

**SUPREME COURT OF NIGERIA**

4TH JUNE, 1993. SC. 163/1991

**CORAM:- A. G. KARIBI-WHYTE, S. KAWU,  
S. M. A. BELGORE. O. OLATAWURA, I. L. KUTIGI, JJSC.**

MRS. C.O.A FAKUADE ..... APPELLANT

AND

OBAFEMI AWOLOWO UNIVERSITY TEACHING  
HOSPITAL COMPLEX MANAGEMENT BOARD ..... RESPONDENT

*CIVIL CAUSES - Master & servant relationship - reason for termination not disclosed - plaintiff's allegation that termination was as a result of reply to a query - whether special disciplinary procedure ought to have been followed - whether termination was valid or not*

*CIVIL CAUSES - Contract of employment - with a statutory body - when not of a special character - to warrant existence of statutory flavour in favour of the employee - proper construction of parties contract*

*CIVIL CAUSES - Master & servant - motive or reason for termination - whether relevant - where termination is as per the provision of the contractual documents*

**FACTS**

The Appellant was employed by the Respondent as one of its nurses. The Respondent later terminated Appellant's appointment through a letter (Exh.D) in compliance with the parties' terms of contract. In an action before the High Court, Ilesha, Appellant sought a declaration that her termination was null and void. The Appellant claimed her termination was in connection with Respondent's missing bowl, as her reply to a query on that issue received no further comment from the Respondent

except her termination. The Respondent who gave no reason in the letter of termination denied Appellant's claim and avered that her termination was as a result of a retrenchment exercise which affected many other workers, necessitated by the need to reduce its cost of operation.

The trial court dismissed Appellant's claim upon a finding that her termination not being as a result of her reply to the query was lawfully done under the parties' terms of contract. Appellant's appeal to the Court of Appeal was dismissed. On further appeal to the Supreme Court, Appellant relied on some inapplicable statutes and decided cases towards showing that her appointment has a statutory flavour. The Supreme Court had to determine whether Appellant's termination was valid, legal and proper.

**HELD** (unanimously dismissing the appeal)

1. The lower Courts were right on their finding that no reason was given in the letter that terminated Appellant's employment (Exh.D) and the Respondent was not bound to give any reason (P.112 L1)
2. As the Appellant was simply terminated without any reason what soever, the Respondent would not be expected to have followed the disciplinary procedures provided in the laws or staff conditions of service cited by the Appellant. Those provisions relate to removal of a staff for misconduct, amongst other issues. (P.112 L4)
3. That the Respondent is a statutory body does not make conditions of service of its employees to be of a special character thereby ruling out master and servant relationship. (P.112 L26)
4. The Court must confine itself and construe nothing else save the terms of contract of service between the parties which provides for their rights and obligations. (P.112 L29)
5. Generally, a master can terminate the contract of employment with his servant at any time for any or no reason at all, provided he terms of contract of service between them (in this case Exhs.

- H & K ), are complied with. (P. 113 L12)
6. The motive that led an employer to lawfully terminate his servant's employment is not normally a relevant factor and the court will have no business with such motive save to give effect to the parties' contract of service. (P.113 L15)
  7. The Respondent properly and lawfully chose the second option of paying one month's salary in lieu of notice in terminating the Appointment as provided in the documents that govern the parties' relationship. (P.113 L25)
  8. The lower Court properly came to the conclusion that the Appellant was validly terminated not as a result of any query, misconduct or indiscipline which would have warranted the adoption of a special procedure before achieving the same result. (P.113 L30)

**PER KARIBI-WHYTE JSC** "The character of an appointment and status of the employee in respect thereof is determined by the legal character and the contract of the employee. Hence where the contract of appointment is determinable by the agreement of the parties, simpliciter, there is no question of the contract having a statutory flavour. The fact that the other contracting party is the creation of a statute did not make any difference

However, where the conditions for appointment or determination of the contract is governed by the preconditions of an enabling statute, that a valid determination or appointment is predicated on satisfying such statutory provisions, this is a contract with statutory flavour." (P.119 L38)

### **REPRESENTATION:**

Ayo Ajayi for the Appellant  
A. A. Fayokun for the Respondent.

### **CASES REFERRED TO**

1. Shitta-Bey v. Federal Public Service Commission (1981) Vol. 12 NSCC

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2. Federal Public Service Commission v. Laoye (1989) 2 NWLR (pt. 106) 652

