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OCCUPATIONAL HAZARDS AND SAFETY DECADENCE UNDER THE FACTORIES
ACT

By
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ABSTRACT

Under the provisions of the Factories Act, Factory has been defined to mean any premises in which or within which or within the close or precincts of which one person or more persons are employed in any process for or incidental to any of the following purposes namely; the making of any article or of part of any article; or the altering, repairing, ornamenting, finishing, cleaning or washing or the breaking up or demolition of any article; or the adapting for sale of any article being premises in which or within the close or cartilage or precincts of which the work is carried on by way of trade or for purposes of gain and over which the employer of the person or persons employed therein has the right of access or control. The above definition contemplates that all appurtenances to factory environment such as stairs, floors, steps, passages, gangways or building used as a factory must be effectively maintained and kept spick and span at all times. Buildings with sub-standard materials leading to collapsing of building, lack of safety wears or protective materials for workers while working have caused serious harm to both workers and work environment. This paper evaluated some of the occupational hazards and safety decadence under the Factories Act through doctrinal legal research methodology. The poor welfare scheme, condition, poor safety apparatus and the ill-mannered in which workers are being treated in factories are some identified occupational hazards which vehemently provoked this paper work. In this connection, this paper examined the identified hazards with a view towards proffering remedial tips so as to mitigate such hazards emanating from factories or work environment. A review of sanctions for breach and strategic enforcement of the Factories Act is recommended.

KEYWORDS: Factories, Occupation, Hazard, Environment, Safety

1. INTRODUCTION

Work environment must as of necessity be kept spick and span, take into cognizance the provisions or presence of some basic amenities to enhance the health, safety and the general wellbeing or welfare of the workers. The Constitution of the Federal Republic of Nigeria¹ provides that the State shall direct its policy towards ensuring that conditions of work are just and humane and that there are adequate facilities for leisure and the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused. Thus, it is the duty of the Federal Ministry of Labour and Productivity (Inspectorate Division) to enforce the Factories Act².

In the words of Honourable Minister of Labour and Employment; Occupational Safety and Health (OSH) does not only seek to secure the safety and health of persons at work but consequentially stimulates productivity in the business of the enterprise. It is therefore necessary that the National Occupational Safety and Health System be visibly identified and coordinated for effective management and one of the means of achieving that is through the development of a National Occupational Safety and Health Profile³.

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¹ Section 17(J)(b) and 8(c) 1999 Constitution (as amended)

² Factories Act Cap. 126 1990 (now Cap. F1 Laws of the Federation of Nigeria LFN 2004).

³ Senator (Dr.) Chris Ngige N., Hon. Minister of Labour and Employment, Nigeria Country Profile on Occupational Safety and Health 2016.

It has been observed by a researcher, Anderson⁴ that the efficacy and accountability of the Federal Ministry of Labour and Productivity in the enforcement of Occupational Safety and Health (OSH) Regulations in Nigeria are evidently questionable and poor especially in the construction industry. It is pertinent to say that the enforcement of Regulations is very important in ensuring efficacy of Rules and Regulations.

2. FACTORIES ACTS IN GENERAL

In Nigeria, the first legislation on factories was the Factories Ordinance No. 33 of 1955. This legislation was anchored on the British Factories Act 1937 which was an Act to consolidate the factories and workshop Acts of 1901 to 1929 and other related enactments. Today, the current legislation on Factories is the Factories Act Cap. 126 1990 (now Cap. F1 Laws of the Federation of Nigeria LFN 2004) hereinafter referred to as the Act.

In Great Britain and Ireland the earliest legislation which dealt with Factories and Mills was the Health and Morals of Apprentices Act 1802. It provided that the walls and ceilings of all rooms in a factory or mill must at least twice a year be well and sufficiently washed with quick lime and water and that sufficient number of windows and openings be provided to ensure a proper supply of fresh air. Apprentices working in the Mills and Factories were to be supplied with two suits a year and with suitable linen, hats stockings and shoes; no apprentice has to work for more than 12 hours a day and apprentices were to be instructed in reading and writing during working hours.

