

Research Article

The Privatisation of State Enterprises and Workers/Labourers' Plight in Cameroon

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Abstract: By the late 1980s the Cameroon economy like most of her African contemporaries was encumbered by an economic crises that undermined the power of the state to decide on the functioning of the power of demand and supply let alone the operation of the factors of production. The toll of this economic meltdown was enormous on the local folks moreso because the government which had heitherto be the sole determinant of employment and working conditions was forced to reschedule its activities to meet a new norm. The pressure for this reforms took many forms and top among them was the condition for Loans and take off measures imposed by International Monetary Fund (IMF) on States to reduce public spending through a broad based programme of privatisation. The problem with privatisation is not even that incomes/salaries and working conditions were now going to be determined by the new employer under the labour office abitation but rather that legality /justice was tampered with both by the state and the privatisation contracting parties leaving the labourers at the mercy of circumstances. Was it therefore the absence/limitations of laws that was responsible for the plight of the labourers caught up by the privatisation programme or the unwillingness of the state and its contracting parties to recourse to legislation that placed the workers and these newly privatised enterprises in a precarious balance? This the intriguing central question which this article summons existing laws and evidential material to answer. Informed by this data, the paper argues the responsibility of the labourers plight lies on the state and the contracting parties who have advetendly failed to use the existing legislation to protect the labourers during the switch of ownership. With the consciousness of the common Law and OHADA stipulations on labour fundamentally spelt out on labour and cpany laws, the papar make bold to submit that it is not the absence of legislation that is the problem but rather on one hand; the unwillingness of the state and its contracting parties to refer to the existing legislation and on the other hand; the ignorance of the labourers to use the law in their defence. This paper is therefore a contribution to the joint scholarship of not only the civil and common laws but fundementaly on the readings of Labour and company laws in all contemporary dimensions.

Keywords: Privitisation, State, Interprises, Labourers, Plight, Cameroon.

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INTRODUCTION

“... the sale of public companies and corporations would inevitably lead to economic slavery and pauperization of the nation....To want to re-organise under private control is to ensure that accruing profit goes in to private pockets and this will lead to retrenchment in the public sector and bring untold hardship to the working people of this country”.¹

From the this statement, it is but obvious that the government’s plan to privatise is viewed with express disfavor by labourers. Naturally there is a latent anxiety on the part of the workers which emanates from concern over “job security” in the face of imminent retrenchment caused by take-overs and the resultant change from public to private ownership. The question that immediately come to mind is whether the privatisation process took into consideration the position of the works? In essence, does the existing legislations in Cameroon actually provides an effective laws for job-security of the workers who found themselves in the hands of the new employer after privatisation? Or to what extent does the existing labour code acts as a countervailing force to mitigate the disequilibrium inherent in the employment

¹Okorodudu-Fubara, M.T., *The Worker&Privatisation of Public Enterprises in Nigeria: A Legal Perspective*. Nigerian Current Law Review. Ile-Ife. 1988. p.1

relation in the face of the eminent consequences of the privatisation policy, for the workers in Cameroon? The focus of this paper therefore is to analyse and assess the existing laws used by Cameroon in privatisation of state-owned enterprises. There is clear evidence of conflicts between the management and workers in all features of capitalist societies which Cameroon is not an exception.² The truth is that, when government relinquished its ownership from these public enterprises to the private sector, the new employer obviously remain an employer, as the new management has the power to policy, rules, management decisions, and to ensure that they are obeyed, well entrenched in the employer. We recommend that the timely intervention of Labour Law should come in forcefully to protect the workers if not the workers would be permanently and hopelessly subjected to the whims and caprices of the employer as the case of Ndu and Tole tea Estate.³

In fact, privatisation schemes have instead frequently led to vehement protests from ethno-regional organisations, particularly when they have felt excluded from the sale of vital public enterprises to well-placed nationals or to foreign-owned enterprises. As a matter of fact, the Cameroonian government had only to end the privatisation process because of the untold hardship envisaged as the government failed in its policy of privatisation. Therefore, this paper intends to highlight the workers' conditions after the privatisation process of state enterprises⁴ in Cameroon.

