

THE DUAL STATUS OF PUBLIC OFFICERS IN PRIVATE EMPLOYMENT

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INTRODUCTION

In Nigeria, employees generally, fall into two broad categories: those in public employment, governed by the Public Service Rules, and those in private employment, whose rights and obligations are regulated by the terms and conditions contained in their contract of employment. Ordinarily, these two categories are distinct and mutually exclusive.

However, the Constitution of the Federal Republic of Nigeria 1999 (as amended) (*“the Constitution”*) has created an exceptional scenario in which certain individuals, though employed in private entities, are deemed public officers for specific constitutional purposes. This article examines the constitutional framework that gives rise to this hybrid category of employees- public officers in private employment- and analyses the implications of this dual status considering judicial interpretation and statutory provisions.

Who is a Public Officer?

The definition of a public officer provides the foundation for understanding how such dual status arises. The constitution sets out an extensive list of persons considered public officers, ranging from the President of the Federal Republic of Nigeria to members of the civil service of the Federation and of the States. For the purposes of this discussion particular attention is paid to employees of companies in which the Federal Government, a State Government, or a Local Government holds a controlling interest. By constitutional provision, any such person is regarded as a public officer.

The fifth schedule to the Constitution, which deals with the code of conduct for public officers, does not define the term “controlling interest”. However, the Companies and Allied Matters Act 2020 (CAMA) provides guidance through its definition of a person with significant control as one who : (a) holds at least 5% of the shares or interest in a company, (b) holds at least 5% of the voting rights in a company, (c) possesses the right to appoint or remove a majority of the directors of a company, and (d) exercises, significant influence or control over a company.¹ Accordingly, any company in which any tier of government has a controlling interest.

Employees of such entities are, therefore, constitutionally classified as public officers.

In this regard, public officers in private employment - that is, employees of companies that are legally distinct from the government that but whose majority ownership or control rests with it. Although their employers are private entities in the corporate sense, the constitution bestows upon their staff the status of public officers.

¹ Section 868 of CAMA

Status of a Public Officer in private employment

This classification raises pertinent questions: what is the status of public officers in private employment? Also, why does the Constitution extend the definition of a public officer to include employees of government-controlled companies? The short answer is that, while such employee's relationship with the company remains governed by private contractual principles. The constitution subjects them to the Code of Conduct for public officers contained in Part 1 of the Fifth Schedule. Thus, a public officer in private employment, like any other private employee, is bound by the specific terms and conditions of their contract of employment. The appointment, scope of duties, and termination of such an employee's employment are determined solely by the contract, not by the Public Service Rules or the authority of the Federal or State Civil Service Commission.

Nevertheless, by virtue of the constitutional designation, such an employee must comply with the code of conduct for public officers. This includes prohibitions against soliciting or accepting gifts or benefits in connection with official duties, and the mandatory declaration of assets, liabilities, and those of their unmarried children under the age of eighteen.

In essence, the designation does not import the benefits of procedural protection available to career public servants- such as the strict application of the Public Service Rules in termination or disciplinary processes – but rather imposes additional ethical and disclosure obligations. The resulting position is that a public officer in private employment occupies a hybrid status: (a) their employment is regulated by private contractual terms; and (b) Their personal conduct is subject to public law accountability standards under the code of conduct for public officers.

It is notable that employees of government-controlled companies are the only category of non-government employees explicitly brought within the purview of the code of conduct provisions.



The Okomu Oil Case



The Supreme Court of Nigeria affirmed this hybrid classification in the case of **Okomu Oil Palm Co. Ltd. v. Iserhienrhien**.² In that case, the Appellant, a limited liability company in which the Government held controlling shares, terminated the employment of its Chief Accountant, on the ground that his services were no longer required. The Respondent contended that as a public servant, his termination should have complied with the Public Service Rules.

While the trial Court and the Court of Appeal accepted the Respondent's argument, the supreme Court took a different view. It held that although the respondent was indeed a public officer by virtue of his employment in a government-controlled company, this classification was solely for the purpose of compliance with the code of conduct for public officers. His employment, the court emphasized, was not governed by the Public Service Rules, and any challenge to his termination could only be determined by reference to his contract of employment.

This decision firmly established that the constitutional label of public officer does not convert private employment into public service employment; it merely extends the ethical and disclosure obligations applicable to public officers to such employees.

Conclusion

The position of Nigerian law is now settled: employees of companies in which the government has a controlling interest are deemed public officers for the limited purposes of compliance with the code of conduct for public officers.

2 [2001] 6 NLWR (Pt. 710) 660

This constitutional arrangement underscores the principle that any individual connected to the management or operations of government owned enterprises should be held to the same standards of integrity, transparency and accountability expected of traditional public officers.

While their employment relationship remains governed by private law, such employees must nonetheless uphold the ethical standards enshrined in the Constitution. This dual obligation epitomizes the hybrid or dual status of public officers in private employment.

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