The Act also regulated night work of apprentices and also provided that male and female apprentices must not sleep in the same room and that for at least one hour every Sunday every apprentice must be instructed and examined in the principles of the Christian religion. Justices of the peace were empowered to appoint two visitors of which one is a Justice of the Peace and the other a Clergyman with full power and authority from time to time and at any time of the day or during the hours of employment to enter any factory. They were to report in writing on the State and conditions of the Mills and Factories and the apprentices employed in them. Any one who obstructed a visitor was liable for such offence (to pay a sum not exceeding ₦20). Copies of the Act were required to be hung up in two or more conspicuous places in the Mills or Factory. Any master or mistress of a mill or factory who willfully contravened any provision of the Act was liable to a fine. One half of such a fine was to be paid to the informer by the justice who tried the offence.

Thus, this Act laid down the basic pattern upon which present day factories legislations are based although the most significant provisions of today's legislation upon the welfare, health and especially the safety of those employed in factories are conspicuously absent. Similarly, the early provisions for instruction of apprentices in academic and religious education as well as the requirement for provision of clothing have lost attention of Government and private employers of labour. No factories legislation in Nigeria has ever dealt with hours of work.⁵

3. APPLICATION OF THE ACT IN NIGERIA

The applicable law regulating factories in Nigeria is the Factories Act Cap. 126 1990 (now Cap. F1 Laws of the Federation of Nigeria LFN 2004).

Over the years, the need for the establishment of Factories Act was made imperative by the failure of the common law to address questions of industrial safety. Thus, the detailed provision defining and delimiting basic industrial standards for safety and health as well as best practices for industrial waste management limitations in the application of the law of occupiers liability, negligence and nuisance to the serious questions of environmental safety and health, exposed the need for a legislation.⁶

⁴ Anderson, J., Health and Safety- Matching Legislation and Enforcement, Proceedings of the Institute of Civil Engineers Management, Procurement and Law, 2007; Pp11-15

⁵ Egerton Unviegham E.; Labour Law in Nigeria - (Malthouse Press Limited, Ikeja-Lagos State, Nigeria) 2001. Pp178-179

⁶ Akande, O.; Regulation of Occupational Safety, Health and Environment 1,2. Nigeria (Lagos; N.T.A.La. 1991), 2

The problem arisen from the above definition of the Act is that it makes the Act applicable only to enclosures or premises exclusively devoted to the above uses. This is one of the limitations to the Act. According to Akanie⁷ a vast majority of work-places are not registrable under the prevailing law and are therefore not within the regulatory supervision of the Factories Inspectorate or any other Agency of Government. It is therefore important that with the substantial increase in the economic and manufacturing activities in Nigeria and the growth of small scale and cottage industries that may not fit the definition of Factory within the Act, the scope of the Factories Act should be expanded to accommodate matters of workers safety and public health.

Sections 14 to 39 of the Act comprised in Part III made general provisions for workers' safety in registrable premises. These cover prime movers, machinery, fencing, lifting equipments, accesses and exits, gas emissions, explosives and inflammable substances, steam, fire prevention and the general powers of factory inspectors to issue prohibition notices for identifiably dangerous factories. Part IV of the Act which comprises of sections 40 to 44 makes provisions for the general welfare in the areas of safe drinking water, washing facilities, accommodation for clothing, first aid and ambulance. Part V makes detailed provisions for regulating protective clothing, removal of dust and the protection of the eyes in certain processes.

These provisions of the Act seem to be suitable in the maintenance of safety and health standards in Factories. However, one of its defects is in the area of sanctions for breach of the provisions. The sanctions regime in Part X of the Act is not satisfactory. Thus, section 69(1)-(5) of the Act provides for the joint and individual liability of the owners, occupiers and employees of factories where contraventions are established. Other areas of interest are the provisions dealing with penalties. For instance, section 71 of the Act provides for a fine of ₦5,000.00 or two years' imprisonment when such a contravention causes death. It is submitted in this paper that such provision need a review as it does not only discount the lives of workers but also place a preference and economic value on the manufacturing processes rather than the lives of employees. The implication of this is decadence in standard implementation of the provisions of the Act as well as provision of welfare and adequate safety apparatus. By the provisions of section 71 (1), (2) and (3), jurisdiction to try all offences under the Factories Act is vested in the Magistrate court. Furthermore, section 3 (4) and (5) dealing with non-registration or change in user status of registrable premises, a contravention is liable to a fine of ₦2,000.00 or to imprisonment for 12 months or both.

Flowing from the above, it is expedient to make a remark that in the present day, the aim of the Act is defeated in many areas relating to sanctions for contravention, the conditions, welfare and safety of workers in work environment. A review is therefore necessary.

