

SUPREME COURT OF NIGERIA
17TH JUNE, 1994. SC. 45/1992
CORAM:- S.M.A. BELGORE, A.B. WALL, M.E.
OGUNDARE, Y. O. ADIO, A. I. IGU, JJSC.

M.A. ENIGBOKAN PLAINTIFF/APPELLANT
AND
AMERICAN INTERNATIONAL DEFENDANT/RESPONDENT
INSURANCE CO. (NIG) LTD.

APPEALS - Court of Appeal's decision - Premised on erroneous appreciation of trial court's finding - When such a decision is not supportable.

COURTS - Pronouncing & abandoned relief - By trial court - Whether the exercise is fruitless.

JUDGMENTS - Pronouncing on abandoned relief- Trial judge's finding on Plaintiff's abandoned relief- Whether the Judge is thereby estopped from a consideration of the real issue before him.

JUDGMENTS - Conflicting findings - Wrongful dismissal - Whether trial court's findings on the wrongfulness of the dismissal - Is in conflict with its finding that applicability of Civil Service Rules was not proved.

MASTER & SERVANT - Unlawful dismissal - First claim in the writ of summons - For an order that the letter of dismissal is unlawful null and void -Where that claim is not contained in the amended statement of claim - Whether it is abandoned.

PLEADINGS - Statement of claim - That discloses a good cause of action - By stating what is being claimed - Super cedes the writ of summons.

PRACTICE & PROCEDURE - Pleadings - Non inclusions of a relief sought under the writ of summons within the statement of claim - Whether that relief is still subsisting.

FACTS

The Plaintiff/Appellant was employed by the Defendant/Respondent in 1955, and by 1984 he had risen to the position of Deputy Life Manager. Plaintiff was dismissed in February 1984 by the Defendant for a “*greivous misconduct*” in that he took loans from his employer, the Defendant, without fully repaying earlier loans. The Plaintiff sued the Defendant claiming by his writ of summons declaration and damages for wrongful dismissal. But in the Plaintiff’s Final Statement of claim, he claimed only N43 1,264.08 being special damages for wrongful dismissal. The trial Lagos High Court found for the Plaintiff, awarding N36,903.33 to him as damages. The trial court also found that the Plaintiff’s dismissal was not wrongful being an aspect of claim the Plaintiff had abandoned by his pleading.

The Defendant appealed to the Court of Appeal which found in its favour and dismissed the Plaintiff’s claim. That court did not consider all the issues raised before it. Being dissatisfied, the Plaintiff has now appealed to the Supreme Court to determine *inter alia*, whether a relief not claimed in an Amended Statement of claim is deemed to have been abandoned and whether an Amended Statement of claim supercedes the writ of summons.

HELD (Unanimously allowing the appeal)

Statement of Claim supercedes writ of summons

1. It is well settled that a Statement of claim supercedes the writ and must itself disclose a good cause of action. To supersede the writ, however, the statement of claim must state what is being claimed and not just claiming “*as per the writ of summons*”. It follows that to supersede the writ, the statement of claim must contain a claim or claims therein set out. Any claim in the writ not claimed in the statement of claim is taken to have been abandoned. (P.58X25)

When relief sought in the writ is deemed abandoned

2. With the law as it stands the court below was in error in regarding relief (1) claimed in the writ of summons as still subsisting when by its non-inclusion in paragraph 38 of the Fourth Amended Statement of Claim it must be taken to have been abandoned. (P. 59 L.I 9)

Finding on abandoned relief is of no effect

3. By considering and pronouncing on relief (1) in the writ of summons the

learned trial Judge embarked on a fruitless exercise as that relief had been abandoned before trial by the Plaintiff. His finding thereon was of no effect. (P.59 L.32)

Unsupportable Decision of Court of Appeal

4. Their Lordships of the court below are wrong in their reasonings and conclusion. They premised their conclusion on the reasoning that by refusing relief (1), the learned trial Judge held that Plaintiffs dismissal was lawful. The trial Judge made no such finding either expressly or by implication. (P.61 L.7)

Judge not estopped from considering the real issue

5. There is nothing in the trial Judge's finding on relief (1) that could be said to estop him from embarking on the consideration of the real issue before him. His finding on the wrongfulness of the dismissal was not in conflict with his finding that Plaintiff did not prove that the Civil Service Rules applied to him - the trial Judge's reason for refusing relief (1). (P.62 L.22)

