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Nigeria: The identity of end-users in triangular employment relationships

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Triangular employment relationships (i.e. arrangements where the beneficiary of an employee's services is not the employer) are fairly common arrangements in Nigeria. The most common form of these arrangements is where the beneficiary of the services (the "End-User") engages a labour contractor who employs and seconds employees to the End-User.

In triangular employment relationships, the position under Nigerian law has always been that, in the event of a dispute, the employee's recourse would be with the employer and not with the End-User. This was largely based on the principle of privity of contract (i.e. since the employee had no direct contractual relationship with the End-User, there was no

basis on which the employee could establish a claim against the End-User).

However, a recent decision of the NIC in *Stephen Ayaogo & Others v. Mobil Producing Nigeria Unlimited & Anor* [1] suggests that in certain circumstances, and subject to the facts of the particular case, the courts may hold that the End-User is the employer or, at least, a co-employer. The NIC's view is that the doctrine of privity of contract is a general presumption to which there are exceptions in appropriate circumstances.

Comment

Where the existence of a triangular employment relationship is brought before the courts, the courts will, in arriving at its decision as to whether the End- User is a co-employer, consider the actual facts of the case. The parties' characterisation of the relationship is no longer the determining factor; instead, the court will be guided by the facts of what was actually agreed and performed by the parties. The NIC is also likely to determine that the End-User is an employer if the facts of the case indicate that the triangular employment relationship is a sham, or an objectively ambiguous relationship designed to either mask the identity of the employer, or to mask the form in which the relationship was established (e.g. where the nature of the employment relationship is intentionally misrepresented in order to deny certain rights and benefits to employees). Parties entering into such triangular relationships will need to be aware of the NIC's new position.

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[1] [2013] 30 N.N.L.R. (pt. 85) page 95