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The views expressed in this Journal are those of the contributors and not necessarily those of the Editors, Editorial Board or the Publishers.

THE LEGAL STATUS OF TRADE UNIONS IN NIGERIA: EMERGING ISSUES*

1.0. INTRODUCTION

Trade Unions “*are preeminently national institutions*”. They engage in the task of defending and improving the conditions of life and work of their members within the confines of national systems of industrial relations.¹

It is difficult if not impossible to see a country without a trade union. Where workers work, there is an intense desire to congregate. The truth however is that the evolution of trade union differs from one country to another. For example, in England, the industrial revolution which took place at the end the eighteenth and early nineteenth centuries combined with the relentless effort of many trade associations to form trade union despite statutory provision to the contrary² led to the eventual recognition of trade union.³ But in Nigeria, the Nigerian workers were saved of the agony and bitterness connected with historical struggles for legal recognition of Trade Unions.⁴ That was not to say that the British colonial authorities greeted the emergence of trade union in Nigeria with euphoria.⁵ There was a plethora of evidence that the

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1. See J.P Windmuller *The International Trade Union Movement* in R. Blanpain *Comparative Labour Law and Industrial Relations in Industrialized Market Economies* Volume 2 fourth and revised edition Kluwer Law and Taxation Publisher-Boston “yet for well over a century trade unions have also had international interests and commitment many of which they have expressed through international labour organizations.”
2. As a result of the industrial revolution, and the growth of trade unionism. The parliament passed unlawful Oaths Act, in 1797, and the combinations Act of 1799 and 1800. The effect of those acts was to make workers organization in all trades of occupations a criminal offence. “A penalty of three months” imprisonment was specified for those that formed an association of workers that had the purpose of: raising pay, reducing hours or interfering in any other way with the Employers business or the employment of workers’ see Charles Barrow *Industrial Relations Law*. 1997 Cavendish Publishing Limited London p 1-15 for history of trade union in Britain.
3. Conspiracy and protection of property Act 1875 repealed some of the draconian laws against Trade Union.
4. Emiola *Nigerian Labour Law*. Emiola (Publisher Ltd) 2000 pg 312.
5. Some writers have maintained a position that Trade Union in Nigeria was not a product of natural development but a creation of British Colonial Authority see E.M. Hyde and H. Davidson, *The Organization of Employers and Trade Unions Collective Beginning*, in J.E. Gonders (ed), *Personnel Management in Developing countries*, institute of Personnel Management London, 1964. pl 2.

Colonial masters opposed the activities of Workers' Association vehemently, for example in 1879, artisan workmen in the public works department embarked on a three day strike between 9 and 12 August 1897, against the arbitrary change in working hours by the Colonial Authorities. The Colonial Governor McCallum even before the commencement of the strike action wrote a letter inundated with his anti union policy berating the strike action of the workers as that of a riotous mob.⁶ Similarly the same Colonial Governor demonstrated his attitude of non compromise to opposing view and anti union policy in another protest involving the police. The point we are making is that the struggle for formation of trade union in Nigeria was not as fierce as that of Britain but nonetheless it was not without opposition.

Though trade organization of craftsmen such as Iron mongers, bronze - workers, blacksmiths, leather-workers and wood carvers etc have existed among a number of ethnic groups in Nigeria even before the advent of the British.⁷

However, the trade unionism in the modern sense as we have it today started in Nigeria in 1912 with the formation of the Nigerian Civil Service Union and between 1912 and 1937, the history of the Nigerian Trade Union movement was predominantly that of the three unions which are the Nigerian Civil Service Union (formerly Southern Nigeria Civil Service Union, the Railway workers' Union and the Nigerian Union of Teachers⁸.

The year 1938 witnessed a phenomenon of growth in trade Unionism because of the enactment of the Nigerian Trade Union Ordinance which culminated in to the establishment of many Trade Unions in Nigeria. The ordinance⁹ was later known as the Trade Union Act Cap 200 and guaranteed unfettered freedom of association and trade union rights.

6. A.G Hoplains, "The Lagos strike of 1897: An Exploration in Nigerian Labour History: past and present, 35, December 1966.pp. 133-135.

7. Oladosu Ogunniyi, Nigeria Employment Law in perspective (1991) Nigeria Folio Publishers Ltd pg 224.

8. Ibid pg. 224.

9. 179 Ibid.

