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Prepared and Presented by:

Carla-Anne Harris-Roper

Attorney-at-Law,

Employment Matters Caribbean



**Ethical Considerations in addressing the
Employee/Independent Contractor
Conundrum: An Analysis of
National Housing Trust v Marksman Ltd.**



**RADIO JAMAICA
NEWS**

Marksman security guards are employees not contract workers, court rules

1:46 pm, Fri September 23, 2022

The Revenue Court in a landmark decision on Friday ruled that third party security guards employed to Marksman Security Limited are employees and not contract workers and that the company should immediately begin paying over their three percent National Housing Trust contributions.

Justice David Batts has, however, blocked efforts by NHT to recover \$806 million in outstanding contribution.

+ This decision has been hailed by many (who may be well intentioned but are uninformed) as the courts making a “general declaration” about the employment status of not only security guards but also (in general) persons who are commonly styled as being “contract workers” or “independent contractors”

What are we doing today?

- + 1. Examine the law related to distinguishing:
 - + - who is a worker - (contract **OF** Service),
vis-à-vis
 - + -who is an "independent contractor" (Contract **FOR** Services)
- + 2. The attorney's role in facilitating their client's intentions in drafting employment contracts - how far does/should "I am a creature of instructions" go?

What is a Contract OF Service?

- + Contract **of** service in modern employment relations is called 'employee or worker/ employer' relationship - in the olden days it was called the "Master and Servant" relationship
- + Very loosely speaking, 'an employee is someone who works specifically/personally for an employer'
- + Certain rights, duties and obligations attach to both parties

What is a Contract FOR Services?

- + The contract **for** service in modern employment relations refers to the '*employer /independent contractor relationship*'.
- + This could include subcontracting, consultancy services, or "trade services" etc.
- + Loosely speaking independent contractor works or is in business for himself - self employed.

Who determines the nature/type of the contract?

- + It has fallen to the common law courts (judges) and in some cases employment/industrial tribunals to determine what type of contract actually exists based on the facts before it.
- + The courts/tribunals have devised a number of tests to assist them in that task (will be discussed through the **Marksman Case**)
- + This is can be a very difficult area of the law even for the most experienced lawyers to predict the results with any degree of certainty - there are many grey areas

Has legislation given any clarity?

- + The Jamaican legislation have not really assisted in giving clarity to the issue of who is an 'employee/worker' or what is a 'contract of service'
- + Each labour law gives a different definition in line with that Act's purpose and various words ostensibly cover the same persons; **worker/employee/workman**

Holidays with Pay Order (1973)

(Paragraph 2)

"worker" means any person who has entered into or works under a contract with an employer, whether the contract be by way of manual labour, clerical work or otherwise, be express or implied, oral or in writing and whether it be a contract of service or of apprenticeship or a contract **personally** to execute any work or labour, but does not include

(a) any person employed by the Government; or

(b) any person employed in the service of the Kingston and St. Andrew Corporation Council or of any Parish Council;

Or (c) a director of any company ...

Maternity Leave Act

(Section 2)

- + **“worker”** means an individual of the female sex who has entered into, or works under, a contract with an employer, whether the contract is express or implied, and (if it is express) whether it is oral or in writing and whether it is a contract of service or of apprenticeship, and includes any such individual employed in the service of the Government (including service in the Jamaica Defence Force and the Jamaica Constabulary Force)

Employment Termination and Redundancy Payments Act (Section 2)

- + **"employee"** means an individual who has entered into or works (or, in the case of a contract which has been terminated, worked) under a contract with an employer, whether the contract be for manual labour, clerical work or otherwise, be express or implied, oral or in writing, but does not include-
 - (a) any person employed by the Government;
 - (b) any person employed in the service of the Council of the Kingston and St. Andrew Corporation or in the service of any Parish Council,

Employment (Equal Pay for Men and Women Act)

Section 2

- + **“employee”** means an individual who has entered into or works, or normally works, under a contract of service or of apprenticeship;

Trade Union Act 1938 –Amended 2002

"WORKERS" means all persons employed in trade or industry, whether or not in the employment of the employer with whom an industrial dispute arises;

Legislative Definition

LRIDA – Pre 2002

Section 2:

“In this Act unless the context otherwise requires–

"WORKER" means an individual who has entered into or works or normally works under a contract of employment".

