

JUDICIAL APPROACHES TO EMPLOYER LIABILITY IN OUTSOURCED WORK ARRANGEMENTS: PROTECTING CONTRACT WORKERS IN NIGERIA’S OIL AND GAS INDUSTRY

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Abstract

The increasing reliance on outsourcing and labour subcontracting within Nigeria’s oil and gas industry has fundamentally reshaped employment relationships, creating a complex triangular structure involving principal employers, labour contractors, and contract workers. Outsourcing is often justified on grounds of efficiency, flexibility, and cost reduction, among other factors. This development raises significant legal questions regarding the identification of the true employer and the extent of liability owed to contract workers, particularly in relation to wages, occupational safety, and statutory employment benefits. This article examines judicial approaches to employer liability in outsourced work arrangements within Nigeria’s oil and gas sector. The paper examined other consequential issues, especially in terms of the judicial approaches to these developments in the Nigerian oil and gas industry. It found that while Nigerian courts have occasionally adopted progressive interpretations that favour employee protection, judicial approaches remain fragmented and insufficiently coherent to fully address the structural inequalities embedded in outsourced labour arrangements. It recommends a

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more expansive interpretation of employer liability that reflects the realities of modern labour relations in the oil and gas industry.

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1.0 INTRODUCTION

The Nigerian oil and gas industry remains one of the most strategically significant sectors of the national economy, contributing substantially to government revenue, foreign exchange earnings, and employment generation.¹ However, beneath its economic importance lies a complex and increasingly fragmented labour structure characterised by widespread outsourcing and labour subcontracting. In contemporary practice, major oil companies and their operational partners rarely maintain large direct employment workforces. Instead, they rely heavily on labour contractors, manpower agencies, and third-party service providers to supply workers across various operational levels, including technical, administrative, security, and maintenance roles.² This outsourcing model has created a triangular employment relationship involving the principal company, the labour contractor, and the worker. While the principal employer benefits from the labour and productivity of contract workers, legal responsibility for employment obligations is often shifted to intermediary contractors. As a result, contract workers in the oil and gas industry frequently find

¹ Nigerian Upstream Petroleum Regulatory Commission, Annual Statistical Bulletin 2022 (NUPRC 2023) <https://www.nuprc.gov.ng> accessed 23 June 2026.

²International Labor Organization, Non-Standard Employment around the World: Understanding Challenges, Shaping Prospects (ILO 2016) <https://www.ilo.org> accessed 23 June 2026.

themselves in a precarious legal position where they perform core business functions without being recognised as employees of the ultimate beneficiary of their labor.

The legal implications of this arrangement are profound. Issues relating to wages, occupational health and safety, pensions, job security, and access to remedies in cases of workplace injury or unfair termination become complicated by the difficulty of identifying the true employer. In many instances, labour contractors are minimally resourced entities that lack the financial capacity to meet statutory obligations, thereby exposing workers to systemic vulnerability.³ Nigerian labour law, particularly the Labour Act Cap L1 Laws of the Federation of Nigeria 2004, provides general protections for employees; however, it does not comprehensively regulate outsourcing arrangements or clearly define liability in multi-layered employment relationships. This legislative gap has left the determination of employer liability largely to judicial interpretation. Consequently, Nigerian courts, particularly the National Industrial Court, have played a critical role in shaping the legal understanding of outsourced employment relationships through case-by-case adjudication.⁴ Judicial responses, however, have not been entirely consistent. While some decisions reflect a willingness to pierce through contractual arrangements and recognise the economic reality of employment relationships, others adhere strictly to formal contractual distinctions, thereby reinforcing the separation between principal employers and contract workers. This inconsistency has created

³International Labor Organization, Decent Work in Global Supply Chains (Report IV, International Labor Conference, 105th Session, ILO 2016) <https://www.ilo.org> accessed 23 June 2026.