3. Olatunbosun v. NISER Council (1988) 3 NWLR (pt. 80) 25

4. DIN v. Federal A.G (1988) 4 NWLR (pt. 87) 147

5. Olaniyan v. Unilay (1985) 2 NWLR (pt. 9) 599

6. Adegbite v. College of Medicine of Unilag (1973) 5 SC 149

7. Nigerian Produce Marketing Board v. Adewunmi (1972) 1 All NLR (pt. 2) 433

8. International Drilling Co. v. Ajijola (1976) 2 SC 115

9. Sule v. Nigerian Cotton Board (1985) 6 SC 62

10. Taiwo v. Kingsway Stores Ltd. (1950) NLR 122

11. Nwangwu v. Nzekwu (1957) 2 FSC 36

12. Amodu v. Awode & Anor. (1990) 5 NWLR (pt. 150) 356

### **STATUTES & RULES**

1. The University Teaching Hospital (Reconstitution of Boards etc) Decree No. 10 of 1985 SS. 8,9,10, 5(5)

2. Labour Act 1974 S. 19

3. Constitution of the Fed. Rep. of Nigeria 1979 S. 277

4. Civil Service Rules 1974.

### **LEAD JUDGMENT BY KUTIGI JSC**

At the Ilesha High Court, the plaintiff claimed against the defen-

dant -

“(a) *A declaration that the purported termination of the plaintiff’s appointment in the service of the defendant as contained in the letter of termination of appointment is null, void and of no effect whatsoever and that the plaintiff is still a Nursing Sister in the defendant’s service.*

(b) *An order of mandatory injunction restraining the defendant, his servants and or agents privies or otherwise from preventing the plaintiff from performing any of the functions and duties of her offices or interfering with the enjoyment or rights, privileges and benefits attached thereto. “*

After the filing and exchange of pleadings, the case proceeded for trial. At the trial the plaintiff testified for herself and called one witness. Only one witness testified on behalf of the defendant.

The plaintiff’s case was simply that at all material times she was a Nursing Sister in the employment of the defendant. She was employed in November 1976. Her letter of appointment was tendered as Exhibit H. The appointment was later confirmed in January 1979 vide Exhibit A. She said in September 1987 she received a query from the defendant accusing her of a missing stainless steel bowl. She was asked to say all she knew about the missing bowl. The query and her explanation thereof were respectively tendered in evidence as Exhibits B & C. All of a sudden on 13th November 1987 she received a letter of termination of her appointment. This was also tendered as Exhibit D. She said she was shocked to have received Exhibit D because she felt she had not committed any offence. She later wrote to the defendant appealing for a reconsideration of her termination. Her appeal was turned down (see Exhibits E, F & G). She said she had spent 10 years and 11 months with the defendant at the time her appointment was terminated. That she was only 41 years old and had expected to retire at the age of 60 year. She said she was the only nurse retrenched at the time by the nursing staff although she was not the last nor the most junior nursing staff to be employee by the defendant.

The defendant on the other hand admitted terminating the appointment of the plaintiff but said it was not as a result of the query

concerning the missing stainless steel bowl, nor for any misconduct on the part of the plaintiff. Rather it was as a result of a retrenchment exercise it found necessary to carry out in 1987 in order to cut down overhead costs. Two hospitals in the group of hospital under the defendant had to be returned to their original owners for the same reason. That a committee was set up which looked in the records of individual staff and made recommendations to it. About one hundred members of staff were affected by the exercise including the plaintiff. The committee's report and recommendations were tendered in evidence as Exhibits J & J.I. the staff regulations and Conditions of Service of the Ife University teaching Hospital Complex, Ile-Ife, Nigeria was tendered as Exhibit K. 5 10

In a well considered judgment the learned trial judge Adekola J dismissed the plaintiff's claims with N150.00 costs.

Dissatisfied with the judgment of the trial court the plaintiff appealed to the Court of Appeal, Ibadan. The appeal was also dismissed with N300.00 costs. 15

The Plaintiff still not satisfied with judgment of the Court of Appeal had further appealed to this Court. 20

Briefs of argument were filed and exchanged by the parties. They were adopted at the hearing and additional oral submissions were also made.

Mr. Ayoola Ajayi learned counsel for the appellant in paragraph 206 of page 3 of his brief formulated the issue for determination thus - 25

*"Whether or not the termination of the appellant's appointment vide the letter of 13/11/87 was valid, legal and proper in all the circumstances of the case."* 30

This same issue was one of the four issues considered by the high court in its judgment. On pages 33 - 34 the learned trial judge stated-

The issues which are to be determined by the Court are:- 35

*"(i) Was the plaintiff's appointment terminated as a result of the missing stainless bowl?*

*(ii) If the answer to question (i) above is in the negative, will it be necessary to follow the disciplinary procedure before the*

*plaintiff's appointment can be terminated?*

(iii) *If the answer to question (ii) above is in the negative, can it be said that the plaintiff's appointment has been validly terminated by the defendant?*

5 (iv) *If the appointment of the plaintiff has been validly terminated can the court issue an order of mandatory injunction restraining the defendant from preventing the plaintiff from performing the functions and duties of her offices or interfering with enjoyment of the rights, privileges and benefits attached thereto?*

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The learned trial judge then continued thus -

*"In answer to question (1) above, it is the duty of the plaintiff to prove by preponderance of evidence that the defendant terminated her appointment as a result of the missing stainless steel bowl. This is so because by the letter, Exhibit D, dated 13-11-87 by which the plaintiff's appointment was terminated by the defendant, there was no reason stated therein. An employer is not bound to state any reason why an employee's appointment is being terminated. But where a reason is stated by the employer why an appointment is being terminated, the burden of proving or establishing that reason will be on the employer or master. One who alleges must prove.*