A limitation of this definition - which persisted for over 25 years was that once a person ceased to work under a contract of employment - for example as a result of dismissal - that persons ceased to be a worker under the LRIDA - could receive no protection .

See: R v Minister of Labour and Employment, The Industrial Disputes Tribunal, Devon Barrett, Lionel Henry and Lloyd Dawkins Ex-parte West Indies Yeast Co. Ltd (1985) 22 JLR 407.

Legislative Definitions

LRIDA – Post 2002

Section 2 **"WORKER"** means an individual who has entered into or works or normally works (or where the employment has ceased, worked) under a contract, however described, in circumstances where that individual works under the direction, supervision and control of the employer regarding hours of work, nature of work, management of discipline and such other conditions as are similar to those which apply to an employee."

Why is the distinction important?

- + The distinction between employee and non-employee is important because of the different treatments accorded to each in the law relating to:
 - Employment Protection
 - PAYE (Taxes)
 - Occupational Safety and Health
 - Vicarious Liability
 - The implied terms of the contract of employment

Why is the distinction important?

- + An “employee”/Workers is entitled to receive:
 - Sick leave
 - Maternity leave
 - Redundancy payments
 - Vacation leave
- + They are also:
 - Eligible for pension benefits on certain conditions
 - NHT and NIS are deducted at source



- + **National Housing Trust v**
- + **Marksman Ltd and Robert Epstein**
- + [2022] JMRC (unreported)
- + Delivered September 23, 2022

According to data from the Private Security Regulation Authority there are currently 300 registered security companies and 25,000 registered security guards.

For years security guards have been labelled as "independent contractors" by security companies, in the context where the protection afforded by labour laws are generally applied to "employees" not "independent contractors" or "contract workers"

- The labelling of security guards as independent contractors meant that security companies would not be liable to collect and pay over statutory deductions due to the National Housing Trust under the **National Housing Trust Act** (NHT Act), and the Ministry of Labour (National Insurance Scheme) under the **National Insurance Act, 1966** (NI Act).



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- ❑ By virtue of **Section 12(1)** of the **NHT Act**, an employer is required to deduct its employee's contribution and pay same to the Trust from his/her salary. The contribution due is 3% of the employee's salary. Additionally, the employer is required to pay over to the Trust its contribution in respect of each person employed to him/her. The total contribution to be paid by the employer is 2%.-
Section 11 of the **Act** and **Regulation 2** of the **National Housing Trust (Contributions) Regulations, 1979**.

Similar provisions are contained in **Section 4(1)** of the **NI Act** and the **Second Schedule** to said Act.



Under both legislation self-employed persons/independent contractors are responsible for making their own contributions to the NHT and NIS.

For years security companies have maintained that security guards are independent contractors and have failed and/or refused to pay over their portion of the contributions due to the NHT and NIS.



The NHT challenged this position in the Supreme Court in the case of **National Housing Trust and Marksman Limited and Robert Epstein, Claim No. 4 of 2018 [2022] JRMC 1.**

DECLARATIONS SOUGHT BY THE NHT in the case

The following were the main
Declarations sought by the NHT from
the Court:

That the 1st Defendant (Marksman Limited) is an employer and contributor within the definition, meaning and designation of the provisions of the NHT Act.

DECLARATIONS SOUGHT BY THE NHT CONT'D



THE 1ST DEFENDANT IS LIABLE TO PAY EMPLOYER'S CONTRIBUTIONS PURSUANT TO THE PROVISIONS OF THE NHT ACT.



THE DEFENDANT'S PAY THE SUM OF \$477,980,257.77 FOR EMPLOYER'S CONTRIBUTIONS FOR FINANCIAL YEARS 2000-2016. IN ADDITION, THE NHT SOUGHT INTEREST AND DAMAGES.

DEFENCE BY MARKSMAN LIMITED

The main grounds of defence offered by Marksman were as follows:

They are not an employer of security guards and other personnel engaged to perform security services.

Security guards provide security services pursuant to fixed term contracts and are all independent contractors.

DEFENCE BY MARKSMAN LIMITED

There has been waiver, acquiescence, misrepresentation resulting in such unfairness as to cause estoppel to arise.