⁴ Chioma Kanu Agomo, *Nigerian Employment and Labor Relations Law and Practice* (Concept Publications Ltd 2011).

uncertainty in the law and has limited the extent to which judicial intervention can effectively protect vulnerable workers in the oil and gas sector.⁵

Against this backdrop, this article critically examines the judicial approaches to employer liability in outsourced work arrangements in Nigeria's oil and gas industry. It seeks to determine whether existing judicial reasoning adequately reflects the realities of modern labour relations and whether it provides sufficient protection for contract workers who remain structurally disadvantaged within outsourced employment systems.⁶ The objectives of this study are to analyze the legal framework governing outsourcing and employer liability in Nigeria, examine judicial decisions on employment relationships involving contract workers, identify gaps and inconsistencies in judicial reasoning, and propose reforms aimed at strengthening legal protection for workers in outsourced arrangements. This study adopts a doctrinal legal research methodology, relying on primary sources such as statutes, case law, and international labour instruments, as well as secondary sources including academic literature, policy reports, and institutional publications. The scope of the study is limited to outsourced employment relationships within Nigeria's oil and gas industry, with comparative references where necessary to enhance analytical depth.⁷

Ultimately, the article argues that outsourcing, as currently practiced in the oil and gas sector, has created a legal grey area that enables the

⁵ Chioma Kanu Agomo, *Nigerian Employment and Labor Relations Law and Practice* (Concept Publications Ltd 2011).

⁶ Guy Davidov, *A Purposive Approach to Labor Law* (OUP 2016).

⁷ Aderonke E Adegbite, *Fundamentals of Legal Research and Methods in Nigeria* (2022).

dilution of employer responsibility. It contends that a more coherent and purposive judicial approach, supported by legislative intervention, is required to ensure that contract workers are not excluded from the protections envisaged under Nigerian labor law.

2.0 CONCEPTUAL CLARIFICATIONS AND THEORETICAL FRAMEWORK

To properly situate the discussion on judicial approaches to employer liability in outsourced work arrangements, particularly within Nigeria's oil and gas industry, it is necessary to clarify the key concepts underpinning this discourse. This section provides a doctrinal foundation for understanding outsourcing, contract labour, employer liability, and the nature of employment relationships in modern industrial settings.

2.1 Outsourcing and Labour Subcontracting

Outsourcing refers to the practice whereby an organization delegates certain aspects of its operations or services to an external third-party entity rather than performing them in-house. In the employment context, this often manifests as labour subcontracting, where workers are formally employed by a labour contractor but deployed to work under the supervision and control of a principal company.⁸

In Nigeria's oil and gas industry, outsourcing is widely adopted as a cost-management and operational efficiency strategy. Major oil operators engage manpower firms to supply workers for roles ranging from clerical duties to offshore technical operations. While this structure is commercially efficient, it creates a disaggregation between the entity that

⁸ International Labor Organization, *World Employment and Social Outlook: Trends 2023* (ILO 2023) <https://www.ilo.org> accessed 23 June 2026.

benefits from the labour and the entity that holds the formal employment contract with the worker.⁹ Legally, outsourcing in Nigeria is not comprehensively regulated by a single statute, leaving its governance to general labour principles, contract law, and judicial interpretation.

2.2 Contract Workers

Contract workers are individuals engaged under fixed-term, temporary, or agency-based employment arrangements, typically through a third-party labour contractor. Unlike permanent employees, they often lack continuity of employment, job security, and access to long-term employment benefits such as pensions, gratuities, and health insurance.

In practice, contract workers in the oil and gas sector perform core operational functions identical to those of permanent staff, yet their legal status remains distinct due to the absence of a direct contractual relationship with the principal employer. This distinction is central to disputes concerning employer liability.¹⁰

2.3 Employer Liability in Employment Relationships

Employer liability refers to the legal responsibility of an employer to comply with obligations arising from the employment relationship, including payment of wages, provision of safe working conditions, and liability for workplace injuries, breaches of statutory obligations, and wrongful acts arising in the course of employment. Traditionally,

⁹ International Labor Organization, *Non-Standard Employment around the World: Understanding Challenges, Shaping Prospects* (ILO 2016) <https://www.ilo.org> accessed 23 June 2026.

¹⁰ Judy Fudge and Kendra Strauss (eds), *Temporary Work, Agencies and Unfree Labor: Insecurity in the New World of Work* (Routledge 2014).

employer liability is determined through the existence of an employment contract and the application of common law tests such as the control test, which examines who has the authority to direct how work is performed. However, modern labour realities have challenged this approach, especially in outsourced arrangements where control may be shared or exercised indirectly.¹¹

In such contexts, courts increasingly consider broader interpretative tools such as the integration test and the economic reality test, which focus on the substance rather than the form of the employment relationship. These approaches recognize that the true nature of an employment relationship cannot always be determined solely by contractual documentation, particularly where outsourcing arrangements are deliberately structured to obscure responsibility. By examining factors such as the degree of control exercised by the principal employer, the worker's integration into the enterprise, and the economic dependence of the worker on the principal employer, these tests provide a more realistic basis for allocating employer liability. Their application is particularly significant in Nigeria's oil and gas industry, where principal companies frequently supervise and direct the work of outsourced personnel while relying on the absence of a direct contractual relationship to deny responsibility for breaches of the duty of care.