The basis of this safety decadence births this paper work to critically examine the challenges to the conditions at which workers are subjected to, welfare and safety of workers in their work environment. All these are discussed under the following:

I. POOR CONDITION AND WELFARE SCHEME:

It is pertinent to say that in this paper, condition at work environment is used to mean the physical conditions of the work environment and not the terms of employment of employees. The idea of the work environment conditions is concerned with the followings⁸.

- i. Securing the health and safety of persons at work, whether employers, employees or self-employed persons;
- ii. Protecting the general public against risks to health and safety arising out of, or connected with the activities of persons at work.
- iii. Controlling the keeping and use of dangerous substances and generally preventing the unlawful acquisition, possession and use of such substances;
- iv. Controlling the emission into the atmosphere of noxious or offensive substances from the industrial premises.

⁷ Ibid

⁸ Ikoni; U.D.; An introduction to Nigeria Environment Law Malthouse Press Limited, Lagos-Nigeria) 2010. P.132

Generally, each work environment must of necessity take into account the provisions or presence of some basic amenities to enhance the health, safety and the general well being of the workers. Apart from the general responsibilities of employer vis-à-vis the employees, the work-place conditions should reflect the followings:

i. Sanitary Conveniences:

Sufficient and suitable sanitary conveniences for the persons employed in the factory shall be provided, maintained and kept clean. Effective provision must be made for lighting the conveniences. Where persons of both sexes are employed, separate accommodation must be provided for each sex.⁸

ii. Drainage of Floor:

Where any process is carried on which renders the floor liable to be wet to such an extent that is capable of being removed by drainage, effective means must be provided and maintained for draining.⁹ Work environments must be put in a proper state to enhance the safety and welfare of workers in a factory. Section 28 (3) of the Act, provided that factory owners must provide and maintain in every factory, safe means of access to every place at which any person has to be or work.

It has been held in the old case of *Mayne v. Johnstone & Cumbers Ltd.*¹¹ that the test of a sound construction is not that it should be so constructed as to be sufficient to withstand some stress which would not occur during normal use but that sound construction means that the floor must be of such construction and so maintained as to be fit to be used for the purpose for which the factory is intended to be used. By the provision of the Act, all openings in floors must be securely fenced, except in so far as the nature of the work renders such fencing impracticable.¹²

In *Sanders v. F.H. Lloyed & Co. Ltd* the court said although there is no doubt there exist some point at which a hole or depression in the floor becomes so small that it cannot in ordinary language be called an opening, it held that an opening need not be hole of sufficient size and depth for someone to fall into or something that could be protected by fencing in the nature of railings. Fencing also means railing off, covering, or otherwise protecting the opening against the possibility of someone falling into it.

In the U.K, it is a requirement that every employer must reasonably and practicably in his factory provide safe means of access to every place at which any person has to be or work. In *Levesly v. Thomas Firth and John Brown Ltd.*¹³ the English court of Appeal, applying *Lutimer's* case held that a temporary and transient obstruction of a passage way was not failure to maintain a safe means of access provided by the employer.

On welfare at work environment, Part four of the Act made general provisions on welfare of workers in factories. It is the requirement of the Act that all industrial environment must provide for the welfare of the workers working therein and other person that might come within the premises for the purpose of business or otherwise. This requirement is in addition to those of working conditions and safety at work place. The issue of the welfare of workers at work place relate to the provision of all facilities necessary for the comfort of the workers who are working within the industrial premises. Such facilities includes supply of washing facilities, drinking water, first aid, accommodation of clothing, sanitary conveniences, prohibition of meals in certain dangerous places etc.¹⁴

⁸ Section 12 (1) of the Factories Act

⁹ Section 11 of the Factories Act

¹¹ (1947) 2 All E.R. 159

¹² Section 28 (2)

¹³ (1953) 2 All E.R. 866

¹⁴ *Ikon* U.D. Op. Cit p.145

II. DETERMINATION OF OCCUPATIONAL HAZARDS AT INDUSTRIAL ENVIRONMENT

It is now a known fact that so many workplaces kill more people as or than it occurs on the roads especially in developed world. Millions of people all over the world annually suffer serious, even life-altering injuries at their workplace. Many others die prematurely because of job exposure to dangerous substance or as result of stress at work.

Since work related death and serious injury occur in almost all sectors of industry and commerce. It is appropriate to ask the following question as they relate to industrial environment;

- i. How safe are you at your place of employment?
- ii. What situations in your place of work may threaten your health and life?