The claim is barred by statutory limitation and/or laches.

THE MAIN EVIDENCE AND ARGUMENTS PUT FORWARD BY NHT

The evidence of a security guard who had worked for Marksman for 11 years was examined. Based on his evidence:

A duty officer and/or supervisor of Marksman was responsible for setting his schedule and location for duties to be carried out.

MAIN ARGUMENTS AND EVIDENCE OF NHT CONT'D

- ❑ If there were changes to the place that the security guards were assigned to work, the supervisor would advise them.
- ❑ Marksman exercised disciplinary control over the guards.
- ❑ Marksman maintained supervisory control over the guards.

MAIN ARGUMENTS AND EVIDENCE OF NHT CONT'D

Marksman is an employer of the security guards and a contributor under the Act.

As a result of the existence of an employer-employee relationship Marksman is obliged to remit the contributions to the NHT by virtue of the Act.



MAIN ARGUMENTS AND EVIDENCE OF NHT CONT'D

- ❑ Based on cases such as **Uber BV & Others v Aslam & Others** [2021] UKSC 5, the terms of the contract are important but not decisive when determining the existence of an employer/employee relationship. The labelling of the legal relationship as employer/employee is not decisive as the Court will examine the circumstances to determine the true nature of the relationship.

MAIN ARGUMENTS AND EVIDENCE OF NHT CONT'D

Several terms of the contract strongly suggest that the security guards are employees and not independent contractors for the following reasons:



The guards were required to perform their duties personally;



They were required to be available to work if required unless ill;

MAIN ARGUMENTS AND EVIDENCE OF NHT CONT'D

Subject to the direction, supervision and control of Marksman as relates to what, where, how and in what manner the work is to be done;

The guards were supplied with the tools needed for the job such as firearms;

MAIN ARGUMENTS AND EVIDENCE OF NHT CONT'D

- ❖ The guards were required to comply with detailed rules and regulations of Marksman and were subject to disciplinary rules and sanctions for breaches.

THE MAIN ARGUMENTS AND EVIDENCE OF MARKSMAN AND 2ND DEFENDANT

- Marksman and the 2nd Defendant put forward a two-pronged argument. In the 1st instance they contended that the security guards are independent contractors. However, in the 2nd instance if the court finds that they are employees, the NHT is barred by estoppel, acquiescence, delay, laches and/or misrepresentation from recovering the sum claimed.

THE MAIN ARGUMENTS AND EVIDENCE OF MARKSMAN CONT'D

- ❑ Counsel for Marksman contended that in the periods January 1st 1986 to 1999, January 1999 to 2007, 2007 to 2018, NHT did not murmur and/or complain about the approach taken by Marksman and other companies who engaged security guards as independent contractors.

THE MAIN ARGUMENTS AND EVIDENCE OF MARKSMAN CONT'D

- ❑ Marksman provided evidence of a letter dated December 27, 1985, from the Commissioner of Income Tax which stated that security guards were independent contractors. Thereafter, there was a new contract with security guards and security companies wherein the guards were labelled as "subcontractors". Upon receipt of this letter Marksman stopped paying NHT contributions for the security guards.

THE MAIN ARGUMENTS AND EVIDENCE OF MARKSMAN CONT'D

- During the period 1989-1997 there was no complaint from NHT. During the period 2007-2018, the NHT queried the status of the guards, but took no further action. As a result of this inaction on the part of NHT, it was contended that if the Court determined that the security guards were employees, the claim should be barred on the basis of delay, estoppel and/or acquiescence.

THE MAIN ARGUMENTS AND EVIDENCE OF MARKSMAN CONT'D

- ❑ In January 1999 an agreement was reached between the then Minister of Finance and the security companies to deduct taxes from fees payable to the security guards as self-employed individuals and pay these sums to the relevant authorities. As a result of this agreement Marksman commenced deducting and paying over the 3% of the guards' earnings as self-employed individuals.

THE MAIN ARGUMENTS AND EVIDENCE OF MARKSMAN CONT'D

- ❑ NHT made full refunds to security guards between 1986 to 2018 which shows its acquiescence to the arrangement.