The issue of workers and the privatisation policy may be perceived in different contexts such as economical, sociological, philosophical, moral, political and legal. The first five contexts in which the issue of privatization and the workers' status could be discussed shall be deferred to the sixth context which is legal. The work is essentially intended to deal with specific legal implications of the privatisation policy vis-à-vis workers within the context of the individual employment relationship and the general context of labour management relations in the public sectors of the Cameroon economy. Essentially, privatisation policy is part of the Cameroon's strategy to revamp the economy, whereby the government would relinquish fully or partially its own share of some corporations, parastatals, and public-owned companies, by selling off its equity shares in these organisations to private ownership. Some of the companies earmarked are REGIFERCAM, SNEC,⁵ SONEL,⁶ Tea in the agricultural sector⁷ etc. The question sort in this paper is what implication does this policy entail for the workers? From the legal perspective, the issue of workers and the privatisation policy raises crucial issues of law which traverse essentially the fields of labour law and company law. This paper will attempt to unveil these specific legal issues with a view to highlight some core areas which call for legal reforms, judicial and statutory, in the interest of equity and justice within the industrial establishment in all sectors of the Cameroon economy.

(A) The Legal and Functional Allowances of Privatization in Cameroon

Of course, there is nothing inherently ultra vires or illegal to the decision to privatise the government enterprises by the sale of the government equity interests therein, either partially or fully, thus reconstituting the enterprises under joint/private, or full private ownership. It is important too for the workers to bear in mind, on the basis of the relevant legal authorities, their corporate employer is well within its legal right if it decides to sell its interests in the enterprise. Certainly, a company which derives its corporate existence or legal personality from statutory authority cannot validly exceed the powers which are expressly or impliedly conferred upon it by its Memorandum of Association or statute of incorporation. It is noteworthy that the corporate memorandum or statutes contain express clauses which authorize the company to, "to sell..., assets and undertaking of the company or any part or any part there, for such consideration as the company may think...", and "to amalgamate with or enter into partnership or into any arrangement for sharing profits, union of interests, joint adventure, reciprocal concessions or corporation with any person or company..." Furthermore, the peculiar advantages which accompany the status of incorporation, added impetus to the legal right to privatise free from any objections by workers to the plan. The innuendoes cast on the plan by workers would seem eminent from ignorance of the true legal position. The mere fact that these are "public" companies does not transform them into the personal "property" of the workers, for which they can, forestall any attempt by their government corporate employer to

² See Section 23, (1) Cameroon Labour Code For example that states: « A contract of employment shall be an agreement by which a worker undertakes to put his services under the authority and management of an employment of an employer against remuneration. Furthermore, contracts of employment shall be negotiated freely.

³ Ndu Tea and Tole Tea Estates are part of CDC owned by the Cameroon government that she has relinquish to the private sector as one of the privatisation policy in the agricultural sector to a Cameroonian.

⁴ Some of the State enterprises that were privatized were; REGIFERCAM, SNEC, SONEL, Ndu and Tole Tea Estates etc.

⁵ SNEC stands for Societe Nationale des euaxdes Cameroun, the Tea sector of Cameroon Development Corporation (CDC) and again the Banana sector of CDC, The Cameroon Petroleum Depot Company called in its French acronym as SCDP.

⁶ SONEL stands for Societe Nationale des electricite aux Cameroun.

⁷ Tole and Ndu Tea was sold to a Cameroonian businessman and the new name is CTE standing for Cameroon Tea Estate.

privatise.⁸ So upon incorporation, either by OHADA⁹ or by registration of the memorandum in accordance with the provisions of OHADA, the company acquires a “legal personality” distinct from its members; (and in the case of “public” companies perhaps we may add, distinct from all the citizens of the nation). Under OHADA Law a company acquires legal personality from the date it is registered in the Trade and Personal Property Credit Register. By article 98 of the UACC, all companies shall have a legal personality with effect from the date of registration in the Trade and Personal Property Credit Register. Before the coming into force of the OHADA Law which was applicable in the former east Cameroon and the other French – speaking countries was not clear as to the exact date a company acquired legal personality.¹⁰ On this matter, the Code Civil provided in its Article 1843 that: ‘Persons who have acted on behalf of a firm in the making of before registration are liable for the obligations arising from the acts so performed, jointly and severally where the firm is a merchant jointly in other cases. A firm regularly registered may take upon itself the undertakings entered into, which are then deemed to have been contracted by it as from the outset’.

Before OHADA Law, French Law which was applicable in Francophone Cameroon did not determine the exact date of birth of a company. It depended on the type of company. In the case of a private company, its date of birth was the date on which the name of the company was recorded in the Commercial Register, at the Registry of the Court of First Instance of the place of the head office of the company. A public company was taken to come into existence on the date of the minutes of the meeting at which the members of the board of directors of the company accepted to act as such.¹¹

Today, pursuant to article 27 of the OHADA Uniform Act on General Commercial Law, companies must apply for registration in the Trade and Personal Property Credit Register, within a month of their formation, to the Registry of the court within whose jurisdiction their registered office is located. A certificate of incorporation giving details of the company, including the registration number, is given to the company upon registration and this certificate serves as the birth certificate of the company. It is the date recorded in the certificate that is proof that the company has acquired legal personality. So from the date of registration, started in the certificate of incorporation, the company is considered as a corporate body and it comes to existence on the date.¹²