2.4 The Nature of Employment in the Oil and Gas Industry

The Nigerian oil and gas sector operates through a complex network of joint ventures, service contracts, and subcontracting arrangements involving multinational corporations, indigenous operators, and

¹¹Mark Freedland and Nicola Kountouris, *The Legal Construction of Personal Work Relations* (OUP 2011).

specialized service providers. This operational model has evolved in response to the technical complexity of the industry, the need for specialized expertise, and the commercial objective of reducing operational costs while maintaining flexibility. Consequently, outsourcing has become an integral feature of workforce management, enabling principal operators to engage labor through third-party contractors for a wide range of operational and support functions.

Employment in this sector is therefore highly stratified. At the top are directly employed professionals of oil corporations, while at the lower tiers are contract workers engaged through manpower agencies. These workers often perform hazardous tasks, including drilling support, pipeline maintenance, security operations, and offshore logistics, yet remain structurally excluded from direct employment protections.¹² Despite working within the principal employer's facilities and being exposed to the same occupational hazards as permanent employees, contract workers are frequently denied equivalent employment benefits, job security, and legal safeguards. Their position within a multilayered contractual framework often creates uncertainty as to which entity bears responsibility for ensuring their health, safety, and welfare. This fragmented allocation of responsibility has contributed to persistent disputes concerning employer liability and the enforcement of the duty of care, particularly where workplace accidents or occupational injuries occur. This stratification has significant legal implications, particularly in determining who bears responsibility for workplace injuries, wage entitlements, and statutory benefits.

¹²International Labor Organization, *Safety and Health at the Heart of the Future of Work: Building on 100 Years of Experience* (ILO 2019) <https://www.ilo.org> accessed 23 June 2026.

2.5 Theoretical Framework: The “Tripartite Employment Relationship”

This study is anchored on the Tripartite Employment Relationship Theory, which explains modern labour arrangements involving three distinct actors: The principal employer (end-user of labour), The labour contractor (intermediary employer) and the worker (service provider)

Under this model, the traditional binary employer-employee relationship is replaced by a layered structure where responsibility is diffused across multiple entities. This diffusion often creates accountability gaps, particularly where the intermediary lacks the financial or institutional capacity to meet employment obligations.¹³ The theory is particularly relevant to Nigeria’s oil and gas sector, where outsourcing is extensively used, and where principal employers often distance themselves from liability by relying on contractual separation. The legal challenge, therefore, is whether courts should prioritise formal contractual relationships or the substantive economic reality of employment when determining employer liability.

2.6 Analytical Relevance of the Conceptual Framework

The foregoing concepts collectively establish that outsourced employment relationships are not merely contractual arrangements but legally complex structures that challenge traditional labour law doctrines. They also reveal a fundamental tension between formal legal categorization and substantive justice for workers.¹⁴ This conceptual foundation is essential for

¹³ Guy Davidov, *A Purposive Approach to Labor Law* (OUP 2016).

¹⁴ Mark Freedland and Nicola Kountouris, *The Legal Construction of Personal Work Relations* (OUP 2011).

understanding judicial responses in Nigeria, where courts are frequently required to determine whether a principal company can be held liable for the actions and obligations of its contractors in outsourced labor arrangements.

3.0 LEGAL AND REGULATORY FRAMEWORK GOVERNING OUTSOURCED EMPLOYMENT IN NIGERIA

Outsourced employment arrangements in Nigeria's oil and gas industry operate within a fragmented legal and regulatory environment. While several statutes and institutional instruments govern aspects of labour relations, none provides a comprehensive framework specifically addressing employer liability in triangular employment relationships. The existing legal framework consists of legislation such as the Labor Act, the Employees' Compensation Act 2010, the Factories Act, the Occupational Safety, Health and Welfare Bill (where applicable), regulations issued by industry regulators, and general principles of the common law. However, these instruments were largely developed to regulate conventional bilateral employment relationships and provide limited guidance on the allocation of rights and responsibilities between principal employers, labor contractors, and outsourced workers. Consequently, significant legal uncertainty persists regarding the entity that ultimately owes the duty of care to contract workers. As a result, legal responsibility in outsourcing arrangements is largely shaped by general labour statutes, judicial interpretation, and international labour standards.¹⁵ In the absence of clear statutory provisions, courts are frequently required to interpret contractual arrangements and apply common law principles to determine the existence and scope of employer liability on a case-by-case basis. This has

