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Knowledge of Education Law: Lessons for Secondary School Teachers in Nigeria

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Abstract

Ignorance of the law or any form of infraction is not an excuse. This study examined awareness of education laws and school effectiveness in secondary schools. This work essentially examined the challenges faced by teacher's lack of basic knowledge of law and education law in particular and how it has impacted on the teaching profession generally. A teacher's ability to enjoy and respond the legal environment will largely depend on his knowledge and effective use of education law apparatus in their daily activities. The paper essentially argues that insufficient knowledge of education law is impacting negatively on the teaching profession and school system in particular. To change the tide, teachers must be conscious of the legal consequences underpinning every action taken in the school daily. Hence, a knowledge of law is indispensable. The paper conclusively dives into critical aspects of law that impact on the teacher and the teaching profession in Nigeria. In all, it was recommended that to improve, the school system in Nigeria, the practice of education law must be given critical attention and must be made an integral part of all teachers' training module in Nigeria.

Keywords: Knowledge, Education, Law, Education Law.

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INTRODUCTION

The importance of law in our daily activities cannot be sufficiently substantiated as it the fulcrum upon which society is built. Legal consciousness can empower people to demand justice, equity, fairness and accountability at all levels of education. Without legal Knowledge, people can get intimidated and alienated. This was the position in Adeboyeje (2001) where it was sufficiently argued that employers, school owners, teachers, school Management, government functionaries and students are not sufficiently grounded with appropriate education laws and procedures in the management of education in Nigeria today. With the frequent changes and rise in information and communication technology (ICT), the school system has become more susceptible, complex, requiring a deep knowledge of education laws, enactments and rules and court decisions in order to stand the legal challenge of being an actor in the school system and to help in the delivery of educational goals as legally as possible for school growth.

The paper maintains that Government is principally responsible to ensure that each teacher is equipped with the basic legal competencies and principles to instill and create the desired conducive atmosphere for teaching and learning in our school system. Government should take the legal responsibilities of its employees seriously without turning a blind eye on what is appropriate in schools. Parents rely solely on the teacher to help prepare their children for adult life and career growth. Their children, who are entrusted in the care of teachers in line with in-loco parentis, rely solely on education to give them the knowledge and abilities they will need for functional adulthood life. Beside, government involvement in education is not merely a benefit to families, but also imposes duty on them. This most directly manifests itself in the burden of mandatory attendance in school through the universal Basic Education and other basic school regulations. Parents who do not send their children to school can be punished appropriately and truant children can be forced to go to school.

Communities involvement and participation has been enhanced greatly to the extent that parents are now conscious of the school environment and all that transpires within the school system. It is this important function that education law seeks to play by regulating the rights and obligations; increasing access to information of the interested parties in order to make the school environment conducive for teaching and learning process. Beyond that education law contributes substantially to the creation of a dependable, harmonious teacher-student relationship, and ensuring co-operation amongst other critical stakeholders. The fundamental role of a professionally trained teacher is further enhanced through Education law by defining the borderline of the playfield and actions at stake in the education sector.

CONCEPTUAL CLARIFICATION

Education

There is no universal definition of education for the very reason that there are different forms of education and what constitute education differs from one society to another. Duze (2007) defined education as a process by which a young adult develops the ability and other behavioural traits which are positive in nature and acceptable to the society where he lives. Ayeni (2012) opined that education is all that happens to us from birth to death. Ikediugwu (2007) saw education as the process of acculturation by which the individual is assisted to attain the maximum activation of his potential according to the right reasons and to achieve his self-fulfillment. Education is the

only panacea for state, national and global development. Yusuf (2009) reported that education is an accepted veritable instrument for National development.

Five things are clearly evident from the above definitions:

- Education is moral and value based driven,
- It develops the hidden potential of the individual,
- Education prepares you for life and society,
- ii. Society determines education, and
- Education equips us with skills and abilities for functional living.

Knowledge

Knowledge is simply a process of acquiring facts, information and skills through one's own experiences or learnings. Knowledge is gained from age and life experiences while education, on the other hand, is learned from the books and may never be experienced because it is related to facts. Knowledge is related to the facts, concepts, theories, and principles that are taught (Peretomode, 1992). It is not related to the skills such as reading, writing or researching. Knowledge is the awareness or understanding of certain things such as facts, information, skills and descriptions which can be obtained through.