25 Having regard to the pleadings and the evidence before the court, it cannot be said that the plaintiff has proved that the defendant terminated her appointment as a result of the missing stainless bowl. Further on page 36 of the judgment the learned trial judge said - *"In dealing with point (ii) above, I should say straight here that once the appointment of the plaintiff has not been terminated on the basis of the missing stainless bowl, there would be no need for the defendant to follow the disciplinary procedure before the plaintiff's appointment can be terminated. Can it be said therefore that the plaintiff's appointment has been validly terminated? Exhibit K is the staff regulations and Conditions of Service which applies to the plaintiff in this case. Chapter 11 of Exhibit K deals with offers of appointment and termination of appointment paragraph 14(a) or section 14 (a) deals with determination of employment and provides that an appointment may be resigned or terminated by giving one month's notice in writing or payment of one month's salary in lieu of notice by either side. It is my view having regard to Exhibit D, that the entitlement*

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*of the plaintiff as stated in the said exhibit included a month's salary in lieu of notice ..... In this particular case where the termination of the appointment of the plaintiff was not based on any misconduct or negligence, the defendant must terminate the plaintiff's appointment in accordance with the terms laid down in the conditions of service. The conditions of service have stipulated that a month's notice or a month's salary in lieu of notice must be given by either side. It is my view that the payment of a month's salary in lieu of notice as quoted in Exhibit D will be a valid termination of the plaintiff's appointment."*

I agree entirely.

In the Court of Appeal Akpabio J.C.A. who delivered the lead judgment (and concurred by Kolawole J.C.A. and Ogwuegbu J.C.A. (as he then was) also had no difficulty in identifying the single issue for determination in the appeal when he stated on page 94 of the record that -

*"Based on the totality of the above arguments and all the legal authorities cited by learned counsel on both sides, I shall now proceed to resolve all the issues for determination which I find can be conveniently disposed of under one question as follows:-*

*"Whether upon all the evidence before the learned trial judge he was right in dismissing the appellant's claim."*

The Court of Appeal thereafter considered the various submissions of counsel and rightly in my view, came to the conclusion that the plaintiff/appellant's claims were rightly dismissed by the learned trial judge of the high Court.

I have endeavoured to show above that the single issue submitted for determination in this Court was not only resolved in the Court of Appeal against the appellant but that the same issue was decided by the trial court against her. There was therefore nothing new in the submissions of appellant's counsel before us. The submissions can conveniently be summarised as follows -

(a) That as a confirmed member of staff the appellant acquired a special status as a public servant over and above the ordinary master and servant relationship and that her appointment could only have been terminated in accordance with the Civil Service Rules and the University

110 Fakuade v. O.A.U. Teaching Hospital (1993) 6 KLR Kutigi JSC  
Teaching Hospital (Reconstitution of Boards etc,) Decree No. 10 of  
1985.

He cited the cases of SHITTA-BEY V. FEDERAL PUBLIC SERVICE  
COMMISSION (1981) VOL. 12 N.S.C.C. 28; FEDERAL PUBLIC SER-  
VICE COMMISSION V. LAOYE (1989) 2 NWLR (PT.106) 652  
5 OLATUNBOSUN V. NISER COUNCIL (1988) 3 NWLR (PT. 80) 25.

(b) That removal from office by reason of redundancy was not con-  
tained or envisaged by either the Civil Service Rules or Decree 10 of  
1985 and that redundancy would not be applicable to the appellant. He  
10 referred to sections 19 of the Labour Act No.21 of 1974 and the case of  
DIN V. FEDERAL ATTORNEY-GENERAL (1988)4 NWLR (PT.87) 147.

Mr. Fayokun learned counsel for the respondent on the other  
15 hand submitted that -

*(1) Appellant's appointment had no statutory flavour. The terms are set  
out in EXHS. H & K. He cited OLANIYAN V. UNILAG (1985) 2 NWLR  
(PT.9) 599.*

20 *(2) No question of fair hearing arose in this case. The appellant was not  
terminated as result of any query, misconduct or indiscipline and that no  
disciplinary procedures needed to be followed before she could be termi-  
nated.*

25 *(3) Appellant's appointment was validly terminated in accordance with  
Exhibits H & K. The provisions relating to discipline of Staff as con-  
tained in Decree 10 of 1985 and Staff Conditions of Service (EXH. K.I  
did not apply. The Labour Act of 1974 also did not apply. He cited*  
30 *OLANIYAN V. UNILAG (1985) 2 NWLR (PT.9) 599.*

The facts of the case are quite simple and straight forward. I  
will therefore be brief. There is no doubt that the parties herein are gov-  
35 erned by EXHIBITS H & K in this case. Exhibit K provides for the pro-  
cedure for termination of appointments. It is provided on page 4 of EXH.  
K as follows -