One thing we observe from the history of trade unionism in Nigeria is the late development of the unionism in the country. Reason for this is not far fetched. In the early days, employment relationships were strictly family affairs. Official paid employment or civil service job was foreign to us and virtually non-existent. In fact the advent of the European traders and missionaries, led to the growth of the concept of wage earning employment in most African countries and the fact that some people offered to work with them did not break their permanent interest in the family farm. As Roper succinctly explained:

“Generally, the family farm is worked by the farmer and his wife or wives and family¹⁰. Communal duties and rights are woven in to the agricultural system; and ancient system of obligatory communal labour still survives in many parts for subsidiary farming activities such as bush clearing, making forest paths or village roads. Chiefs still retain some customary powers under native law to regulate aspect of life and labour¹¹”

This paper seeks to consider the Legal Status of a trade union. The legal status of a trade union is of some importance since it is that status that determines the fundamental issue of juristic personality of the trade union and its related and relevant issues. This paper is divided into six parts. The first part which is an introduction discusses the history of trade union in Nigeria. The second part explains the meaning of trade union while the third part deals with its legal status. Part four considers the statutory rules for registration of trade union while part five examines critically the negative attribute of making a trade union a legal entity and conclusion is in part six.

2.0 MEANING OF TRADE UNION:

Every association or union can't be a trade union. For an Association to be a trade union, it must fulfill the requirements of the law.

Two requirements are prescribed by law, the first relates to the membership of the union and the second relates to the purpose of the

10. S.O. Akindipe Trade Union rules and the demand of natural justice IFJR Vol. 2004 pg 203.11.

J.I. Roper, Labour problems in West Africa 1958. Penguin, London, at p.2.

union. Consequentially a trade union is defined as any combination of workers or employers, whether temporary or permanent, the purpose of which is to regulate the terms and condition of employment of workers¹².

As to the requirements of membership, it must be a combination of workers or employees. The term "workers" is wider in import than that of employee. It includes the self employed if they offer personal services¹³.

In **Broadbent V. Crisp**¹⁴ where the applicant was a pools collector, the court held that he was a worker, on the ground that he was under the control of the defendant and under a personal obligation to perform his contract. A worker is interpreted¹⁵ to mean any employee, that is to say any member of the public service of the federation or a state or any individual (other than a member of any such public service) who has entered into or works under a contract with an employer, whether the contract is for manual labour, clerical work or otherwise, expressed or implied, oral or in writing, and whether it is a contract personally to execute any work or labour or a contract of apprenticeship. Lord Wright explains that the interpretation of a worker particularly¹⁶ with the phrase "or otherwise" means that the "entire range of wage earning or salaried employment" will be covered. Also, the fact that another phrase opens the ambit to any form of contract "whether it be a contract personally to execute any work or labour" means that the independent contractors may be covered by the statutory provision¹⁷.

In all, it is obvious from that definition that the relationship between employee and employer arises from the contract¹⁸ except the employees of the Governments whether from the federal public service or state Civil Service whose relationship has statutory flavour.

12. S. 1 (1) of Trade Union Act Cap T14, LFN 2004.

13. Allison Bone & Marnah Suff Essential Employment Law Second Edition Cavendish Publishing Ltd London 1999 pg 166.

14. (1974) I.C.r. 248 (N.I.R.C).

15. S. 54 Trade Union Act Cap T14 LFN 2004.

16. National Association of Local Government Officers v. Bolton Corporation (1943) AC 166.

17. E.E. Uvieghara, Labour Law in Nigeria Malt House Press Ltd 2001 First Edition 316

18. Adeniyi, Olatunbosun, Prohibition of Classified Public Workers from Trade Union activities and Freedom of Association from the legal Tempo Aspects of law: Essay in honour of Chief Obiyera Oduunlade edited by Okpigue Othluka Esq and 2 others. Zenith Publishers 2001 Nigeria.

The second requirement is that of proper purpose. A trade Union should be formed to regulate the terms and conditions of employment of workers. Oguntade, J.C.A in **Udoh & 2 Ors. V Orthopedic Hospitals Management Board & Anor**¹⁹ explains this very well when he observed:

“Primarily, the reason for the existence of a trade union is to regulate the terms and conditions of employment of workers. This is another way of saying that trade unions are to ensure that the terms and conditions given to workers by employers are suitable”.

That does not mean that a trade union can not have any other purpose and the fact that a trade union has other purposes different from the purpose of regulating the terms and conditions of employment shall not be a factor to refuse its registration.²⁰ However the Registrar shall cancel the registration of a trade union if it is proved that the primary purpose which the union is pursuing is different from that of regulating the terms and conditions of employment of workers.²¹

Similarly, alteration of rules of trade unions shall not be allowed by the Registrar if by its effect, the principal purpose of the said trade union would cease to be that of regulating the terms and conditions of employment of workers.²² In **Re Union of Ifelodun Timber Dealers and Allied Workers**²³ Court justified the refusal by the Registrar to register a combination of persons calling themselves “Union of Ifelodun timber Dealers and Allied Of-workmen” on that ground (absence of the primary purpose). De Lestang C.J. observed:

“...there is nothing in these objects which to use the words of the definition, regulates the relation between workmen and masters or between workmen and workmen or between masters and masters. It seems to me that the main purpose of the association in so far as they may be

19. (1990) 4 N.W. L.R. (part 142) 52.

