

SUPREME COURT OF NIGERIA
30TH SEPTEMBER, 1993. SC85/1989
CORAM:- M.L. UWAI, S. KAWU, A.B. WALI,
I.L. KUTIGI, U. MOHAMMED, JJSC.

NYONG EMMANUEL OBOT APPELLANT

AND

CENTRAL BANK OF NIGERIA RESPONDENT

DAMAGES - Wrongful Dismissal - Appellant basing claim for damages on length of time which he would have served before his retirement - whether appropriate.

DAMAGES - Appellant having been in service for 25 years what his entitlement should be after termination.

FAIR HEARING - Appellant not receiving notification to appear before the Disciplinary Committee - not allowed to hear the evidence against him - not allowed to cross examine - whether his right to fair hearing was infringed.

NATURAL JUSTICE - Proceedings being in breach of Natural Justice - in breach of Staff Manual - whether a violation of the principles of natural Justice.

PRACTICE AND PROCEDURE - Reply to statement of defence - whether party seeking to file same must obtain leave in order to do so - purpose of Replies.

PRACTICE AND PROCEDURE - Where Appellant is entitled to meet the allegations in statement of defence - leave to do so refused him on application - whether rules of Natural justice are thereby infringed.

WRONGFUL - Summary termination of appellant - in violation of rules of natural justice - when held to be wrongful.

FACTS

Appellant in the High Court of Cross Rivers State, Calabar claimed against the Respondent, special and general damages.

Appellant was staff of the Respondent. Following a Petition writ-

ten against the Appellant about irregular award of contracts by the Calabar Branch of the Respondent, the Appellant was summoned by a letter to appear before an Investigating Panel and he did so together with other employees of the Respondent at the branch in Calabar. He was later issued a query which he answered stating that the allegations against him were actuated by malice. He was then summoned to appear before a Disciplinary Committee after which he was dismissed from the Respondent Bank's Service. Appellant brought an action in the High Court of Cross River State, Calabar claiming against the Respondent, special and general damages for wrongful dismissal. He contended that of the 8 witnesses that testified before the Disciplinary Committee, only 1 testified in his presence and that he was not given opportunity to cross examine them. After hearing the whole case, trial Chief Justice dismissed the Appellant's action. Aggrieved by this decision, he appealed to the Court of Appeal which equally found against him. He then appealed to the Supreme Court. The Supreme Court had to determine inter alia, whether the refusal of the trial court to allow the Appellant file a reply to the Defendant's statement of Defence engendered a miscarriage of justice, whether the Appellant's said trial before the Disciplinary Committee was void.

HELD (unanimously allowing the appeal)

1. To file a reply of further pleadings under 0.33 r.16 of the Cross-River State High Court Rules, leave must be obtained. Appellant's application to file a reply to the statement of Defence inappropriate though the High Court's power to grant the application is discretionary. (P61 L22)
2. It is not necessary to file a reply if the Plaintiff only wishes to deny the allegations contained in the statement of defence. This is by virtue of Order 18 rules 3 and 14 of the English Rules of the Supreme Court as applicable to Rivers State by s.16 of the High Court Law, Cap. 51, Laws of Rivers State 1979. (P62 L13)
3. The purpose of filing a reply is to join issues on the allegations made in the statement of claim and issues are deemed to have been joined in respect of allegations made in a statement of defence even where no Reply is filed. Thus, the application by the Appellant for leave to file a reply was therefore unnecessary since no reply was required to join issues on the statement of defence. (P2L38)
4. Since the Appellant was entitled to meet the allegations in the statement of defence without filing a reply, the denial of the leave

having been based on the rule of practice has not denied the Appellant of fair hearing neither has it infringed the rule of natural Justice in the maxim audi alteram partem. (P63 L5)

5. The allegation that no charge was read to the Appellant and 8 of the 9 witnesses called testified in his absence was admitted in the statement of defence. It is therefore a proved fact that the 8 witnesses were heard in the absence of the Appellant and that he did not have the opportunity to cross examine them. (P63 L10)
6. The Appellant's right to fair hearing was infringed by the Disciplinary Committee as he did not receive the appropriate notification to appear before the Disciplinary Committee, was not allowed to hear the evidence against him nor was he given an opportunity to cross examine them. (P64 L31).
7. The proceedings of the Disciplinary Committee was not only in breach of the provisions of the Staff Manual but also in violation of the principles of natural Justice. The proceedings therefore were null and void and it follows that the summary dismissal of the Appellant based on the findings of the Disciplinary Committee was wrongful. (P65 L8)
8. The Appellant based his claim for special and general damages in his statement of claim on the fact that he would have remained for 13 years before retiring but for his wrongful dismissal. This is untenable because that is not in accordance with the principle on which damages for wrongful dismissal are assessed. (P65 L33)
9. Having been in the service of the Respondent for 25 years, the Appellant would have been entitled to a month's notice of termination or a month's salary in lieu of notice had he been properly terminated in accordance with the Staff Manual. Consequently the general damages which the Appellant is entitled to amounts to one month's salary which is N991.67k. (P66 L17)
10. The Appellant is entitled to his pension and gratuity to be worked out by the Respondent in accordance with the provisions of the Staff Manual. (P67 L11)

REPRESENTATION

A. Ekong Bassey for the Appellant
N. O. Nsefik for the Respondent

CASES REFERRED TO

1. Abimbola George v. Dominion Flour Mills Ltd (1963) 1 ANLR 71
2. Umoffia v. M.C. Ndem (1974)4 ECSNL.R. 674
3. Benson v. Otubor (1975)3 S.C.9.
- 5 4. N.I.P.C. v. Thompson Organisation (1969)1 N.M.L.R. 99
5. Sofekun v. Akinyemi (1980) 5-7 SC. 1
6. Adigun v. A-G Oyo State (1987)3 SC 250
7. Okonjo v. Odje (1985)10 SC.267
8. Chukwudi v. Mbanadi (1980)4 SC.31
9. Akeredolu v. Akinremi (1989)3 N.W.L.R. (Pt.108)164
- 10 10. Williamson v. London and North Western Rly. O

LEAD JUDGMENT BY UWAIS JSC

The appellant brought an action in the High Court of Cross River
 15 State, Calabar against the respondent in which he claimed, as per paragraphs 16 and 17 of his statement of claim, as follows:-