In the words of Lord Macnaghten: “The company is at law different person altogether from the subscribers...and though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustee for them....”.¹³

Just like the common law system, under the civil law when a company is incorporated, it acquires the status of a legal person, capable of exercising all the functions, rights and duties of such an entity.¹⁴ The concept of corporate personality is a basic principle of company law in both French Law and OHADA Uniform Acts Relating to Commercial Companies and Economic Interest Groups. As a consequence in both systems,¹⁵ there is a clear-cut demarcation between the individuals who promote a company, the company and the shareholders. Under both systems, incorporation is granted

⁸Ibid note 1, p.6. Furthermore, A brief reference may be made to the reported experience at the Pfizer Industries of Tanzania which was nationalized in 1967. Following nationalization of the enterprise, the workers had imbibed the erroneous mentality that “the company now belonged to the people”. Sometime in 1968, a supervisor was said to have intruded a group of workers who had overstayed their break time to return to work, failing which he threatened that he would report the erring workers to the management. The workers in reply asked the supervisor: “who is the management?” While the workers themselves answered saying: “the people. Who are the people? We are. So the place belongs to us. This sort of attitude is not only unfortunate because it demonstrates the depth of ignorance of the legal realities of the employment contractual nexus, but it also highlights the negative work ethic which is largely responsible for the low productivity or inefficiency of public enterprises in most developing countries.

⁹OHADA is the acronym of the Organisation for the Harmonisation of Business Law in Africa (OHBLA) and in French, it is Organisation pour l’Harmonisation en Afrique du Droit des Affaires.

¹⁰Ngomo, A.F. “Guide Pratique du Droit des Societes Commerciales au Cameroun” 1996, in Simon, T.T., Understanding OHADA Law Company Law In Cameroon. SKYLIMIT OUTREACH PRINTING PRESS, Bafoussam. 2018.p.13.

¹¹Ngwari, C.N., The Principle of Corporate Personality in Cameroon. Cameroon Law Review. 2nd Series, No 29. 1985. p.6.

¹² Article 98 of the UACC.

¹³ For details, see *Salomon v. Salomon & Co., Ltd.*, (1897) A.C.22; (33, H.L.1895-9) All E.R.Rep. 51.

¹⁴ As in French Law, a societete in OHADA Law, has a legal personality separate from that of the people who either own or manage the business. However, OHADA Law unlike English Law does not really recognize an intermediary form of business organization without legal personality which is common in the Common Law system – the partnership. OHADA Law does ascribe legal personality to partnership, which was not the case with the Companies Ordinance.

¹⁵ The case of Cameroon which is a bilingual country.

to small business concern in order to limit their liability and also to avoid any serious risk in the same way like a large public company. It is also legally possible to have a “one-man” company. In both systems, members of the company are not responsible for the debts of the corporation. So too, the responsibilities of members are inconsistent with that of the corporation. A company can be held liable on contracts entered into during the period of formation if only the company, once it is registered and acquires legal personality, ratifies the contracts, if the company does not ratify the contracts, the individual who made them are personally liable.

Like in English law, the origin of the concept of corporate personality in the civil law system could be traced on the grounds of overriding commercial exigency. The principle was developed to encourage a group of commercial investors to utilize their capital in productive business enterprise in the form of limited liability companies with little risk by making a distinction between the corporate entity and the individuals behind it.

The discussions and the theories on the concept of legal personality have depended on a morass of extra-legal considerations; historical, political, moral, philosophical, metaphysical and the theological. And as Geldart said, “the question is at bottom not one on which law and legal conceptions have the only and final voice. It is one which law shares with other sciences; political science, ethics, psychology and metaphysics.”

French law has recognized the principle of corporate personality through statutory provisions. French law, through what Rodiere describes as a very slow evolution, came to accept that all human beings of full age and sound mind possess a certain number of attributes. These attributes came to be accorded to incorporated bodies.

Brief, once the company has complied with all the formalities of registration under the Uniform Acts, it becomes a legal person from the shareholders or the incorporators themselves.¹⁶ From this fundamental attribute of a separate personality some consequences follow. This include the powers to take out legal procedures, determines its duration, limits its liability, own property, transfer its shares, and determines its nationality, domicile and residence.

Privatisation and Individual Contract of Employment

It is trite law that a company is at liberty to reconstruct; merge or amalgamate, provided such power is *intra vires* the company. But then, what would be the effect of the sales of the company’s undertaking (in other words the sales by the employer of its interest to a third party) on existing contracts of employment? By operation of law the existing contracts of employment would be deemed to determine in the absence of any stipulation to the contrary in the particular contract of employment, collective agreement, and the sale agreement with the purchasing third party. The employer company is not estopped from selling out mainly because this might result in a termination of existing contracts of employment.