¹⁵ International Labor Organization, ILO Centenary Declaration for the Future of Work (ILO 2019) <https://www.ilo.org> accessed 23 June 2026.

resulted in inconsistent judicial outcomes and has left many outsourced workers uncertain about the legal remedies available where workplace injuries, occupational diseases, or breaches of statutory employment obligations occur. The inadequacy of the current framework therefore underscores the need for clearer legislative intervention to ensure effective protection of contract workers within Nigeria's oil and gas industry.

3.1 The Nigerian Labor Act (Cap L1 LFN 2004)

The Labour Act remains the principal legislation regulating employment relationships in Nigeria. It provides for minimum standards relating to wages, contracts of employment, working hours, and basic conditions of service. However, its scope is largely limited to “workers” in a traditional employer-employee relationship and does not expressly contemplate modern outsourcing structures. A significant limitation of the Act is its narrow definitional framework, which fails to clearly distinguish between direct employees and contract or agency workers. Consequently, workers engaged through labour contractors in the oil and gas sector often fall outside the protective reach of key statutory provisions, particularly where courts interpret their employment as existing only between the worker and the contractor.¹⁶

This legislative silence has allowed principal employers to avoid statutory liability by outsourcing labour functions while retaining operational control.

3.2 The Employees’ Compensation Act 2010

¹⁶ Chioma Kanu Agomo, *Nigerian Employment and Labor Relations Law and Practice* (Concept Publications Ltd 2011).

The Employees' Compensation Act (ECA) 2010 provides a framework for compensating employees who suffer occupational injuries, diseases, or death arising from employment. It establishes a no-fault compensation system administered by the Nigeria Social Insurance Trust Fund (NSITF).¹⁷ In principle, the Act has the potential to extend protection to contract workers in hazardous industries such as oil and gas. However, its effectiveness is constrained by the continued requirement of establishing an employment relationship, which becomes legally complex in outsourced arrangements.¹⁸

Where a worker is formally employed by a labour contractor, liability for compensation is often directed to the contractor, even where the principal employer exercises significant control over the working environment. This creates a structural gap in accountability, particularly where contractors are underinsured or financially incapable of meeting compensation obligations.

3.3 The Petroleum Industry Act (PIA) 2021

The Petroleum Industry Act 2021 represents the most comprehensive reform of Nigeria's oil and gas legal framework. While its primary focus is regulatory governance, fiscal restructuring, and host community development, it also has indirect implications for labour relations within the sector. The PIA imposes certain obligations on oil operators regarding environmental standards, community development, and operational

¹⁷ Employees' Compensation Act 2010, ss 1–17.

¹⁸ International Labor Organization, Non-Standard Employment around the World: Understanding Challenges, Shaping Prospects (ILO 2016) <https://www.ilo.org> accessed 23 June 2026.

governance. However, it does not provide explicit provisions addressing labour outsourcing, contractor liability, or employment classification.¹⁹

This omission is significant, as the Act governs the very industry where outsourced labour is most prevalent. The absence of clear labour provisions reinforces reliance on general labour law and judicial interpretation, thereby perpetuating legal uncertainty regarding employer responsibility.

3.4 National Industrial Court of Nigeria (NICN) Jurisdictional Framework

The National Industrial Court (NICN) is the primary judicial body with exclusive jurisdiction over labour and employment disputes in Nigeria. Established under Section 254C of the 1999 Constitution (as amended), the NICN plays a critical role in interpreting employment relationships, including those arising from outsourcing arrangements.

The NICN has adopted a more purposive and worker-protective approach, often looking beyond strict contractual arrangements to determine the real nature of employment relationships. However, its decisions are not always uniform, leading to evolving but sometimes inconsistent jurisprudence on employer liability in outsourced work arrangements. The Court's expanded interpretive approach has become central to the development of modern labour jurisprudence in Nigeria, particularly in cases involving contract workers in the oil and gas industry.²⁰

3.5 International Labor Standards

¹⁹ Petroleum Industry Act 2021.

²⁰ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 254C.

