



**At a Glance: The Practice of Probationary
Employment in Nigeria**



Introduction

This article examines the practice of probationary employment in Nigeria and its legal implications. The research reveals that probationary employment is a widely practised type of employment and that it is a useful tool for employers to assess the performance of employees before making a final decision on their employment status. The research also indicates that probationary employment is not without risks and drawbacks. It can lead to over-exploitation of employees, and job insecurity. The article concludes by identifying the implications of probationary employment and offering recommendations for employers to ensure that the practice is conducted in a legally and ethically sound manner.

What is a Probationary Period?

Probation is a period in which an employee is allowed to prove their suitability for a job. During this period, the employee is closely monitored and assessed in terms of their job performance. If they do not meet the expected standards or fail to satisfy their employer, the employee may be dismissed or the probationary period may be extended.

In the case of **Baba v Nigerian Civil Aviation Training Centre**,¹ the Court while adopting the Black's Law Dictionary definition of the word 'probation' as:

The initial period of employment during which a new, transferred, or promoted employee must prove or show that he is capable of performing the required duties of the job or position before he will be considered as permanently employed in such position.²

The Oxford Advanced Learner's Dictionary³ says inter alia that the word 'probation' means a time of training and testing when you start a new job to see if you are suitable for the work: a period of probation.⁴

It is a trial term that typically lasts 6 months to a year and allows the supervisor to examine an employee's conduct and job performance, as well as remove or reassign the person if necessary. This type of structure ensures that employees deliver high-quality work while also allowing them to prove themselves.

1 (1986) 5 LPELR-21095

2 *Al-Bishak v. National Productivity Centre & Anor* (2015) LPELR-24659(CA)

3 A. S. Hornby, A. Michael, and S. Wehmeier, *Oxford Advanced Learner's Dictionary of Current English*. (7th edn. Oxford: Oxford University Press, 2000) p. 1156

4 *Raji v. OAU* (2014) LPELR-22088(CA)



Probationary periods are usually incorporated in the main employment contract as a condition. This clause explicitly states the probationary period's terms. In addition to incorporating a probationary period clause, it is critical to ensure that new employees are completely aware of and understand the clause's implications. The probationary period clause should include:

- Its length
- The termination notice period that will be in effect throughout the probationary period; and
- The procedure for determining whether an employee's probationary period was successful or not

Nature of Probationary Employment

The sole purpose of putting an employee on probation is to assure the employer that the employee is a fit and proper person to be placed on a permanent appointment. The probationary period is a period of observation by the employer. It, therefore, follows that once the condition laid down for the termination of appointment during the probationary period is satisfied or complied with an employee cannot justifiably complain.⁵

Probationary periods are not expressly required by law to be included in an employment contract. It is purely a matter of contract flexibility, which has become the norm in the workplace.⁶ As a result, for a probationary period to have a legal meaning, it must be specified in the employee's employment contract and must not constitute a violation of the employee's statutory rights. A probationary period will not be assumed into an employment contract.⁷

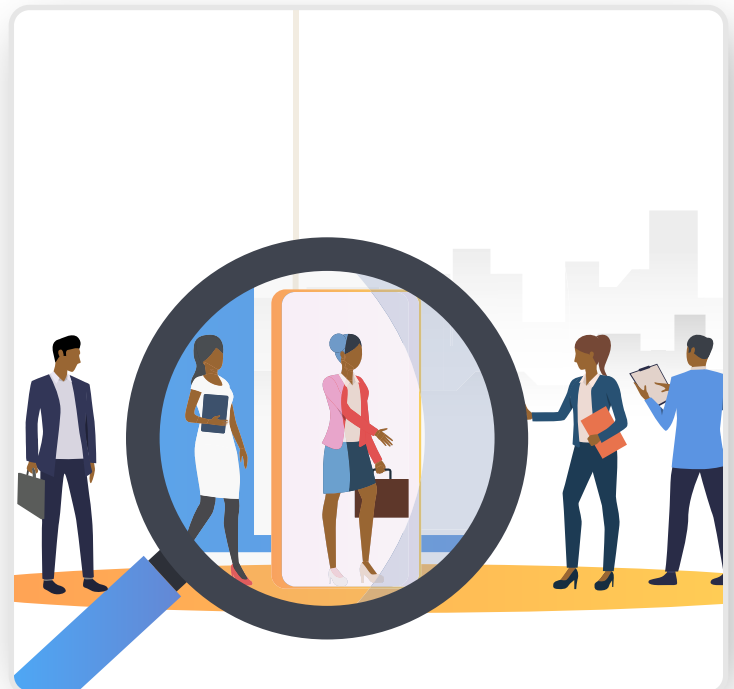
A probationary period shall not be implied in a contract of employment and imposed on the employee automatically. To establish a probationary period, the condition must be specified in the job offer and agreed upon before the person begins working.