- " 16. *The plaintiff therefore claims from the defendants (sic) the sum of*
N30,000.00 as special and general damages for wrongful dismissal.
- 20 *PARTICULARS OF SPECIAL DAMAGES*
- Salary for 13 years (up to retiring age of 60) at N11,900.00 per annum - N154,700.00*
- GRATUITY/PENSION:*
- 25 *One year's salary - 11,900.00*
- 10% of annual salary per each year of the remaining 23 years after the 1st 15 years i.e. 23% of N11,900.00*
- 23,370.00*
- 30 *Rent allowance for 13 years at N2,160.00 per year 28,080.00*
- Leave allowance for 13 years at N357.00 per year - 4,641.00*
- 35 *Car basic allowance for 13 years at N840.00 per year - 10,920.00*
- 237,611.00*

GENERAL DAMAGES 62,389.00
300,000.00

17. *Whereof the plaintiff claims for the defendant:*

(i) *A declaration that the dismissal of the plaintiff is wrongful;*

(ii) *N300,000.00 as damages for wrongful dismissal."*

The respondent filed a statement of defence. The appellant by motion on notice sought inter alia for leave to file a reply to the statement of defence but the trial court (Kooffrey, C.J.) refused him leave to do so.

The facts of the case are not in dispute. They are as follows. At the time material to his suit, the appellant was employed by the respondent as Maintenance Superintendent at its branch in Calabar. He had been in the respondent's employment since 1962 when he transferred his service to it from the Nigerian Ports Authority.

In September, 1982, the appellant had information that one Mr. Enembe a Senior Maintenance Supervisor - who worked under the appellant had written a petition against the appellant to the Assistant Controller in charge of the respondent's branch in Calabar alleging irregular award of contracts by the branch. In October, 1982, the appellant, while on leave, received a letter instructing him to appear before an Investigation Panel that was to come to Calabar from the Head Office of the respondent in Lagos. The appellant appeared before the panel together with other employees of the respondent at the branch in Calabar. Appellant was asked questions concerning the award of contracts at the branch, which he answered. On 13th January, 1983, the appellant was issued a query from the respondent's Head Office (exhibit 6) in which he was accused of the following misdeeds and was directed to explain in writing why disciplinary action should not be taken against him:-

"1. Re: contract for external redecoration of the Senior Staff Quarters awarded to Jansenide Company.

You allowed the contracting company to use the Bank's extension scaffold for the job and caused same to be removed to the site by the Bank's Bullion lorry.

2. Re: contract for the partitioning of two offices on the second floor of the branch building awarded to Doves Enterprises at a cost of

N3,800.30.

- (a) You did not call for nor accepted (sic) any written quotation in respect of this contract.
- 5 (b) If at all you received quotation, you failed to refer such to the Minor Contracts Tenders Board for its consideration in accordance with laid-down procedure considering the amount involved in the contract.
- (c) You did not make any drawing nor prepare any estimate for the partitioning before you caused the job to be awarded to a contractor at the cost of N3,800.30.
- 10 (d) In spite of the fact that you were instrumental to the award of this contract to a contractor, you caused the Bank's Maintenance Staff - Messrs Kolokolo, Umoh, Assian and Mbaba to carry out the partitioning job.

- 15 3. Re: contract for the dislodgement of septic tank and soak-away awarded to Doves Enterprises at a cost of N1,290.00.

You failed to refer the quotations for this job to the Minor Contracts Tenders Board in accordance with established procedure which requires that tenders involving N1,001 -N20,000 should be referred to the Board for its consideration.

20

4. Between March, 1979 and August, 1982, you signed for and collected L.P.Os and cheques on behalf of the following firms without authority.

25 <u>FIRMS</u>	<u>AMOUNT</u>
Doves Enterprises	N72,736.90
Jansenide Company	N37,088.80
Nefresi Enterprises ,	N29,035.72
Heta (Nig.) Limited	N2,685.50"

- 30 The appellant answered the query by his letter(exhibit7)dated the 17th January,1983 in which he stated that the allegations made against him were "based on malice".On 22nd February,1983 a letter (exhibit 8) was issued from the respondent's Branch in Calabar to the appellant. The letter reads:-

35 *"Mr. N.E. Obot,*
Maintenance Office,
CBN - Calabar.

Dear Sir,

DISCIPLINARY COMMITTEE

You are required to appear before a Disciplinary Committee sitting in the Branch on the 3rd March, 1983 to give evidence in a case of irregular award of contracts involving certain members of staff in the branch.

Please make yourself available before the Committee on the said date.

*Yours faithfully,
(Sgd.)*

Manager, Establishments."

The Central Disciplinary Committee of the respondent went to Calabar and sat on 4th and 5th March, 1983. The Committee wrote a report (exhibit 40) which it gave title to as *"Minutes of the Central Disciplinary (sic) Meeting held on 4th and 5th March, 1983 to determine a case of irregular award of contracts involving Messrs. N.E. Obot, O.R. Umoh and B. Assian, all of Calabar Branch."* The report indicates the procedure adopted by the Committee to be as follows:-

"The meeting of the 4th March, 1983 opened at about 10.35 a.m. Since every member of the Committee had earlier got and studied a copy of the case file, the chairman called for suggestions on how best to proceed with the case. The Committee agreed that Mr. Enembe who brought the case to light should be called to testify first. It was also agreed that in the course of its deliberations, the Committee would visit the site of some of the projects executed by the contractors to appraise the work done. The Committee would also, where possible, visit the offices of some of the companies involved in the contract jobs."

The Disciplinary Committee made the following findings and recommendations in its report with regard to the allegations made against the appellant:-

"1. USE OF THE BANK'S EXTENSION SCAFFOLD BY A CONTRACTOR:

The Committee found that Mr. Obot himself agreed that the scaffold was taken to the Senior Staff Flats by the Maintenance Staff and he saw it standing there at least two weeks after the completion of the glazing work by the Maintenance Staff and by which time the contractors had started work at the flats. The committee therefore found it difficult to believe that the contractors did not use the scaffold or that

52 Obot v. Central Bank Of Nigeria (1993) 12 KLR Uwais JSC

Mr. Obot did not connive at its use by the contractors. It is the view of the Committee that Mr. Obot knew about the use of the scaffold by the contractor and he should therefore be held responsible as indicated.