Nigeria is a member of the International Labour Organization (ILO) and has ratified several conventions relevant to employment relationships, including those relating to occupational safety, forced labour, and decent work principles. As a member of the ILO, Nigeria is expected to align its domestic labor laws and policies with internationally recognized labor standards that promote fair working conditions, occupational safety, and the effective protection of workers' rights. Although not all international labor instruments are directly enforceable under Nigerian law, they provide persuasive guidance for legislative reform and judicial interpretation, particularly where domestic legal provisions are ambiguous or inadequate.

In addition to the conventions it has ratified, Nigeria is guided by important non-binding ILO instruments, including ILO Recommendation No. 198 concerning the Employment Relationship, which provides interpretative guidance on identifying the existence of an employment relationship. Of particular relevance, Recommendation No. 198 provides that the existence of an employment relationship should be determined by factual circumstances rather than contractual labels, thereby challenging outsourcing arrangements that rely on contractual separation to avoid employer liability. The Recommendation encourages national authorities and courts to look beyond the formal terms of contractual arrangements and examine the practical realities of the working relationship. By emphasizing factors such as the actual performance of work, the degree of supervision and control, and the economic dependence of the worker, it supports a functional approach to determining employer responsibility. This guidance is particularly significant in Nigeria's oil and gas industry, where outsourcing structures frequently obscure the identity of the true

employer and create uncertainty regarding the allocation of the duty of care.

3.6 Institutional and Regulatory Gaps

Despite the existence of multiple legal instruments, significant gaps persist in regulating outsourced employment relationships:

There is no dedicated legislation governing labour outsourcing or agency work in Nigeria. This leaves principal employers and contractors operating under unregulated arrangements, particularly in high-value sectors such as oil and gas.²¹ Although existing labor legislation regulates certain aspects of employment, it does not establish a comprehensive legal regime governing triangular employment relationships involving principal employers, labor contractors, and outsourced workers. Consequently, the rights, obligations, and liabilities of the parties are often determined by contractual arrangements rather than clear statutory rules, creating uncertainty and inconsistency in the protection afforded to contract workers.

The absence of clear statutory definitions for “joint employment” or “principal liability” allows employers to structure relationships in ways that minimize legal responsibility. This legal uncertainty enables principal employers to distance themselves from obligations relating to workplace safety, employee welfare, and compensation for occupational injuries by relying on the separate legal identity of labor contractors. As a result, outsourced workers may face significant difficulties in identifying the appropriate party against whom legal claims should be brought,

²¹International Labor Organization, *Employment Relationship Recommendation*, 2006 (No 198) (ILO 2006) <https://www.ilo.org> accessed 23 June 2026.

particularly where labor contractors lack the financial or organizational capacity to satisfy their statutory obligations. The persistence of these gaps demonstrates the need for legislative reforms that clearly define employer responsibility and ensure that the duty of care cannot be avoided through contractual outsourcing arrangements.

4.0 JUDICIAL APPROACHES TO EMPLOYER LIABILITY IN OUTSOURCED WORK ARRANGEMENTS IN NIGERIA

The determination of employer liability in outsourced work arrangements within Nigeria's oil and gas industry has developed primarily through judicial interpretation rather than explicit statutory guidance. This has placed the courts, particularly the National Industrial Court of Nigeria and appellate courts, at the centre of defining the legal boundaries of employment relationships in a sector characterised by complex subcontracting structures. The judicial approach in this area reflects an ongoing tension between strict adherence to contractual principles and a more purposive interpretation that prioritises the economic realities of modern labour arrangements.²² At the foundation of Nigerian judicial reasoning on employment relationships lies the traditional contractual approach, which treats the existence of an employment contract as the primary determinant of liability. Under this framework, courts are generally reluctant to impose obligations on a party that is not formally recognised as the employer in a written agreement. This approach is deeply rooted in common law principles of privity of contract and has historically shaped labour adjudication in Nigeria. However, the realities

²² Guy Davidov and Brian Langille (eds), *The Idea of Labor Law* (OUP 2011).

of outsourced employment in the oil and gas sector have exposed the limitations of this formalistic reasoning.²³

One of the most frequently cited authorities in this area is *Shena Security Co. Ltd v Afropak (Nig) Ltd & Ors*, where the Court of Appeal examined the nature of employment relationships and emphasized that the existence of an employment contract, coupled with the element of control, remains central to determining who an employer is. While the court acknowledged that employment may exist even in the absence of a formal written contract, it nevertheless maintained a strong reliance on contractual structure as the primary lens of analysis. The implication of this reasoning is that where a labour contractor is the formal employer, the principal company is often insulated from liability, even where it benefits substantially from the labor supplied.