If an employee accepts an oral offer of employment that does not include a probationary period, the deal is done, and the probationary period does not apply. The employer bears the burden of proving a supposed probationary period. An employer cannot unilaterally impose probation after an employee has accepted a job offer.

Even if a company has a policy requiring all new workers to be placed on probation, a court will look at the circumstances of the hiring to see if the policies were disclosed to the person and incorporated into the employment contract before the employee accepted the position.

An employee on probation does not enjoy the benefit of employment security like an employee in confirmed employment. The National Industrial Court of Nigeria (NICN) affirmed this in **Bishak v. National Productivity Centre & Anor**⁸ in determining the nature of probationary employment and held that 'an officer on probation does not enjoy the same condition of service as an officer whose appointment has been confirmed. His status in the establishment is more or less temporal during the period of probation?...'.

Furthermore, it is apposite to state that Section 73 of the Employee Compensation Act, 2010, defined an employee to mean a person employed by an employer under oral or written contract of employment whether on a continuous, part-time, temporary, apprenticeship or casual basis..., thus an employer can be vicariously liable for the actions or omissions of an employee on probation.



¹ *Al-Bishak v National Productivity Centre & Anor* (2015) LPELR-24659(CA); *Ihezukwu v. University of Jos & Ors* (1990) LPELR-1461(SC); *Simeon v College of Education Ekiadolor Benin* (2014) LPELR-23320(CA)

² E Chianu, *Employment Law*, (Reprint, Akure: Bemicov Publishers (Nigeria) Ltd, 2006), page 116 – 167

³ *Ibid*

[2015] 57 NLLR (Pt. 194) 1.

⁴ *Alhassan v. Ahmadu Bello University, Zaria* [2011] 11 NWLR (Pt. 1259) 417.



Advantages and Disadvantages of probationary employment in Nigeria

Probationary employment in Nigeria offers several advantages and disadvantages.

Advantages

- 1. Flexibility:** Probationary employment allows employers enjoy flexibility when it comes to hiring new employees. Probationary periods can be extended or shortened depending on the performance of the employee. This allows employers to determine if the employee is a good fit for the job before committing to a long-term contract.
- 2. Low Risk:** If an employer is not entirely sure if a new hire is the right fit for a job, they can use probationary employment to get to know the employee better without any long-term commitments. This reduces the risk of making a bad hiring decision. It also reduces the risk of liability if the employer has to terminate the employment during or at the end of probationary period.
- 3. Cost Savings:** Probationary employment can help employers save money by not having to pay the full salary of a new employee until they are sure that the employee is the right fit for the job.
- 4. Opportunity:** For employees, probationary employment offers an opportunity to prove their mettle and demonstrate their abilities to land a more permanent job.

Disadvantages

- 1. Uncertainty:** Probationary employment can be uncertain for both employers and employees. There is no guarantee that the employee will be hired after the probationary period is over and the employer may decide to terminate the employee before the probationary period is up.
- 2. Low Morale:** Employees on probationary employment may feel uncertain about their job security, which can lead to low morale and decreased motivation.
- 3. Potential for Discrimination:** Employers may use probationary employment as a way to discriminate against certain employees. For example, an employer may use the probationary period to evaluate an employee's performance differently based on their race, gender, or other protected characteristics.
- 4. Limited Job Opportunities:** Probationary employees may not be eligible for promotions or other job opportunities within the organization. This can limit their career prospects and make it difficult to advance in their career.

Implications of Probationary Employment for Employers and Employees

For Employers:

1. Employers must ensure that the probationary period is reasonable, taking into consideration the job role, the employee's experience and qualifications, and the industry sector.
2. Employers must provide employees with regular performance reviews and feedback to ensure that they are progressing in their roles.
3. Employers must provide employees with appropriate training and support to ensure that they are capable of performing their job role.