ISSUES FOR COURTS DETERMINATION

- The following are two of the main issues the Court had to consider:
 - ❖ Whether an employer-employee relationship exists between Marksman and the security guards?
 - ❖ If the guards are employees whether NHT is statute barred, or in the alternative is NHT barred by laches, acquiescence, waiver and/or estoppel from recovering the sums claimed?



SUMMARY OF MAIN LAW AND ANALYSIS OF COURT

- ❑ The question of whether a contract is a *contract of service* or a *contract for service* is a question of mixed fact and law.
- ❑ Case law supports various approaches such as the control test, the organizational test and the multiple factor test.



MAIN LAW AND ANALYSIS OF COURT CONT'D

- The control test examines whether the person is under the direct supervision and control of the other party in relation to the manner in which the work is done.



MAIN LAW AND ANALYSIS OF COURT CONT'D

- The organizational test examines whether the person is employed as a part of the business and whether his work is integral to the business.



MAIN LAW AND ANALYSIS OF COURT CONT'D

- ❑ The multiple factor test examines several factors to determine whether an individual is an employee or independent contractor.

MAIN LAW AND ANALYSIS OF COURT CONT'D

- ❑ The exercise of a high degree of control is no longer conclusive as to whether an individual is an employee or independent contractor.
- ❑ Courts have now moved to the application of a multiple factor test. Authorities such as **Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance** [1968] 2 WLR 775 have established this principle.

MAIN LAW AND ANALYSIS CONT'D

This case establishes that three conditions must be fulfilled:

The servant agrees that in consideration of a wage or other remuneration he will provide his own work and skill in the performance of some service for his master;

MAIN LAW AND ANALYSIS CONT'D

The worker agrees expressly or impliedly that in the performance of that service he will be subject to the other's control in sufficient degree to make that other master.

The other provisions of the contract are consistent with it being a contract of service.

MAIN LAW AND ANALYSIS CONT'D

- ❑ **Market Investigation Ltd v Minister of Social Security**
[1969] 2 WLR 1 is another well known authority which examines this area of law i.e., the proper test for determining whether a person is an employee or an independent contractor.

MAIN LAW AND ANALYSIS CONT'D

According to said case the matters to be considered include:

The degree of control exercised over the worker;

Whether the worker provided his own equipment and manpower and;

The extent of his financial and managerial involvement in the Project.

MAIN LAW AND ANALYSIS CONT'D

- In the instant case (NHT and Marksman) Batts J was of the view that authorities such as **Market Investigation Ltd** are applicable to this jurisdiction. The words of the contract between the parties are important but not conclusive in determining the issue.



MAIN LAW AND ANALYSIS CONT'D

- Batts J opined that a review of the terms of the contract alone would not suffice in determining the true nature of the relationship. As he stated:

MAIN LAW AND ANALYSIS CONT'D

"... although I start my assessment of the issue by looking at the contract, it matters not what Marksman and the security guards intended to create. What matters is what they did create." The important question to be answered is what relationship was created by the contract between the parties. The contract and what it calls itself is not determinative. However, the terms are relevant as the relationship between the parties is generally born from the terms set out in the contract

Paragraph 53 of the Judgement

FINDINGS OF THE COURT

- The security guards are not in business of their own account. They work for Marksman Limited and are a part of its organization. Marksman exercises direct control over the work performed by the security guards.

FINDINGS OF THE COURT (CONT'D)

- The equitable doctrine of laches may defeat a claim on the basis that a claimant may be barred by his unconscionable delay. The applicable maxim is *"delay defeats equities"* or the *"equity aids the vigilant and not the indolent"*.

FINDINGS OF THE COURT CONT'D

- The doctrine of laches has been explained in the case of **Chevron Caribbean v the Attorney-General** [2013] JMSC Civ.93:

"...Equity has long recognized the effect of laches. Where a wronged party sits on his rights and does not pursue them, it lulls the party in the wrong into a false sense of security. It impacts their ability to prove

FINDINGS OF THE COURT CONT'D

their case; it means they must have taken decisions which impact their ability to account for the wrong done, in financial terms."

FINDINGS OF THE COURT CONT'D

- In the instant case, the Supreme Court determined that NHT had knowingly accepted payments at the contractor's rate and had refrained from taking legal action for numerous years. NHT had acquiesced in the treatment of security guards as independent contractors for an extended period of time.