Law

Like education, the term, law can never be defined. This is because of the myriad of authorities on the subject matter. However, some definitions can properly fit in our discourse. For instance, Peretomode (1992) defined law as a dynamic process, a system of regularized, institutionalized procedures for orderly decision making. Ozurumba (1997) opined that law is the aggregate of rules recognized and noted by the courts. Salmond in Kalagbor (1998) defined law as the body of principles, recognized and applied by the state in the administration of justice. Important in the above definitions is that law is a body of rules that govern group interaction and facilitate social control. For this reason, it is posited here that law is a set of modern rules that governs social system generally.

Education Law

The concept of education law in Nigeria is still not popular because, an average teacher in Nigeria does not considered it as important in his daily interaction with the students (Nwadialo, 2000). The Nigerian teacher do not believe he or she requires the knowledge of law to compliment his or her role as a teacher. Whether this notion is true of false will be seen as make progress in this paper. Education law is the legal discipline covering all issues pertaining to schools, from kindergarten through higher education (Nkpa, 2011). Though, it has been defined as the portion of law in a state, a city, an area or a country which directly deals with the acts of administering educational bodies such as those in public and private primary and secondary schools, tertiary and non-tertiary educational institutions (Peretomode, 1992). According to Kalagbor (2015) education law is the area of law relating to schools; it deals mainly with schools, school systems and school boards. The law is charged with providing education to

children, adults and special needs children alike in schools. The reason why there are significant differences among the states in the administration of schools is because each state develops, maintains and operates its own school system.

Knowledge of Education Law

This is a process of learning in a systematic manner laws in a formal institution such as schools, colleges or universities and how the impact or affect the relationship of individuals generally. Knowledge of education law referred to the extent of available information at the disposal of the teacher. It is an indication that the teacher is acquainted with the rules and regulations that guides the teaching profession as well as the schools' activities. In other words, knowledge of Education Law, refers to the level of teachers' awareness of the rules and regulations that guide school conduct and activities.

Sources of Education Law

The sources of obtaining information on laws relating Nigeria education law include;

The Constitution: The constitution is said to be the organic law of the country. It is a system or body of fundamental principles for which a nation, state, or organization is governed. The constitution is said to be supreme and that any law that is inconsistent with the provision of the constitution, shall to the extent of such inconsistency, be declared null and void and of no effect. This is recorded in section 1(3) of the 1999 Constitution of the Federal Republic of Nigeria. That is to show that any law meant for the purpose of education, that is inconsistent with any part of the constitution, shall become null and void and of no effect whatsoever.

The 1999 above constitution, makes specific declarations on dealing with the subject matter of education which can be seen as follows:

- Government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels,
- Government shall promote science and technology, and
- Government shall strive to eradicate illiteracy and to this end government shall as and when practicable provide; Free, compulsory and universal primary education, free secondary education, free university education and free adult literacy programme.

What is important to note in the above is that the constitution also states, that no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if such instruction, ceremony or observance in relation to a religion other than his own, religion not approved by his parent or guardian (Nakpodia, 2010). The above explains that those who are in primary and secondary schools shouldn't be forced to take morning deviational prayers contrary to those of their parents and guardians. Although, the constitution clearly stipulates that their right to personal liberty can be deprived if such person has not become 18years of age. Nevertheless, however, such deprivation must be for the purpose of his or her education welfare. **The Federal and States Statutes/laws:** There are various laws passed by the national assembly of on education in Nigeria and assented to by the President. Among this are; National Examination Council Act, (NECO) (Establishment) Act, National Secondary Education Commission, ETC, Act, Nigerian Education Bank Act, West African Examination Council Act, Universal Basic Education Act, Child's Right Act, African Charter on Human and Peoples Right. There are various statutes, local or foreign, dealing on the subject of education which is relevant to each state of the federation as passed by the State Houses of Assemblies and assented to by the Governors of those states.

Case Laws decided by the Court: There are some cases which have gone to court which now enjoys precedent of law because it has settled an issue on education and thus have become a source of education law. This is a good way of having knowledge about the interpretation given by the court on the issues of education law as may have been decided which will now form what is generally referred to as "judicial precedent".