- Employers must ensure that the probationary period is clearly defined and outlined in the employee's contract of employment.
- In addition, the employer must provide the employee with a fair and reasonable opportunity to demonstrate their ability to perform the job.
- Finally, the employer must ensure that the probationary employee is not subject to any discriminatory or unfair treatment.

For Employees:

- Employees should use the probationary period to demonstrate their capabilities and suitability for the job role.
- Employees should take advantage of the training and support provided by their employer to ensure that they are progressing in their roles.
- Employees should be aware that the probationary period may be extended if they do not perform satisfactorily.

Effect of Failure to Formally Confirm, Extend or Terminate the Appointment of an Employee After the Probationary Period

The probationary period is interpreted as a unique condition of employment or an agreement between the parties when it is included in the employment contract. The quality, or attribute that an employer seeks in a potential employee may be a deciding factor in how long he or she is placed on probation. However, the employer must proceed with prudence and not use the ruse of probation to take unfair advantage of the employee. As a result, the employee's probationary status must be addressed before the probation period ends.

An employee on probation is considered a confirmed employee if his or her employer keeps him or her on after the probation period ends without informing him or her of the results of the probationary test or terminating his or her job. In the case of **Iwuji v. Federal Commissioner for Establishment**,¹⁰ the Court endorsed this stance.

The Court of Appeal in the case of **Reliance Telecom Ltd. v. Adegboyega**¹¹ Per Jamilu Yammama Tukur, JCA held:

"...In *Obafemi Awolowo University v. Dr. A. K. Onabanjo* (1991) 5 NWLR (Pt. 193) pg 549 at 569 paras. G-H & pg 570 paras. D-E. Akpabio, J.C.A. (as he then was) in the above case, held thus "the appellant had delayed unnecessarily in making up their minds whether to terminate or confirm respondent's probationary period. By keeping him in his employment and continuing to pay him in his employment and continuing to pay him for four months, after the probationary period of three years had expired, they would be deemed by operation of law to have confirmed his appointment, and the doctrine of "estoppel by conduct" would operate to prevent the appellant from alleging and treating him as if he was still on probation. "Delay defeats equity". From the above decision of the Appeal Court, I am of the view that the claimant's appointment was confirmed by the defendant immediately after the expiration of the three months' probation."

In the case of **Aigoro v. University of Lagos**,¹² it was held that where the probationary period lapsed but the Appellant was neither informed of the employment being confirmed nor terminated but he continued to work. His employment was subsequently terminated through a notice wherein he sued for wrongful termination and the court held that he was no more a probationary employee at the time his employment was terminated and that the silence of the Respondent as to the outcome of his probation period and his continuation in the Respondent's employ translated him to a tenured employee whose employment can only be terminated according to the statutory provisions regulating the Respondent.¹³

¹⁰ (1985) 1 NSCC 580

¹¹ (2017) 8 NWLR (Pt. 1567) 319, (Pp 6 - 10 Paras E - F)

¹² [1979] 10 - 12 CCHCJ 9

¹³ See also *O.A.U.v. Onabanjo* [1991] 5 NWLR (Pt. 193) 549.



In the case of **Amanze v Union Bank**,¹⁴ the employee was employed on the 9th of May 2014 on a 6-month probationary contract and disengaged on the 14th of July 2017, with a two-week salary in lieu of notice, as an unconfirmed employee. In holding that the Claimant's service had been impliedly confirmed, Justice Essien held as follows:

"...I must add that where the terms of an employment contract such as the one under consideration in this judgment stipulate for confirmation after a period of probation, unless there are reasons to extend the probation period which must be in writing and duly notified to the employee, the defendant is under a duty to confirm the employee after the period of probation. It would be a breach of contract by the defendant for failing to confirm the claimant in this action. The claimant was employed on 9/5/2014. The confirmation of the claimant was due on 8/11/2014. The defendant failed to confirm the claimant or terminate her appointment. The defendant continued to keep the claimant in his employment up to 13/7/2017 when they terminated the claimant vide exhibit D5. The claimant is deemed to have been confirmed by operation of the law."