FINDINGS OF THE COURT CONT'D

- ❑ It would therefore be unjust to give the NHT the remedy being sought. Its consistent conduct over 30 years amounted to its waiver of its entitlement to the employer's contribution.

DECISION OF THE COURT



NHT succeeds on its claim for a declaration that the security guards are employees and not independent contractors.



Notwithstanding the claim for the sum of \$477,980,257.77 being employer's contributions for financial years 2000-2016 plus interest, penalty etc is denied. NHT had sat on its rights for far too long to succeed.

DECISION OF THE COURT CONT'D

- A Declaration is made with prospective effect that the security guards are employees of Marksman. The effect of this, is that Marksman will have to start paying NHT contributions with effect from the time of this ruling.

**Dave Robinson, Sentry Service Co. Limited and Inez Brown,
Supreme Court Civil Appeal No 18/99, (Court of Appeal)
unreported delivered April 3,2003**

- + Unsurprisingly, it is noted that this is not the first time that the issue of whether security guards are employees or independent contractor was previously examined in the case of **Dave Robinson, Sentry Service Co. Limited and Inez Brown, Supreme Court Civil Appeal No 18/99, (Court of Appeal) unreported delivered April 3,2003**
- + It was determined in this case that the security guard in question was an employee and not an independent contractor.
- + But it appears that this case has largely been ignored by security companies as the judgment was delivered in the context of a case of vicarious liability.

IMPACT OF THE DECISION

- ❑ This case will have far-reaching impact on not only Marksman but other security companies. Several security companies use contracts with similar terms and operate under similar arrangements with security guards.
- ❑ The case will also impact other employers who have inaccurately labelled workers as independent contractors in an effort to circumvent labour legislation, without having regard to the various common law tests which determine the true nature of the relationship.

IMPACT OF THE DECISION

- The case will also impact the treatment of statutory deductions such as NIS in relation to security guards. As there are similarities between the NHT and NIS Acts, the Ministry of Labour now has the legal backing to insist that the employer's contributions are paid over in respect of security guards from the date of this decision.

IMPACT OF THE DECISION

- ❑ The case will impact the costs to customers of security companies. Security companies have already warned that costs will have to be increased.
- ❑ The decision that security guards are employees means that several labour legislation such as the Holidays With Pay Act and Order (vacation leave and sick leave entitlement) and Maternity Leave Act will be applicable to guards who qualify.

IMPACT OF THE DECISION

Some security companies have denied the guards vacation leave and maternity leave on the basis that they were classified as independent contractors. There is therefore the potential for an increase in litigation by security guards who are being denied such entitlement.

I am a *“Creature of Instructions”*



Commentary on the Phrase “Creature of Instructions”

“What the public, however, lose sight of is that behind an attorney stands a client who instructs an attorney.

In the legal fraternity, a lawyer is defined as a ‘creature of instruction’, meaning they act out instructions received from their clients.

The creature of instruction will advise what a client can do, but the client will decide what he wants to do. Thereafter the legal representative has his instructions and he has to execute these instructions to the best of his abilities.

Failure to do so may land him in front of a disciplinary tribunal at the Law Society.

Many times the public misattribute the nastiness of a party to an attorney, while in reality it is that of the person who has employed the attorney.”

Commentary on the Phrase “Creature of Instructions”

- + *To put it otherwise, an attorney is the conduit of the intentions – good or bad – of a client.*
- + *Granted, an attorney advises his client on the law and the probabilities for success of a case, but at the end of the day it is the client who chooses down which path he or she wants to go.*

To put it in colloquial short and simple:

“Behind a mean attorney stands a mean client!”.