20 See section 1(2) of Trade Union Act T14 LFN 2004.

21 *Ibid* S 7 (1) (d).

22 *Ibid* S. 29 (2) (b).

23 (1974)1 CR 230.

extracted from the published objects are the protection and expansion of the timber trade and the welfare of all persons, whether they be workmen or employers engaged in that trade. The association does not, therefore come within the definition of a trade union”.

The definition of a trade union further specifies that the combination should not be regarded as an unlawful combination merely because its activities may constitute a restraint of trade. Again, a union will not cease to be a union because its purpose include or excludes the provision of benefits for its members²⁴

3.0 LEGAL STATUS OF A TRADE UNION

When a company is registered in Nigeria by Corporate Affairs Commission, such a company becomes a body corporate different from the promoters who formed the company²⁵. Consequentially, the registered company as a corporate personality becomes capable of exercising the function and powers of a corporate personality which are the power to sue and be sued in its registered name, the power to hold separate property, the power to enter into its own contract etc.

The question we intend to consider here is to find out whether a registered trade union is a corporate entity or personality capable of enjoying its attributes thereof. The starting point of resolving that issue in Nigeria threw everybody into the region of uncertainty and confusion when Betuel J. Pungently exclaimed in **Nigerian Stevedores and Dockworkers & Union V Opara**²⁶ “that the union is either a quasi juristic person by virtue of the operation of the provision of our Trade Union Act or it is not”. Unfortunately, there is no provision in the Trade Union Act that invest a registered trade union in Nigeria with the status of a corporate personality. It was therefore no big deal (though the consequence may be calamitous) for the court in **Nigerian Civil Service Union (WS) V Alien**²⁷ to hold that a registered trade union is not a legal entity.

24. Prof. Uvieghara condemns the inclusion in the definition of Trade Union of the provision relating to benefit as superfluous. See Trade Union Law in Nigeria, 1976 Ethiopie Publishing Corporation Benin City page 90.

25. See S 37 of the Nigerian Companies and Allied Matters Act 2004 Laws of the Federation of Nigeria.

26. Unreported Suit No p(H) 1963). High Court, Port-Harcourt, Nigeria. 339.

27. (1972) 2 UILR 316.

However the confusion and uncertainty created by the position of the court in that case was cleared when Obaseki J.S.C said obiter in **Nigeria Nurses' Association V Attorney General of the Federation**²⁸ that a trade union has a legal personality. A learned professor lends credence to that view but posited that "if a registered trade union is a legal entity, it can only be by inference from the meaning and effect of the provisions of the Act²⁹. It can be easily argued that such an intention existed on the path of those who drafted the Act. The Act imposes a duty on a registered grade union to have a registered office³⁰, render annual returns³¹ and to submit an audited account of its fund to the registrar³² and for failure to comply, the said trade union as a distinct body and its officers shall be guilty of an offence against the Act³³.

On the issue of property, the Nigerian Act is silent on who should hold the property of the Union but Section 28(4)³⁴ provides the clue when it states that "*the property of each of the merged unions*" according to the terms of the merger "be forwarded to the registrar and should be *vested in the merged unions*"³⁵.

The implication of that is that a registered trade union is capable of holding its property real or personal in its name.

On the issue of juristic personality, a registered trade union **can sue and be sued** in its name. In **Taff Vale Rly V Amalgamated Society of Railway Servants**³⁶ the House of Lords argued that the power to sue

28. (1981) 11-12SC, 1, 11 and 12, other members of the judges who gave judgment in the case did not address this issue but not the less it was correct.

29.E.E. Uvieghara p. 340.

30. Section 395) Trade Unions Act Cap T14 Laws of the Federation.

31. Ibid S 37.

32. Ibid S 37.

33. See S 37.

34. See S 37 see also S38.

35. Ibid.

36. (1901) AC 426 Farewell J in the High Court observed that "the Trade Unions Act rendered the purposes of trade unions legal and enabled these purposes to be carried out by virtue of the specific powers provided in the Acts. Furthermore, the Acts inter alia established a system of union registration, legalized trade union contracts, authorized the ownership of property through trustees and imposed duties of account on officers. Consequently, the existence of these specific provisions meant that the parliament must have intend to treat a registered trade union as if it was a legal entity." The Court of Appeal reversed farewell's judgment but the majority of the House of Lord strongly approved his opinion that registered trade unions possessed similar powers and liabilities as a corporate body. The decision has been followed in a great number of subsequent cases.

and be sued is a natural consequence that flow from the statutory provision creating a trade union. Lord Halsbury declared:

*"if the Legislature has created a thing which can own property, which can employ servants, and which can inflict injury, it must be taken to have impliedly given the power to make it suable in a court of law for injuries purposely done by its authority and procurement"*³⁷

In Nigeria, it is contended that the combined effect of **section 38 (5)**³⁸ **section 42(1)**³⁹ of the Act is to make a registered trade union a juridical person.