In **Council of Federal Polytechnic, Ede & Ors. v. Johnson K. Olowookere**,¹⁵ the Court of Appeal held thus:

"where an employer had delayed unnecessarily in making up his mind whether to terminate or confirm an employee's probationary appointment by keeping him in his employment and continuing to pay him for months after the probationary period had expired, he would be deemed by operation of law to have confirmed the employee's appointment, and the doctrine of "estoppels by conduct" would operate to prevent the employer from alleging and treating him as if he was still on probation. Delay defeats equity."

Furthermore, under the doctrine of estoppel by conduct which had been explained by the Apex Court in the case of **Lawal v. U.B.N. Plc & Ors**,¹⁶ per Ogwuegbu, J.S.C. thus:

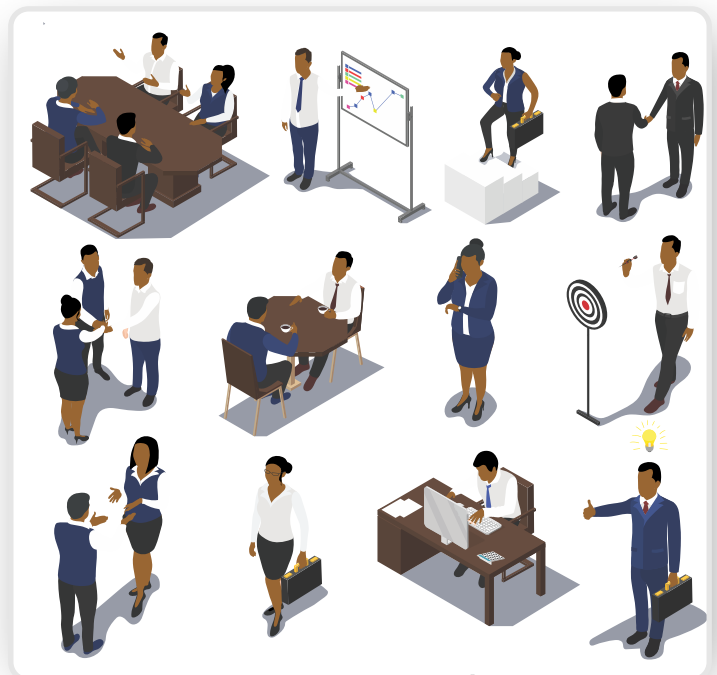
"...the doctrine of estoppels is that where one party has by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to act on accordingly, then once the other party has taken him at his words and acted on it, the one who gave the promise or assurance cannot after words be allowed to revert to the previous relations as if no such promise or assurance had been made by him."

Hence, an employer who allows the employment of an employee to continue in full view of the stipulation of the probationary period must be taken by his conduct to have fully assured the employee that his appointment had been confirmed.¹⁷

Promotion of Employee on Probation

The promotion of a probationary employee does not translate that probationary employment into confirmed employment even though promotion is an acknowledgement of an employee's skill, knowledge, suitability, or contribution. The fact that an employee is promoted during the period of probation does not automatically convert his probationary employment into a confirmed one and makes the employee not liable for termination.

This position has received judicial consideration in the case of **Baba v. N.C.A.T.C.**¹⁸ where the Appellant, in this case, was employed by the Respondent as an Assistant Security Officer on salary Grade level 06, for an initial probationary period of 2 (two) years with the training centre of the Respondent while reserving the right to terminate the appointment by giving him a month salary in lieu of notice and he was also free to terminate his employment by giving a month notice or by paying one month salary in lieu of notice.