2. CONTRACT FOR THE PARTITIONING OF TWO OFFICES IN
5 THE BRANCH BUILDING AND USE OF BANK STAFF TO
EXECUTE THE JOB

In respect of the above charge the committee found the following:

- (a) That Mr. Obot did not call for written quotation from contractors;
- (b) He did not pass the quotation through the Minor Contracts Tenders Board;
- 10 (c) He did not prepare any estimate in respect of the job before he awarded it to a contractor, Doves Enterprises at a cost of N3,800.30;
- (d) He used the Bank's Maintenance staff to execute the job;

3. CONTRACT FOR THE DISLODGEEMENT OF SEPTIC TANK
15 AND SOAK AWAY AWARDED TO DOVES ENTERPRISES AT A
COST OF N1,290.00

Under this the Committee found that Mr. Obot did not refer the contract to the Minor Contracts Tenders Board before he awarded it to Doves Enterprises at a cost of N1,290.00;

4. SIGNING FOR AND COLLECTING LPOs AND CHEQUES ON
20 BEHALF OF COMPANIES WITHOUT AUTHORITY.

In respect of the above charge the Committee found that between March, 1979 and August, 1982 Mr. Obot signed for and collected cheques and LPOs without authority for the following companies:

25	<u>FIRMS</u>	<u>AMOUNT</u>
	DOVES ENTERPRISES	N72,736.90
	JANSENIDE COMPANY	N37,088.80
	NEFRESI ENTERPRISES	N29,035.72
30	HETA (NIG.) LIMITED	N 2,685.50

In addition to the above, the Committee also found the following:-

- 5. The existence of two of the companies - Doves Enterprises and
35 Jansenide Company could not be established. The Committee however found that at least one company Nefresi Enterprises belongs to Mr. Obot.

6. From the way the estimates were prepared and indeed from quality of work done on the completed projects the committee was convinced that the prices of the contracts were arbitrarily inflated and consequently the bank incurred unnecessary loss of fund.

COMMITTEE'S RECOMMENDATIONS:

5

MR. N.E. OBOT:

In making its recommendations on Mr. Obot, the Committee noted that the gravity of the offence committed by Mr. Obot merited him summary dismissal. However, taking into consideration, the fact that Mr. Obot had served the bank for about twenty-one (21) years and in keeping with the Staff Manual provision, Chapter 5, Section 2(m) which states that 'the bank may terminate the appointment of any staff member who engages in business that conflicts with the bank's interest', the Committee recommended that Mr. Obot's appointment with the Bank should be terminated." 10 15

A letter (exhibit 10) was written to the appellant on 27th May, 1983 dismissing him from the respondent's employment. The letter reads:-

*"CENTRAL BANK OF NIGERIA
Tinubu Square, 20
Lagos.
Private Mail Bag 12194:
Cables: CENBANK.:
TELEPHONE.....
27th May, 1983. 25*

*Mr. N.E. Obot,
Via: Branch Controller,
Central Bank of Nigeria,
Calabar.
Via: Deputy Director (Branches/Staff),
Domestic Operations Department,
Central Bank of Nigeria,
Lagos. 30*

Dear Sir, 35

DISMISSAL FROM BANK'S SERVICE

I am directed to draw your attention to the fact that on 5th March,

1983 you appeared before the Bank's Central Disciplinary Committee on a case of irregular award of contracts for which you were found guilty.

Consequently, you have been summarily dismissed from the Bank's service with immediate effect.

Your entitlement or indebtedness to the Bank is being determined and will be communicated to you in due course.

Meanwhile, you are required to hand over all Bank's property in your possession including the laminated identity and clinic cards to your Branch Controller before you leave.

Please note that as a result of your dismissal from the Bank's service, you will not be allowed into the Bank's premises without official permission.

*Yours faithfully,
(Sgd.)*

*G.O. Akinlade,
AG. Senior Manager,
For: Director of Personnel."*

The employment of the plaintiff with the defendant was regulated by the Central Bank of Nigeria Staff Manual (Condition of Service) The appellant contends in his Statement of Claim and testimony at the High Court that when he appeared before the Disciplinary Committee he was asked questions which he answered. He alleged that 9 employees of the Calabar Branch of the Bank testified before the Disciplinary Committee. That he was not present when 8 of the witnesses gave evidence and that he was not given the opportunity by the Disciplinary Committee to cross-examine them. He was, however, present when the ninth witness, Mr. E. Kolokolo gave evidence and he was allowed to cross-examine him. The appellant averred in paragraph 12 of the Statement of Claim thus:-

"12. The employment of the plaintiff with the defendant was regulated by the Central Bank of Nigeria Staff Manual (Condition of Service) and at the trial the plaintiff will contend that the defendant did not comply with the stipulation in the said manual in relation to disciplinary procedure and the dismissal of staff."

This was admitted in paragraph 12 of the Statement of Defence which reads as follows:-

"12. The defendant admits paragraph 12 of the statement of claim and states that it complied with the procedure contained in the Central Bank of Nigeria, Staff Manual, in relation to the acts of the plaintiff against the Bank which amounted to grave misconduct."

Hearing opened in the High Court on 21st March, 1984 with the plaintiff

as the first witness. His testimony continued due to adjournments up to the 1st of June, 1984. He called two witnesses. The learned trial Judge concluded taking evidence of the 7 witnesses called by the defence on the 18th day of April, 1985. In the meanwhile, the appellant filed a Reply to the respondent's statement of defence on 10th December, 1984. The appellant filed an application in the trial court on 16th April, 1985, under Order 33 rule 16 of the High Court Rules, Cap.51 of the Laws of Cross River State, 1979 in which he prayed the court for an order:-

"(1) That the plaintiff may file a reply to the statement of defence herein; and

(2) That the reply to the Statement of Defence filed on the 10th of December, 1984 be deemed to have been properly filed."