*“14. Determination of Employment*

*(1) Termination of Appointments (other than on disciplinary*

Grounds)

*Appointment may be resigned, or terminated by giving one month's notice in writing or payment of one month's salary in lieu of notice by either side."*

Needless to say that a similar provision is also made in the Offer Appointment, EXHIBIT H. Wherein it is provided thus - 5

*"Offer of Appointment*

*In the light of your performance at the recent interview ..... I have the honour to offer you temporary 10  
appointment as a Grade I Midwife on month to month basis pending the completion of necessary formalities..... on the following conditions:-*

*(a) That, unless dismissed, you may or the Management Board may terminate your engagement by a month's notice or with the consent of your Head of Department, by payment of a month salary in lieu of notice. 15*

*(b) That as long as you remain in the services of the Management Board of Ife University Teaching Hospitals Complex you will be liable to be employed in any part of the complex. 20*

*(c) That you will be subject in all respects to all conditions of service stipulated from time to public officers in the appropriate Government regulations and instructions. "*

It may be added that EXH.K is one such conditions of service stipulated for public officers referred to in (c) above. 25

EXHIBIT D clearly in my view complied with the provisions of EXH H & K above by giving to the appellant, amongst others, on month's salary in lieu of notice. EXH.D reads in part - 30

Determination of Appointment

*I am writing to inform you that the Management Board .....The Accounts Department is being advised by a copy of this letter to compute and pay you your entitlements less your indebtedness (if any). Your entitlement include: 35*

*(a) Your salary up to date*

*(b) Your one month's salary in lieu of notice;*

*(c) Your 1987 earned but unenjoyed leave (if any) commuted to cash;*

and

(d) *Your gratuity at appropriate rate subject to availability of fund.*”

Both the trial court and the court of Appeal therefore, I believe, were right when they found that Exh.D gave no reason for the termination of the appointment of the appellant. The respondent in fact was not  
5 bound to have done so. It is therefore obvious that since the appellant was not terminated or dispensed with for any misconduct or indiscipline or as a result of any query, the cases of SHITTA-BEY V. FEDERAL PUBLIC SERVICE COMMISSION (1981) VOL.12 N.S.C.C. 28, FED-  
10 ERAL PUBLIC SERVICE COMMISSION V. LAOYE (1989) 2 NWLR (PT.106) 652. OLATUNBOSUN V. NISER COUNCIL (1988) 3 NWLR (PT.80) 25 and Olaniyan v. Unilag (1985) All NLR 314 heavily relied upon by the appellant will not apply. The reason simply is that the defend-  
15 ant would not be expected to have followed the disciplinary procedures as laid in the Acts or decrees or Staff Conditions of Service to which appellant’s counsel referred. It is in this connection particularly that the provisions of the University Teaching Hospitals (Reconstitution of Boards, etc.) Decree No. 10 of 1985 (Sections 8, 9 & 10 thereof) were not helpful to the appellant. These provisions relate to removal of staff for  
20 misconduct etc. In the instant case the services of the appellant were simply dispensed with or terminated without any reason whatsoever. Sections 5(5) of Decree 10 of 1985 clearly empowers the respondent Board to inter alia terminate employees. I have also found nothing helpful to her case in the Labour Act of 1 974.

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The fact that the respondent is a statutory body does not mean that the conditions of service of its employees must be of a special character ruling out the relationship of mere master and servant relationship. The court must confine itself to the terms of contract of service between  
30 the parties which provides for their rights and obligations. In this case it is the relevant conditions in EXHIBITS H & K that must be construed and nothing else ADEGBITE V. COLLEGE OF MEDICINE OF UNIVERSITY OF LAGOS (1973) 5 SC.149, NIGERIAN PRODUCE IN-  
35 TERNATIONAL DRILLING CO. V. AJIJOLA (1976) 2 SC.115). SULE V. NIGERIAN COTTON BOARD (1985) 6 SC.62). The appellant was unable to show that her contract of service was based or reinforced by any law or statute (see OLANIYAN V. UNIVERSITY OF LAGOS & ANOR (1985) 2 NWLR (PT.9) 599.

Now a word about redundancy. I said and it was clear that the respondent did not give any reason for the termination of appellant's appointment in Exhibit D. In its pleadings however it gave the reason to be retrenched and actually adduced satisfactory evidence (including Exhibits J & J.1) which convinced the learned trial judge that redundancy was the compelling reason and not any misconduct on the part of the appellant. The respondent had to return two of its main hospitals to their original owners as a result of which it was decided to reduce staff strength in order to save costs. About one hundred members of staff were retrenched including the appellant. (See Exhibits J & J.1). I think the trial court was right. But generally speaking a master can terminate the contract of employment with his servant at any time and for any reason or for no reason at all, provided the terms of contract of service between them are complied with. The motive which led an employer to lawfully terminate his servant's employment is not normally a relevant factor and the court will have no business with such motive but only to give effect to the contract of service between the parties (See TAIWO V. KINGSWAY STORES LTD (1950) NLR 122, NWANGWU V. NZEKWU (1957) 2 FSC 36, 2 AMODU V. AMODE & ANOR (1990) 5 NWLR (PT.150) 356).