As noted above, the power to infect such a scheme of corporate reconstruction is provided for by the company’s memorandum and it’s statutorily recognized as a valid incidence of property ownership.¹⁷ However the employer/company cannot exercise these right without at the same time bearing the corresponding duty to the other party to existing contracts. For example, the contracts of service with the company. In as such as the unilateral act of the employer/company in infecting the scheme of privatisation would result in a breach of the existing contracts of service, the employer/company shall be liable in damages to the employees who may consequently lose their jobs.

This has been clearly established by case law. In *Allen v. Gold Reefs of West Africa*, a company was held entitled to alter its articles to effect the plan it desired, in view of the fact that the power to alter the articles is a statutory right, which the company cannot forgo, but, be that as it may, Lindley, M.R said: “a company cannot break its contracts by altering its articles”. And in *Southern Foundries Ltd. V. Shirlaw*, lord porter said: “ a company cannot be precluded from altering its articles thereby giving its self-power to act upon the provision of the alter articles- but so to act may nevertheless be a breach of contract validity made before the alteration. Nor can an injunction be granted to prevent the adoption of the new articles and in that sense they are binding on all and sundry, but for the company to act upon them will nonetheless render it liable in damages if such action is contrary to the engagements of the company. If , therefore, the alter articles had provided for a dismissal without notice of a managing director previously appointed, the dismissal would be *intra vires* the company, but would nevertheless expose the company to an action for damages if the appointment had been for a term of (say) ten years and he were dismissed in less”. And equally, noteworthy, Bailey equitable assurance *Cozens Hardy*, L.J. said “it would be dangerous to hold that in a contracts of ... service... validly entered into by a company there is any greater power of variation of the rights and liabilities of the parties than would exist if, instead of the company, the contracting party had been an individual”.

¹⁶ See Article 98 of the UACC.

¹⁷ *Ibid.*

As earlier indicated in this paper, upon partial or total privatization, and order of the court would be sought in accordance with section 98 of the UACC. Transferring the property and liabilities of the transfer or company to the transferee company the question has arisen, as regards existing contracts, of service with the transferor company, whether the order of court automatically transforms these in to individual contracts of employment with the transferee company. The issue came up for determination in *Nokes v. Don Caster Amalgamated Collieries Ltd.* where the House of Lords answer the question in the negative, holding that contracts if personal services are not automatically transferred by an order of court under the relevant provision of the law, irrespective of the concerns of the employee. The house of lords reasoned furthered that a right to the service of an employee is not the property of the transferor company, consequently, “such a right cannot be the subject of a gift or bequest; it cannot be bought or sold; it forms new parts of the assets of the employer for the purpose of administering its estates”.

Thus, it is a clearly established principle at Common Law that the contractual right to personal service is a personal right to the employer which is incapable of being transferred by him to anyone else and the employee’s duty to serve a specific master cannot be part of the property or right of that master capable of becoming by transfer, a duty to serve someone else. However, regulatory labour law provisions can spell a variation to this common law position. In the United Kingdom for example, Section 13 of the Redundancy Payments Acts, 1965 which relates to change of ownership of business, provides that (1) the provision of this section shall have effect where-a) a change occurs (whether by virtue of a sale or other disposition or by operation of law) in the ownership of a business for the purpose of which a person is employed, or of a part of business, and -b) in connection with that change the person by whom the employee is employed immediately before the change occurs (in this section referred to as “the previous employer”) terminates the employee’s contracts of employment whether by notice or without notice. “2” if, by agreement with the employee the person who immediately after the change occurs is the owner of the business or of the part of the business in question, as the case may be (in this section referred to as “the new owner”) renews the employee’s contracts of employment (with the substitution of the “new owner” for the “previous owner”) or reengages him under a new contract of employment, section 3 (2) of this Act shall have effect as if the renewal or re-engagement had been a renewal or re-engagement by the previous owner (without any substitution of the new owner for the previous owner).