NOTABLE POINTS OF INTEREST

OGUNDARE.JSC

1. Grounds of Appeal to the Supreme Court are only to attack issues decided by Court of Appeal

"Many of the issues formulated and canvassed in both the Appellant's Brief and the Respondent's fall far outside the judgment of the court below appealed against and are not covered by the grounds of appeal either. As I shall show presently, that court based its judgment primarily on one of the four issues placed before it; it made no pronouncements on the other issues. The grounds of appeal to this court attack the decision of the court below only on the issue decided by it". (P.54 L.28)

2. Amendment of pleading speaks from the date the original was filed

It is equally settled that an amendment of pleading speaks from the date the original pleading was filed. (P.59 L.2)

3. Issues that the Supreme Court cannot pronounce on - When to be remitted to Court of Appeal

"In the circumstance, those issues cannot be canvassed in this appeal nor can we pronounce on them. Moreover, as this court has not had the benefit of the opinion of the court below on those issues, the proper course, in my

humble view, is to remit this case to the court below for it to consider and decide all the other issues placed before it by the parties as disclosed in their Briefs of Arguments before that court”. (P.62 L.40)

BELGORE.JSC

4. Practice of claiming per writ of summons in statement of claim is discouraged

“It is however necessary for the statement of claim to aver clearly its purport and the practice whereby at the conclusion of the Statement of claim the Plaintiff avers “The Plaintiff therefore claims as per writ of summons” should be discouraged. It is in the interest of justice to state clearly all that a party claims and reference to writ of summons is a lazy way of pleading” (P.63 L.20)

IGUH.JSC

Court should not grant a relief not sought

5. “And the principle is also well established in law that a court must not grant to a party a relief which he has not sought or which is more than he has sought. The first relief originally claimed by the Plaintiff having been abandoned could no more be deemed to form part of his claims and it was erroneous on point of law for the trial court to have purported to consider and dismiss the same.” (P.65 L.9)

REPRESENTATION:

Appellant in person.

A Ochei Esq. for the Respondent

CASES REFERRED TO

Ajayi v. Texaco Nigeria Limited (1987) 9-10 SCNJ 1

Uchechukwu v. Okwuka (1956) 1 FSC 70, 71,

Otanioku v. Alii (1977) 11-12 SC. 9

Keshmro v. Bakare (1967) 1 All NLR 280, 284

Nta v. Anigbo (1972) 5 SC. 156

Lahan v. Lajoyetan (1972) 6SC.190, 192

Rotimi v. MacGregor (1974) 11 SC 133, 152

Ekpenyong v. Nyong (1975) 2 SC. 71 at 81- 82

Kalio v. Daniel-Kalio (1975) 2 SC. 15 at 17-19

Nigerian Development Housing Society Ltd. v. Mumuni (1977) 2 S.C. 57 at 81

Union Beverages v. Owolabi (1989) 2 N.W.L.R. (part 68) 128 at 133

Olurotimi v. Ige (1993) 8 N.W.L.R. (Part 311) 257 at 271

Makan v. Balogun (1989) 3 N.W.L.R. (part 108) 192 at 206

LEAD JUDGMENT BY OGUNDARE JSC

By a writ of summons issued in March, 1984 plaintiff (who is now
appellant before us) claimed from the defendant. (now respondent) -

5 “1. An order that the defendant’s letter of dismissal dated the 27th
February, 1984 purporting to dismiss the plaintiff from the defendant’s ser-
vice with effect from the 25th February, 1984 is unlawful, null and void.

2. The sum of N60,000.00 being N41,309.12 special damages and
10 N16,690.88 general damages against the defendant for the unlawful dis-
missal of the plaintiff by the defendant as per the said Defendant’s letter of
27th February, 1984.”

Pleadings were ordered, filed and exchanged, and by leave of Court
15 amended. The case proceeded to trial on plaintiff’s fourth Amended State-
ment of Claim and Defendant’s Reply thereto. By paragraphs 37 and 38 of
plaintiff’s final pleadings, he claimed as hereunder:

	37. 1(a) Salaries receivable for 15 years at N15,500.00 per annum	N232,500.00
20	(b) Rent subsidy receivable for 15 years at N5,000.00 per annum	75,000.00
	(c) House Rent Allowance receivable for 15 years at N2,000.00	30,000.00
25	2(a) Gratuity for 19 years service put in by the plaintiff i.e. 190% of basic salaries	29,450.004
	(b) Gratuity for 15 years not rendered up to 60 years of age i.e. 160% of basic salaries	24,800.00
30	3(a) Pension for 5 years service rendered by the plaintiff i.e. 28 1/2% of basic salaries	4,417.50
35	(b) Pension for 15 years service not rendered up to 60 years of age i.e. 24% of basic salaries (N15,500.00)	3,720.00
	4(a) 1983 Leave entitlement at 5% of basic salaries	N77 5,00
	Unearned leave of 34 days (commuted) N1,29 1.66	2,066.66

<i>(b) 1984 Leave entitlement (10 months)</i>	
for 1984 <u>10</u> x 775	N645,83
12	
28 days (commuted)	N1,205.55
	1,851.38
<i>(c) Leave entitlement for 15 years service</i>	
<i>not rendered as a result of unlawful dismissal i.e.</i>	
5% of N15,500.00	N15,000.00
for 15 years.....	N11,625.00
Unearned leave for 15 years N 19,374.00 -	<u>30,999.90</u>
Total	<u>N434,805.44</u> 15
Less Balance of Car Loan	<u>(3,541.36)</u>
	<u>N431,264.08</u>

38. *Whereof the plaintiff claims the said sum of N431,264.08 as Special Damages for wrongful dismissal.*"

At the trial, the parties led evidence in support of their respective cases. After 15 addresses by their learned counsel, the learned trial Judge, in a reserved judgment, found for the plaintiff in his claim for damages and concluded thus:

"In Conclusion, I summarize the details of the plaintiff claims for which I enter judgment in his favour:

1. 3 month's salary in lieu of notice	N3,875.00	20
2. Leave allowance and earned leave	2,702.49	
3. Pension	4,417.50	
4. Gratuity	29,450.00	
N40,444.99		

From this amount must be deducted the car loan already contained 25 in paragraph 37 of the fourth amended statement of claim. There will be judgment for the plaintiff for N40,444.99 as general damages less N3,541.36 i.e. N36,903.33"

Being dissatisfied with the judgment the defendant appealed to the Court of Appeal upon 4 original and with leave of court 4 additional grounds 30 of appeal. In its Appellant's Brief, the following issues were set down as calling for determination, that is to say:

"(a) Whether it is still good law that a plaintiff succeeds on the strength of his own case and not on the weakness of the defence;

(b) Whether on the pleadings, when the defendant has joined issues 35 with the plaintiff on a material fact in the action and which material fact is within the peculiar knowledge of the plaintiff, whether the onus of proof is

on the defendant or on the plaintiff;

(c) Whether in an action founded on a valid written contract of service, whether it is the duty of the trial Judge to give effect to the wishes of the parties as expressed in the document or to depart from it, and

5 (d) Whether where a court has found and held that in the case of master and servant as in the instant case that dismissal was not unlawful, whether it would still be right in law for the judge to grant the relief for damages which would have followed if the dismissal were unlawful.”

The plaintiff, for his part, pursuant to Order 3, rule 14(1) of the Court
10 of Appeal Rules, filed a “Notice By Respondent of Intention To Contend That Decision of Court Below Be Varied,” By this Notice, plaintiff would want the Court of Appeal to revise the damages awarded in his favour from N40,454.99 to N71,354.99. He stated in the Notice his grounds for the variation sought. In his Respondent’s Brief he raised objection to grounds 2-4 of the original
15 grounds of appeal filed by the defendant. Plaintiff also set out 4 issues for determination, to wit:

“(i) Considering the state of pleadings in this case, is the lower court right when it held that the burden of proof as to facts of the plaintiffs (the respondent’s) dismissal by which he (the plaintiff) was not entitled to
20 notice or salary in lieu must fall on the defendant’s company (i.e. the appellant) - See page 221 lines 9-13 of the records

(ii) Whether the defendant’s company i.e the appellant has discharged the onus required of it to prove that the dismissal of the plaintiff/respondent is justified having regard to the state of pleadings and Section
25 134(i) and 135 of the Evidence Law (sic).

(iii) Whether the Lower Court was right to have found for the plaintiff! respondent on his 2nd relief claimed for special damages for unlawful dismissal when the first relief praying for an order declaring the letter dated
30 27th February purporting to dismiss the plaintiff/respondent from the defendant/appellant’s service as unlawful, null and void was dismissed.