On the other hand, if the certificate of registration of a trade union is cancelled,⁴⁰ or the trade union is dissolved, the certificate of registration shall be cancelled, and the legal personality of the said Trade Union comes to extinction or ceases to exist. The said Trade Union can no longer enjoy the attributes of a legal personality.

In Nigeria Nurses Association and S.S. Okezie V. Attorney-General of the Federation & 2 others.⁴¹ The plaintiffs who were a registered Trade Union filed two actions in the High Court, Kaduna, on 30th November 1977 and 6th January 1978. The two actions were consolidated, and judgement was given in favour of the plaintiffs on 12th October 1978, though on the 15th of August 1978, the Federal Military Government in Nigeria promulgated a decree⁴² which determine the existence of the plaintiffs as a trade union because their certificate

37. Ibid at 43 6.

38. See E.E. Uvieghara pg 342 S 38(5) provided that the union or any person capable of suing as a representative may sue and S 42 (1) provides that in certain circumstances the registrar may, if it is expedient to do so by reason of the refusal or neglect of the union or the members to take legal proceedings to take action on behalf of the union and in the union's name.

39. N 7.

40. Ibid S 14 deals with cancellation of registration of a trade union.

41. (1981) 11-12S.C. 1.

42. Trade Unions (Amendment) Decree 1978. The Military Government used this Decree to restructure trade union set up in the country and brought them under one labour organization. In the process, the certificate of registration of the "Nigerian Nurses Association" was cancelled. The union and its officers instituted the suits. The judgment of Kaduna high court was given without any reference to the decree which determined its existence.

of registration as a trade union was cancelled and the cancellation was made to have retrospective effect from 3rd August 1977, that is to say, to cover the dates 30th November 1977 and 6th January 1978 when the plaintiff instituted the two actions. On appeal, the Court of Appeal held that the plaintiffs had ceased to exist as a trade Union by virtue of the provisions of the Amending Decree of 1978⁴³ which had the effect of canceling their certificate of registration. The Supreme Court upheld the judgment of the Court of Appeal. Obasekj JSC discussed the issue of legal status of a trade union when he said:

*"A registered trade union is a legal person and the birth and death of legal persons are determined not by nature but by the law. They came into existence at the will of the law, and they endure during its pleasure. Their extinction is called dissolution"*⁴⁴.

Aniagolu J.S.C who delivered the lead judgment of the Court spoke in the same vein when he said:

*"On 3rd August 1977" "the Nigerian Nurses Association" which had before then been a registered Trade union, was, by operation of the 1978 Amending decree, obliterated out of existence. As at 30th November 1977 and 6th January 1978 it was no more, in the contemplation of law, alive, to have taken out the writs it took out on those dates"*⁴⁵.

This case has shown that the perpetual succession which is an attribute of legal personality comes into extinction when the certificate of registration of trade union is cancelled.

43. The Trade Union (Amendment) Decree 1978.

44. Ibid pg 12.

45. Ibid pg 23.

4.0 STATUTORY PROVISION FOR REGISTRATION OF A TRADE UNION

Before a trade union is registered, it can collect subscriptions or dues and take further steps that will help her to fulfill the requirements for registration. But the pre-registration privilege or right does not include the right to take any step to achieve the purpose for which the union is to be formed.⁴⁶

An application for registration must be made to the Registrar in the prescribed form and must be signed in the case of a trade union of workers, by at least fifty members of the proposed union and in the case of a trade union of employers, by at least two members of the union.⁴⁷

The application must state the name under which it is proposed that the said trade union shall be registered and the address of the office which, if the union is registered, is to be the registered office.⁴⁸ Each application shall be accompanied by two copies of the rules of the union and should state (a) the name, address, age and occupation of each of the persons, by whom the application is signed, and (b) the official title, name, address, age and occupation of each official of the union.⁴⁹

The Registered rules must contain provisions with respect to the various matters mentioned in the first schedule of the Act⁵⁰ and the Registrar must register the trade union and its rules at the same time if the proposed trade union meets all the requirements for registration. But if it appears to the Registrar that the application is defective in one form or another, the Registrar shall notify the applicant accordingly and must take no further action in relation with the application until the defect is cured to

46. S 2(1) Trade Unions Act Cap T14 Laws of the Federation.

47. *Ibid* S 3(1).

48. *Ibid* S 3 (5).

49. *Ibid* S 3 (6).

