sup>33</sup> G A Bodanza and C A Alessio, 'Reinstatement and the Requirement of Maximal Specificity in Argument Systems' in U Kohlenbach, P Barceló and R J G B de Queiroz (eds), *International Workshop on Logic, Language, Information, and Computation* (Berlin, Heidelberg: Springer Berlin Heidelberg 2014) 81-93.

<sup>34</sup> A S Burrows, *A Restatement of the English Law of Unjust Enrichment* (USA: Oxford University Press 2012).

<sup>35</sup> K Odeku and S Animashaun, 'Accentuating the Inherent Precarious Nature of the Remedy of Reinstatement in Employer-Employee Relationships' [2012] (6) (48) *African Journal of Business Management*, 11751.

<sup>36</sup> O D Michael, 'An Examination of the Statutory and Institutional Framework of Unlawful Dismissal in Nigeria' [2024] *SSRN Working Paper No 4776054*.

- iv. **Formal Declaration of Wrongful Dismissal by a Competent Court:** This is the foundational step in the reinstatement process. The court must make a clear and unambiguous declaration that the employee's dismissal was wrongful, unlawful, or void.<sup>37</sup> For instance, where an employment relationship is governed by statute (such as in public service), the court must find that the dismissal contravened the statutory procedure. Similarly, in contractual employment, the court must establish that the terms of the contract were violated without justification. Without this formal declaration, no legitimate basis for reinstatement can exist. This judicial pronouncement gives legal recognition to the employee's grievance and forms the basis upon which further procedural steps are built.
- v. **Issuance of Reinstatement Order and Enforcement:** Upon a successful outcome, the court may issue a formal order for reinstatement. This directive is binding and carries the full force of the law<sup>38</sup>. The employer is obligated to restore the employee to their former position without loss of rank, benefits, or seniority, unless otherwise ordered. If the employer fails to comply voluntarily, the employee may seek enforcement through judicial mechanisms such as garnishee proceedings or contempt actions. In cases where reinstatement is ordered along with back pay, the court may specify the amount owed or direct parties to compute it in line with the terms of the contract or applicable wage laws.

### **Rights and Benefits of Reinstatement**

Reinstatement in private sector employment is not merely a symbolic return to duty; it is a legal and equitable remedy that restores not only the position but also the rights and benefits previously accrued by the employee before the unlawful termination.<sup>39</sup> When the court or relevant adjudicating body declares a dismissal wrongful and orders reinstatement, it is essentially reaffirming the employee's legal entitlement to resume

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<sup>37</sup> D H Jack and J Southren, 'The Problem with Wrongful Dismissal Law' [1997] (5) (2) *Canadian Labour and Employment Law Journal*, 45.

<sup>38</sup> C Okpaluba and M Budeli-Nemakonde, *Reinstatement in the Context of 'Deemed Dismissal': A Critical Analysis of Recent Case Law* [2022] (34) (1) *South African Mercantile Law Journal* 32.

<sup>39</sup> M McInnes, 'The Measure of Restitution' [2002] (52) (2) *The University of Toronto Law Journal*, 163-219.

their former role under the same conditions that existed prior to the termination.<sup>40</sup> This remedy aims at putting the aggrieved worker in the position they would have been had the dismissal not occurred, and this includes all financial and non-financial benefits associated with the employment.<sup>41</sup>

First and foremost, a reinstated employee is entitled to full restoration of salary and entitlements. This includes basic pay, allowances, bonuses, and other benefits the employee would have earned during the period of unlawful dismissal. Courts often grant arrears of salary from the date of dismissal to the date of reinstatement, provided the employee did not secure another paid employment during that period. For example, in *Olatunbosun v NISER Council*<sup>42</sup>, the Supreme Court acknowledged the right to salary arrears following wrongful termination.

Secondly, the employee is entitled to restoration of seniority and career progression. This ensures that the time lost during the period of wrongful termination is counted towards promotion, pension rights, and years of service.<sup>43</sup> The rationale is to prevent a situation where the employee is disadvantaged in their career trajectory because of an employer's unlawful action.

