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## PATRELI Publications

# NON-COMPETE CLAUSES IN EMPLOYMENT CONTRACTS: BALANCING THE EMPLOYEE'S RIGHT TO GAINFUL EMPLOYMENT AND EMPLOYER'S INTERESTS IN A COMPETITIVE MARKET

## Introduction

In Nigeria and other jurisdictions, employees are often faced with restrictions arising from non-compete clauses in their employment contracts. These restrictions stem from an employer's desire to safeguard its business and trade secrets, particularly in specialised fields. While Nigerian law permits employers to protect their business interests within legal limits, the courts, particularly the National Industrial Court of Nigeria (NICN), have taken a firm stance against restrictive covenants that unduly hinder an employee's ability to secure gainful employment. The courts have consistently emphasised the need to strike a fair balance between an employer's right to protect its business and an employee's right to gainful employment. This article explores the evolving legal landscape surrounding non-compete agreements and proposes a pragmatic approach to reconcile the interests of both employers and employees in a free-market economy.

## Definition of Non-Compete Clauses

Black's Law Dictionary defines 'non-compete ...' as a promise, usually in a sale of business, partnership, or employment contract, not to engage in the same type of business for a stated time in the same market as the buyer, partner, or employer.<sup>[1]</sup> A Non-compete Agreement is an agreement that a party covenants to restrict his future liberty to exercise his trade, business, or profession in such a manner and with such persons as he chooses.<sup>[2]</sup>

In employment law, a non-compete clause or contract is an agreement where an employee agrees not to work for a competitor or engage in a similar business within a specified period and geographical location for the purpose of protecting the employer's interests.

## Application in Nigeria

1. Black's Law Dictionary 8<sup>th</sup> Ed. Page 392

2. Furmston, (ed.), Cheshire and Fifoot Law of Contract 13<sup>th</sup> ed. (London: Butterworths, 1996) at 351.

The Federal Competition and Consumer Protection Act (FCCPA), 2018, is the primary law governing consumer protection and competition regulation in Nigeria. The Act aims at promoting fair and competitive markets and consumer rights. Section 59 of the FCCPA generally prohibits and renders void any agreement which has the purpose or effect of preventing, restricting, or distorting competition, such as price fixing, market allocation, limiting production, collusive tendering, or tying arrangements, save where exemptions under Section 61<sup>[3]</sup> apply, including reasonable non-compete agreements not exceeding two years. Also, section 17(3)(a) and (e) of the 1999 Constitution of Nigeria (as amended) guarantees all citizens the right to secure suitable employment and receive equal pay for equal work without discrimination.

Nigerian courts, on various occasions, have been called upon to assess the validity of non-compete clauses in employment contracts by weighing their reasonableness in protecting the employer's legitimate business interests against the employee's right to career mobility and broader public policy concerns. Generally, the court assesses the enforceability of non-compete clauses based on factors such as business nature, geographical scope, duration, and overall reasonableness. However, there are conflicting decisions on this issue. In **Koumoulis v Leventis Motors Ltd**<sup>[4]</sup> an employment agreement which included a restrictive covenant that prohibited the employee from engaging in any business similar to the employer (Leventis Motors Ltd) for two years after the termination of his employment was given a judicial blessing by the Apex Court. The Court found the restrictive covenant to be reasonable and enforceable, and the Court upheld the liquidated damages awarded by the trial court for the breach of the covenant. In contrast, in **iROKOTV.com Ltd v Michael Ugwu**<sup>[5]</sup>, the claimant at the NICN sought to enforce the two-year duration against the defendant. The NICN veering away from the position of the Supreme Court as established in the **Koumoulis case**, determined the restraint clause to be invalid on the ground that the employer failed to justify the restriction with a legitimate business interest and that a restriction of the employee's right to gainful employment would reduce the State's revenue and increase unemployment-related crimes.

In the case of **Interswitch Ltd v. Christopher Esumeh**<sup>[6]</sup>, the issue before the NICN was the enforceability of a non-compete clause that restricted the defendant from working for a competitor for one year. The employee (the Defendant) argued that the clause unfairly limited his right to work, while the employer (Interswitch) relied on the FCCPA provision of a maximum two-year duration to justify the non-compete clause.<sup>[7]</sup> The court found the one-year restriction excessive and unconstitutional but considered a three-month restraint more reasonable, reflecting the judiciary's increasing reluctance to uphold lengthy non-compete clauses in employment contracts.