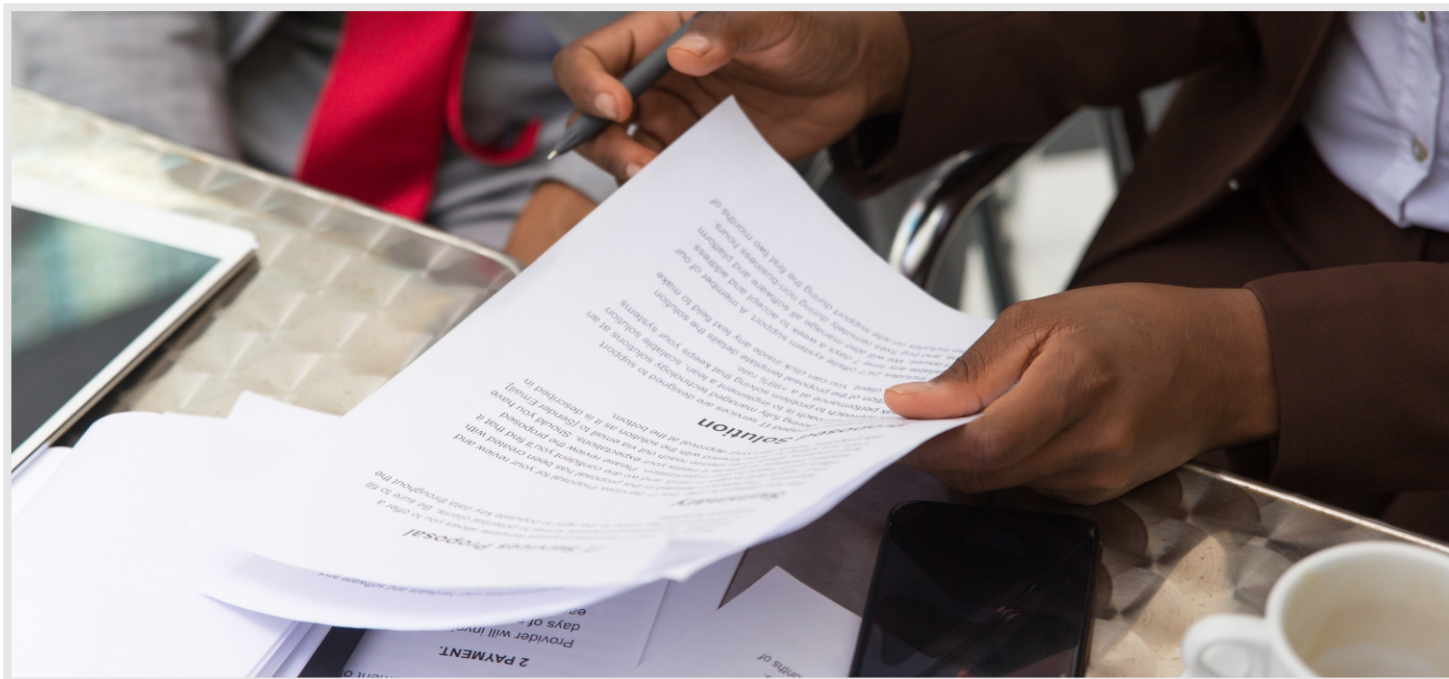
¹⁴ Suit No NICN/LA/424/2018, delivered on 29th June 2021 by Hon. Justice I. J. Essien of the National Industrial Court, Lagos Division.

¹⁵ [2014] 49 NLLR (Pt. 161) 144 at 170 – 171, Paras. D – E.

¹⁶ (1995) LPELR 1762 (SC); *Pina v Mai-Angwa* (2018) LPELR-44498(SC)

¹⁷ *Taylek Drugs Co. Ltd v Onankpa* (2018) LPELR-45882(CA)

¹⁸ [1991] 5 NWLR (Pt. 192) 388, [1991] 7 S.C. (Pt. 1) 58



Before the expiration of the probationary period, he was promoted and shortly thereafter there was a reported incidence of theft wherein about thirty junior staff under the Appellant's control made representation to the Respondent indicting the Appellant.

A panel of inquiry was set up to investigate the allegation of theft and incompetence levelled against the Appellant and he was given the opportunity to present his own case. After the hearing, the panel of inquiry recommended to the Respondent that the Appellant's employment be terminated. Hence, the Appellant's employment was terminated after the panel's report on the grounds of stealing and incompetence. He sued the Respondent for wrongful termination of his employment and claimed damages and reinstatement. He lost both at the Trial Court and Court of Appeal. He further appealed to the Supreme Court. One of the issues which the Supreme Court had to determine was whether his promotion was indicative or had translated the probationary employment to a confirmed one.

The Supreme Court held that:

“...since the letter of appointment unequivocally stated that from the date of resumption, the Appellant will serve a probationary period of two years and there is nothing in the Staff Regulation of the Respondent to show that a person promoted during the period of his probation ceases to be on probation rather it provides that, at the end of his probationary period, an officer shall be informed in writing whether he is considered suitable for confirmation in his appointment and since no such written information was given to the Appellant, it is conclusive that, as at the time of his termination, he was still on probation his promotion notwithstanding.”