In order to answer the preceding questions, it must be emphasized that tremendous pressure is often placed on workers to be productive.

In Japan for instance, the term "karoshi" meaning death from overwork is used in the compensation claims filed by bereaved families of deceased employees. According to a survey there, years ago, 40% of Japanese office workers feared possible death from overwork. By estimation, there are at least 30,000 victims of Karoshi in Japan every year.¹³ Americans had overtaken the Japanese in putting in the longest working hours in the world.¹⁴

As companies go through the process of merging, compromise, restructuring or downsizing to maintain good financial status, greater pressure to produce is placed on employees. This has a negative effect on the health of employees. Overworked and stressed employees are not just at risk to themselves but to others as well. Many office workers spend much of their working day in a state of irritation with colleagues and that such conflict often triggers violent reactions leading to hostility in work places.

Industrial environment could mean the factory workshop, office or farm or other premises at which a person is employed. Notwithstanding the description, where separate branches of work are commonly carried on as separate business in separate premises at separate places, are in any case carried on in separate departments on the same premises or at the same place, each of those departments will be deemed to be a separate factory a workshop or farm or separate premises or a separate place.

A number of factors have been identified as factors responsible for occupation hazards at industrial environment. Below are some of such factors that determine occupational hazard.

1. Air pollution
2. Noise from heavy equipment
3. Faulty equipment
4. Inadequate ventilation and overcrowding
5. Ignorance on the use of chemicals and equipments or lack of supervision
6. Prolonged exposure to gasses, fumes, dust etc
7. Improper disposal or management of industrial waste
8. Alcohol indulgence by the employees
9. Inadequate provision of protective equipment e.g gloves, masks, boots etc
10. Extreme temperature and humidity
11. Poor physical or structural development
12. Poor health states of the workers and
13. Malnutrition due to poor condition of service especially as it affects the pay package.

Flowing from the aforementioned it is necessary that employers and employees in a work environment must take into cognizance the provision or presence of some basic amenities to enhance the health, safety and the general well being or welfare of the workers.

¹³ Awake, February 22, 2002 p.3 (quoted by Ikem U.D, An introduction to Nigeria Environmental Law (Malthouse press, limited, Lagos-Nigeria) 2010 p.128

¹⁴ The Canberra Times 30th November, 2001. Op. Cit p. 22

Thus, the factories Act makes provision for the enforcement of health conditions in every work environment. It is provided to the effect that there shall be for the purpose of executing the Act, a Director and Inspectors of Factories and other officers to be so appointed and that the appointment of a person as a Director or an inspector must be in writing and notice of such appointment shall be published in the official gazette of the Federal Republic of Nigeria.¹⁷

The powers of inspector in the enforcement of the provisions of the Act are stated to be the followings; amongst others, namely;

- a. To enter, inspect and examine, by day or by night, a factory and every part thereof, when he has reasonable cause to believe to be a factory and any part of any building of which a factory forms part and in which he has reasonable cause to believe that explosive or highly inflammable materials are stored or used.
- b. To take with him a police officer if he has reasonable cause to apprehend any serious obstruction in the execution of his duty.
- c. To require the production of the provision of the Act and to inspect, examine and copy any of them.
- d. To make such examination and inquiry as may be necessary to ascertain whether the provision of the Act are complied with.
- e. To require any person whom, he finds in a factory to give such information as it is in his power to give as to who is the occupier of the factory.
- f. To examine any person either alone or in the presence of any other person as he thinks fit, with respect to matters under the Act and to require every such person to sign a declaration of the truth of the matters in respect of what he is so examined.
- g. In the case of an inspector who is a registered medical practitioner to carry out such medical examinations as may be necessary for the purpose of his duties under the provisions of the Act.
- h. To carry out such examinations, test and analysis in order to give effects to the provisions of the Act and take instant Photographs in any factory.
- i. To exercise such other powers as may be necessary for giving full effect to the provisions of the Act.¹⁸

In the same vein, there is also the power to issue improvement and prohibition notices to the inspector under the Act. Thus, if any inspector is satisfied that any part of the way, work machinery or plant, used in a factory is in such a condition or is so constructed or placed that it is likely to cause bodily injury or that any process or work is carried on or anything is or has been done in any factory in such a manner as to constitute a risk of bodily injury. The inspector shall issue an improvement notice stating clearly the danger complained of and requiring the occupier of the factory to take such steps as may be specified in the notice to remedy the danger.¹⁹ The notice may include directions as to measures to be taken to remedy any contravention or matter to which the notice relates.