While sub-section 1(1) a & b of Section 13 of the UK Act of 1965 gives statutory recognition of the enunciated Common Law principle that alienation of the corporate employer’s interest terminates the existing contracts of employment, by operation of law; the practical effect of sub-section (2) of Section 13 of the same law is to enable by operation of law, the preservation of the continuity of the contracts of employments, as well as accrued pension right, job seniority etc. There is no provisions in the Cameroonian labour codes comparable with the fore going English statutory provisions, expressing the legal implications of the change of employer for the existing individual contract of employment. The closest Nigerian statutory provision we may resort to is that contained in S 12 of the labour degree 1974; which provided that; “ (1) the transfer of a contract from one employer to another shall be subject to the concern of the worker and the endorsement of the transfer upon the contract by an authorized labour officer. (2) Before endorsing the transfer upon the contract the officer is requested-

- (a) Shall ascertain that the worker has freely consented to the transfer and that his consent has not been obtained by coercion or undue influence as a result of misrepresentation or mistake, and
- (b)

Section 10 of the labor degree, is an explicit reaffirmation of the common law principles, “that neither at law or inequity could the burden of contracts be shifted off the shoulders of a contractor to those of another without the consent of the contractor”. The Nigerian provision is, however in aliquant or rather vague, in one important respect. There are no antecedent or precedent provision to the stated S.10 indicating the full ramification of the intents and purposes of that specific provision on transfer of contract. And to our knowledge there is no judiciary decision yet interpreting the set provision. Would the court hold that S.10 of the labor degree 1974 envisage effect the preservation of continuity of service, accrued pension right, job seniority under the transferee employer? Secondly, it is not clear, what circumstances, specifically or generally, would give rise to transfer of contracts under the degree. Would it be upon transfer or sale of the business to the transferee employer? Or merely, a transfer of contract of employment between two affiliated organization? Or would a transfer of contract of employment between unaffiliated organizations also suffice for purposes of the degree?

In printing and publishing works’ Union Federal Ministry of information, the appellant claimed, (a) “ the man for retirement or otherwise re-instatement of workers of the now defunct Nigerian Press in accordance with degree number 11 of 1969 and Government Notice No 2009 of 1964 which clarified the press as a stationary corporation and its workers as pensionable public servants: and See (c) members of the union who were transferred to the government press should be treated as if they had a departmental transfer and should retain their formal salaries and seniority in service”.

Rejecting the claims the national industrial court held that the appellants seemed to have overlooked the fact that condition of service in the civil service and the Nigerian national press were different and that the workers who originally transferred from the civil service to the Nigerian national press when it was first established were attracted by the better condition of service and prospects offered by the Nigerian national press.

The legal issue of transfer of contract of employment was not vast before the national industrial court. Probably because the issue did not arise as the employer in the case was not seeking to transfer the contract of employment to another employer; and secondly it was not the most suitable forum to thrash out intricate question of law. However, another dimension which the fact of this case throws out in the light of our criticisms of S. 10 of the labor degree, is that transfer of the contract is at the discretion of the employer, although subject, in the final analysis to the concern of the employee.

And equally important issue which may be raised in connection with the privatization policy is, assuming that a contract of employment has been transferred with the concern of the employee, by the 'employer public company' to the new 'employer private companies, those it follow that the employee carries with him accrued pension right, job seniority and continuous service in the 'public sector service' to the 'private sector service'. This is a pertinent point knowing fully well that accrued job rights cannot be transferred from the private sector service to the public sector service, by deduction from the provision of the relevant statutes. Indeed, only 'inter public service' and 'intra public service' contract transfer may be credited for the purposes of pension right, gratuity, continuous service etc. under the pension's degree 1979. There is thus the need to fill the lacuna in our labor degree 1974, to protect similar job related right of the vast majority of Nigerian workers who incidentally are not covered by the pension's Decree 1979.

Privatization and Efficiency Programmes

It is almost certain that when government interested are taken over in these ailing public enterprises, the primary concern of the new owners would be to restore the business on a sound economic footing with the objective of the achieving maximum profit yields. From the vantage of the workers, it is an open secret that redundancies would be a sequel of such policy, given the current economic crisis in the country. Labour and management are quite conscious of this fact. Mr. E.O. shonekan, chairman and managing director of U.A.C in the course of a lecture, he gave at first Omolayole Annual management lecture said, inter alia, "the most significant factor contributing to improved results in 1984 was the major cost cutting and efficiency programs which companies embarked upon. Inventories were reduced, plants were temporarily or permanently closed, business were rationalized and lab our forces were very substantially reduced,..." it is this fear of redundancies in the wake of privatization which lurked in the reaction of labour groups to the government's proposed privatization policy.

At this point, we can rightly justify that the worker, just as the shareholders, is a separate personality from the company. This position can also be of settled law in the case of *Lee v. Lees Air Farming Ltd.*¹⁸ From this case, it is clear that there is the legal recognition of a clear distinction between the property of the company and that of its members. This point settles any controversy as to whether the company can deal with its property as it pleases. It has been clearly established that members (and we may add also, workers in "public" enterprises) have no direct proprietary right to the company's property, but merely to the shares. This can better be exemplified in the judgment of Evershed, L.J. who said in the case *Short v. Treasury Commissioners*: "Shareholders are not in the eye of the law, part owners of the undertaking. The undertaking is something different from the totality of the shareholdings".¹⁹ Again the law recognizes the easy transferability of shares by an incorporated company.