I must also observe again that although counsel argued that the relationship between the parties was more than that of master and servant, he failed to tell us what the new relationship was and what conditions then governed the parties. The parties as I said before are governed by exhibits H & K which provide that an appointment may be resigned or terminated by giving one month's notice in writing or payment of one month's salary in lieu of notice by either side. The respondent lawfully and properly too chose the second option. The lower courts therefore properly in my view came to the conclusion that the appellant was validly terminated and that the termination was not as a result of any query, misconduct or indiscipline which would have warranted the adoption of a special procedure before achieving the same result.

The appeal therefore fails. It is accordingly dismissed. Costs of 1,000 are awarded to the respondent.

**KARIBI-WHYTE JSC**

I have read the judgment of my learned brother Kutigi, J.S.C in this appeal. I agree with him that this appeal should be dismissed and for the reasons he has given in his judgment. I adopt the facts of this appeal so carefully and comprehensively summarised in my learned brother Kutigi  
5 JSC's judgment.

The point in issue in this appeal is whether the court below was right in affirming the judgment of the trial court that the termination of the Appellant in accordance with her contract of employment was valid.  
10 This was succinctly formulated by Mr. Ayoola Ajayi learned counsel for the Appellant in the issue for determination as follows:-

Whether or not the termination of the appellant's appointment vide the letter of 13/11/87 was valid, legal and proper in all the circumstances of the case.”  
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The letter of termination which is Exhibit “D” in these proceedings is reproduced below:-  
20

HIL/72/88

IFE UNIVERSIY TEACHING HOSPITAL COMPLEX, ILE-IFE  
NIGERIA

25 Chairman: Prof. (Chief) J. M. Falaiye  
Chief Medical Director: Prof. G.O.A. Ladipo  
Ag. Director of Administration: Mr. M.A. Abiodun

30 P.M.B. 5538,  
Ile-Ife,  
Nigeria.  
13th November, 1987.

Our Ref. No. p.1018/116  
35 Mrs. C. Fakuade,  
Nursing Sister,  
U.F.S. Chief Matron,  
I.U.T.H.C.,  
Ile-Ife.

Determination of Appointment

I am writing to inform you that the Management Board in session on 11th and 12th November, 1987 decided to dispense-with your service with effect from the date of this letter.

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In consequence, you are hereby required to surrender all the institution's property in your possession or care to your Head of Department who would issue you a Clearance Certificate to that effect.

The Accounts Department is being advised by a copy of this letter to compute and pay you your final entitlements less your indebtedness (if any). Your entitlements include:

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- (a) *Your salary up to date;*
- (b) *Your one month's salary in lieu of notice;*
- (c) *Your 1987 earned but unenjoyed leave (if any) commuted to cash; and*
- (d) *Your gratuity at appropriate rate subject to availability of*

*fund.*

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I thank you for your past services and wish you the best of luck in your future endeavours.

Signed

M. A. Abiodun

Ag. Director of Administration &  
Secretary to the Management Board."

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For a proper appreciation of the reasoning of the court of trial and of the court below in this case, it is pertinent to refer to the Appellant's contract of appointment, and the conditions of service governing the appointment. The letter of appointment which is reproduced below reads:-

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SUIT NO. HIL/72/88

Our Ref: No. P. 1018/2

Ife University Teaching Hospital Complex,  
P.M.B. 538

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Ile-Ife.

25th November, 1976. 115

Mrs. C. Akuade,  
P.O.NOC 35,  
Oye-Ekiti.

Dear Madam,

### Offer of Appointment

In the light of your performance at the recent interview and subject to your passing a medical examination conducted by Medical Officer of the Teaching Hospitals Complex as to your fitness for employment in the Public Service, I have the honour to offer you temporary appointment as Grade I Midwife on month-to-month terms pending the completion of necessary formalities precedent to your probationary appointment on a salary Grade Level 07 Step 1 i.e. N208 per month, on the following conditions:-

*(a) That, unless dismissed, you may or Management Board may terminate your engagement by a month's notice or with the consent in writing, of your salary in lieu of notice,*

*(b) That so long as you remain in the service of the Management Board of the Ife University Teaching Hospitals Complex you will be liable to be employed in any part of the Complex.*

*(c) That you will be subject in all respects to all conditions of service stipulated from time to time for public officers in the appropriate Government regulations and instructions.*

2. If you wish to accept this offer I am to request that you report to the Matron, Wesley Guild Hospital, llesha not later than 16th December, 1976 with the following documents:-

(a) *The attached form duly completed.*

(b) *Your Birth Certificate or Sworn Declaration of age (Original and a copy)*

(c) Photostat copies of your educational/professional certificates.

(d) 2 copies of your recent passport photograph.