50. *Ibid* S 3 (4) matters to be provided for in the Registered rules mentioned in the first schedule of the Act are (1) The name of the Trade Union (2) The whole of the purposes of the Trade Union and the purposes for which its funds may be applied (3) subscription and due to be paid by members. (4) Conditions of benefits to members if any (5) Fine and forfeitures to members (6) Procedure for making and altering rules. (6) Procedure for making and altering rules (7) Provision for appointment and removal of elected officers (8) Qualification for membership and inclusion of right to be voted for. (9) Provision making all members inclusive in General Committee of management (10) A provision for keeping a nominal roll of members (11) Provision for investment of the funds of the Trade Union or deposit in bank.

his (Registrar) satisfaction or a fresh application is made in its place⁵¹. If on the other hand, the application is without any defect, the Registrar shall cause a notice of the application to be published in the Federal Gazette, stipulating that any objections to the registration of the trade union in question may be submitted to him in writing during the period of three months beginning with the date of the Gazette in which the notice is published.⁵²

The Registrar has three months after the end of the period for objection to consider any objections submitted to him and if he is satisfied that no proper objection has been raised that non of the purposes of the proposed trade union is unlawful, that the requirements of the Act and of the Regulations⁵³ with respect to the registration of trade union have been complied with shall register the union as a trade union. However, the Registrar has a statutory duty to refuse registration of a trade union if it appears to him that any existing trade union caters for the same interest as the one applying for registration.⁵⁴

The approval of the Minister of labour is a condition precedent for registration of trade union. S3 (21)⁵⁵ provides that no “*combination of workers or employers*” shall be registered as a trade union “*save with the approval of the minister on his being satisfied that it is essential to register the trade Union “either by regrouping existing trade unions, registering a new trade union or otherwise provided that “no trade union is registered to represent workers or employers in a place where there already exists a trade union”*”.

If the Registrar refuses to register the union, he shall without any delay send to the Applicant a notice in the prescribed form to that effect, stating the date from which the time for appealing against the refusal is to run and shall publish a notice to that effect in the federal Gazette.⁵⁶ The Applicant or any official or member of the proposed trade union has

51. S.5 Ibid.

52. Ibid S 5.

53. Ibid the Trade Unions Regulations prescribes various forms including the fee and Form for the application for registration.

54. Ibid S 5 (4) “The Registrar shall not register the trade union if it appears to him that any existing Trade Union is sufficiently representative of the interests of the class of persons whose interest the union is intended to represent”.

55. Ibid.

56. Ibid.

within the period of thirty days, beginning with the date so specified to appeal to the Minister against the refusal and the Minister's decision is final.⁵⁷ Once the registrar has registered a trade union, he must issue to the Union a certificate of registration which is conclusive evidence that the requirements of the Act and the regulation for the registration of trade unions have been complied with.⁵⁸ However, in any proceedings for the cancellation⁵⁹ of the registration of the union on the ground that its registration was obtained by fraud or as a result of mistake, the applicant is barred from proving that the certificate is a conclusive evidence of compliance with the requirements of the Act.⁶⁰

The consequence of registration is that the registered trade union possesses the powers and duties of a trade union under the Act⁶¹ and the power is lost when the said trade Union ceases to be so registered.⁶²

5.0 Corporate Entity with its Negative Attribute of Liability

We have taken time to explain the controversy surrounding the status of trade union as a corporate entity. Doubt does not exist any more on the status of trade union as a legal entity. But the catalyst which occasioned corporate entity status in industrial relations was the imposition of statutory obligations on the trade union being a statutory creature.

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57. Ibid S5 (5) Before this provision the state high court was vested with the power to hear appeal against refusal by the aggrieved applicant. But sections 5 (5) and 8 Ibid transferred the power of the high court to the Minister of labour. Prof. EE Uvieghara at pg 327 noted that "... it would have been difficult in practice to fit the minister into the legal system. Furthermore, natural justice at common law and fair trial under the constitution may well have been trampled upon since it is the minister who would have refused the registration in the first place". Supreme Court held in *Adediran v Interland Transport Ltd* (1991) 9 NWLR 155 that section 6 (b) of the constitution gives power to the courts to determine issue of civil right and obligation and that the said power could not be altered by any other law.
58. Ibid S 5
59. S 7 Ibid deals with cancellation of registration. It provides that "Subject to the provisions of the section of section 10 (2) of this Act, the Registrar shall cancel the registration of a trade union if it is proved to his satisfaction - (a) that the registration of the Union was obtained by fraud or as the result of a mistake; or (b) that any of the result of any of the purposes of the union is unlawful; or (c) that after receipt of a warning in writing from the Registrar, the union has deliberately contravened or continued to contravene any provision of the Act or the Regulation; or (d) the principal purpose for which the union is in practice being carried on is a purpose other than that of regulations the terms and condition of employment of workers; or (e) the union though in existence, has ceased to function or (f) the Union has ceased to exert.
60. Ibid the provision is essential so as to correct the mistakes that the registrar may have made while registering the trade union. If it is discovered that the union could not have been registered if certain facts later discovered against its registration had been within the knowledge of the registrar.
61. By virtue of S 5 (7) Ibid, the registered trade union has statutory. Power to perform the functions of a Trade Union in the Act. The same provision invests a registered trade union with the attribute of a corporate personality though it is not expressly stated in the Act.
62. Ibid S 2 (2) but note that such a trade union has power to take any necessary step to dissolve the union.