This judicial posture becomes more complicated when viewed against the operational realities of the oil and gas industry, where principal companies exercise significant control over the daily activities of contract workers deployed through manpower agencies.²⁴ Despite this operational control, courts have often been hesitant to extend liability to principal employers, largely because such workers are not directly engaged by them. This creates a legal disconnect between economic control and legal responsibility, which has become a recurring challenge in Nigerian labor jurisprudence.

A second layer of judicial reasoning is reflected in the application of the control test, which examines the degree of authority exercised over the

²³ Simon Deakin and Gillian S Morris, *Labor Law* (7th edn, Hart Publishing 2021).

²⁴ *Shena Security Co Ltd v Afropak (Nig) Ltd & Ors* (2008) 18 NWLR (Pt 1118) 77.

manner in which work is performed. In theory, this test should favour a finding of liability against principal employers in outsourced arrangements, particularly in the oil and gas industry where operational supervision is often tightly regulated by the principal company.²⁵ However, Nigerian courts have applied this test inconsistently. In some instances, the courts focus narrowly on formal supervisory structures established in the contract, while in others they recognise that actual workplace control may rest with the principal employer regardless of contractual disclaimers.

This inconsistency is further complicated by the evolving jurisprudence of the National Industrial Court of Nigeria, which has attempted to move away from rigid contractual analysis towards a more purposive and worker-centred approach. The NICN has increasingly recognised that modern employment relationships cannot always be understood through traditional legal categories, particularly in industries where outsourcing is used as a structural labour strategy. In a number of decisions, the Court has demonstrated a willingness to look beyond contractual documentation and examine the real nature of the working relationship, especially where contract workers are fully integrated into the operations of the principal employer.²⁶

This shift reflects an implicit adoption of what may be described as a substance-over-form approach. Rather than focusing solely on who signed the employment contract, the court considers whether the worker is

²⁵ Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance [1968] 2 QB 497.

²⁶ International Labor Organization, Employment Relationship Recommendation, 2006 (No 198) (ILO 2006).

effectively part of the principal employer's business structure, whether the work performed is integral to the core operations of the company, and whether the principal employer exercises functional control over the worker.²⁷ This approach aligns more closely with international labour standards, particularly the International Labour Organization's Recommendation No. 198, which emphasises that the existence of an employment relationship should be determined based on factual circumstances rather than contractual labels.

However, despite this progressive judicial inclination, the Nigerian jurisprudence remains far from settled. There is still a significant degree of inconsistency in judicial outcomes, with some decisions adhering strictly to contractual boundaries while others adopt a more expansive interpretation of employment relationships. This inconsistency is particularly evident when comparing decisions of the National Industrial Court with those of appellate courts, which have at times reverted to more conservative interpretations that prioritise formal contractual relationships over substantive realities.²⁸

The case law further reveals that Nigerian courts have not fully developed a coherent doctrine on joint employment or shared liability in outsourced work arrangements. Unlike jurisdictions where courts have explicitly recognised that more than one entity can simultaneously bear employer obligations, Nigerian courts tend to treat employment as a singular legal relationship. This binary approach creates significant challenges in addressing the realities of outsourced labour in the oil and gas sector,

²⁷ Guy Davidov, *A Purposive Approach to Labor Law* (OUP 2016).

²⁸ Mark Freedland and Nicola Kountouris, *The Legal Construction of Personal Work Relations* (OUP 2011).

where multiple entities often exercise different forms of control, supervision, and economic benefit over the same worker.

In addition to doctrinal inconsistency, judicial reasoning in this area is also shaped by an underlying reluctance to interfere with commercial arrangements in highly sensitive economic sectors such as oil and gas. Courts are often cautious not to disrupt established corporate structures or impose liabilities that could have wide-reaching financial implications for multinational and indigenous oil operators. While this judicial restraint is understandable from a commercial stability perspective, it has the unintended effect of weakening labour protections for contract workers who are often the most vulnerable participants in the employment chain.²⁹ When these judicial approaches are examined collectively, what emerges is a fragmented and transitional legal landscape. On one hand, traditional contract-based reasoning continues to dominate formal adjudication, reinforcing the separation between principal employers and contract workers.³⁰ On the other hand, there is a growing but uneven shift towards recognising the economic and operational realities of outsourced labour. This duality has resulted in a lack of predictability in judicial outcomes, leaving both employers and workers uncertain about the legal consequences of outsourced arrangements.³¹

The implications of this judicial inconsistency are particularly severe in the oil and gas industry, where contract workers perform essential and often hazardous functions but remain excluded from direct employment

²⁹ Simon Deakin and Gillian S Morris, *Labor Law* (7th edn, Hart Publishing 2021).