(C) Legal/Functional Justifications of the Privatisation of Cameroon State Enterprises

Many reasons have been advanced for this governmental policy. According to Okorodudu-Fubara,²⁰ there is the group, perhaps the more cynical, which sees government decision to privatisethe listed enterprises from the point of view

¹⁸ The facts: «the appellant's husband was killed while piloting an aircraft owned by the company of which he was the controlling shareholder and governing director. He was also holder and governing director. He was also employed by the company as its Chief Pilot. The issue arouse whether, Lee was a "worker" for purposes of workman' compensation. The Privy Council held that he was an employee of the company, because the company and the deceased were separate legal entities so as to permit of contractual relations being established between them, so also were they separate legal entities so as to enable the company to give an order to the deceased". See also, Sim, R.S., *Casebook on Company Law*. Third Edition. London. Butterworks. 1971, p.5.

¹⁹ Cite case...

²⁰ Professor Okorodudu-Fubara, M.T. was educated at queens School, Ede and the University of Lagos, Nigeria. She later had her post graduate training abroad at the University College, London, England and Harvard Law School in the United States of America. She was in legal Practice having been call to the Bar, before moving to the University of Ife (now

that the government is “broke” and cannot afford to keep the enterprises afloat on its dwindling resources.²¹ The more authoritative rationale, however, behind the government’s privatisation policy is that the government is not receiving a share on its equity investments in the public companies.²² In other words, the profit yield of these enterprises are not commensurate with the enormous amount invested in them by the government.

Another underlining cardinal reason for privatisation is that “management” of the enterprises will be more efficient when turned over to private interests. This is definitely, but undoubtedly true, an indictment of the quality of the management of our “public” enterprises. In a nutshell, most government owned enterprises are unprofitable because of mismanagement. The day-to-day management of these enterprises in most cases are operated contrary to existing companies’ law and practice as well as the specific statutes under which these enterprises were established.²³

\The first two points advanced above are acute and pertinent reasons forwarded but the most serious and recent reason was that advanced by the Bretton Wood Institution to privatize state owned enterprises.

(D) Functionality and management of State owned Enterprises

A good number of the companies which are ear-marked for privatisation were formed and registered by law, the business of the company shall be managed by the directors, who may pay all expenses incurred in promoting and registering the company, and may exercise all such powers of the company as are not, by the law or by these regulations, required to be exercised by the company in general meeting, subject, nevertheless to any of these regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made. This thus constitute the BODs a performing organ of the company²⁴. This is well established in the early Case of Automatic Self-Cleansing Filter Syndicate Co. v. Cuninghame,²⁵ Where the articles of association of a company had given the directors the powers to manage, they alone can manage. In *Shaw & Sons (Salford) Ltd. V. Shaw, Greer L.J.*²⁶ succinctly remarked: “A company is an entity distinct alike from its shareholders and its directors. Some of its powers may ... be exercised by directors, certain by others may be reserved for the shareholders in general meeting. If powers are vested in the directors, they and they alone can exercise these powers.... They cannot themselves usurp the powers which by the articles are vested in the directors any more than the directors can usurp the powers vested by the articles in the general body of shareholders”.

From here, it is well settled law that the principle of company law is entrenched in Cameroon. Notwithstanding, as regards the management of government-owned companies, the law is at variance with the practice. The BODs of the government-owned companies are hardly given a free hand to manage the affairs of the enterprises. Corporate management is tightly hamstrung by bureaucratic red-tapism of the Public Service, with its attendant consequence for delays in effective decision-making and a dilution of qualitative corporate management.

(E) CASE-LAW for the INDICTMENT PICTURE on MANAGEMENT MENTALITY IN CAMEROON: CASE of IBC

ObafemiAwolowo University) Ile-Ife as a Lecturer in 1982. She had been a Senior Lecturer and Acting Head of Department of Business Law of the ObafemiAwolowoUniversity, Ile-Ife. She has attended several conferences in Nigeria and Overseas and has many publications in professional journals both in Nigerian and abroad.

²¹ Okorodudu-Fubara, M.T., *A Legal appraisal of the Privatisation of Public Enterprises*. Apdepegba Printing Press, Ile-Ife, Nigeria. 1988.p.1.

²² For example, SONEL, SNEC, REGIFICAM, TOLE and NDU TEA etc.

