

against this background, the alleged infractions of the immigration act by the appellant cannot be said to affect the contract of employment entered into by the respondent on behalf of the appellant.

it is not, therefore, necessary to enforce the contract of employment against the respondent. notwithstanding that, i am constrained to say that the alleged failure of the appellant to secure an executive licence for the respondent within the prescribed period, if true, constitutes a technical breach of contract. contrary to the findings of the respondents counsel, the court did not find that the respondent made a payment to the appellant for the work done by him. it is an established fact that the respondent made payment to the employment promotion fund n25,000 as start up capital. while payment to the fund is not a payment to the individual, the contract of hiring was made with the employment promotion fund. a payment to the fund is a payment to the individual and if the appellant did not pay out n5,000,000 to the respondent within the prescribed period, he breached the terms of the contract and the respondent had every right to regard it as terminated. this, however, cannot be the ground on which the respondent should have proceeded to collect the money. none of the three grounds provided for enforcement of the contract of hiring can be the basis of the respondents suit. the injunction against the appellant was, therefore, without any legal justification. unlike farnsworth, mccamus on careful consideration also argued that the decision does not contest or disturb the settled common law principle that any term in the contract, so long as it is valid and bargained for, will be performed. [27] at the same time, he could not fault the decision for its elevation of concept of implied terms. mccamus does, however, note that both the decision and bhasin implied more than what was necessary to resolve the case in the particular circumstances.

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In *The Bank of Boko v. Fasifade* [28] the court held that the failure to do what one promised is a breach of good faith and not breach of contract. However, there is a fundamental difference between the remedy of restitution/restoration of good faith (which may be defined as remedial action taken by the aggrieved party to compensate for the breach) and the assumption of the economic burden of the contract (which can be implied contract terms arising from one party assuming the economic obligation of the contract). In *The First Bank of Nigeria Ltd. v. Barclays Bank Plc*, [29] the court held that if the first claim is premised on breach of contract, the liability should be determined by the terms of the contract. However, if the first claim is premised on breach of duty, the liability should be determined by the law of good faith. Accordingly, the reference to the duty of honest performance in support of the claims of breach of contract and breach of good faith are synonymous, given that the duty of honest performance imports the notion of good faith. More significantly, in Nigeria, contract cases are heard by the Federal High Court and High Court of the Federal Capital Territory without a judge acting as a single point of reference on the common law. Indeed, whether the common law doctrine of good faith has an relevance in these courts is debatable. It is widely believed that the law of good faith has no application in customary law in Nigeria even though that may not be the outcome of the best understanding of the doctrine of good faith in Nigeria. The point, however, is that the legal landscape in which the issues of contract cases are litigated in Nigeria has a novel character that necessarily demands thoughtful consideration on the common law. 5ec8ef588b

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