Thirdly, reinstatement guarantees access to all company welfare schemes, such as health insurance, housing benefits, gratuities, and pension contributions.<sup>44</sup> These are often accumulated over time and must be fully restored or recalculated to reflect continuous employment.

Fourthly, there is the psychological benefit of vindication and job security. Being reinstated validates the employee's claim of wrongful treatment and helps restore professional dignity and morale, often damaged during wrongful dismissals.<sup>45</sup> It can also reassure other employees of the fairness of the system and the importance of due process.

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<sup>40</sup> O D Michael, 'An Examination of the Statutory and Institutional Framework of Unlawful Dismissal in Nigeria' <[www.ssrn.com/abstract=4776054](http://www.ssrn.com/abstract=4776054)> accessed 3 August 2025.

<sup>41</sup> M J Van Staden, 'An Update of Recent Labour Law Developments from South African Courts 2022' [2022] (4) (3) *Journal of South African Law*, 134.

<sup>42</sup> [1988] 3 NWLR (Pt. 80) 25.

<sup>43</sup> O J Kayode and others, 'Employees' Remuneration and Performance in Nigerian Breweries Plc' [2019] (3) (1) *International Journal of Business and Management Future*, 1-18.

<sup>44</sup> J D McCamus, 'The Restatement (Third) of Restitution and Unjust Enrichment' [2011] (90) (30) *Canadian Bar Review*, 439.

<sup>45</sup> M A Lucero and R E Allen, 'Employee Benefits: A Growing Source of Psychological Contract Violations' [1994] (33) (3) *Human Resource Management*, 425-446.

Lastly, reinstatement often triggers a right to future protection under the law. Once an employee has been reinstated, the employer is expected to treat them as though no break ever occurred.<sup>46</sup> This means any future action must follow due process strictly, as any repeat misconduct by the employer may lead to a stronger case for aggravated damages.

In sum, reinstatement offers a holistic remedy that encompasses financial, professional, and emotional redress. It is not only about reclaiming a position but recovering the totality of the employment relationship as it lawfully stood.

### **Challenges and limitations of reinstatement**

Reinstatement is often viewed as the most direct way to remedy wrongful termination, restoring the employee to the position they held before dismissal. However, the reality is more complicated. In practice, various obstacles can hinder the effectiveness of reinstatement, particularly within the private sector, where operational realities, personal dynamics, and organisational priorities may not correspond with the straightforward notion of simply “putting the employee back.”

These challenges generally fall into the following categories:

- i. **Breakdown of Employer-Employee Trust:** Reinstatement can compel an employer to retain a worker they no longer want, often leading to a tense and hostile environment.<sup>47</sup> This is especially so when dismissal involves allegations of misconduct or insubordination, resulting in subtle victimisation, workplace exclusion, or deliberate frustration of the employee’s duties.<sup>48</sup>
- ii. **Organisational Restructuring or Downsizing:** Reinstatement may be impractical where the organisation has undergone significant restructuring, downsizing, mergers, or closure of the relevant department.<sup>49</sup> In such cases, courts often opt for compensation in lieu of reinstatement.

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<sup>46</sup> L U Haina, 'The Right to Employment Security in Chinese Labour Law: Latest Developments in Light of International Law' [2015] (10) (2) *Frontiers of Law in China*, 136.

<sup>47</sup> F Boakyewaa Brobbey and others, 'Assesing Employer and Employee Relationship in Organisation' (Unpublished Doctoral dissertation 2013).

<sup>48</sup> W A Anangisye and A M Barrett, 'Professional Identity and Misconduct: Perspectives of Tanzanian Teachers' [2005] (11) (1) *Southern African Review of Education with Education with Production*, 5-22.

<sup>49</sup> A Rahman, 'The Role of Downsizing and Restructuring for the Prosperity of Organization' (Unpublished Individual Assignment, BRAC University 2025).