Textbooks: There are textbooks written on education law but such are majorly found in the U.S and U.K. In Nigeria, there hardly any text book as a result of low interest in the subject matter of education law. Hardly you find any department studying education law.

Journals: The area of education law also in the journals in Nigeria is very weak as no much direct work can be found in this important area of education

Importance pf Education Law in Nigeria

From the analysis so far illustrated it is not in doubt that education law is important for teachers in Nigeria in order to excel. Among such importance are:

- They act as codes of instruction which regulate educational policies and programmes.
- It directs and regulates the students.
- It directs and regulates the teachers.
- It direct and regulates the stakeholders for effective administration of educational policies and planning.
- It guides against corruption and maladministration.

Going deeply in looking at the importance of education law, it has been said that, there is the need to carefully expand this importance in covering of wider varieties of issues which can be appreciated thus:

- It is not in doubt that every school must be accountable for all its activities just like any business outfit. Because of this, need for accountability and responsibility, modern day education requires every schools to meet up certain basic regulations which are in the form of education law.
- There is the need for every School to comply with appropriate education laws and government policies and such rules must not be broken in order to avoid sanctions.

- Certainly schools will be involved in buying goods and services and there is no doubt that the basic knowledge of law of contract is required in order to be at the safer side. The breach of contract or signing of illegal contract may spell doom for an institution.
- The teachers will be involved in the discipline of students and it is important for a modern day teacher to know what constitutes discipline of a student as at today and what can be said not to constitute discipline of a student.
- There is the need to have an idea of construction, planning and ecological laws. There is the need to comply with the law. If you want to modify the structure of your building or an entire new building or even the play fields.
- There is the need to know the employment law and to be sure that there exists no breach of the terms of the employment contract by the employer and the employees.

Contract of Employment by the Teacher

The basic Law of Contract guides the employment status of a teacher, and he is required to be abreast with the simple law of contract (Malemi, 2013).

The Law of Contract is said to be involved in the employment of a teacher because the teacher will go through the following stages before taking the employment:

- Application for employment or filing of form for employment.
- Letter of invitation for interview.
- Interviewing of prospective applicants for employment.
- Letter of offer of employment.
- Letter of acceptance of employment

A contract is defined as an agreement between two or more parties, by which they reach what is known as "consensus - ad - idem" giving rise to a legal relationship. A Contract has been further defined as an agreement which the law will enforce or which the law will recognize as affecting the legal rights and duties of the parties.

The essential elements of a valid contract, can therefore be stated as follows;

- Offer.
- Acceptance.
- Consideration.
- Intention to enter into a legal relationship.
- Legal capacity of the parties to the contract.

An Offer: is defined as a definite undertaking or promise made by one party by which he convey the terms and conditions of the offer with the intention that it shall become binding on the party making it as soon as it is accepted by the party to whom it is addressed. The person making the offer is called the offeror. Acceptance is defined as a final and unqualified expression of assent to the terms of the offer. The court has further described acceptance thus; a counter-offer is not an acceptance, it must not be conditional, acceptance must be communicated. It must be understood that an offer will remain open for acceptance but can be terminated by; (i) revocation (ii) by lapse of time (iii) by the death of the offeror or offeree and (iv) by rejection. The person accepting the offer is known as offeree.

Consideration means that there must be something of value in the eye of the law, which will be given for a promise so as to make the contract to be enforceable.

The court has given a wider and clearer definition of consideration thus:

A valuable consideration in the eye of the law may consist either in some right, interest, profit, or benefit accruing to the one party, or some for bearance, detriment, loss or responsibility given, suffered or undertaking by the other thus consideration does not only consist of profit by one party, but also exists where the other party abandons some legal right in the present, or limits his legal freedom of action in the future as an inducement for the promise of the first (Ogundele, 1995). So, it is irrelevant whether one party benefits but enough that he accepts the consideration and that the party giving it does thereby undertake some burden, or lose something which is in contemplation of the law may be a thing of value (Sagay, 2012)

Knowledge of Education Law

This is a process of learning in a systematic manner laws in a formal institution such as schools, colleges or universities and how the impact or affect the relationship of individuals generally.