- + **See: <https://www.news24.com/news24/a-creature-of-instruction-20140829> (August 29, 2014)**

THE LEGAL PROFESSION ACT THE LEGAL PROFESSION

(Canons of Professional Ethics) RULES

+ Canon I

+ ***An Attorney Shall assist in Maintaining the Dignity and Integrity of the Legal Profession and Shall avoid even the appearance of professional impropriety***

+ (b) An attorney shall at all times maintain the honour and dignity of the profession and shall abstain from behavior which may tend to discredit the profession of which he is a member

THE LEGAL PROFESSION ACT THE LEGAL PROFESSION

(Canons of Professional Ethics) RULES

- + Canon I
- + ***An Attorney Shall assist in Maintaining the Dignity and Integrity of the Legal Profession and Shall avoid even the appearance of professional impropriety***
- + (c) An attorney shall observe these Canons and shall maintain his integrity and encourage other attorneys to act similarly. He shall not counsel or assist anyone to act in any way which is detrimental to the profession

THE LEGAL PROFESSION ACT THE LEGAL PROFESSION

(Canons of Professional Ethics) RULES

+ Canon III

- + ***An Attorney Owes a duty to the Public to make his Counsel available and a duty to the State to Maintain its Constitution and its Laws and shall assist in improving the legal system***

(f) An attorney shall not act contrary to the laws of the land or aid, counsel or assist any man to break those laws

THE LEGAL PROFESSION ACT THE LEGAL PROFESSION

(Canons of Professional Ethics) RULES

+ Canon III

An Attorney owes a duty to the Public to make his Counsel available and a duty to the State to Maintain its Constitution and its Laws and shall assist in improving the legal system

(i) An attorney shall not by his actions stir up strife or litigation, and where it is in the interest of his client, he shall seek to obtain reasonable settlement of disputes

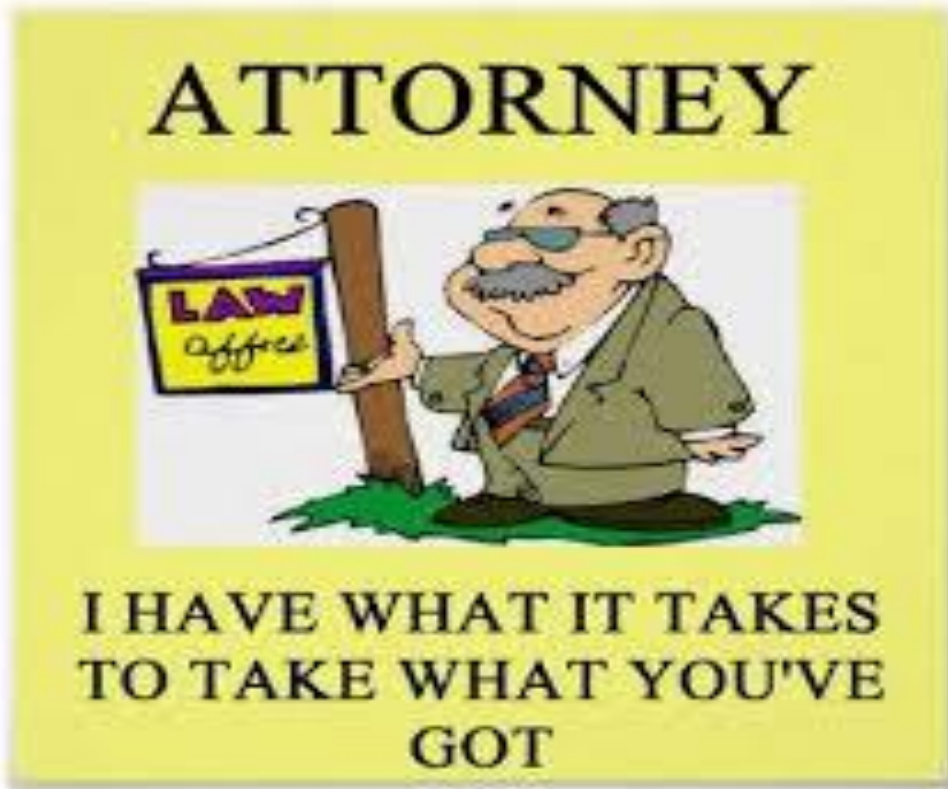
THE LEGAL PROFESSION ACT THE LEGAL PROFESSION

(Canons of Professional Ethics) RULES

+ Canon IV

+ ***An Attorney Shall act in the best interest of his client and represent him honestly, competently and zealously within the bounds of the law. He shall preserve the confidence of his client and avoid conflict of interest***

(c) An attorney shall exercise independent judgement within the bounds of the law and the ethics of the profession **for the benefit of his client.**



Faustian bargain:
An agreement in which a person abandons his or her spiritual values or moral principles in order to obtain knowledge, wealth or other benefits.