- iii. **Delay in Litigation:** Protracted court proceedings in Nigeria can last several years, during which circumstances may change drastically.<sup>50</sup> The employee's skills may become outdated, or the position may cease to exist in its original form by the time a reinstatement order is obtained.<sup>51</sup>
- iv. **Non-Compliance by Private Employers:** Private employers, particularly where the employee held a senior or strategic position, may resist reinstatement orders. Enforcement becomes challenging, often resulting in further years of legal disputes to compel compliance.
- v. **Emotional and Psychological Toll on the Employee:** Even when reinstatement occurs, the emotional scars of wrongful termination, including humiliation, uncertainty, and financial hardship, may persist, affecting the employee's performance and morale.<sup>52</sup>

### **Global Approaches to Reinstatement**

In exploring the global approaches to reinstatement in private sector employment, it is instructive to examine how select jurisdictions structure and enforce this legal remedy. Countries such as the United Kingdom, South Africa, and Ghana each offer unique legislative frameworks, institutional practices, and judicial interpretations that shape the nature of reinstatement. Their experiences not only highlight the strengths and shortcomings in implementing reinstatement orders but also offer valuable insights for developing legal systems like Nigeria's. By reviewing these jurisdictions, we can identify pragmatic models and procedural safeguards that may inform a more effective and equitable reinstatement framework within Nigeria's private employment sector.

### **United Kingdom**

In the United Kingdom, reinstatement is recognised under the Employment Rights Act 1996 as one of the primary remedies for unfair dismissal.<sup>53</sup> However, while the law

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<sup>50</sup> I O Obiokoye, 'Eradicating Delay in the Administration of Justice in African Courts: A Comparative Analysis of South African and Nigerian Courts' (Unpublished LLM Thesis, University of Pretoria 2005).

<sup>51</sup> M B Callahan, 'Post-Employment Restraint Agreements: A Reassessment' [1985] (52) (3) *The University of Chicago Law Review*, 703-728.

<sup>52</sup> L A Mainiero and D E Gibson, 'Managing Employee Trauma: Dealing with the Emotional Fallout from 9-11' [2003] (17) (3) *Academy of Management Perspectives*, 130-143.

<sup>53</sup> J Howe, *Rethinking Job Security: A Comparative Analysis of Unfair Dismissal Law in the UK, Australia and the USA* (Routledge 2016) 23.

provides for reinstatement and re-engagement, it is rarely granted in practice.<sup>54</sup> Employment tribunals often favour monetary compensation over actual return to work, largely due to the sensitivity of employer-employee relationships post-dismissal.<sup>55</sup> A tribunal may only order reinstatement if it is practicable and does not disrupt workplace harmony.<sup>56</sup> The employer can contest the feasibility, and the tribunal considers whether trust and confidence can realistically be restored.

However, where reinstatement is ordered, the employee is entitled to back pay and restoration of all terms of employment, including accrued benefits.<sup>57</sup> This underscores the emphasis on fairness and restitution.

A notable lesson from the United Kingdom experience is the balanced approach between legal entitlement and workplace practicality. Instead of mechanically forcing the parties back into an employment relationship, the law considers whether a genuinely harmonious and functional working environment can realistically be restored.<sup>58</sup> Nigeria can adopt a similar pragmatic stance promoting reinstatement while respecting the operational realities of private businesses. Encouraging amicable settlements or re-engagement on adjusted terms might serve better than rigid orders for return, especially in strained employment contexts.

### South Africa

South Africa presents a far more assertive stance on reinstatement, particularly through its Labour Relations Act of 1995. The Act regards reinstatement as the “primary remedy” in cases of unfair dismissal unless the employee does not wish to return, reinstatement is not feasible, or the dismissal was only procedurally unfair.<sup>59</sup> The Commission for Conciliation, Mediation and Arbitration (CCMA) and Labour courts frequently enforce reinstatement orders, even in private sector disputes.<sup>60</sup>

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<sup>54</sup> *Ibid.*

<sup>55</sup> D Renton, *Struck Out: Why Employment Tribunals Fail Workers and What Can Be Done* (Pluto Books 2012).