²³ At this point, it is pertinent to observe that one of the cardinal assumption underlining privatization is that “management” of the enterprises will be more efficient when turned over to private interests.

²⁴ “A company has two primary organs, the members in general meeting and the directorate”. See Gower, L.C.B., *The Principles of Modern Company Law*. Third Edition.p.17. See also, **TaberSimon**,.....

²⁵ *Automatic Self-Cleansing Filter Syndicate Co., Ltd. V. Cuninghame*, (1906) 2 Ch. 34; 75 L.J.Ch 437, CA. Fact: Directors of a registered company refused to carry out a sale agreement resolved upon by the company in general meeting because in their opinion it was not in the best interest of the company. The directors relied for support of their decision upon the articles which delegated to them all powers of management. The members argued that the articles are subject to the general rule that agents must obey the directions of their principals.

The Court of Appeal held that the resolution of the general meeting was a nullity and could be ignored. The articles constitute a contract between all the corporators by which it is agreed that the directors alone shall manage. For more on the dictum by Cillins, M.R.: See Sim,R.S., *Casebook on Company Law*. Third Edition. London, Butterworths. 1971. p.102.

²⁶ (1935) 2 K.B.113.

Within the framework of the diversification of its activities, SNH entered into partnership with IBC S.A. for the construction of a plant, for the processing of industrial steel and metals in Douala. In the process, SNH and its workers acquired 61% of shares in IBC S.A.'s capital, of which 51% for the Corporation and 10% for its workers.

As a result, the founding shareholders of IBC S.A., including Léopold EkwaNgalle, Chief Executive Officer at the time, his sister Héléne NjanjoNgalle and LEN Holding company, represented by Olivier Behle, became minority shareholders, with 39% of the shares, but continued to manage the company, pursuant to the Shareholders' Agreement signed on 18 September 2007.

Several loans were granted to IBC S.A. by SNH within the framework of loan agreements to fund the construction of the plant, which was inaugurated in 2010. To date, no amount has been repaid and the promissory notes securing the loans returned unpaid.

Considering the difficulties faced by IBC S.A. to refund the important amounts loaned out by SNH both for the construction of the plant and for its operation, and given the accumulated successive losses, SNH decided, on the expiry of the Shareholders' Agreement of 18 September 2007, during a meeting of the board of directors (BODs) of IBC S.A., to appoint a new Board Chairman, an Assistant General Manager as well as a Financial and Accounts Manager in the company, and to implement joint signature for any payment and any commitment to third parties.

In disapproval of this decision, Léopold EkwaNgalle, together with Héléne NjanjoNgalle and LEN Holding S.A Company, instituted the arbitration proceedings against SNH and its workers who hold shares in IBC S.A., before the CCJA of OHADA.

Moreover, it is worth mentioning that on 08 October 2012, SNH had filed a criminal complaint against Mr. Léopold EkwaNgalle before the Special Criminal Court, claiming damages for misappropriation of public funds.

In fact, considering the persistent cash problems and the loss in mathematical value of the IBC share, SNH ordered an audit which has revealed serious financial, legal and management failures on the part of MrEkwaNgalle.

According to the Special Criminal Court, EkwaNgalle and associates will have to pay damages to the tune of 1.91 billion CFAF to SNH.²⁷ This is a sample case of how Cameroon Managing Directors of state corporations run state enterprises. And herein lies the fundamental reasons underlining the option for the privatisation of public enterprises in Cameroon.

(F) The Survival of Contract of Employment after Privatization

a- Existing Contract of Employment

It is trite law that a company is at liberty to reconstruct; merge or amalgamate provided such powers is *intra vires* the company. But then, what would be the effect of the sale of the company's undertakings (in other words, the sale by the employer of its interest to a third party) on existing contract of employment? By operation of the law, existing contract of employment will be deemed to be determined in the absence of any stipulation to the contrary in the particular contracts of employment, collective agreements, and the sale agreement with the purchasing third party. The employer company is not estopped from selling out merely because this might result in a termination of existing contracts of employment. The Cameroon Labour Code²⁸ is very clearly on this as it wits: "In the event of any change in the legal status of the employer, in particular through succession, sale, amalgamation, financial re-organisation, or transformation into a partnership or company, all contracts of employment in force on the date of the change shall subsist between the new organization and the personnel of the undertaking. They shall be terminable only in the manner and subject to the conditions laid down in this Part"²⁹. Interesting enough, the code further stipulates that: "The contract of employment, may, while still in force, be amended on the initiative of either party"³⁰. Where the amendment suggested by the employer is substantial and is rejected by the worker, the termination of the contract that may result therefrom shall be the responsibility of the employer. Such termination shall be wrongful only where it is not justified by the interest of the undertaking³¹. Where the amendment suggested by the worker is substantial and is rejected by the employer, the contract may be terminated only following the resignation of the worker.³²

²⁷ Headquarter: B.P.955, Yaounde – Cameroon. Tel.: (+237)22-22-01-91-01. Website: www. Snh. cm

²⁸ Cameroon Labour Code, Law No. 92-007 of 14 August 1992.