Consequently, every trade union registered in Nigeria must have a registered office⁶³ where it can issue out notices and accept correspondence for the purpose of communication. When such a trade union is registered, the Registrar must record the registered address as the registered office of the Union⁶⁴.

It is the duty of the officers of the said registered trade union to intimate the Registrar of any change of the registered office, within 30 days of the change.⁶⁵ If any trade union in disobedience carries on business as a trade union for more than 30 days without having a registered office, such a trade union is liable to a fine of ₦10 for every day during which it has no registered office⁶⁶. It is compulsory for every registered trade union to prepare and deliver to the Registrar of Trade Unions Annual Return⁶⁷ on or before 1st June of every year in prescribed form. The Annual Return must be certified as correct by the auditor appointed by the trade union⁶⁸.

To ensure accountability and prudence in the management of Union's funds, there is statutory imposition that annual returns must be accompanied with some other documents⁶⁹ which will help the registrar to detect or determine the accuracy of the returns.

Furthermore, any member of trade union can request for a copy of annual return sent to the registrar,⁷⁰ the reason behind this right is to detect the

63. S. 21(1).

64. S. 21 (2).

66. S. 21 (4).

67. S.37 (1) Annual Return must Include: (a) Full particulars of the assets and liabilities of the union at the date to which the return is made out. (b) Full particulars of the receipts and expenditure during the year ending on that date. (c) The prescribed particulars of the membership of the union at the date, and of any changes which occurred there in during the year ending with that date. (d) Evidence that the amount due to the Nigeria labour congress from the check-off contribution of the members has been paid to it note that check-off system has been abolished, contributions are now voluntary. Such other particulars as may be prescribed and must show separately the amount expended by the Union during the year on each of its various purpose.

68. Ibid.

69. Ibid which are: (a) A copy of the rules of the Union as in forces on the date to which the return is made out. (b) A copy of alterations of the rules of the Union and all new rules adopted during the years ending with that date, showing in respect of each alteration or new rules the date on which it was adopted whether or not it has been registered and, if so the date on which it came or will come into force. A complete list of the officials of the union at the date to which the return is made out and a list of all changes in the officials which occurred during the year ending on that date, showing the date of each such change.

70. Ibid. S.37.

discrepancy if any between the annual account that is sent and the one which ought to be sent. A trade union which fails to comply with any of the requirements on Annual returns is guilty of an offence and shall be liable to a fine of ₦50⁷¹. In addition, the registrar has a power to cancel the registration of a trade union, if after a warning the said trade union remains recalcitrant as far as the contravention is concerned.

The treasurer of a trade union has a duty to render an account of the union's fund⁷² and a copy of such an account after being audited must be sent to the registrar within a month of its submission to the members⁷³. In addition, every member of the trade union including her executives must abide by the rules⁷⁴ of the trade union which govern and administer the management of the union as a contract not only between the union and its members but between members and members inter se. Lord Atkinson explained the contractual relationship between members of trade union and the rules of the union and the reason why members should be bound by it when he said "*of course when a workman becomes a member of a trade union, he contracts to be bound by the rules of that union, and the contracts which he enters into with the union or with each of his fellow workmen are to be found, if found at all, in those rules.*"⁷⁵

It is therefore clear that the creation of corporate personality and its extension to trade union is not only to invest it with power to enjoy rights but also to incur liabilities both civil and criminal.

71. Ibid. S 37 (1).

72. The duty may be imposed by the rules of the union and the committee of management has an inherent power also to direct the treasurer to do so. When that is done by any of those means the treasurers must prepare a full and accurate account showing. (a) All sums received or paid by him since the date to which the last account submitted by him was made out: (b) The balance remaining in his hand at that date and must cause the account, when prepared to be audited by the duly appointed Auditor.

73. S. 38-39. Note that every officer that has some thing to do with the fund of the trade union must give account too. Consequentially E.E. Uvieghara commented that the duty of the treasurer to render accounts apply so far as they are capable of applying to every other official of a trade union and accordingly, reference to the treasurer must be so construed. See E.E. Uvieghara Labour Law in Nigeria Malthouse law Books 2001 Lagos Nigeria 33.