Thus, where the employment contract specifies a means for confirmation of probationary employment unless an employer later modifies it, regardless of whether the employee has been promoted, confirmation can only be through the specified means.

Termination of Probationary Employment

An employer-employee relationship is given life by the contract of employment that birthed the relationship, In this relationship, an employer has the right to end an employee's employment because a willing employee cannot be forced on an unwilling employer.¹⁹ In a master and servant relationship, the master has unfettered right to terminate the employment but in doing so he must comply with the procedure stipulated in their contract.

Flowing from this, the Court has stated the common law position that an employer can dispense with the services of the employee with or without any reason.²⁰ Notwithstanding, in the event of gross misconduct by the employee, the employer has the right to dismiss the employee immediately.²¹

19 *Ondo State University Anor v Folayan* (1994) LPELR 2673 (SC) and *Eze v Spring Bank Plc* (2011) LPELR 2892 (SC).

20 *Obanye v Union Bank* (2018) LPELR-44702(SC)

21 *U.B.N Plc v. Chinyere* [2010] 16 NWLR (Pt. 1219) 271.



The mere fact that an employee is placed on probation does not imply that his appointment cannot be fully terminated on reasonable notice within the probationary period, as the purpose of putting the employee on probation is to provide the employer with assurance that the employee is a fit and proper person to be placed on permanent/confirmed employment.²² It, therefore, follows that once the condition laid down for the termination of appointment during the probationary period is satisfied or complied with, an employee cannot justifiably complain.²³

During probation, either party may terminate the contract as set out in the letter of engagement.²⁴ There are two types of employment relationships. These are simple master-servant employment and statutory employment. For statutory employment to be validly terminated, the employer or employee must follow the procedure outlined in the statute governing the employment contract.²⁵

There is no procedure for terminating probationary employment specified in any labour legislation unless it is specified in the employee's letter of employment or other regulations under which he or she was employed. If the employment contract stipulates that either party may terminate the contract by giving a month's notice or a salary in lieu of notice (as is usually the case), either party could validly terminate the contract by following this provision. Also, where an employee's appointment is under the statute and not under a common law contract of master and servant, the employee's appointment even though on probation cannot be terminated without a fair hearing. The employers are expected to comply with the procedure for termination as provided by the Public Service Rules.²⁶

Whether the employment is confirmed or probationary, the employer has a responsibility to ensure that the implied or express terms of the contract regarding termination are followed. In the case of *Eze v UNIZIK*²⁷ Per Patricia Ajuma Mahmoud, JCA, it was held:

...In issues of dismissal, it is irrelevant whether the employee is on probation or not in his employment as the respondent made heavy weather of in the instant case. The principles of fair hearing are sacrosanct in cases of dismissal. This was the finding of this Court in the case of *Federal Medical Center, Ido-Ekiti v Alabi* (2012) 2 NWLR PT 1285, 411 RATIO 13: "Where an employee's appointment is under the statute and not under a common law contract of master and servant, the employee's appointment even though on probation cannot be terminated without fair hearing. The employers are expected to comply with the procedure for termination as provided by the Public Service Rules. In the instant case, failure to so comply renders the termination of the employee's appointment null and void and of no effect and the respondent is entitled to reinstatement.

Remedies Available to a Dismissed Employee on Probation

When a probationary employment is wrongfully terminated, the employee is entitled to certain remedies. An employer has the right to hire and fire his employee, and it is not in the habit of a Court to force a servant on an unwilling employer. Thus, even where an employee was wrongfully terminated or dismissed from service, the Court cannot reverse the dismissal, except in the case of employment with statutory flavour (i.e. employment in the civil service or public service of the Nation, State or Local Government).²⁸

It must be pointed out that in issues of dismissal of an employee with statutory flavor, it is irrelevant whether the employee is on probation or not in his employment, the employee's appointment cannot be terminated without a fair hearing and failure to so comply renders the termination of the employee's appointment null and void and of no effect and the employee is entitled to reinstatement.²⁹

In the case of *Adeyemo v. Oyo State Public Service Commission*,³⁰ it was held that where an employee on statutorily flavoured probationary employment is deprived of a fair hearing in the termination of his employment, such an employee is entitled to reinstated.