³⁰ *Shena Security Co Ltd v Afropak (Nig) Ltd & Ors* (2008) 18 NWLR (Pt 1118) 77.

³¹ International Labor Organization, *Non-Standard Employment around the World: Understanding Challenges, Shaping Prospects* (ILO 2016).

protections. The inability of courts to consistently attribute liability to principal employers means that workers frequently rely on labour contractors who may lack the resources to meet statutory obligations, thereby creating a structural protection gap.³²

In conclusion, the judicial approach to employer liability in outsourced work arrangements in Nigeria reflects a system in transition. While there are clear signs of a shift towards a more realistic and protective interpretation of employment relationships, this evolution remains incomplete and uneven. The absence of a clear doctrinal framework means that liability is determined on a case-by-case basis, resulting in uncertainty and inconsistency. This underscores the need for a more coherent judicial doctrine that reflects the realities of modern labour structures while ensuring that outsourcing does not become a mechanism for avoiding legal responsibility.

4.1 The Traditional Contractual Approach: Emphasis on Privity of Contract

Historically, Nigerian courts have adhered to the principle of privity of contract in determining employer liability. Under this approach, only the parties to an employment contract are recognised as having enforceable obligations. A key case illustrating this position is *Shena Security Co. Ltd v Afropak (Nig) Ltd & Ors* (2008) 18 NWLR (Pt. 1118) 77, where the Court of Appeal emphasized that the existence of an employment relationship is determined by the terms of the contract and the degree of control exercised by the employer. The court acknowledged that the absence of a formal contract does not necessarily negate employment;

³² International Labor Organization, *World Employment and Social Outlook: Trends 2023* (ILO 2023).

however, it still placed significant weight on contractual arrangements in identifying the employer.³³

This approach often benefits principal employers in outsourcing arrangements, as they can argue that no contractual relationship exists between themselves and contract workers supplied by third-party agencies.

4.2 The Control Test and Its Judicial Application

The control test remains one of the earliest and most frequently applied judicial tools in determining employer-employee relationships. Under this test, the court examines who has the authority to direct not only what work is done, but how it is done. In outsourced employment structures, this test becomes problematic because while labour contractors may formally employ workers, principal oil companies often exercise substantial operational control over daily work activities, especially in technical and safety-sensitive environments.³⁴

However, Nigerian courts have not applied the control test consistently. In some cases, courts focus on formal contractual control, while in others they recognise operational control exercised by principal employers. This inconsistency contributes to legal uncertainty in determining liability.

4.3 The National Industrial Court and the Shift Toward a Purposive Approach

³³ *Shena Security Co Ltd v Afropak (Nig) Ltd & Ors* (2008) 18 NWLR (Pt 1118) 77.

³⁴ *Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance* [1968] 2 QB 497.

The establishment of the National Industrial Court as a specialized court for labor matters has significantly influenced judicial reasoning in employment disputes. The NICN has increasingly moved away from rigid contractual analysis toward a more purposive approach that examines the substance of employment relationships. In several decisions, the Court has demonstrated willingness to look beyond the outsourcing arrangement to identify the real employer, particularly where workers perform core functions of the principal organization and are integrated into its operations.³⁵

This approach aligns with international labour standards, particularly ILO Recommendation No. 198, which encourages determination of employment relationships based on factual circumstances rather than contractual labels. Despite this progressive stance, NICN jurisprudence remains uneven, with outcomes varying depending on judicial interpretation of facts in each case.

4.4 The Economic Reality and Integration Tests: Emerging Judicial Thinking

In more recent decisions, Nigerian courts have gradually embraced aspects of the economic reality and integration tests. These approaches focus on: who benefits economically from the labour; whether the worker is integrated into the business structure of the principal employer; who bears operational risk; and who effectively determines working conditions.

³⁵ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 254C.