Section 38 of the Act provides for the power to issue prohibition notice as to dangerous factory. Accordingly, if the inspector is satisfied that any factory or part of a factory is in such a condition or is so constructed or placed in such manner that any process or work carried on therein cannot be so carried on without undue risk to the safety and health of persons employed therein the inspector shall by notice, prohibit the use thereof for the purpose of that process or work. The prohibition notice so issued is capable of prohibiting the carrying on of any process or work whether indefinitely or until such steps as may be specified in the notice have been taken to enable the process or work concerned to be carried on with due regard to the safety and health of person employed therein.

¹⁷ Section 64(1) of the Act

¹⁸ Section 65 (1) of the Factories Act

¹⁹ Section 37 of the Factories Act

The notice may also be revoked on the application of the occupier or owner of the factory after rectifying all the defects contained in the notice to enable the process or work to be carried on with due regard to the safety and health of persons employed therein.

III. ACCOMMODATION FOR CLOTHING

Accommodation for clothing is necessary and must be provided and maintained for the use of all workers employed in the factory.

The accommodation for clothing must be adequate and suitable for workers not worn during working hours.²⁰ Unfortunately some industries or establishment provide clothing to be worn during the working process within the work place environment. To promote the welfare of workers, it is important that adequate and suitable accommodation for clothing not worn during working hours be provided and maintained from all kinds of contact with dust, fumes or other materials that might cause injuries to the workers in a work environment. This is not so in so many places, specifically, observations have been made from some factories in Oleh, Irii e.t.c in Delta State. Again, Inspectors of factories do not visit factories for proper inspections to ensure compliance. In the work environment where workers are engaged in any process involving excessive exposure to wet or to injurious or offensive substance, suitable protective clothing and appliances including where necessary, suitable gloves, footwear, goggles and head coverings must be provided and maintained for the use of such workers.²¹

Suitable goggles or effective screens must be provided to protect the eyes of the person employed in the following processes;

- (a) Dry grinding of metals or articles of metal, applied by hand to a revolving wheel or disc driven by mechanical power;
- (b) Turning, external or internal of non-ferrous metals cast iron or of articles of such metals or such iron where the use of goggles or a screen would seriously interfere with the work or turning by means of hand tools;
- (c) Welding or cutting of metals by means of an electrical oxyacetylene or similar process and;
- (d) Where the following processes are carried on by means of hand tools other portable tools.
- (e) Fetting of metal castings involving the removal of metal.
- (f) Cutting out a cutting off, not including drilling or punching back of cold rivets or bolts from boilers or other plant or from ships.
- (g) Chipping or scaling of boilers or ship's plates; and
- (h) Breaking or dressing of stone, concrete or slag.²²

IV. SAFETY OF WORKERS AT INDUSTRIAL ENVIRONMENT

Occupational environmental hazard is viewed as work place environment that affects negatively the health and status of both the workers and their employers. This calls for a responsibility on the part of both the workers and the management or employers to ensure safe and hazard free environment where they carry out their daily activities.

The safety of workers and employers of labour in the factory is of a serious concern because of the increasing awareness of the consequence to health due to exposure to certain processes or materials in some of the establishment in the course of production. Sequel to this, the common law and statutes where applicable, imposed certain rights and obligations upon those connected therewith. The responsibility of keeping the industrial environment safe for workers and others is largely that of the employer.

This responsibility extends to workers of another employer provided that the injured or the aggrieved party is within the premises of the employer. This principle was applied in the case of *MC Ardel v. Andmac Roofing Co.*²³ In that case, the plaintiff was employed by one of several sub-

²⁰ Section 42 of the Act

²¹ Section 47 of the Act

²² Section 48 (1) and schedule 4.

²³ (1973) 3 WLR 297

contractors who were working on a building site under the direction of a main contractor. The plaintiff was injured because of the negligence of an employee on one of the other sub-contractors. Amongst these held liable were the main contractors, since they handover all responsibility for the site and had taken no steps to ensure the safety of groups of workers working in close proximity, even though these workers were not their own employees. The responsibilities of an employer could be under the common law or under the statutes or protective Regulations.