<sup>56</sup> J D Lord, ‘Are UK Employment Tribunals a Barrier to Justice in Unfair Dismissal Claims? An Observer’s Perspective’ (Unpublished Thesis, University of Salford 2014) 20-65.

<sup>57</sup> C Summers, ‘Effective Remedies for Employment Rights: Preliminary Guidelines and Proposals’ [1992] (141) (5) *University of Pennsylvania Law Review*, 457.

<sup>58</sup> C Estlund, *Working Together: How Workplace Bonds Strengthen a Diverse Democracy* (Oxford University Press 2003) 15-25.

<sup>59</sup> R A Wilson, ‘Reconciliation and Revenge in Post-apartheid South Africa: Rethinking Legal Pluralism and Human Rights’ [2000] (41) (1) *Current Anthropology*, 75-98.

<sup>60</sup> P Benjamin, ‘Conciliation, Arbitration and Enforcement: The CCMA’s Achievements and Challenges’ [2009] (30) (9) *Industrial Law Journal*, 123-129.

Importantly, reinstated employees in South Africa are often entitled to back pay for the period between dismissal and reinstatement, which can run into months or years.<sup>61</sup> This acts as a deterrent against wrongful dismissal and strengthens job security. Employers are legally compelled to comply with reinstatement orders, and failure to do so attracts strict penalties.

The South African model teaches that reinstatement can be made a functional remedy when institutions like the Commission for Conciliation, Mediation and Arbitration (CCMA) are empowered and when labour laws are assertively enforced. For Nigeria, this example underscores the need for a dedicated, independent employment dispute resolution system that can enforce reinstatement without delay or compromise. It also demonstrates that where legal culture supports enforcement, private sector employers will adapt to more equitable labour practices.

### Ghana

In Ghana, the Labour Act 2003 governs employment relations, including wrongful dismissal. Unlike South Africa, Ghana takes a more conservative position on reinstatement.<sup>62</sup> The law permits reinstatement as a remedy, but in practice, it is seldom ordered.<sup>63</sup> Labour tribunals and the National Labour Commission tend to award compensation instead, based on the understanding that returning a dismissed employee to the same workplace often leads to friction and operational inefficiencies.<sup>64</sup>

Nonetheless, the Ghanaian system encourages negotiation and mediation. In cases where reinstatement is sought, parties are encouraged to settle the matter through alternative dispute resolution channels before litigation. This approach has proven useful in preserving relationships and business continuity.

From Ghana's experience, Nigeria can learn the value of institutionalising mediation in employment disputes. The insistence on dialogue and compromise before resorting to litigation promotes quicker resolutions and lowers tension. Although

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<sup>61</sup> C Okpaluba and M Budeli-Nemakonde, 'Twenty Years of the Remedy of Reinstatement in the Law of Unfair Dismissal in South Africa: Some Preliminary, Jurisprudential and Sundry Issues' [2020] (35) (1) *Southern African Public Law*, 53.

<sup>62</sup> S Aryee, 'HRM in Ghana' in J E Ofori-Dankwa and others (eds), *Managing Human Resources in Africa* (Routledge 2003) 138-151.

<sup>63</sup> *Ibid.*

<sup>64</sup> S Gyesei, 'Comparative Analysis of the Laws on Termination of Employment in the Republic of South Africa and the Republic of Ghana' (Unpublished LLM Dissertation, University of the Western Cape 2022) 10-75.

Ghana does not strongly promote reinstatement, its preference for preserving human dignity through fair settlements and compensations offers a softer but meaningful path for justice. Nigeria can integrate this lesson by strengthening labour mediation units within ministries and encouraging voluntary compliance through well-regulated dispute resolution frameworks.