Under this reasoning, contract workers in oil and gas operations may be considered employees of the principal company where they are fully integrated into its production process, even if formally employed by contractors. This represents a significant shift from formalistic reasoning toward substantive justice, particularly in industries where outsourcing is used extensively to structure labour relationships.³⁶

4.5 Judicial Reluctance to Pierce Outsourcing Structures

Despite this emerging trend, Nigerian courts often exhibit judicial restraint in fully piercing outsourcing arrangements. Courts remain cautious about disregarding contractual relationships, especially in commercial sectors such as oil and gas where complex corporate structures are involved.

This reluctance is partly rooted in respect for corporate autonomy and freedom of contract, but it has the unintended consequence of shielding principal employers from liability, even in situations where they exercise significant control over working conditions.³⁷ As a result, contract workers are frequently left to pursue claims against labour contractors who may lack the financial capacity to satisfy legal obligations.

4.6 Key Judicial Inconsistencies in Employer Liability Determination

Judicial approaches to employer liability remain inconsistent. Courts differ on whether control or contractual privity should be the dominant test, and there is no settled position on the joint liability of principal employers and labour contractors. Judicial reasoning also varies according to the factual matrix, producing inconsistent outcomes in similar cases.

³⁶ Guy Davidov, *A Purposive Approach to Labor Law* (OUP 2016).

³⁷ Simon Deakin and Gillian S Morris, *Labor Law* (7th edn, Hart Publishing 2021).

Although the National Industrial Court has generally adopted a more worker-protective approach, appellate courts have at times reverted to stricter contractual interpretations. These inconsistencies undermine legal certainty and weaken the protective function of labour law in outsourced employment arrangements.

4.7 Comparative Judicial Insight (Persuasive Authority)

Comparatively, jurisdictions such as South Africa have adopted a more structured approach to outsourced employment relationships, recognising the concept of “joint employment” in certain circumstances. Courts there place greater emphasis on the reality of the working relationship rather than formal contractual distinctions.³⁸

These comparative approaches demonstrate that Nigerian courts are not constrained to strict contractual interpretations and may adopt more expansive doctrines to protect vulnerable workers.³⁹

5.0 CONCLUSION

This article has demonstrated that judicial approaches to employer liability in outsourced labour arrangements within Nigeria’s oil and gas industry remain inconsistent. Although the National Industrial Court has increasingly adopted purposive interpretations that reflect the realities of modern employment relationships, Nigerian jurisprudence has yet to develop a coherent doctrine capable of addressing the complexities of triangular employment structures. Consequently, contract workers

³⁸ Labor Relations Act 66 of 1995 (South Africa), s 198.

³⁹ Mark Freedland and Nicola Kountouris, *The Legal Construction of Personal Work Relations* (OUP 2011).

continue to occupy a precarious legal position, while principal employers are often able to avoid liability through contractual separation.

The study further established that the existing legal framework is inadequate to address the allocation of employer responsibility in outsourced employment relationships. The absence of clear legislative provisions on joint employer liability, coupled with inconsistent judicial interpretation, has created a legal environment in which responsibility does not always correspond with operational control and economic benefit.

A more coherent legal approach is therefore required. Judicial interpretation should continue to prioritise the substance of employment relationships over contractual form, while legislative reform should clarify employer obligations within outsourced arrangements. Such reforms would better align employer liability with the realities of modern labour practices and strengthen the protection afforded to contract workers in Nigeria's oil and gas industry.

6.0 RECOMMENDATIONS

In light of the foregoing analysis, the following reforms are proposed to strengthen employer accountability and improve the regulation of outsourced employment relationships in Nigeria's oil and gas industry.

First, legislative reform is required to expressly regulate labour outsourcing and define employer liability within triangular employment relationships. The Labour Act should be amended to recognise joint employment arrangements and impose shared liability on principal employers and labour contractors where appropriate. This would reduce

reliance on judicial interpretation and provide greater certainty regarding employer obligations.

Second, the National Industrial Court should continue to develop a coherent jurisprudence that prioritises the substance of employment relationships over contractual form. Greater reliance on the economic reality and integration tests would promote consistency and ensure that liability reflects operational control rather than contractual labels.

Third, regulatory oversight of labour contractors should be strengthened through a formal licensing and accreditation system. Only contractors that satisfy minimum standards of financial capacity and compliance should be permitted to supply labour within the oil and gas industry.

Finally, enforcement agencies, particularly the Federal Ministry of Labour and Employment and the Nigeria Social Insurance Trust Fund, should be adequately resourced to monitor outsourced employment arrangements and ensure compliance with statutory labour obligations.