- a) a clause preventing the Respondent from accepting any job "in the same or similar field in Nigeria for a period of five (5) years" following termination of his employment; and
- b) a further restriction preventing him, after those five years, from working "for any competing companies in the beverages, soft drinks, and table water industry in Nigeria" indefinitely.

Adding to the evolving jurisprudence, the Court of Appeal's recent judgment in **La Casera Company Plc v. Mr. Prahlad Kottappurath Ganghadaran**<sup>[8]</sup> has reignited critical debate on the doctrine of restraint of trade and the permissible scope of such restrictions within employment relationships in Nigeria. The case concerned two restrictive covenants:

3. A summary of what the section relates to

4. (1973) LPELR-1710(SC)

5. (2020, NICN/LA/169/2015, Unreported)

6. (2023) (Unreported, Suit No: NICN/LA/192/2020)

7. Section 68 (1) (e), FCCPA 2018

8. (unreported Appeal No. CA/L/1059/2016, delivered on 9 July 2025)

9. <https://thenigerialawyer.com/a-critique-of-the-court-of-appeals-decision-in-the-la-casera-company-plc-v-mr-prahlad-kottappurath-ganghadaran>

While the lower court (NICN, per Hon. Justice J.D. Peters) struck down both restrictions as unreasonable and contrary to public policy, the Court of Appeal partially disagreed. The Court of Appeal upheld the invalidity of the indefinite restriction but affirmed the enforceability of the five-year restraint, holding that it was not excessive and did not offend public policy. On that basis, the Court awarded La Casera ₦10,000,000 in general damages for breach of contract.<sup>[9]</sup>

This landmark decision, upholding a relatively lengthy restraint clause, marks a significant judicial departure from the NICN's recent trend towards striking down extensive non-compete clauses and appears to revive the older, more employer-friendly stance exhibited in *Koumoulis* case. This decision, no doubt, took into cognizance the peculiar facts of the case.

### Judicial Inconsistencies and the Competing Interests at Stake

The Nigerian position on non-compete clauses remains unsettled due to inconsistent judicial pronouncements. In the *Koumoulis* case, the Supreme Court upheld a restrictive covenant preventing the employee from engaging in similar business for two years, finding it reasonable and enforceable. This decision was, however, not followed by the NICN in the *iROKOTv.com* Ltd case where the court declared a two-year restriction unenforceable, holding that the employer had failed to justify the clause with a legitimate business interest, and that unduly limiting employment opportunities would harm the economy. The NICN, taking its decision in *iROKOTv.com* Ltd case further in the *Interswitch Ltd* case found a one-year restriction unconstitutional deeming a three-month restraint more reasonable.

The position of the NICN seems to have been upturned by the recent Court of Appeal decision in the ***La Casera Company Plc*** case. By upholding a five-year post-employment restriction as reasonable, the Court of Appeal appears to have expanded the acceptable boundaries of restraint under Nigerian law, even in the face of constitutional and public policy considerations favouring employee mobility. While the decision strengthens employers' capacity to safeguard trade secrets and business goodwill, it raises concerns about the potential erosion of employees' constitutional right to seek gainful employment and the broader economic implications of prolonged restrictive covenants.

These divergent decisions highlight the underlying uncertainties in this area. Employers contend that they must be able to protect substantial investments made in developing trade secrets, client relationships, and specialised training. Therefore, without enforceable restrictions, departing employees could transfer sensitive knowledge to competitors, discouraging investment in innovation. Employees, on the other hand, argue that non-compete clauses unfairly prevent them from relying on the skills and experience legitimately acquired in their employment to secure future work. To restrain this right too heavily not only hampers career mobility but also risks increasing unemployment and stifling economic growth.

10. Section 2 of Contracts in Restraint of Trade Act (Cap 24), 1932.

11. (2017) eKLR

12. [2018] eKLR

13. <https://www.whitecase.com/insight-tool/white-case-global-non-compete-resource-center-ncrc>

The divergent position by both employer and employee calls for the courts to therefore strike a principled balance between these competing rights. A coherent approach would require employers to show a specific protectable interest, while ensuring that non-compete clauses remain proportionate in scope, duration, and geographical reach. Such an approach would provide certainty for employers whilst safeguarding employees' constitutional right to work.

