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# Making Your Company Sue Proof: Employee Perspective

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**Abstract:** *Untold billions of naira is been spent on litigations between employees and corporations on annual basis coupled with the duration it takes to complete a lawsuit in this part of the world has become a problem to the survival of today's companies. These resources could have been utilized more resourcefully in other projects of economic value to society but they are however spent on litigations which could have been avoided if organizations can just take a precautionary measures to reduce the occurrence of this litigations, thus, the purpose of this paper is to provide companies with guidelines on how they can enjoy sue proof in today's turbulent business environment. The paper adopted qualitative methods through the review of literatures as its methodology. We listed some reasons why company should avoid lawsuit as well as some factors companies must considered and hold preciously if they are to enjoy sue proof in Nigeria.*

**Keywords:** *Sue Proof; Company; Employee; Integrity*

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## Introduction

Legally speaking nobody or company as a legal entity can be sue proof in the literal sense of the word. By the provisions of the Constitution of the Federal Republic of Nigeria only the President and Governors of the respective States have immunity against actions in the courts of law. In other words, they are "sue proof" for the duration of their tenure of office. Companies in Nigeria do not enjoy such immunity. What they can seek to do as best as possible is limit the incident of such suit against them by their employees or other stakeholders. Today's business organizations are very unlikely to involve in costly and time-consuming law suit no matter the expected outcome; this is because of the nature of the judiciary system in Nigeria whereby a particular case can lingered for years before its outcome can be finally known. Nevertheless, most organization disregard and overlook even the most essential things that might lead to legal suit through negligence and lack of appropriate strategic planning.

There are many gripping and undeniable reasons why an organization would want to circumvent and out rightly avoid law suit. Law suit can be time consuming, results to loss of corporate focus, potential disclosure of confidential information as well as distracting and expensive (Bernaz, 2013). Time spent preparing a matter for trial takes away time and money from the organization. More so, disputes or law suit especially when it is coming from employees can affect other employees' morale as well as signal wrong perspective about the organization which can dent the organization's reputation and public image. Employment based claims/suit (between employees and employer) are predominantly dangerous for the organization because the suit can lead the firms paying more in form of damages to aggrieved

employees when the outcome of the case is not in its favour. Thus, such claim or suit can be avoided by doing the right thing at the right time as well as setting clear written policies concerning the code of conducts of employee in the organization. However, having policies that guide everyday behaviour is not enough; employees must be systematically trained and developed so as to inculcate in them the values and norms of the organization. This will help to make sure their conduct as well as behaviour are in conformity with the organization's standards and laws (Patrick, 2016). Furthermore, on a yearly basis untold billions of naira is wasted on litigation by individuals and organization which could have been avoided altogether by just doing the right thing. There is no question that the costs of being involved in litigation are also increasing consistently. If a fraction of the amount spent by most corporations on litigation was expended on procedures to avoid litigation, overall fees would plummet (John, 2005). However, the savvy organization will take precautionary and reasonable steps to circumvent litigation altogether as well as properly managing unavoidable litigation. Thus, the purpose of this paper is to unravel how companies can make their firm sue proof. Optimistically, some of the point outlined in this paper will go a long way in providing suit proof for organization especially on how to avoid law suit related to human resources of the organization.

## **Literature Review**

### **What does it mean to make a Company Sue Proof?**

Making a business enterprise sue proof is like trying to make a house tornado-proof. As mentioned earlier, no business enterprise can actually be sue proof; however, the rate at which it occurs can be minimized. The reality is that a company is an entity which can sue and be sued as long as the conditions are right. Hence, the only thing that can prevent a lawsuit is the correct set of circumstances. Business organizations generally and manager specifically might as well think of lawsuits as a force of nature. Lawsuits are sometimes unpredictable and one can barely protect his/herself from one which is even truer once the lawsuit has been filed. Lawsuits are like nature: they are inevitable. It is a question of when, not if they will happen or not. However, its occurrence can be minimized.