²⁹ Section 42 (1) (a) Cameroon Labour Code, 1999.

³⁰ Section 42 (2) Cameroon Labour Code, 1999.

³¹ Section 42 (2) (a) Cameroon Labour Code, 1999.

³² Section 42 (2) (b) Cameroon Labour Code, 1999.

In as much as the unilateral act of the employer/company in effecting the scheme of privatization would result in a breach of the existing contracts of service or employment, the employer/company shall be liable in damages to the employees who may consequently lose their jobs.

The best remedy provided by the law of this country is to serve the worker a work certificate. The code wits: "...on the expiry of the contract of employment, regardless of the reason for its termination, the employer shall serve to the worker at the time of his departure a certificate stating only the dates of his arrival and departure and the types and dates of the various post he has held."³³

Transfer of property

(G) The workers Sojourn (Plight) with the New Employer after Privatisation

A contract of employment shall be an agreement by which a worker undertakes to put his services under the authority and management of an employer against remuneration³⁴. This contract of employment shall be negotiated freely³⁵. If by agreement with the employee, the person who immediately after the change occurs is the owner of the business or of the part of the business in question, as the case may be with CAMWATER, CAMRAIL, SONEL for example, the new owner renews the employee's contract of employment (with the substitution of the "new owner for the previous owner (the state) or re-engages him under a new contract of employment. Since the Code is clear that contracts of employment shall be negotiated freely, certainly, the new employer would chose to negotiate the new contract to his advantage at the detriment of the worker in other to make more profit as the case is with the tea sector in Cameroon. It but certain that the new owner will retrench the workers the state employed that had been unproductive and maintain those he believe to be hardworking and productive under a new employment contract.

CONCLUSION

It is triste law that a company is at liberty to reconstruct, merge or amalgamation, provided such power is introverts the company. By operations of law, the existing contracts of employment will be deemed to be determined in the absence of any stipulation to the contrary in the particular of employment, collective agreements, and the state agreement, and the sale agreement with the purchasing third party. The employer company is not estopped from selling out merely because this might result in a termination of existing contracts of employment as stipulated by section 23 of the Cameroon labour code.

However, the employer company cannot exercise this right, without at the same time bearing the corresponding duty to the other party to existing contracts of employment. In as much as the unilateral act of the employer| company in effecting the scheme of privatization would result in a breach of the existing contracts of service, the employer\ company shall be liable in damages to the employee who may consequently lose their jobs.

It is almost certain that when government interest are taken over in these willing state enterprises, the primary concern of the new owners would be to restore the businesses on a sound economic footing with the objective of achieving maximum profits yields. From the vantage of the workers, it is an open secret that redundancies would be a request of such policy, given the current economic crisis in Cameroon labour and management are quite conscious of this fact. Indeed, after privatisation, there is the likelihood that some workers may become redundant because the new private owners are less likely than the erstwhile government owner/employer, to run the enterprises taken over, as charity organization for superfluous workers.

It should be however, be borne in mind that the issue of redundancies could arise prior to a well, as after privatization .nothing stops the government companies as part of its composite plan or package deal with the would-be private owners, from declaring some of the workers redundant, before releasing government interest in the enterprises to private hands. The pertinent question at this juncture is how far are the interests of these workers protected in this regard under the existing laws?

Ipsa facto, redundancy or retrenchment implies a termination of the employer- employee relationship. In law, therefore either party to a contract of employment may terminate the contract upon the expiration of notice given by him to the other party of his intention to do so as seen in section 34 of the Cameroon Labour code of 1992.

³³Section 44 (1)Cameroon Labour Code, 1992.

³⁴Section 23 (1) Cameroon Labour Code, 1992.

³⁵Section 23 (2) Cameroon Labour Code, 1992.

Recommendations

Statutory reform of existing inadequate legal protection of employee interest in the face of corporate reconstructions etc. comparatively with the statutory and common law protection of the interests of the shareholders, creditors, etc.

This paper proposes that an amendment or provisions whereby there would be provision in the OHADA where powers be vested on the employer to make reasonable financial compensation be made to the employee. to the

But well added to this is the fact that this power is enhanced by existing OHADA law on property, which recognize the right of the government of Cameroon (i.e. as owner of “capital” in this case) to sell of its equity shares or ownership in the affected public enterprise.