74. Ibid.

75. Amalgamated Society of Carpenters, Cabinet Makers and Joiners V Braithwaite [1922] 2 AC 440. 655.

76. Trade Union Act 1871 made trade union a lawful organization. But the Act did not directly deal with the status of trade union as a legal personality. However those unions that were registered under the 1871 Act and the subsequent 1876 Act were conferred with a degree of corporate personality equivalent of "quasi corporate status" by the courts in United Kingdom.

However that was not the position of Law in the past before Trade Union Act 1871⁷⁶ came in to existence. Before that time, trade unions were unincorporated associations, regarded as illegal with no corporate personality and appurtenant rights.

The task confronting the law makers then was how to recognize trade union as a legal institution and invest it with rights but not with liabilities. Consequentially, several proposals that were made in the past to the Royal Commission on Labour before 1871 Act for the incorporation of trade unions were rejected because of the perception that the incorporation of trade unions would make it to be susceptible to liability. It was perceived that if trade unions are liable to be sued, the central funds of the union could be affected and it would be unfair that their large central funds should be amendable to legal process due to the acts of hundreds of branch officials all over the country⁷⁷.

As a result, the legislature endeavoured to cover trade union with immunity despite the imposition of statutory requirement of incorporation⁷⁸. An attempt to protect trade unions from the wrath of law could not endure forever since there is no benefit without its alloy of responsibility. If trade unions enjoy the attributes of corporate personality, it is equitable and fair that they should also bear the burdens of incorporation by complying with all the rules of incorporation and face sanctions if they do otherwise.

That was the message that the Supreme Court of Nigeria was passing across in the case of **Marina Nominees Ltd. V. F.B. I.R**⁷⁹ where **Aniagolu J.S.C.** said:

77. Citrin N.A "Trade Union Law", 2nd Edition. Stevens & Sons, 1960. See also Prof. E.E. Uvieghara and Dr. J.E.O. Abugu. Trade Union Law in commercial Law in Nigeria by E.O Akanki (ed) University of Lagos Press 799.

78. The 1871 Act in Britain for the first time made a trade union a legal entity and provided for registration of a trade Union but it also gave immunity to trade Unions for tortuous liability and remove liability for trade Unions for criminal conspiracy. The Nigerian Law could not but follow the same example. Section 24 of the trade Union Act Laws of the federation of Nigerian Cap T 24 2004 gives protection to trade Unions for tortious acts in respect of trade disputes. "An action against a trade Union (whether of workess or employers) in respect of any tortuous act alleged to have been committed by or on behalf of the trade Union in contemplation or in furtherance of a trade dispute shall not be entertained in by any court in Nigeria".

79. (1986) 2 NWLR (Pt 20) 48. Note that though the case concerned a registered company under c companies and Allied Malters Act the principle as it touches statutory liabilities of an incorporated company is applicable to trade Unions.

“It is admitted in all side that Marina Nominees Ltd. is a registered company limited by shares under the Companies Act 1968. It follows that such a registered company under that Act, it is subject to all the incidents, under the Act, of a company so registered. It enjoys all the benefits accruing there from as well as suffering or enduring all liabilities which such registration entails, including the liability to discharge all the duties imposed by the Act”.

Consequently, the trade union could not but be liable in certain circumstances⁸⁰.

6.0 CONCLUSION

The broad compass of corporate personality could not be stretched too far. Prof. E.E. Uvieghara and Dr. J.E.O. Abugu have commented rightly that *“A trade union, although possessing many of the most attributes of a corporate person is clearly not a person at law”*.⁸¹

Therefore, a sharp distinction cannot be made between its fortunes and those of its members and officials⁸².

80. In Nigeria, there is plethora of statutory provisions making trade union liable for civil wrongs and guilty of criminal offences. For example, The Trade Union (Amendment) Act 2005 makes room for liability of trade union in respect of strike, picketing etc. Section 30 (7) of the Act criminalizes strike and lock out. It states *“Any person trade union or employer who contravenes any of the provisions of this section commits an offence and is liable on conviction to a fine of N10,000.00k OR six month imprisonment or to both fine and imprisonment. etc.* In *Taff Vale v. ASRS (1901) AC 436*. Lord Halsbury said *“if the legislature has created something which can own property, which can employ servants and which can inflict injury, it must be taken I think to have impliedly given the power to make it suable in a court of law for injuries purposely done by its power and procurement.”* Also, in United Kingdom, section 224 of the TULR(C) A 1992 removes immunity of trade union for inducing abreach of, or interfering with a contract of employment or threatening to do so where the employer under the contract of employment is not a party to the dispute except in the case of lawful picketing.