I am, Madam,

Your Obedient Servant

Signed

## Age Ogunleye

for Director of Administration." (sic)

On the other hand the relevant provision for the procedure for termination of appointments is as stated in Exhibit “K” as follows

“14. *Determination of Employment.*

(1) *Termination of Appointments (other than on Disciplinary Grounds)*

(a) *Permanent and temporary staff:* 5

Appointment may be resigned, or terminated by giving one month’s notice in writing or payment of one month’s salary in lieu of notice by either side.”

It is pertinent to observe that the condition for determination of the contract of employment was one of the conditions in the letter of offer of appointment in Exhibit K reproduced above and accepted by the appellant. 10

Now, the contention of Mr. Ayo Ajayi learned counsel to the Appellant before us is that Appellant being a confirmed member of staff of Respondent’s establishment, had acquired a special statute as a public servant over and above the ordinary relationship of master and servant, and that her appointment could only have been terminated in accordance with the Civil Service Rules and the University Teaching Hospitals (Reconstitution of Boards etc) Decree No. 10 of 1985. Counsel cited and relied on Shitta-Bey V. FPSC (1981) Vol. 12 NSCC 28, FPSC V Laoye (1989) 2 NWLR (Pt. 101 652; Olatunbosun v. NISER (1988) 3 NWLR (Pt. 80) 25. 15 20

It was argued that in any event, removal from office on ground of redundancy is not contained in and was not envisaged by either the Civil Service Rules or Decree No. 10 of 1985, and that even applying the provisions of section 19 of the Labour Act NO. 21 of 1974, the principle of redundancy is not applicable to the facts of this case. Learned Counsel cited Din v. Federal Attorney-General (1988) 4 NWLR (Pt.87) 147. 25 30

In his reply to the submissions of Appellant’s Counsel Mr. Fayokun, for the Respondents argued that Exhibits “H” and “K which govern the appointment of Appellant did not give the appointment any statutory flavour. He relied for his submission on Olaniyan v. University of Lagos & ors. (1985) 2 NWLR (Pt. 9)599. He submitted that Appellant’s appointment was terminated accordance with Exhibits H and K and therefore valid. 35

Learned counsel pointed out that the provisions relating to discipline of staff as contained in Decree No. 10 of 1985 and staff conditions of service were not applicable. Similarly, not applicable is the Labour Act of 1974.

5 I think it will be of immense assistance in elucidating the legal basis for the termination of Appellant's appointment to reiterate the facts immediately preceding the termination. Appellant was appointed as a Nursing sister in November 1976. Her appointment was confirmed in January 1979. Following investigation into the loss of a stainless steel bowl, ap-  
10 pellant was issued with a query to state all she knew about the matter. She did, but did not receive any reaction from the Respondent about the matter. The query and her reply are Exhibits "B" & "C" in these proceedings. Later and on November 13, 1987 Appellant received a letter of  
15 termination of her appointment. This is Exhibit "D".

Although Appellant assumed that her appointment was terminated following her answer to the query for the missing stainless steel bowl, and petitioned asking for reinstatement the respondent denied this.  
20 They have also averred unequivocally that the termination of the appointment was not as a result of any misconduct on the part of the Appellant. Accordingly the termination was not the result of any disciplinary proceedings. Rather it was as a result of an exercise in staff reduction which Respondent found necessary to carry out to reduce overhead costs.

25 The crux of the matter therefore has been whether respondent can lawfully in accordance with the contract of service determine the appointment of Appellant merely on the ground of a scheme to reduce overhead costs in their establishment. It seems therefore not a matter for  
30 argument that the termination of the Appellant's appointment was not founded on any reasons of misconduct by the Appellant. The question therefore is whether respondent can lawfully terminate the appointment of Appellant in any other manner? The learned trial Judge answered the  
35 question in the affirmative.

In the court of trial, Adekola J, after considering the evidence held that respondent could validly terminate Appellant's appointment and said:

*“In this particular case where the termination of the appointment of the plaintiff was not based on any misconduct or negligence, the defendant must terminate the plaintiff’s appointment in accordance with the terms laid down in the conditions of service. The conditions of service have stipulated that a month’s notice ‘or month’s salary in lieu of notice must be given on either side. It my view that the payment of a month’s salary in lieu of notice quoted in exhibit D will be a valid termination of the Plaintiff appointment.”*

The Court of Appeal agreed with the above opinion. We are now to determine whether the two courts below are right. I have already summarised the contentions of learned counsel before us. I consider it appropriate to deal with the submissions in some detail.

I start with the contention that Appellant’s appointment is one with statutory flavour and therefore could not have been determined in the manner the Respondent did. Learned counsel replied this argument on the proposition that the Respondent is the creation of a statute with powers to make appointment and to determine the appointments so made. It was therefore argued that for the provisions of section 9 of the University Teaching Hospital (Reconstitution of Board etc) Decree No, 10 of 1985 provide for removal and discipline of members of staff, and section 277 of 1979 Constitution has defined the public service and public servants to include “staff on any educational institution established financed principally by the Government of the Federation appellant’s status is to be accepted as that of a public servant accordingly governed either by the Civil Service Rules 1974 ammended, or by the provisions of Section 9 of the Decree No of 1985. Appellant is a confirmed public servant holding a pensionable permanent appointment who can only be removed by resignation, retirement or by dismissal through a prescribed procedure.