The date given on the motion paper for the hearing of the application was 18th day of April, 1985. Although that was the date on which the trial court concluded taking evidence of the defence witnesses, there is nothing in the record of proceedings against that date to show that the application was heard by the High Court. But curious enough, the following minutes appear in the record of proceedings at the end of the testimony of the plaintiff which, as mentioned above, was concluded on the 1st day of June, 1984:-

"... At this stage Mr. Ekong-Bassey Counsel for the plaintiff made application to reply to the allegations made against the plaintiff in the Statement of Defence in particular paragraphs 10 and 11 among others.

By Court: At this stage, the reply is not necessary as the counsel has the chances of calling witnesses to disprove all the allegations made against his client, or doing so under cross-examination, application is therefore refused."

Order: This case is adjourned to the 26th of June, 1984 for continuation."

Obviously the above minutes tell lie about itself. If the application was filed on the 16th April, 1985 and it was fixed for hearing on the 18th April, 1985, which was indeed the case, it certainly could not have been heard on the 1st day of June, 1984, that is nine and a half-months before the application was even filed.

Be that as it may, the learned Chief Judge gave judgment on the 29th day of August, 1985 dismissing the plaintiff's action. In dealing with the appellant's assertion in paragraph 12 of the Statement of Claim which, as shown above, was admitted by the respondent in the Statement of Defence, the learned Chief Judge in holding that there was neither infringement of the rules of natural justice nor miscarriage of justice observed as follows:-

"On the 22/2/83, the plaintiff was invited to appear before a Disciplinary Committee in the Branch on the 3/3/83 to give evidence in the award of contracts involving certain members of staff in the Branch. See Exhibit 8.

5 Counsel for the plaintiff had argued that the plaintiff was invited as a witness and was turned to be an accused before the panel when he was not informed of what he had done. I do not think counsel was quite correct because already the plaintiff had appeared before an investigating panel. This did not involve the plaintiff alone. Seventeen of them were interviewed. Each of them were told what part he played in the irregular award of contracts. Having worked in the Bank for as long as 21 years, the plaintiff knew or is expected to know that this investigating panel having been followed by a query the panel had found something against him that needed further explanations. When therefore he received Exhibit 8 inviting him to appear before a Disciplinary Committee, I will be surprised if he said 15 that he did not know that the evidence he will be required to give in a case of irregular award of contracts involving certain members of staff of the Bank would not include him. If not why was he issued with a query? I am sure as an experienced member of staff at the Bank of not less than 21 years service he knew the procedure that was likely to follow after investigation and a query to a particular person when that person is asked to appear before a disciplinary committee and give evidence. As far as that is concerned, I do not see any miscarriage of justice or the infringement of the rules of natural Justice or any denial of fair play. It is my opinion that the facts of what were alleged against the plaintiff by Enembe having been disclosed to him (a) in the interview before the investigating panel. (b) in the query served on him, there was no need to give a copy of the petition of Mr. Enembe to the plaintiff. I do not therefore see how the case of Abimbola George and Others v. Dominion Flour Mills Ltd. (1963) 1 All NLR 7 or that of Antonia E. Umoffia v. M.C. Ndem (1974) 4 ECSNLR 674 cited by the plaintiffs counsel apply. The plaintiff did in fact appear before the Disciplinary Committee which consisted of the Executive Director, as Chairman, Deputy Director of Personnel, Deputy Director of Domestic Operations, Deputy Director of Research, Deputy Director of Banking Supervision with Assistant Director of Personnel, Principal Legal Officer in attendance and Senior Supervisor, Staff Relations Office as Secretary. See Exhibit 40. Exhibit 40 shows that the Committee heard evidence from all concerned and checked up facts bearing on the matter which were outside the premises of the Bank." (Italics mine)

20
25
30
35

The appellant appealed to the lower court from the decision of the learned

Chief Judge. He inter alia complained against the refusal of the trial court to grant him leave to file a reply denying the allegations of fraud which were made in the statement of defence and the denial of fair hearing by the Disciplinary Committee. In dealing with the former complaint, the Court of Appeal held as follows (per Oguntade, J.C.A.):-

"In the instant case, respondent had pleaded grave acts of misconduct against appellant. Appellant was denied the opportunity to meet those charges on the ground that he could call witnesses to disprove the allegations against him and to cross-examine the witnesses. I consider this unfair to appellant. He ought, properly in my view, to have been allowed to file a reply. It is certainly presumptuous on the part of the lower court to think that the grave allegations made against appellant could be disproved by mere denials or through cross-examination of witnesses. The lower court ought to have known that appellant might have wished to meet the accusations against him by putting before the court different versions of the allegations pleaded by respondent. How could appellant have done so without first pleading such facts? It is trite law that evidence on facts not pleaded goes to no issue and ought to be discountenanced. See Benson v. Otubor (1975) 3 S.C. 9; and N.I.P.C. v. Thompson Organisation (1969) 1 NMLR 99. Even if it was possible for appellant to have extracted from respondent's witnesses evidence favourable to his case during cross-examination, such evidence would not have advanced his case without the facts upon them being pleaded."

The learned Justice referred to the provisions of Order xxxiii rules 9, 10, 11 and 16 of the Anambra State Court Rules, which are not applicable to the case in hand, and continued thus:-

"In view of the above rules and relevant principles of law involved - 'Audi Alteram Partem' I am satisfied that the learned Chief Judge erred by not allowing appellant to file a Reply to the statement of defence as appellant had tried to do."

.....

I am satisfied however that the errors of the lower court and the other matters I commented upon have not in any way led to a miscarriage of justice.

.....

I am therefore satisfied the appellant was not in any way prejudiced by the refusal of the lower court to allow him file a reply to the statement of defence. He was still able to deny that he owned Nefresi (Nigeria) Enterprises and that he operated its account."

On the latter complaint by the appellant, the Court of Appeal remarked thus:"

In the instant case, some of those who gave evidence before the disciplinary committee did so in the absence of appellant. In fact, of the nine persons who testified only Mr. Kolokolo was confronted by the appellant. There was therefore to some extent an infraction of the rules of natural justice. But a close look at exhibit 40, shows that except on the allegation that appellant used respondent's staff to execute some jobs that had been contracted out and that appellant inflated contract prices, much of the evidence upon which appellant was found guilty came from appellant himself and the result of on-the-spot investigation carried out by the disciplinary committee. On the use of the respondent's scaffold, the appellant agreed that this had been kept at the site of work after respondent's staff had finished using it. This made it possible for an outside contractor working for respondent on the same site to use the scaffold. As regard the office partitioning contract awarded to Dove Enterprises at the cost of N3,800.30, the appellant had himself agreed that he did not prepare estimates before awarding the contract. He used his experience and discretion in the matter.