Knowledge of Education Law refers to the extent of available information at the disposal of the teacher. It is an indication that the teacher is acquainted with the rules and regulations that guides the teaching profession as well as the schools' activities. In other words, knowledge of Education Law, refers to the level of teachers' awareness of the rules and regulations that guide school conduct and activities.

Intention to Enter into a Legal Relationship

One of the essentials of a valid contract is the intention to enter into legal relations. At least it is important that it is stated in the contract or it should be capable of being inferred in a contract. Where intention to enter into legal relations is lacking in an agreement, then, it cannot be said to ripen into contractual obligation, no wonder, it is often said, that all contracts are subject matter of an agreement but not all agreement are subject matter of a contract.

The above quotation can be seen in the circumstances:

Domestic and social engagements are agreement but there exists no intention to enter into true legal relations (Nakpodia, 2010).

Legal Capacity of the Parties: The parties to a contract must not lack capacity to enter into such contract. If such party is an institution, the law establishing the institution or terms of reference must spell out the legal capacity of such institution. If the contract has to do with an adult, who is above 18 years, he must not be insane nor drunk as at the time of entering into the contract, if he is a child, he must enter only into contract of necessity for his welfare directly.

If the party is a company or corporation or statutory establishments, it must be contract as stated in the memorandum and articles of association of such company and for statutory establishments, it must have been stated in the statutes creating such establishment (Ogundele, 1995).

Terms of the Contract

The terms of a contract are either stipulated or implied. The terms may be express or implied. The terms may be implied as a result of the usage or custom of a particular trade and except the terms of contract specifically expressly excluded the implied terms, the implied terms will automatically be taken or accepted as being part of the said term or terms of the contract (Durosaro, 1997). The terms are also classified as conditions and warranties, while conditions are most important terms of a contract, warranties are less important terms of the contract.

Jurisdiction of court with respect to employment cases. The court which has the jurisdiction to handle employment cases and its related issue is the "National Industrial Court". This fact has to be known by most teachers in Nigeria who may have one or more problem in relation to their employment. The above postulation is supported by the constitution which is the 1999 constitution as altered by Fourth Alteration. The National Industrial Court is given power to exercise jurisdiction to the exclusion of any other court in civil causes and matters (a) relating to or connected with any labour, employment, trade unions, industrial relations and matters arising from workplace, the conditions of service, including health, safety, welfare of labour, employee, worker and matters incidental thereto or connected therewith; (b) relating to or connected with or arising from Factories Act, Employers Compensation Act or any other Acts or Law relating to labour, employment, industrial relations, workplace or any other enactment replacing the Acts or Laws. Furthermore, the Constitution as altered by the third Alteration gave the National Industrial Court, other jurisdiction such as (c) relating to or connected with the grant of any trade restraining any person or body from taking part in any strike, lock-out or any industrial action or any conduct in contemplation or in furtherance of a strike, lock-out, or any industrial action and matters connected therewith or related thereto.

The constitution gave the National Industrial Court Other Jurisdiction in cases such as:

- Dispute over interpretation of the constitution relating to employment and related matters.
- Dispute on National Minimum Wage.
- Unfair labour practices or international best practices in labour, employment and industrial matters.
- Dispute arising from sexual harassment at work place.
- Application or interpretation of International Labour Standards.
- Child Labour and related matters.
- Interpretation of collective agreement, awards.
- Payment or nonpayment of salaries.

The School Heads and Knowledge of Education Law

There is no doubt that most school principals and Head teachers in Nigeria will always say; What is my business about the law, am I a Lawyer? The idea of an average school principal in Nigeria

is that it is only the Lawyers who should know the law. The truth about this is that it is a wrong notion because, a school principal requires basic knowledge of the law to succeed. The principal must be able to appreciate that a large percentage of their time are devoted to legal contentions. has therefore shown the importance of the knowledge of the school principal to education law (Ogundele, 1995). It has been said also that the school principal does not need law degrees to be able to have the knowledge of the law but he needs to read the law dealing with his work and to make sure that he complies with what the law requires (Peretomode, 1992).