However, in a master-servant employment relationship, where a servant on probation or an unconfirmed employee has his employment wrongfully terminated, he cannot lawfully be reinstated by the court and his remedy lies in the award of damages as provided for in his contract of employment.³¹

²² *Ihezukwu v University of Jos* (1990) 4 NWLR (Pt. 146) 598; *NITEL Plc. v Akwa* (2006) 2 NWLR (Pt. 964) 391

²³ *Olayinka Kusamotu v. Wemabod Estate Ltd.* (1976) II S.C. 279; *ONDO State University & Anor v. Folayan* (1994) LPELR-2673(SC)

²⁴ *Seven-Up Bottling Co Plc v. Ajayi* (2007) LPELR-8765(CA)

²⁵ *Attorney General of Kwara State v. Abolaji* [2009] 7 NWLR (Pt. 1139) 199.

²⁶ *F.M.C., Ido-Ekiti v. Alabi* (2012) 2 NWLR (Pt. 1285) 411

²⁷ (2021) LPELR-56186(CA) (Pp 35 - 38 Paras F - C)

²⁸ *Eze v Spring Bank Plc* (2011) LPELR - 2892 (SC); *Awulu v Polaris Bank Ltd* (2022) LPELR-58783(CA).

²⁹ *Eze v. UNIZIK* (2021) LPELR-56186(CA)

³⁰ (1979) 1 FNLR, 28.

³¹ *Anakism v. U.B.N. Ltd* (1994) 1 NWLR (Pt. 322) 557



In law, the measure of damages for wrongful dismissal in a simple contract of employment under a Master-Servant relationship, devoid of any legal or statutory flavour, is the amount of money that is payable during the period of notice to be given by the employer to the employee as stipulated in the contract of employment.³²

However, in a master-servant employment relationship, where a servant on probation or an unconfirmed employee has his employment wrongfully terminated, he cannot lawfully be reinstated by the court and his remedy lies in the award of damages as provided for in his contract of employment. In law, the measure of damages for wrongful dismissal in a simple contract of employment under a Master-Servant relationship, devoid of any legal or statutory flavour, is the amount of money that is payable during the period of notice to be given by the employer to the employee as stipulated in the contract of employment.

Also, in the case of *Sekoni v. Shell BP Petroleum Development Company Limited*³³ it was held that where on the grounds of ill health, the employment of a probationer is terminated, he is entitled to the equivalent of his remuneration for the notice period as provided in the employment contract.

Best Practices to consider when Implementing Probationary Employment.

Probationary employment in Nigeria is becoming increasingly popular as companies look to hire workers on a short-term basis. Companies are increasingly relying on probationary employment to evaluate potential candidates for full-time positions, or to fill short-term needs. This trend is increasing the mobility of the Nigerian workforce, allowing them to gain valuable experience in different fields.

For employers, there are several best practices to consider when implementing probationary employment. It is important to establish a clear policy for probationary periods and communicate it to the employee. During the probationary period, employers should closely monitor the performance of the employee and provide feedback regularly. Additionally, employers should provide training and support to help employees reach their full potential.

For employees, the best practice is to be proactive and take full advantage of the probationary period. Employees should take responsibility for their learning and development, and strive to meet the expectations of the employer. Additionally, employees should seek feedback and use it to improve their performance.

Overall, probationary employment is becoming increasingly common in Nigeria and provides an opportunity for employers and employees to evaluate their potential for a long-term relationship. By following best practices, both employers and employees can benefit from probationary employment.

Conclusion

In conclusion, probationary employment in Nigeria is a viable way for employers to assess the suitability of potential employees for a permanent role. Employers need to have a clear process in place to ensure that employees understand the terms and conditions of their probationary period and are given a fair chance to prove their worth. The probationary period should be structured to give employees adequate opportunities to demonstrate their skills and capabilities, and employers should ensure that they provide adequate feedback and guidance to probationary employees to help them succeed. Ultimately, probationary employment can be beneficial for both the employee and the employer, providing the employer with a way to assess the suitability of the employee without the commitment of a permanent role, while providing the employee with a chance to prove their worth. Furthermore, employers need to ensure that they comply with the relevant labour laws when setting up probationary periods and managing them, as failure to do so can lead to costly legal action.

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³² *Bako v British Council (Nig) & Anor (2022) LPELR-58127(CA)*

³³ [1975] 1 CCHCJ 91. See also *Olukoya v. Intercotra Ltd. [1969] NCLR 357.*