Furthermore, there are three major factors that make a lawsuit extremely likely to occur; hence if all the three circumstances are present at the same time, then a lawsuit is almost certain; they include legal precedent: the first question an employee that wants to sue an organization must answer is whether he or she has a realistic position based on law of the land. Thus, the legal precedent talks about the possibility of the courts granting the reason for suing the company. The second factor is factual grounds: lawsuits more often than not take place because of some kind of incongruity or unfortunate event which can occur randomly. However, once occur, the only thing to know is whether the plaintiff (the employee suing the organization) has substantial and appropriate evidence to stand a possibility of winning the suit. The third factor is the recovery value of the suit: no employees file a suit just because he or she wants to but they do because of what they might gain from it. Hence, if there is something to gain, he or she will be ready to sue the company.

### **Reasons for making a Company Sue Proof**

The following are important reasons why a company should be sue proof or minimize the occurrence of lawsuit:

*Law suit can be Costly:* lawsuits whether from the employee or other stakeholders to the company can be very costly in terms of its financing (naira equivalent) and the time it takes to conclude a case is also very expensive. Of course in Nigeria, lawsuits are notorious for their longevity which can affect the productivity of the company: as the time wasted on the case would have been used for other profitable ventures that will enhance the productivity of the firm. In the United States according to Patrick (2016) small and medium size business enterprises often confronted with employment litigation spend an average of one hundred and twenty five thousand dollars (\$125,000) and it takes 275 days in settling them while in Nigeria, it could even be more expensive. More so, the associated costs can differ significantly subject to the nature of the litigation as well as the form in which it is brought (Campbell, 2006). Thus, business enterprise must do everything within their capabilities to ensuring the level of litigations from the employees as well as other stakeholders are minimized if not totally eradicated.

*Lawsuit Outcome sometimes is unpredictable:* most of the time the result of a lawsuit can be uncertain. The time it takes to file a lawsuit and its attendant processes in this part of the world is extremely too time-consuming that sometime it takes three to seven years or even more depending on the nature of the suit. This long duration can affect the firm's operations, finances as well as its survival as a going concern. More so, at the end of the litigations not every business enterprise will come out on the winning side due to unpredictability of lawsuits.

*Lawsuit can be risky and can tarnish the Public Image of the Company:* lawsuit can be very risky and often time it might result in a cataclysmic loss. Any lawsuit against the company especially the ones coming from its employees can be very risky to the organization in terms of its ability or tendency to tarnish its public image. More so, many documents filed in connection with lawsuits often become a matter of public record, and news outlets regularly search court dockets for appalling and scandalous stories. Thus, even a business enterprise that has strong evidence or claim against the suit may find its reputation damaged in the court of public opinion (Fasterling & Demuijnck, 2013).

Furthermore, to avoid those above scenario, the best organizational strategy is to try as much as possible to making the organization sue proof by avoiding litigations whenever possible and to minimize the costs and risks that might be involved.

### **How to Make Company Sue Proof**

As mentioned earlier, though there is no way to make an organization immune to a lawsuit especially from employees, the company can certainly reduce its likelihood. Some of the steps or factors to consider in ensuring sue proof for a company includes:

*Having a clear Corporate Policy and Guidelines:* The first step to ensuring sue proofed company is to have a clear and logical written corporate policy or policies (code of conduct) that will state the behaviours required of both parties in the company. It should further state the obligations

of both parties in this case; the employee and the employer. Lots of business enterprises do not have a coherent and clear set of policies or guidelines that employees must follow so as to avoid common mistakes leading to lawsuit (John, 2005). It is very easy for things to go skewed when there is no concrete agreement documented between employer and employees. Hence, companies must make sure any agreement between employees or other stakeholders are properly captured in writing and any variations to the original agreement are also documented, approved and signed off between involved parties. More so, the code of conduct as well as the employment of contract must be clear enough for both parties; it is of no use having an agreement if it's poorly drafted or doesn't accurately reflect the terms agreed. It must therefore be very concise and precise for easy comprehension of both parties involved. The basic rights of an employee must be specified in his contract of employment. A company must therefore ensure that it has a contract of employment with its entire staff for clarity and certainty of the parties' respective rights and obligations. Such contracts of employments must be respected by the company. Apart from the Contract of employment other sources of employee's right are as provided in the Constitution. Labour rights/standards provided under the Constitution, which apply to employment relationships, include the following:

1. Dignity of the human person which entails the following:
  - i. no person shall be subject to torture or to inhuman or degrading treatment;
  - ii. no person shall be held in slavery or servitude; and
  - iii. no person shall be required to perform forced or compulsory labour.
2. Fair hearing: This provision stipulates that an employee be given the right to fair hearing before being summarily removed from his employment or dismissed.
3. Freedom of association: This right allows an employee to belong to a labour union of his or her choice. Nevertheless, many companies over the years have deprived their employees the right of belonging to labour unions and take advantage of the collective bargaining power provided by these unions.