The appellant denied that he used respondent's staff to execute jobs contracted out. The evidence of some of appellant's accusers on this respect was not taken in the presence of the appellant as it should have, to enable appellant to contradict and cross-examine them. On this particular allegation, the proceedings of the Disciplinary Committee offended against the rules of natural justice. (Emphasis mine)

and concluded as follows before dismissing the appeal:-

"I think that appellant had taken the advantage of his position to enrich himself and that he deserved summary dismissal.

In the course of this judgment, I have held that the trial Judge made errors (1) By not allowing appellant to file a reply to the statement of defence and (2) By stating that he was not concerned with the truth of the allegations made in court. I also, held that the allegation against appellant before the disciplinary committee that he used respondent's staff to execute contracts awarded to outside contractors ought to be discountenanced since appellant's accusers testified behind appellant. And further that appellant had been denied the opportunity to appeal to the Governor of respondent.

I am satisfied however, that the errors of the lower court and the other matters I commented upon have not in any way led to a miscarriage of justice.

In the lower court, respondent pleaded the fact and led evidence that respondent (sic) misconducted himself. Although appellant, did

not file a reply to the statement of defence wherein these allegations were made, the simple and crucial issue at the end of the day came to this - Did appellant own the company Nefresi (Nig.) Enterprises which company he had recommended for the award of contracts? Appellant had ample opportunity in his evidence to deny or confirm this. At page 26 of the record, 5 appellant testified thus:-

'It is not true that I owned the company Nefresi. I am not the sale signatory of the account of Nefresi in the Union Bank.... It is true that for the contract of partitioning of the office I collected the cheque for Nefresi Enterprises. It is correct to say that I collected 10 cheques for Nefresi for work done by them to the Central Bank of Nigeria, Calabar for 12 times'

There, we have evidence that the appellant collected cheque; 12 times for Nefresi (Nig.) Enterprises. Exhibits 41 to 41G as I pointed out earlier show that appellant owned the company and operated its account. It was amply demonstrated by documentary proof that appellant had recommended Nefresi (Nig.) Enterprises for award of contracts. 15

I am therefore satisfied the appellant was not in any way prejudiced by the refusal of the lower court to allow him file a reply to the statement of defence. (Emphasis mine)

In the further appeal before this court the appellant formulated, in his brief 20 of argument, 6 issues for determination as follows:- .

"(1) Having concluded in favour of the appellant that it was unfair for the learned trial Judge of the High Court to have refused leave to the appellant to file a reply to the grave allegations of misconduct pleaded in the defendant's statement of defence against the appellant was it proper for the Court of Appeal to conclude that such 25 refusal did not occasion any miscarriage of justice?"

(2) Was the trial before the disciplinary committee of the appellant not invalidated or rendered void having regard to the text of the invitation in Exhibit 8; the fact that no charge was read to the appellant and his plea taken as required under the rule; and the fact that 8 of the 9 30 witnesses (including his principal accuser, Mr. Enembe) testified against the appellant in his absence and was it proper for the Court of Appeal in those circumstances to justify the dismissal of the appellant based on the decision of the disciplinary committee? 35

(3) Are specimen signature cards, request to open an account forms, letters of reference - all kept by a bank - not banker's books within the meaning of sections 2 and 156 of the Evidence Act; can an officer of

a bank give evidence in a case to which the bank is not a party without an order of the court made for special cause and can a person brought to court by a subpoena to come and give evidence or to tender a document be said to have volunteered such evidence.

(4) *As the Staff Manual Exhibit 12 reserved a right of appeal to the governor against the decision of a disciplinary committee and the Court of Appeal having held that it was implicit, (from a construction of the manual exhibit 12) that the appellant be first notified of such decision before he was dismissed (to enable him to appeal if he wished) can such a right cease to exist merely because the appellant said in evidence that it was unusual to send a report of the disciplinary committee to an individual?*

(5) *Whether a disciplinary committee empanelled in Lagos had jurisdiction to try the appellant who was a Calabar Branch Staff and who under the Manual Exhibit 12 was subject to the Calabar Branch (not Lagos) Disciplinary Committee in the absence of any evidence that the Branch in Calabar had refused to act or that it could not act or whether it was not the Staff Manual Exhibit 12 that solely carved out areas of jurisdiction of Disciplinary Committees.*

(6) *As the plaintiff/appellant was accused of defrauding the Bank and of awarding contracts to and in the names of companies that in fact did not exist and thereafter appropriating the funds on such contracts to himself whether those facts did not amount to allegations of a criminal nature and whether the Court of Appeal was right in failing to follow the decision in Doctor O.G. Sofekun v. Akinyemi (1980) 5-7 S.C. 1."*

Whilst agreeing with these issues as drafted by the appellant, the respondent added in its brief 2 more issues for determination.

I do not intend to state the additional issues here as I am of the view that a determination of issues Nos. (1) and (2) raised by the appellant are sufficient to dispose of this appeal.

At the hearing in this court, neither counsel addressed us in expatiation of any argument in the briefs. Instead they adopted their respective briefs only.

In arguing issue No. (1) learned counsel for the appellant submitted in his brief of argument that the principle of audi alteram partem is cardinal and once the court pronounces that there has been a breach of that rule, the proceedings and judgment must be impugned; judgment based on a breach of that principle cannot be saved. Therefore, the Court of Appeal clearly misdirected itself in law when it held that the appellant was not prejudiced. The case of Prince Yahaya Adigun v. The A-G of Oyo State (1987) 3 S.C. 250 at pp.306 and 309; (1987) 2 NWLR (Pt.53) 678 was cited in support of the submission.