In Kenya, non-compete agreements operate similarly to those in Nigeria and are governed by the **Contracts in Restraint of Trade Act (Cap 24), 1932**. Similar to the NICN, Kenyan courts have frowned upon non-compete clauses that stand in the way of an employee's right to earn a living. This position is premised on the fact that employees stand in a weaker position when negotiating contracts of employment. The Act expressly stipulates that a contract in restraint of trade is not void provided it is specific on the period of applicability, geographical location and the scope of services it tends to restrict.<sup>[10]</sup>

In **Credit Bureau Holdings Limited v. Steven Kuniya**,<sup>[11]</sup> The Kenyan courts have held that a non-compete clause is only enforceable if it restricts the use of an employer's unique secrets, not general knowledge or skills gained through experience or technological advancements. Also, in **Craft Silicon Limited v Niladri Sekhar Roy**,<sup>[12]</sup> the court held that an employer cannot restrain an employee from earning a living by relying on a vague clause that had not capped any physical boundaries. The court, however, agreed to enforce a part of the non-compete clause that provided that the employee should not contact the former employer's customers in any way for one year.

In the United Kingdom, non-compete clauses are not governed by specific employment laws but are regulated under the common law principle of restraint of trade.<sup>[13]</sup>

The case of **Nordenfelt v. Maxim Nordenfelt Guns and Ammunition Co Ltd**<sup>[14]</sup> established that non-compete clauses must be reasonable between the parties and in the public interest. The House of Lords upheld a 25-year non-compete restriction on a gun manufacturer, ruling that, despite its unlimited geographic scope, it was necessary to protect the purchasing company's business and did not harm public interest. However, the court emphasised that restraints must not be broader than necessary, reinforcing the principle that restrictions on trade must be justified and proportionate.

The decision reaffirmed that while non-compete clauses can be upheld if they serve a legitimate business interest without harming the public, they must be carefully scrutinized to ensure they are not overly broad or unjustifiably restrictive. This position was upheld by the Supreme Court in the recent case of **Tillman v. Egon Zehnder Ltd**<sup>[15]</sup> here, the court emphasised the need for precise drafting to ensure that the clauses do not extend beyond what is necessary to protect the employer's interests.

8. (unreported Appeal No. CA/L/1059/2016, delivered on 9 July 2025)

9. <https://thenigerialawyer.com/a-critique-of-the-court-of-appeals-decision-in-the-la-casera-company-plc-v-mr-prahlad-kottappurath-ganghadaran/>

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13. <https://www.whitecase.com/insight-tool/white-case-global-non-compete-resource-center-nrcr>

14. [1894] AC 535

15. [2019] UKSC 32 <https://www.whitecase.com/insight-tool/white-case-global-non-compete-resource-center-nrcr>

## Conclusion and Recommendations

Non-compete clauses remain an essential instrument for protecting an employer's legitimate business interests, especially in industries where trade secrets, customer relationships, and proprietary knowledge are critical to competitiveness. Nevertheless, their enforceability must be carefully scrutinised to ensure they do not impose unreasonable or disproportionate restrictions on an employee's constitutional right to seek gainful employment.

Nigerian courts have long grappled with striking the proper balance between these competing interests. While earlier decisions such as *Koumoulis* upheld reasonable restraints, more recent pronouncements by the NICN, such as *iROKOTv.com Ltd* and *Interswitch Ltd*, have tended towards invalidating broad restrictions that unduly limit career mobility. However, the Court of Appeal's recent decision in *La Casera Company Plc* has revived the earlier position of the courts.

This appellate intervention has reignited the debate on the proper limits of contractual freedom in employment relationships and signals a more balanced, contextual approach, one that neither disregards the employer's need to protect proprietary assets nor trivialises the employee's right to work. Going forward, Nigerian courts would benefit from adopting a principled test grounded in proportionality: the employer must demonstrate a legitimate protectable interest, and the restraint must be reasonable in duration, geographical reach, subject matter and the position of the employee in the organisation. Such an approach would promote predictability in employment relations, encourage investment in innovation, and safeguard employees' right to earn a living in a competitive market.

To address the prevailing uncertainty in this area of law, clearer statutory and judicial guidance is required. The FCCPA should be supplemented with practical parameters defining reasonable restraints, while courts should continue to provide interpretative direction to ensure consistency. Adopting this approach would enhance predictability, protect legitimate business investments, and uphold employees' constitutional right to gainful employment in a fair and competitive labour market.