Nigeria Education Law and Curriculum Content

Both the Curriculum Developers and our Education Administrators are to be knowledgeable in education law especially with respect to the rules and regulations necessary in guiding the actions and inactions of those who implement the policies. There are lot of educational policies beginning from 1914 during the period of Lord Lugard to the present day (Peretomode, 1992). According to Adewumi (1993), one basic deficiency in the implication/effects of curriculum changes, is the failure to train and retrain the School Administrators on education laws through refresher courses such as conferences, seminars, workshops and symposia. Curriculum developments need to be passed into law for effective implementation especially on the area of national policy on education, (Usman, 2015).

It is unfortunate that the Nigerian curriculum are being manipulated and changed from time to time even at the detriment of both the teachers and the students (Durosaro, 1997). Unfortunately, unless you are knowledgeable on about the law upon which an education policy can be changed, you may not know whether the change in curriculum followed the laid down procedure as expected under the law. It is no longer news that the federal government policy on education is the order of the day in most secondary schools in Nigeria and no one can deviate from it except the policy is amended or changed. The policy means, a child must spend six years in elementary school, six years in secondary school and the bodies given power under the law to examine the students in secondary through a uniform process is West African Examination Council (WAEC) and National Examination Council (NECO). The examination bodies are duly recognized by law and any school which goes contrary to the directives of this examination bodies are appropriately sanctioned but the said examination bodies must also give fair hearing to the school or staffs involved before any form of sanctions can take place effectively. There are periods of time to be spent at the tertiary and non-tertiary institutions.

CONCLUSION

The topic is a very sensitive one and we have been able to see that the teachers in Nigeria require knowledge of law to be able to do their work perfectly. This work dealt extensively with so many issues in relation to Education Law, such as, the area where the constitution devote itself to education, showing how important section 1(1) and (3) is to education Law, since it states that the constitution is supreme and its provisions shall have binding force on all authorities and powers throughout the Federal Republic of Nigeria, while subsection 3 of the Constitution is on the issue of any Law which is inconsistent with the provision of the Constitution shall to the extent of inconsistency be void. Also, Section 18 if the 1999 Constitution was analyzed, which has to do with education objectives of the Government while Section 38 dealing with restriction on forceful religious teaching and indoctrination in schools vis-à-vis, Section 35(1)(d) where a

person who has not attained the age of eighteen years can be deprived of his personal liberty for the purpose of his education or welfare.

The work look at the right of students to free speech and the limiting factors imposed by law. The issue as to fair hearing, curriculum development, quorum when holding meetings and the basic requirements for a school principal and other officers of the school were discussed among other issues. Not done with the above discussion, we also dealt with the issue of contract of employment by a teacher, while exposing the teachers to the basic requirements of the essentials of a valid contract. To be able to show the court which has jurisdiction on employment matter, we looked extensively at Section 254C, of the 1999 Constitution, the Third Alteration to the constitution and we accordingly exposed the cases the National Industrial Court can handle as provided for constitutionally. We did a summary, recommendations and conclusion. The footnotes and bibliography contained here-in are going to be helpful for further reading. It is not in doubt that no knowledge is lost in acquiring more knowledge. The truth about this is that the Nigerian teacher require the knowledge on education law instead of the wrong notion that only the lawyers require the knowledge of the law.

Suggestions

From the work done, we hereby recommend as follows:

- That both the Federal Government and the State Government should as a matter of urgent necessity make "education law" to be compulsory for all categories of teachers in Nigeria by allowing all teachers to go for two or three months training in education law in any of the colleges of Law or faculties of Law in our Nigerian Universities.
- That all the colleges of education or faculties of education in Nigeria should as a matter of urgent necessity, make sure none of its graduate obtain their certificates without taking a course on "education law", this can be a policy to be implemented by all agencies of government who supervise teachers' education.
- That more lawyers should write books and articles in journals on "education law" for teachers in Nigeria. This will re-awaken their interest in the knowledge of education law.
- The teachers of most schools, whether private or government institutions, from primary, secondary, tertiary and non-tertiary institutions should endeavour to have knowledge in the law establishing their institutions, the constitution and all areas of law dealing with education.
- The teachers should have basic knowledge of the law of contract vis-à-vis employment law because some teachers just sign their employment letter, accept the terms of the offer of employment, without first going through the terms contained in the said letter of offer of employment.
- There should be seminars, conferences and activities for teachers on education law.
- The Constitution should be amended making entrepreneurship education compulsory from primary school to the university.

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