(iv) Whether the learned trial Judge was right to have given judgment in favour of the plaintiff for the amount awarded considering the total-
ity of the evidence adduced by both parties at the trial.”

35 The court below, in its judgment, allowed defendant’s appeal, set aside the judgment of the trial High Court and dismissed plaintiff’s claim. It is against that judgment that the plaintiff has now appealed to this Court upon 3 grounds of appeal which read:

“1. The learned Justices of the Court of Appeal erred in law to have held that the appellant herein cannot be said to have abandoned the first leg of his claim postulated in the amended Writ of Summon, when by paragraph 38 of the 4th Amended Statement of Claim, the only relief claimed by the appellant was only damages for wrongful dismissal, and thereby came to wrong conclusion by allowing the appeal after holding that the learned trial Judge was in error when having dismissed the claim in the first leg for declaration, (which was not claimed) there is no way in which the appellant could be entitled to any damages because of the dismissal.

PARTICULARS OF ERROR

(i) The Amended Writ of Summons as postulated, contained two specific reliefs namely:-

(a) An order that the defendant's letter of dismissal dated the 27th February, 1984 purporting to dismiss the plaintiff from the defendant's service with effect from the 25th February, 1984 is unlawful, null and void.

(b) The sum of N80,000.00 being N66,040.62 special damage and N31,951.38 general damages against the defendant for the unlawful dismissal of the plaintiff by the defendant as per the said defendant's letter of 27th February, 1984.

(e) Further order or orders as may be just to make in the circumstances.

(ii) By leave of the trial Judge, 4th Amended Statement of Claim was duly filed and served by the appellant wherein the appellant postulated his claim at the penultimate part of the said 4th Amended Statement of Claim in his paragraph 38 as follows:-

“WHEREOF the plaintiff claims the sum of N431,264.08 as special damages for wrongful dismissal.”

(See pages 211 (Part 11), line 24-26 of the records)

(iii) The learned Justices of the Court of Appeal were in error to have held that the 4th Amended Statement of Claim in this case did not supersede the Amended Writ of Summons unless the Statement of Law that the Statement of Claim supersede the Writ of Summons is still not the law.

2. The learned Justices of the Court of Appeal erred in law by holding that the two reliefs contained in the Amended Writ of Summons subsist and that the dismissal of the 1st leg of claim by the learned trial Judge estopped him from embarking on the consideration of the 2nd leg which led to the conclusion that the appellant herein was entitled to damages and thereby neglected to hold that the judicial pronouncement of dismissal of the 1st leg of the claim in the Amended Writ of Summons which was no longer

claimed in the 4th Amended Statement of Claim by the appellant was an exercise in futility, was bad and not effective and the Justices of the Court of Appeal also failed to consider the relative positions/stands of the parties as regard their pleadings as they relate to the issues concerning the 2nd leg as per Amended Writ of Summons or the main relief as per Amended Statement of Claim (which the learned trial Judge did by awarding damages).

PARTICULARS OF ERROR:

(i) *The judicial pronouncement of the learned trial Judge that the first relief claimed by the appellant (then plaintiff) fails and it is dismissed. (See page 218 (Part ii) lines 1-2) is definitely unnecessary as the relief is deemed to have been abandoned and the Justices of the Court of Appeal would have held that the pronouncement by the learned trial Judge was an exercise in futility.*

(ii) *From the above, the only claim/relief before the learned trial Judge was the claim for damages for wrongful dismissal which the learned trial Judge duly considered and made an award in favour of the appellant and which the learned Justices of the Court of Appeal neglected and failed to consider at all and thereby came to a wrong conclusion by allowing the appeal.*

(iii) *The learned Justices of the Court of Appeal also failed to consider the notice to vary the judgment as canvassed by the appellant.*

(iv) *The learned Justices of the Court of Appeal relying on paragraph 23 of the 4th Amended Statement of Claim to justify their conclusion that the 1st relief of his claim was not abandoned was in error as the said paragraph is irrelevant even paragraph 25 of the said 4th Amended Statement of Claim is immaterial and does not support the only relief claimed in paragraph 38 of the 4th Amended Statement of Claim and therefore goes to no issue.*

3. *The learned Justices of the Court of Appeal erred in law by holding that the present case does not favour comparison with case for declaration of title and damages for trespass and distinguishing them by saying one is interchangeable while the other is interdependent, whereas a claim for declaration is the same whether it relates to right interest in land or relate to status as same is granted by the Honourable Court's discretion which are exercised judicially ...*

In his Appellant's Brief, the plaintiff sets down the following six issues as calling for determination, that is:

"1. Whether a relief not claimed in an Amended Statement of Claim is

deemed to have been abandoned or not, and whether an Amended Statement of Claim supersedes the Writ of Summons or not.