It was submitted in the alternative, that compliance with section 9 is required in the case of the Appellant whether in respect Purported termination or dismissal. The argument, though quite misconceived, now seems to me common with counsel that officer employed by a statutory body enjoys an appointment with statutory flavour. Nothing is farther from the true legal position.

The character of an appointment and status of the employee in

respect thereof is determined by the legal character and the contract of the employee. Hence where the contract of appointment is determinate by the agreement of the parties, simpliciter, there is no question of the contract having a statutory flavour. The fact that the other contracting party is the creation of a statute did not make any difference.

5 However, where the conditions for appointment or determination of the contract is governed by the preconditions of an enabling statute, so that a valid determination or appointment is predicated on satisfying such statutory provisions, this is a contract with a statutory flavour. 10 It is within this category that we find the cases of Olaniyan v. Unilag (1985) All NLR. 314 and Shitta-Bey v. FPSC (1981) Vol.12 N.S.C.C.28 and Laoye V. FPSC (1989)2 NWLR (pt. 106)652. The contract is determinate not by the parties, but only by statutory preconditions governing 15 its determination. There is clearly nothing in the contract of employment of the Appellant which brings it within the Olaniyan and Shitta-Bey cases. Those cases do not therefore apply to this situation.

20 The fact that the respondent is the creation of a statute does not elevate all its employees to that status or that the status of master and servant is no longer existent or that their employment or determination of their appointment must necessarily have a statutory flavour. The special statutory provision merely re-enforces the security of tenure provided 25 the servant. There is no doubt, and this must be conceded, that if the determination of Appellant's appointment had fallen under Section 9 of the University Teaching Hospitals (Reconstitution of Boards etc.) Decree No. 10 of 1985, the situation would have been different. The cases relied upon by learned counsel to the appellant would have been relevant. 30

In the instant case the contract between the parties is clear and unequivocal, Applicant has a contract of service with Respondent. The Contract also contains the provisions for its determination.

35 The court must in construing the relationship of the parties confine itself to the plain words and meaning which can be derived from the rights and obligations provided thereunder. Exhibits "H" & "K" constitute the entire provisions and must be construed - See Adegbite v. College of Medicine, University of Lagos (1972) 5 SC. 149, Nigerian Produce Mar-

Learned Counsel has submitted that the principles of the law of redundancy under S. 19 of The Labour Act, 1974 was not applicable to her case and therefore the reason for terminating her appointment was not valid, this is a misunderstanding of the case before us. 5

It is important to point out that the letter of termination “Exhibit D” did not give any reason for the termination. The reason it gave in the pleadings for adopting a retrenchment exercise was to reduce staff strength to save costs. Respondent is in the instant case acting within its right under the contract with the Appellant to determine the contract and terminate her appointment. The motive which led to the exercise of the undoubted right is clearly irrelevant to the right to exercise the right. The right thus exercised is valid notwithstanding the motive - See Taiwo V. Kingsway Stores Ltd. (1950)2 NLR.122; Amodu V. Awode (1990)5 NWLR 356. The right exercised is derived from the contract Exhibit “H” It is not derived from section 19 of Labour Act 1974. 15 20

For the reasons I have given in this judgment, and the other reasons given in the judgment of my learned brother Kutigi, JSC, I hereby dismiss the appeal. 25

Appellant shall pay N1,000.00 as costs to Respondents. 25

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### KAWU JSC

I have had the privilege of reading, before now, the lead judgment of my learned brother, Kutigi, JSC which has just been delivered. I am in complete agreement with him that the two lower courts were right in dismissing the appellant’s claim. It is clear on the evidence Educated at the trial that the appellant’s appointment was terminated in accordance with the terms of her contract of service contained in exhibits H & K. I see no merit whatsoever in this appeal which I too will dismiss with N1,000.00 costs awarded to the respondents. 30 35

### BELGORE JSC

The parties to a contract of employment are bound by the terms and conditions of employment. In the instant case, the offer of employment given to the appellant, Exhibit H, is clear in its terms and my learned brother has quoted it fully in the lead judgment. The conditions of service, Exhibit K, at page 4 paragraph 14 thereof clearly provided for the mode of terminating the employment other than on disciplinary reasons. Both the appellant and the respondent were availed the right to invoke paragraph 14 of the conditions of service stipulated in the offer of appointment in Exhibit H. It is therefore clear that the appellant was not dismissed for any misconduct whereby statutory provisions would apply as in Shitta-Bey vs Federal Civil Service Commission (1981) Vol.12 NSCC 28. The provision of The University Teaching Hospitals (Reconstitution of Boards etc.) Decree 1985 has no bearing on this case. Similarly cases of The Federal Civil Service Commission vs Laoye (1985) 2 NWLR (Pt. 106) 652; Olaniyan vs University of Lagos (1985) 1 All NLR 314; and Olatunbosun vs Nigerian Institute of Social and Economic Research Council (1988) 3 NWLR (Pt. 80) 25 will not apply.