In reply, learned counsel for the respondent argued in the respondent's brief that the appellant was late in filing the reply and that as held by the Court of Appeal, the reply was not necessary as no counter-claim was raised in the statement of defence to call for a reply being filed. It was submitted that when the proposed reply was filed on the 6th day of December, 1984, the appellant had already called all his witnesses and had closed his case on the 9th day of November, 1984. Therefore, the application could not have been moved on the 1st day of June, 1984 as shown by the record of proceedings. Relying on the cases of Okonjo v. Odje & Ors. (1985) 10 S.C. 267; and Chukwudi v. Mhanadi & Ors. (1980) 4 S.C. 31, it was urged that we should not allow technicalities to defeat justice.

Order 33 rule 16 of the High Court Rules, Cap.51 of the Laws of Cross River State, 1979 under which the application for leave to file the reply was brought reads:-

"16. The court if it considers that the statements of claim and defence filed in any suit insufficiently disclose and fix the real issues between the parties may order such further pleadings to be filed as it may deem necessary for the purpose of bringing the parties to an issue."

The filing of pleadings in any suit is, under the High Court Rules of Cross River State, by order of court - see Order 33 rule 1 thereof. The order for statement of claim and statement of defence to be filed by the parties in the present case was made by Kooffrey C.J. on 31st October, 1983. If a party wishes to file a reply or any further pleadings, leave to do so must be obtained under Order 33 rule 16 quoted above. The application brought by the appellant to file a reply to the statement of defence is in that respect appropriate. However, the power of the High Court to grant the application is discretionary. An examination of the provisions of Order 33 rule 16 will show the conditions to be satisfied before an application to file a reply could be granted. These are:-

1. The trial court must be satisfied that both the statement of claim and statement of defence filed by the parties have not, when read together, sufficiently disclosed and fixed the real issues between the parties; and
2. The further pleading in the reply to be filed will achieve the purpose of bringing the parties to an issue.

In general, it is not necessary for a plaintiff to file a reply if his only intention in doing so is to deny any allegations that the defendant may have made in the statement of defence - see paragraph 18.06 of Practice and Procedure

of the Supreme Court, Court of Appeal and High Courts of Nigeria by T.A. Aguda. The purpose of filing a reply to a statement of defence has been stated succinctly by Kawu, J.S.C. in the case of *Akeredolu v. Akinremi* (1989) 3 NWLR (Pt. 108) 164 at p.172 F-G as follows:-

5 *"Now, the rule of practice is that where no counter claim is filed, a reply is generally unnecessary if its sole object is to deny allegations contained in the statement of defence. The proper function of the reply is to raise, in answer to the defence, any matters which must be specifically pleaded, which make the defence not maintainable or which otherwise might take the defence by surprise or which raise issues of fact*
 10 *not arising out of the defence - Bullen & Leake and Jacob's Precedent of Pleadings, 12th Edition, p.107. (Also see Williamson v. London & North Western Rly Company (1879) 12 Ch.D. 787 at p. 794). Reply is the proper place for meeting the defence by confession and avoidance - Hall v. Eve (1876) 4 Ch.D. 341."*

15 Furthermore by Order 18 rules 3 and 14 of the English Rules of the Supreme Court (see pp.253 and 305 of the 1979 White Book) which is applicable to Cross River State by virtue of section 16 of the High Court Law, Cap.51 of the Laws of Cross River State, 1979; it is unnecessary to file a reply if the plaintiff only wishes to deny the allegations contained in
 20 the statement of defence. If no reply is filed all material facts alleged in the statement of defence are put in issue. A reply to merely join issues is therefore not permissible. Now, it is clear that a counterclaim or set-off was not raised in the respondent's statement of claim. What then were the reasons for the appellant's application for leave to file a reply? These are contained
 25 in paragraphs 3-6 inclusive of the affidavit in support of the application which read:-

"3. That in the statement of defence, the defendant has leveled a number of allegations against me which facts were not alluded to in my statement of claim.

30 *4. That these included allegations of fraud, improper award of contract and inflating of the prices of contract.*

5. That all these allegations are false and my Solicitor A. Ekong Bassey, Esq. has advised me and I verily believe him that it is necessary for me to file a reply setting out my denial of these facts.

35 *6. That I had already filed a reply on the 10th of December, 1984 without obtaining the permission of the court and my solicitor has advised me and I verily believe him that I have to apply formally for leave of this Honourable Court before I can rely on the reply so filed."*

It is quite clear from the foregoing that the purpose of filing the reply is to join issue on the allegations made in the statement of defence.

As pointed out above issues are deemed to have been joined in respect of allegations made in a statement of defence even where no reply is filed. The application by the appellant for leave to file a reply was therefore unnecessary since no reply was required to join issues on the statement of defence. Consequently, the learned Chief Judge, though for a different reason, was right to have made the ruling that it was not necessary for the appellant to file a reply. The denial of the leave having been based on the rule of practice, has nothing to do with the denial to the appellant of fair hearing or the infringement of the rule of natural justice in the maxim audi alteram partem, since the appellant was entitled to meet the allegations without filing a reply.

I now come to the proceedings before the Disciplinary Committee. Issue No. (2) in the appellant's brief of argument complains that the proper procedure had not been adhered to by the Disciplinary Committee since no charge was read to the appellant and 8 of the 9 witnesses called testified in his absence. This allegation was made in paragraph 12 of the statement of claim and was admitted in paragraph 12 of the statement of defence as quoted above. It is therefore a proved fact that the 8 witnesses were heard in the absence of the appellant and that he did not have the opportunity to cross-examine them.

The staff regulations of the respondent which are compoundly called Central Bank of Nigeria Staff Manual deals with staff discipline. It provides for two types of disciplinary committees, namely Bank's Staff Disciplinary Committee and Departmental Disciplinary Committee. Although the committee that was set up to look into the complaints against the appellant was referred to as Central Disciplinary Committee, it was by its composition the same as the Bank's Staff Disciplinary Committee. Therefore, for our purposes here, the misnomer is not important. The appellant has raised the point somewhere that the committee that should have dealt with his case was the Departmental Disciplinary Committee and not the former. But clause 10 of Chapter 5 of the Staff Manual provides that where a Departmental Disciplinary Committee is not set up the case to go before it becomes the responsibility of the Bank's Staff Disciplinary Committee. Be that as it may, the procedure to be followed by both the Bank's Staff Disciplinary Committee or the Departmental Disciplinary Committee is the same. It is as contained in paragraph 13 of Chapter 5 of the Manual which provides as follows:-

"In all cases the procedure of a Disciplinary Committee shall allow the staff member against whom an allegation is made to defend himself. He shall be issued with a query setting out in clear terms the nature of the allegation against him and be requested to

answer the query within a stipulated time. Subsequently, he shall be given the facility to call his witnesses if any and also cross examine opposing witnesses. The suspect shall however not use any of these facilities to delay the proceedings unreasonably. Failure to answer the query within a stipulated time may be deemed to mean admission of guilt."