At common law, an employer is saddled with the responsibility to take reasonable care for the course of his employees while in the premises or in the course of his employment. The employer under the common law is considered to have fulfilled this duty if he acted reasonably. The determination as to whether an act of employer was reasonable or not, is a matter for the court to decide. In this respect, the court may have regard to the established practices in a particular trade or industry, the state of knowledge about a particular danger and the severity of the possible injury. The determining factors are not by any means exhaustive.

This is owing to the fact that a conduct that may be reasonable in respect of one person may not be reasonable to another. An employer owes a greater duty to an apprentice than to the skilled employed and to the handicapped employee than one who has no disability.

In *Latimer v. A.E.C.*,²⁴ it was decided *inter alia*, that when determining whether an employer has acted reasonably or not, the court may consider the economic cost of taking safety measures balanced against the risk of injury to employees if these measures are not taken or only taken in part.

Thus, it will not be out of place to consider at this juncture, the common law duties of an employer in relation to the Act. At common law, an employer has a duty to take reasonable care for his employees' safety and this may take any of the following forms:²⁵

a. **THE DUTY TO PROVIDE PROPER AND SAFE PLANT AND MACHINERY**

This duty imposes on the employer to ensure that all the machines or tools to be used by the employee must be reasonably safe and adequate for the purpose for which they are intended. This was the reasoning of the court in the English case of *Taylor v. Rover Co. Ltd.*²⁶ where it was held that an employer who knew either personally or through his representatives that a piece of equipment was defective but who failed to withdraw it from use was liable. In this case, the plaintiff lost his eye when the top of a chisel flew off owing to the excessive hardness of the top of the chisel. Four weeks before, a piece of the top of the same chisel has broken off and slightly injured another employee. The court held that the company was liable for breach of their duty and the plaintiff was awarded damages.

b. **THE DUTY TO PROVIDE A SAFE WORK ENVIRONMENT**

This duty is very important in that it has been described as a personal duty to the employer and that he cannot escape liability by delegating it even to a skilled and competent contractor.

This duty has to do with the structure of the factory or place of work as opposed to the equipment and plant in the factory. However, both must be safe to enable the employer escaped from liability.

c. **DUTY TO PROVIDE A SAFE SYSTEM OF WORK**

Under the common law, the duty imposes upon the employer an obligation to provide safe physical layout of work. The consequence in which work is to be done and general working conditions. A system of work has been dissented as "a practice which is permanent and continuous and not merely a method which is casual and emerging in the day's work."²⁷

²⁴ (1953) 3 WLR 259

²⁵ *Ikoni U.D.*; Op. Cit. p. 122

²⁶ (1966) 1 WLR 191

²⁷ Ruff, A.R., *Commercial and Industrial Law* (England, Macdonald of Evans Ltd, 1984), 127

It involves also the provisions of Warnings and Notice and the issue of special instructions and pointing to the fact that the employer must take reasonable care for the safety of his employees. This was the position in the case of Clifford V. Charles H. Challen & Son Ltd.²⁸

In this case, the work in which an employee was engaged involved sticking pieces of wool together with a synthetic glue. It was well known that this glue would cause dermatitis if allowed to dry on the skin. A government notice was displayed in the workshop warning of the danger and setting out the precautionary measures that were necessary, that is, the use of a protective cream. The employer kept a stock of this cream in the store to which the men had access but none in the workshop and the foreman did nothing to encourage or enforce the use of the cream. An employee contracted dermatitis through using the glue, it was held that the protective cream should have been provided in the workshop itself and an effective system established to ensure the use of it. The employer was therefore in breach of his duty to the employee. The court further stated that the employee was however guilty of contributory negligence. Hence, the amount of damages awarded was reduced to half.

Thus, it is worthy of mention that this duty of employer of labour is personal and cannot be delegated in such a way as to absolve the employer from personal liability.

Again, the duty cannot be discharged unless the employer gives his workers proper instructions and reasonable supervision. The defenses available to the employer in case of action arising due to his failure to fulfill any of the duties enumerated above are that;

- a. There is contributory negligence of the employee
- b. He has exercised reasonable care
- c. *Violenti non fit injuria*

CONCLUSION

The Act is centered on the efforts of the Government in compelling the employers to keep the working place environment free from pollution and safe for the workers.