This appeal therefore lacks merit and I will dismiss it. For the fuller reasons in Kutigi, JSC's judgment which I agree with entirely I dismiss this appeal with N1,000.00 costs to the respondent against the appellant.

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### OLATAWURA JSC

My learned brother Kutigi, JSC has in a concise manner stated the facts relied upon by the parties. I will, to bring out these facts, refer to the pleading relied on by the appellant. In paragraphs 2, 3, 4 and 5 of the Statement of claim, the plaintiff averred as follows:

- “2. The defendant is a Medical Institution within the Public Service and is subject to the provisions of the University Teaching Hospital (Reconstitution of Boards etc) Decree No. 1 of 1985.
3. Sometimes in September 1987 the Plaintiff received a letter of query

Fakuade v. O.A.U. Teaching Hospital (1993) 6 KLR Olatawura JSC 123  
*in respect of a missing stainless steel bowl in the Post Natal Ward of the Wesley Guild Hospital. Plaintiff will rely on the said query letter dated the 17th of September, 1987 and signed by one Dr. E. A. Bamgboye, the Chairman Medical Advisory Committee.*

4. *On that same date the plaintiff replied the said query letter by a letter 5  
by a letter dated 17th September, 1987 in which she explained her side of  
the story and her innocence of any allegations of wrong doing with re-  
gards to the missing stainless steel bowl. Plaintiff will at the trial of this  
action rely on her said letter dated the 17th of September, 1987.*

10  
5. *After the delivery of the said reply the plaintiff was never subsequently  
invited before any panel, Board and tribunal and received no further  
information regarding any investigation into the matter.”*

15  
The plaintiff cannot in my view make out any case outside the pleadings.  
There is no need to cite any authority for this. It was case at the court of  
trial that her dismissal was based on the loss of the stainless bowl. Once  
she cannot prove this, her case should be dismissed. On her assumption  
that her appointment was determined because of the missing bowl she  
then relied on Decree NO. 10 of 1985. The material part of section 9 20  
reads thus:

25  
“S.9(1): *If it appears to the Board that there are reasons for believing  
that any person employed as a member of clinical, Administrative or  
Technical Staff of the Hospital other than the Chief Medical Director,  
should be removed from his office or employment the Board shall require  
the Secretary to:*

30  
(a) *Give notice of those reasons to the person in question.”*

It is pertinent to mention that this section of the Decree deals with disci-  
pline of clinical, administrative and technical staff. Because of the erro-  
neous belief or wrong assumption on the part of the plaintiff that her  
appointment was determined as a result of the missing stainless bowl she 35  
therefore made this the main plank of her case. Whilst the defendant  
admitted paragraph 2 of the statement of claim.

It pleaded that the plaintiff was bound by the contract of service between the parties. In his oral submission in amplification of the appellant's brief, Mr. Ajayi, the learned counsel for the appellant contended that the contract of service was no longer in force as a result of Decree 10 of 1985 and that the relationship was no longer that of master and servant by that  
 5 it is statutory. I do not think so. The case of SHITTA-BEY V. FEDERAL CIVIL SERVICE COMMISSION (1981) 12 N.S.C.C. 28 does not apply.

The respondent has complied fully with the terms of agreement which have been clearly set out in the lead judgment. By paragraph 14 of  
 10 Exhibit K, the notice requirement is one month or one month's salary in lieu of notice. Paragraph 14(a) which deals with termination of appointment reads:

“(a) *Permanent and temporary staff:*  
 15 *Appointment may be resigned, or terminated by giving one month's notice in writing or payment of one month's salary in lieu of notice by either side.*”

Neither side can legally abandon this binding term of the contract. To  
 20 clothe the terms of the contract in this appeal with “statutory flavour” appears a misunderstanding of the decisions in OLANIYAN V. UNIVERSITY OF LAGOS (1985)2 N.W.L.R (Pt.9) 599. Those whose appointments are governed by conditions within a statute are those who can claim that their appointments and conditions of service are with statutory  
 25 flavour. It is the conditions within the statute that will determine their contract. See also SHITTA-BEY V. FEDERAL PUBLIC SERVICE COMMISSION (1981) Vol.12 N.S.C.C. 28. To abandon the terms of the contract in Exhibits H and K is to seek refuge under a more favourable  
 30 conditions of service not entered into by both parties, nor can the terms and conditions of these favourable conditions be within the on temptation of the parties. The validity of the termination of the appointment has been correctly analysed by the lower courts. I see no merit in the appeal and it is for these reasons and the fuller reasons in the lead judgment of my  
 35 learned brother Kutigi, JSC that I will also dismiss the appeal with costs assessed at N1,000.00 in favour of the respondent.