81. Even a company in Nigeria does not possess the full attributes of a natural person. It has been held that a company cannot be a citizen of Nigeria. In *Alumaco Manufacturing Co (Nig) Ltd v. Oshodi/Isollo Local High Court suit no M/10/83 Adefarasin C.J* said that *“A company is not with respect, a citizen of Nigeria and can not be sued before a Customary Court Law Cap 33 as amended”*. In United States of America, some corporations as juristic persons have enjoyed certain constitutional rights intended for natural persons. In Britain, the court held that a company is incapable of *“exercising itself in the duties of piety and religion (Rollowswin Investment Ltd v. Chromolit Portugal Cutelarias (1970) 2 All E.R 673* or capable of being deemed a rogue and a vagabond (*A.G v. Walker Gate Press Ltd [1930] 142 LJ 408*)

82. See Prof. E.E. Uvieghara and Dr. J.E.O. Abugu *Trade Union Law in Commercial Law in Nigeria* edited by Prof. E. O. Akanki University of Lagos Press 2005 pg. 781. They argued that liability of officers of the trade union will affect the trade union despite its immunity. To them, anything *“which affects the membership, especially liabilities on them in the circumstances of a trade dispute, is likely to affect the union as an entity*

In the final analysis, controversy as to the status of trade union has been laid to rest in Nigeria but not in Great Britain where the position of law has been beclouded with uncertainty as a result of the legislative enactment⁸³ which rendered void⁸⁴ and inapplicable the judicial precedents⁸⁵ which purported to invest the trade union with the status of corporate personality.

Be that as it may, the statutory obligations imposed by law as concomitant of registration and corporate entity attribute are not autocratic or disdainful except in some circumstances where they are made to subvert the rule of law and the right of the people⁸⁶.

Therefore, it is our view that to subject trade unions to certain minimum standards that will ensure equity and accountability in the formulation and execution of their policies should not be seen as unfair but a benefit that could facilitate legitimacy in trade unions' administration.

83. The Industrial Relations Act 1971 provided for the formal incorporation of trade unions and the trade unions who registered under the Act attained full incorporated status. However, in 1974, the new Labour Government repealed the majority provisions of the Industrial Relations Act 1971 and replaced it with the Trade Union and Labour Relations Act 1974. Section 2(1) of the 1974 Act (now section 10(3) of TULCA 1992) provides that a union is not and should not be treated as if it is a body corporate, that it is unincorporated association of workers and that attempt to register it under Companies Act would be void.

84. The Act expressly provided that trade union should not be treated as a corporate body. In *EEPTU v. Times Newspaper* (1980) where a trade union sued for defamation over an article which was published in the newspaper. Oconnor J. held that despite the fact that section 2(1) conferred on unions most of the features of corporate status, the implication of the express legislative enactment that trade union shall not be treated as a corporate body was that the union was not a corporate body and consequentially did not possess the reputation of a corporate body. He explained further that a trade union was an association of individuals with exhaustively defined collective powers. His decision as to the status of trade union was affirmed by the Court of Appeal in *Times Newspaper Ltd v Derbyshire County Council* (1992) 3 All ER 65. The Court of Appeal made an obiter comment that Galian's case was not the current position of the law. That the law had changed since *NUGMU v. Gallian* and a union could no longer maintain an action for defamation in its own name: "the statutory injunction that a union is not and is not to be treated as a corporation meant that it should not be treated as having a personality capable of being damaged through defamation." However, element of confusion set in when the case came to the House of Lord on appeal. Lord Keith who gave the leading judgment which was unanimously followed by his colleagues commented favourably on the decision of the Court of Appeal in *Gillian* that it was a good judgment with sound reasons for it and went on to discuss the relevance of *Gillian's* case to other cases concerning non-trading associations. Lord Keith failed to comment on *EETPU* is case or on the assumption of the Court of Appeal that *Gillian's* case no longer represented the correct legal position.

85. *Farwell J's* decision in *Vale Railway Co v. Amalgamated Society of Railway Servants* (1901) AC 426 and the confirmation by the House of Lords. The re-affirmation in *Osborne v. Amalgamated Society of Railway Workers* (1910) AC 97. *Infact* Earl of Harlsbury observed that Trade Union Acts represented a trade union's charter of incorporations. In *Gillian v. National Union of General and Municipal Workers* (1946) KB 81 the Court of Appeal relied on *Taff Vale* to hold that a trade union possessed sufficient characteristics of a company to conclude that it has corporate personality and therefore is capable of being defamed. *Infact* *Uthwart J* and *Scott LJ* majority of the judges concluded that it should possess the attributes of an incorporated body. Even in *Bonsor v. Musician's Union* (1956) AC 100 Lord. Morton and Lord Porter recognized that a union may not possess the full powers of an incorporated body, yet they concurred with "the nation stemming from *Taff Vale* that a union possessed most of the attributes of a corporation.

86. The Trade Union Amendment Act 2005 is an example of this law.