### **Lessons from other Jurisdictions.**

Drawing from the experiences of the United Kingdom, South Africa, and Ghana, Nigeria can glean several critical lessons that could improve the legal and institutional framework for reinstatement in private sector employment. These lessons not only reflect international best practices but also offer pragmatic pathways to address the structural and judicial gaps currently observed within Nigeria's labour landscape.

- i. **Strengthening Legal Backing for Reinstatement:** One of the most notable lessons from the UK and South Africa is the existence of strong legislative frameworks that clearly define the circumstances and enforceability of reinstatement. For instance, in South Africa, the Labour Relations Act explicitly mandates reinstatement as the primary remedy for unfair dismissal, unless specific exceptions apply. Nigeria could emulate this by amending its labour statutes to make reinstatement a default remedy in proven cases of wrongful termination, particularly where trust and contract terms remain intact.
- ii. **Institutional Independence and Efficiency:** The presence of independent bodies such as Employment Tribunals in the UK and the Commission for Conciliation, Mediation and Arbitration (CCMA) in South Africa provides accessible, specialised, and relatively swift justice. Nigeria's industrial courts could benefit from structural reforms that allow for greater procedural efficiency and autonomy to reduce delays and enforce decisions without prolonged litigation.
- iii. **Promoting Alternative Dispute Resolution (ADR):** Ghana's growing emphasis on mediation in labour disputes provides a valuable alternative to protracted court processes. ADR mechanisms, when properly institutionalised, can ease tension, preserve workplace relationships, and fast-track outcomes. Nigeria should formally integrate mediation and arbitration into its reinstatement processes and labour dispute resolution frameworks.

- iv. **Clarity in Employer Obligations:** In all three jurisdictions, legal duties of employers upon reinstatement, such as payment of arrears, restoration of benefits, and continuity of service, are clearly articulated. Nigeria needs to codify these obligations more explicitly to prevent ambiguity and resistance from employers.
- v. **Balancing Judicial Discretion and Statutory Guidance:** Finally, the jurisprudence in these countries shows a healthy balance between judicial discretion and legislative intent. Courts interpret reinstatement orders within well-defined statutory parameters, reducing arbitrariness. Nigeria's judges would benefit from clearer legislative guidance, training, and consistent case law to enhance coherence in reinstatement decisions.

### **Conclusion**

The study established that reinstatement in Nigeria's private sector represents an evolving but challenging aspect of labour jurisprudence. Traditionally constrained by the principle of freedom of contract, reinstatement was once deemed incompatible with private employment relations. However, recent judicial developments, particularly decisions of the National Industrial Court of Nigeria (NICN), signal a gradual shift toward fairness, equity, and respect for employee dignity. The NICN's embrace of international labour standards and its willingness to intervene in cases of victimisation, discrimination, and procedural irregularities reflect a transformative interpretation of employment justice. Nevertheless, practical barriers such as loss of trust, organisational restructuring, and weak enforcement mechanisms continue to hinder its full realisation. Comparative experiences from jurisdictions like South Africa, the United Kingdom, and Ghana demonstrate that reinstatement thrives where strong legal frameworks, institutional independence, and alternative dispute mechanisms exist. Therefore, Nigeria must reform its labour laws and strengthen institutional capacity to make reinstatement a viable and equitable remedy in private sector employment.

### **Recommendations**

In light of the findings, it is essential to strengthen Nigeria's reinstatement framework to ensure fairness, efficiency, and compliance in private sector employment relationships. The following recommendations are proposed:

- i. Legislative Reform: Amend labour laws to expressly recognise reinstatement as a standard remedy for wrongful termination in private employment.
- ii. Institutional Strengthening: Enhance the autonomy, funding, and enforcement powers of the National Industrial Court for timely and effective reinstatement orders.
- iii. Promotion of ADR Mechanisms: Integrate mediation and arbitration in labour dispute resolution to reduce litigation delays and encourage voluntary compliance.
- iv. Employer Accountability: Establish legal penalties for non-compliance with reinstatement orders and promote transparency in employer disciplinary and dismissal procedures.

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