Under the duty or responsibility imposed by the Act on the employers of labour, it is worthy to note that the Act did not intend to provide for the control of industrial pollution or the pollution of the general environment. The concern of the Act is restricted to the protection of the workers within the confine of the work-place environment. This is because the Act makes it mandatory for an occupier of a factory to keep it in a clean state and free from effluvia arising from any drain, sanitary inconvenience or nuisance.²⁹

The object of the Act is summed up in the statement of Lord Pearson in the English case of *Stone v. Haygarth* which was based on the English Factories Act 1961. In his words stated thus:

The Act ... should be regarded as a beneficial rather than a penal statute. Its object is to secure proper working condition for persons employed to do manual labour in certain operations and the penalties for failure to provide such conditions are merely incidental to that object.

Furthermore, the point that the Act was enacted to check against pollution of the working environment and the protection of the health of workers in the factory, there is need to refer the provisions of Section 45 (1) of the Act. The section is to the effect that:

In every factory in which, in connection with any process carried on there is given off any dust or fume or the other impurity of such a character and to such extent as to be likely to be injurious or offensive to the persons employed or any substantial quality of dust of any kind, all practicable measures shall be taken to protect the persons employed against inhalation of dust or fumes or other impurity and to prevent its accumulation in any workroom and in particular, where the nature of the process makes it practicable, exhaust appliances shall

²⁸ (1951) 1 KB 295

²⁹ *Ibid* Section 7 of the Factories Act

be provided and maintained as near as possible to the point of origin of the dust or fume or other impurity so as to prevent it from polluting the air in any workroom.

In the light of the foregoing, the Act is an apt description of satisfactory provision that concerns itself with the protection of workers and their immediate environment but has nothing to offer for the protection of the entire environment against industrial pollution. That being as it were, environmental protection is and must be a crucial ethical aspect of all industries. This Nigeria's formal environmental regime has developed significantly from humble beginning.³⁹ It is therefore pertinent that every employer of labour or company is duty-bound to safeguard the interest not only of its owners but also of its workers society and the entire environment.

RECOMMENDATION AND CONTRIBUTION TO KNOWLEDGE

Flowing from the definition of factory given by the Factories Act, The Act is applicable only to enclosures or premises in which or within the close or cartilage or precincts of which persons are employed in manual labour. This indeed is one of the limitations of the Act. It is therefore recommended in this research that the scope of the Act should be expanded due to the substantial increase in economic and manufacturing activities and the growth of small scale and cottage industries that may not fit the definition of factory within the Act. A vast majority of work-place environments are not registerable under prevailing law and are therefore not within the regulatory supervision of the factories inspectorate division in the Federal Ministry of Labour and Productivity.

The provisions in the Factories Act in areas of sanctions are not devoid of flaws. One of its fundamental flaws is the sanctions regime that does not seem to enhance Law abiding. Specifically, the sanctions regime Part X of the Act is not satisfactory. The sanctions regime need a review.

Sections 69 (1) to (5) provide for the joint and individual liability of the owners, occupiers and employees of factories where there is a breach of any of the provisions.

For instance, section 71 of the Act provides for a fine of ₦5,000.00 or two years imprisonment when such a contravention causes death. It is submitted in this research that such provision need a review as it does not only discounts the lives of workers but also place a preference and economic value on the manufacturing processes rather than the lives of employees. By the provisions of section 71 (1), (2) and (3), jurisdiction to try all offences under the Factories Act is vested in the Magistrate court. Furthermore, section 3 (4) and (5) dealing with non-registration or change in user status of registrable premises, a contravention is liable to a fine of ₦2,000.00 or to imprisonment for 12 months or both.

Sequel to the above, it is expedient to make a remark that in the present day, the aim of the Act is defeated in many areas relating to sanctions for contravention, the conditions, welfare and safety of workers in work environment. A review is therefore necessary.

It is our humble opinion that the punishment provided for in this Act are persuasive in the breach rather than in compliance. Statutory provisions alone will guarantees nothing if they are not backed up with adequate enforcement mechanism.

It is also suggested in this paper that the fines imposed by the Act are too meager to be enforced on offenders or defaulters. There should be upward review of the fines.

Again, this research also recommend that a wholesome review of the factories Act be under taken in a way as to accommodate the definitional and conceptual problems earlier mentioned in order to procure more effective compliance through an improved sanctions or compensations regime. There should be strict application of the provisions of the Factories Act.

There should be regular reports by the employers of labour stating in writing the status or conditions of the work-place environment to the inspectors who will in turn inspect compliance.

³⁹ Ladun M.T., Material and Cases on Environmental Law and policy -117-244 (Zaria-Nigeria, ECONET publishers, 2004