5 There can be no doubt the Bank's Disciplinary Committee which heard the complaints against the appellant was in breach of the above procedure when it denied him the opportunity to listen to the evidence given against him by 8 witnesses and to cross examine them. Learned counsel for the appellant drew attention in his brief of argument to the provisions of Chapter 5 clause 11 (d) of the Manual which states:-

10 *"On arraignment before the Disciplinary Committee (of a Branch) the charge against the staff shall be read by the Chairman and the staff shall be asked to plead. Before his plea is taken, the facts of the case shall be read to the staff.*

15 *If the staff pleads guilty, the committee shall there and then recommend to the Director of Personnel the disciplinary measure to be taken against him/her.*

The disciplinary measure shall be in accordance with the Bank's stipulation on Staff Discipline." and argued that when the letter Exhibit 8 was sent to the appellant it was to invite him to appear before the Disciplinary Committee to give evidence and not as a formal notification of any case against him. This, it is submitted, is a violation of the principle of natural justice. In support of the submission, the brief referred to Judicial Review of Administrative Action, 4th Edition, by S.A de Smith and the case of Aiyetan v. NIFOR (1987) 3 NWLR (Pt.59) 48. In the former, the following is stated on p. 203 thereof:- *"If prejudicial allegations are to be made against him, he must normally, as we have seen, be given particulars of them before the hearing so that he can prepare his answers. In order to protect his interest he must also be enabled to controvert, correct or comment on other evidence or information that may be available before the hearing, right course will usually be to give him advanced notification."*

30 The appellant did not receive the appropriate notification to appear before the Disciplinary Committee nor was he allowed at the hearing of the Committee to hear the evidence given against him, nor was he given the opportunity to cross-examine them. There is no doubt that the appellant's right to fair hearing was infringed by the Disciplinary Committee and the Committee's proceeding was tainted by its violation of the laid down procedure for discipline.

In Olatubosun v. NISER Council (1988) 3 NWLR (Pt.80) 25 Oputa, J.S.C, made the following observation on p.52 B-C thereof:-

"...one of the essential elements of fair hearing is that the body investigating the charge (in this case of misconduct) must not receive evidence on representation behind the back of the person being investigated. This was our decision in Garba v. University of Maiduguri (1986) 1 NWLR (Pt. 18) 550 at p.618. In that case this court also added that the court will not inquire whether such evidence or representation did not work to the prejudice of the person being investigated. It is sufficient that it might. The risk of it is enough."

Consequently, I hold that the proceeding of the Disciplinary Committee was not only in breach of the provisions of the Staff Manual but also in violation of the principles of natural justice. I hold that the proceedings were null and void. See Adigun v. A-G of Oyo State (1987) 1 NWLR (Pt.53) 678 at p. 709. It follows, therefore, that the summary dismissal of the appellant which was based on the findings of the Disciplinary Committee (as per Exhibit 10 quoted above) was wrongful.

In view of the decision which I have reached above, it is not necessary for me to deal with other issues for determination in both the appellant's and respondent's briefs. I therefore need only to address the issue of general and special damages in order to determine to which, if any, the appellant is entitled.

It is the duty of the trial court to assess damages even if its decision goes against a plaintiff - see English Exporters (London) Ltd. v. Ayanda (1973) NSCC 123 at p.126; Okupe v. Ifemembi (1974) NSCC 164 at pp.179-180; and Yakassai v. Messrs. Incar Motors (1975) 5 S.C. 107 at pp.115-116. In the present case the High Court failed to do so. By virtue of the decisions in Dumbo & Ors. v. Idugboe (1983) 1 SCNLR 29; (1983) 2 S.C. 14 at p.73; Solei Boneh (Nig.) Ltd. v. Ayodele & Anor. (1989) 1 NWLR (Pt.99) 549 at pp.559F; and Onwuka v. Omogui (1992) 3 NWLR (Pt.230) 393 at p.417C this court is in a position to assess the damages in order to avoid delay, trouble and expense which further proceedings will involve if the case is remitted to the trial court. The general and special damages claimed by the appellant are contained in paragraphs 16 and 17 of the Statement of Claim produced above. Evidence in support was given by the appellant at the trial.

The general and special damages as itemised in the statement of claim show that the items being claimed are based on the fact that the appellant would have remained in the respondent's service for 13 years before retiring but for his dismissal wrongfully. This is, however, untenable because that is not in accordance with the principle on which damages for wrongful dismissal are assessed. See Denmark Production Ltd. v. Boscobel Productions Ltd. (1968) 1 All E.R. 513 at p.524 where it was decided

that:- *"As an employee dismissed in breach of his contract of employment cannot choose to treat the contract as subsisting and sue for an account of profits which he should have earned to the end of the contractual period; he must sue for damages for wrongful dismissal and must of course mitigate those damages as far as he reasonably can."*

5 In *The Nigerian Marketing Board v. A.D. Adewunmi* (1972) 11 S.C. 111 at p.117; (1972) NSCC 662 at p.665, this court held as follows (per Fatai-Williams, J.S.C. as he then was):-

10 *"In a claim for wrongful dismissal the measurement of damages is prima facie the amount that the plaintiff would have earned had the employment continued according to contract (see Beckham v. Drake (1849) 2 HLC 579 at pp.607 -608). Where, however, the defendant, on giving the prescribed notice, has a right to terminate the contract before the end of the term, the damages awarded, apart from other entitlements, should be limited to the amount which would have been earned by the plaintiff over the period of notice bearing in mind that it is the duty*
 15 *of the plaintiff to minimise the damage which he sustains by the wrongful dismissal."*

The appellant having been in the service of the respondent for 25 years would, had his appointment been properly terminated, be entitled to a month's notice of the termination or a month's salary in lieu of the notice.
 20 For clause 2 of Chapter 3 of the Staff Manual - Exhibit 12, provides:-

"2. Appointments of permanent staff members can be terminated either by the staff member or by the Bank on the giving of a month's salary in lieu thereof."