Furthermore, it is the responsibility of company managers to maintain a safe, unprejudiced and unbiased workplace where all employees are treated fairly and consistently. Thus, it is essential to establish policies as well as procedures that clearly explain employer and employee obligations and to hold regular performance reviews that let employees know where they stand and where they need improvement.

*Integrity:* Integrity has to do with reliability, trustworthiness, sincerity, faithfulness as well as honesty. It is a virtue that a company must possess in today's turbulent business environment. A company that wants to achieve sue proof must possess integrity as one valuable characteristic for its existence and survival. In other words, the company must be ethical, sincere, reliable as well as honest in its day to day operations and in relationship with its employees. To attain and maintain such relationship with employees to avoid lawsuit, the company must ensure integrity is one of its core values. But the question is do we still have companies with integrity in today's unethical business world where all companies want is to make outrageous profit at the detriment of others no matter what? It is one thing to have a written agreement with employees and it is another to make sure the company is faithful

enough to keep to its side of the agreement. Integrity is honouring ones side of the agreement, however most companies do not have integrity enough to honour their side of agreement hence the increase in the numbers of lawsuit between them and their employees. More so, a company that wants to be sue proof or minimized the numbers of lawsuit must avoid making promises about the future of employees with the company that they will be unable to keep. Thus, Voiculescu (2009) expressed that one of the mistakes companies make for which they are later sued is making promises that they do not intend to keep or cannot keep.

*Effective Communication:* Effective communication is the lifeblood of any relationship including relationship between employee and employer. Any organization without effective communication things are likely to go soar sooner than later. Thus, another way to minimize law suit from employees is to ensure they are well informed and carry along in the organization frequently especially in regards to organizational performance. This may include informing them about increases in costs, budgets, scheduling as well as the profit and loss made by the company. Respecting employees and keeping them well informed can go a long way towards avoiding lawsuit especially during difficult times in the organization and when things go soared between the employees and the organization. By maintaining the company's legal obligations, constantly documenting an employee's performance, addressing complaints and grievances promptly, and upholding and maintaining open lines of communication with employees, companies should be able to avoid as well as minimized most lawsuits from employees.

*Acting Proactively, On-timely and appropriately:* A company that wants to be sue proof must be proactive in settling issues that might occur in the organization. By been proactive, a company can often prevent any conflict, hiccups or disagreement as well as resolving it appropriately before developing into a major problem that might lead to lawsuit. It is no use ignoring employees' glitch or complaint and hoping it will go away. Managers must be able to take on-time steps to deal with any glitches when it arises. More so, in case of termination of employee's job, it must be properly done. If the company decides to terminate an employee job due to poor performance, the employer (manager) should be able to do it personally, cordially, affectionately and with care without arrogance. For instance, the employer or the manager can call the employee into his or her office and clearly state that he or she is being terminated and explain why. An employee who seems surprised by the fact that he or she is being fired in an unpleasant manner is more likely to sue the company. One of the ratified Labour Conventions in Nigeria is International Labour Organisation Convention on Termination of Employment Convention, 1982 (No. 158) (ILO). Article 4 of the Convention provides as follows:

***"The employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service."***

Once a company is able to diligently respect the contract of its employees and adhere to international best standard, it will be in a position to reduce the number of suits brought against it by its employees.

### **Conclusion**

In order to make a company sue proof succinctly means the avoidance or the minimization of lawsuit especially from the employees and generally from other stakeholders. Though no individual or organization can actually be sue proof, however, the occurrence of such suit can be mitigated and reduced. However, for any business organization, the best way to minimize or avoid legal problems especially from its employees is to always take precautionary measures and always try to do things right as part of the organization's overall strategic daily plan. Furthermore, to minimize the occurrence of lawsuit from employees is to deliberately respect the rights and privileges of the employees as provided by the Nigerian Labour Laws and other legislations in Nigeria. The company should also adhere to international best practices as stipulated by the International Labour Organisation and other international Treaties and Conventions on law and rights of the worker as well as take seriously the outlined points from this paper.

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