THE LEGAL PROFESSION ACT
THE LEGAL PROFESSION
(Canons of Professional Ethics) RULES

+ **Canon IV**

+ ***An Attorney Shall act in the best interest of his client and represent him honestly, competently and zealously within the bounds of the law. He shall preserve the confidence of his client and avoid conflict of interest***

(q) An attorney shall withdraw forthwith from employment or from a matter pending before a Tribunal:

(ii) Where the client insists upon him representing a claim or a defence that he cannot conscientiously advance;

THE LEGAL PROFESSION ACT
THE LEGAL PROFESSION
(Canons of Professional Ethics) RULES

- + **Canon IV**
- + ***An Attorney Shall act in the best interest of his client and represent him honestly, competently and zealously within the bounds of the law. He shall preserve the confidence of his client and avoid conflict of interest***
- + (q) An attorney shall withdraw forthwith from employment or from a matter pending before a Tribunal:
 - (v) Where the client by any other conduct renders it unreasonably difficult for the Attorney to carry out his employment as such effectively, or in accordance with the judgement advice of the Attorney or the Canons of Professional ethics;

THE LEGAL PROFESSION ACT
THE LEGAL PROFESSION
(Canons of Professional Ethics) RULES

+ **Canon IV**

+ ***An Attorney Shall act in the best interest of his client and represent him honestly, competently and zealously within the bounds of the law. He shall preserve the confidence of his client and avoid conflict of interest***

(q) An attorney shall withdraw forthwith from employment or from a matter pending before a Tribunal:

(vi) where for any good and compelling reason it is difficult for him to carry out his employment effectively

THE LEGAL PROFESSION ACT
THE LEGAL PROFESSION
(Canons of Professional Ethics) RULES

+ **Canon VI**

- + An Attorney Has a Duty to maintain a proper professional attitude toward his fellow attorneys
- + * (cc) An attorney shall not knowingly represent **falsely** to a Judge or a an official of a Court or other Tribunal that a particular state of fact exists.

THE LEGAL PROFESSION ACT THE LEGAL PROFESSION (Canons of Professional Ethics) RULES

+ Canon VI

- + *Breach by an Attorney of this provision shall constitute Misconduct in a professional respect and an attorney who commits such a breach shall be subject to any of the orders contained in **Section 12 (4) of the Legal Profession Act**
- + (a) **striking off the Roll** the name of the attorney to whom the application relates;
- + (b) **suspending** the attorney from practice on such conditions as it may determine;
- + (c) the **imposition on the attorney of such fine** as the Committee thinks proper;
- + (d) subjecting the attorney to a **reprimand**;
- + (e) **the attendance by the attorney at prescribed courses of training** in order to meet the requirements for continuing legal professional development;
- + (f) the **payment by any party of costs** of such sum as the Committee considers a reasonable contribution towards costs; and
- + (g) **the payment by the attorney of such sum by way of restitution** as it may consider reasonable, so, however, that orders under paragraphs (a) and (b) shall not be made together.

NIGERIA -

- + THE DUTIES OF LAWYERS TO CLIENT
- + There are ethics and professional code of conduct which a lawyer must adhere to. In Nigeria, lawyers are bound by **The Rules of Professional Conduct (RPC)**. The rules of professional conduct covers aspects like, their duty to the profession, duty to clients, and their duty to other lawyers as well.

NIGERIA :

DUTY TO TAKE FULL INSTRUCTIONS

- + Before counselling a client on the best course of action in a legal matter, a lawyer must always have full instructions from the client, fully understand the client's situation, and gather all the relevant information.
- + A lawyer has an obligation to obey **all valid directions** from a client, and failing to do so could result in legal action being taken against him for any losses that may arise.

CONCLUSION

The practice of labelling persons as employees who are in fact independent contractors will not withstand judicial scrutiny. This case follows a long line of established common law authorities which show that the Courts will look beyond the words in the contract to determine the true nature of the relationship between the parties.

Employers (and their lawyer) should be mindful of this saying:

If it walks like a duck, swims like a duck and quacks like a duck, then it probably is a duck.