Consequently, the general damages which the appellant is entitled to
 25 amounts to one month's salary, which is N991.67k, and in addition he is entitled to pension and gratuity as admitted in Exhibit 10 by the respondent - see *E.C.N. v. Nicol* (1968) 1 All NLR (Reprint) 199 at p.206. The pension and gratuity payable to the appellant is stated in Chapter 22 of the staff manual as follows:-

30 *"The Central Bank of Nigeria has instituted a non-contributory pension scheme which will apply to all members of the Bank's permanent staff.*

Pension will not normally be granted to any member of staff until he has completed 15 years of service with the Bank and has reached the age of at least 45 years in the case of voluntary retirement or 60 years in the case (of) compulsory retirement.

35 **PENSION AND GRATUITY:** *The benefits payable under these rules will be computed as follows:-*

(i)

(ii) *Those who put in 15 years service and above would be entitled to an amount equal to their annual salary at the time they withdraw as gratuity*

ity. This amount progresses by 10% per annum for each completed year of service after the first 15 years up to a maximum of 300%. The gratuity is payable to the staff at the time the staff withdraws from the Bank's service or retires.

(iii) In addition all staff who have served for at least 15 years, would also qualify for the payment of pension.

5

.....
The detailed pension and gratuity rules and regulations are obtainable from the Manager, Salary Administration Office in Personnel Department."

10

I therefore hold that the appellant is entitled to pension and gratuity to be worked out by the respondent in accordance with the above rules and regulations and Exhibit 10.

On the whole this appeal succeeds. I declare that the appellant was wrongly dismissed by the respondent. The appellant is entitled to general damages which I assess at N991.67k being payment of one month's salary in lieu of notice. The appellant is entitled to pension and gratuity as damages to be worked out by the respondent on the basis of the formula stated above.

20

As a result, the decisions of the High Court and the Court of Appeal are hereby set aside. The appellant is hereby awarded N1,000.00 costs and in addition the costs in the High Court and the Court of Appeal which I assess at N100.00 and N400.00 respectively against the respondent.

25

WALI JSC

I have read before now, the judgment of my learned brother Uwais, J.S.C, with which I entirely agree.

For the same reasons well articulated in the judgment which I hereby adopt as mine, I also allow this appeal, set aside the decisions of both the High Court and the Court of Appeal and declare that the appellant was wrongly dismissed by the respondent and is entitled to general damages of N991.67k his one month's salary in lieu of notice. In addition he is entitled to pension and gratuity as stipulated in Chapter 22 of the Staff Manual of Central Bank of Nigeria.

30

The appellant is awarded N1,000.00 costs in this court and N400.00 and N100.00 costs in the Court of Appeal and the High Court respectively.

35

KUTIGI JSC

I read before now the judgment of my learned brother Uwais, J.S.C, just delivered. I agree with the conclusion that the appeal succeeds. Clearly the Disciplinary Committee which the respondent appointed to investigate the complaints against the appellant was not only in breach of the provisions of Chapter 5 of Exhibit 12 (Central Bank of Nigeria Staff Manual) but it also violated the principle of audi alteram partem. The Committee neither framed nor read any charge to the appellant. It is clear that eight of the nine witnesses who testified against the appellant did so in his absence. Again the letter (Exhibit 8) sent to the appellant merely invited him to appear before the committee to give evidence. It did not accuse him of anything. It was not a notification of any case against the appellant. The proceedings before the Committee were therefore patently null and void (see *Adigun v. A.-G. of Oyo State* (1987) 1 NWLR (Pt.53) 678; *Olatunbosun v. NISER* (1988) 3 NWLR (Pt.80) 25. Consequently, the summary dismissal of the appellant as per Exhibit 10 by the respondent based on the Committee's finding was equally null and void. You cannot put something on nothing. (See for example *Macfoy v. U.A.C.* (1962) A.C. 152).

I also agree with the lead judgment that the general damages which the appellant is entitled to is one month's salary (plus any allowance for that period) in lieu of notice. The claims for special damages calculated on the notion that the appellant would have remained in the respondent's service for another 13 years before retirement is clearly misconceived. They are accordingly refused (see *Nigerian Marketing Board v. Adewunmi* (1972) 1 All NLR 433; *International Drilling Co. v. Ajijala* (1976) NMLR 52).

The appeal having succeeded the decisions of the High Court and the Court of Appeal are hereby set aside. The appellant is awarded costs of N100.00 and N400.00 respectively in the High Court and the Court of Appeal. He is also awarded costs of this appeal assessed at N1,000.00

30

MOHAMMED JSC

I agree that this appeal should succeed for the opinion given by my learned brother, Uwais, J.S.C., in the lead judgment which I have the privilege to read in advance. It is without doubt that the Central Bank Disciplinary Committee was not fail to the appellant when it failed to permit him to listen to the testimony of eight witnesses during the Disciplinary Proceedings set up to inquire into allegations of his involvement in award-

ing irregular contracts at Calabar Branch Office of the Bank.

It is a clear violation of natural justice for the Disciplinary Committee to permit witnesses to testify against the appellant without giving him the opportunity to cross-examine them.

I do not intend to say more considering the massive discussion of authorities which my learned brother had expressed in his opinion, in the lead judgment. I therefore express my concurrence with the lead judgment and allow the appeal. 5

I abide by the order made in the lead judgment on costs.

Appeal allowed.

10

UWAIS JSC (Pronouncement):

My learned brother, the Hon. Justice Saidu Kawu, who sat with us on the 5th day of July, 1993 to hear this appeal retired from the Bench on the 10th day of August, 1993. Conference on the case was held by the panel with him present on the 7th day of July, 1993. He expressed, at the conference. The opinion that the appeal should be allowed with N1,000.00 costs and damages as contained in the judgment which has been delivered by me. 15

I make this pronouncement in accordance with the proviso to section 180 subsection (2) of the Interim Government (Basic Constitutional Provisions) Decree, No. 61 of 1993 and A-G. of Imo State v. A-G. of Rivers State (1983) 8 S.C 10 at pp. 10-12. 20

25

30

35