2 *Whether the learned Justices of the Court of Appeal have jurisdiction or power to reverse the findings of the trial court on damages awarded* 5
for wrongful dismissal based on the admitted fact by the defendant/respondent, having regard to Section 74 of the Evidence Act. Whether the Court below was right to have refused to vary the judgment of the trial Court as canvassed by the appellant herein (then respondent) pursuant to Order 3 rule 14(1) of the Court of Appeal Rules of 1981, as amended. 10

3. *Whether it is still a good law that a claim for declaration is* 10
discretionary or not, having regard to the fact that the Court or tribunal adjudicating on the matter ought to exercise the discretion with caution, judiciously and judicially.

4. *Whether the plaintiff/appellant had discharged the initial onus* 15
of proof placed on him having produced Exhibits. A, B, C, D, G, M, Q, R and S in support of the existence of facts pleaded in paras. 18, 20, 21, 25, 28, 32 and 37 of the 4th Amended Statement of Claim.

(a) *Whether the defendant/respondent did rebut the onus of rebuttal shifted to it having regard to section 135 of the Evidence Act; re 4 above.* 20

(b) *Whether the defendant/respondent had discharged the onus* 20
placed on it by proving with credible evidence the existence of facts averred, reasons given for dismissal, and the allegations of commission of grievous misconduct levied against the plaintiff/appellant and pleaded with full particulars in paras. 14 and 15 of the 2nd Amended Statement of Defence, as 25
required by Section 134 of the Evidence Act.

5. *Whether it is proper for the Court of Appeal to close its eyes on*
the pleadings of the parties where issues had been joined, and went astray to
consider the appeal on new issues which were neither pleaded nor con- 30
tested before the trial court, more especially when the leave to raise the new issues before the Court below was not obtained. Whether the Court of Appeal have jurisdiction or power to formulate issues on their own and relied on paragraph 8(1) of Exhibit B which was not an issue on the pleadings. Whether Grounds 2, 3, 4, 5, 6 and 8 of the Notice of Appeal dated 10/12/87 are grounds of appeal known to law having regard to Order 3 rules 2(2), 3 35
and 4 of the Court of Appeal Rules 1981, as amended. Whether it is proper for a Court to look outside a Contract of Employment document for the terms of such contract in the determination of the rights of each party. Whether the Court below has jurisdiction to give effect to a non-existing Contract of

employment.”

The defendant, on the other hand, set out in his Respondent’s Brief the following five issues:

- 5 *“1. Whether in a case of Master and Servant, where the servant claims damages against the master for unlawful dismissal, it is necessary and proper for the court to consider first whether the dismissal is lawful or unlawful and, where the court concludes that the dismissal is not unlawful, whether in such a case there can still be liability in damages for wrongful dismissal?”*
- 10 *2. Whether where a plaintiff (servant) suing for unlawful dismissal has in his Writ of summons specifically asked for a declaration that the dismissal be declared null and void and claims damages therefrom and subsequently amends his Statement of Claim whereby he still claims special damages for wrongful dismissal, can he be said to have abandoned the*
- 15 *express relief in the Writ of Summons for a declaration that the dismissal was null and void?*
- 3. Whether were the plaintiff and defendant have joined issues on the material question of unlawful dismissal, whether the principle still holds good that the plaintiff has to adduce credible evidence in order to succeed*
- 20 *or whether the onus of proof is on the defendant who has positively denied the plaintiff’s claim?*
- 4. Whether at the Supreme Court, an appellant is entitled to raise for the first time against a finding of fact by the trial court when at the Court of Appeal he did not cross-appeal against such finding of facts.*
- 25 *5. Whether the Court of Appeal was right to set aside the award of damages by the High Court.*

Many of the issues formulated and canvassed in both the Appellant’s Brief and the respondent’s fall far outside the judgment of the Court below appealed against and are not covered by the grounds of appeal either. As I shall show presently, that court based its judgment primarily on one of the four issues placed before it; it made no pronouncements on the other issues. The grounds of appeal to this Court attack the decision of the court below only on the issue decided by it.

Before I proceed further to a consideration of the issues properly raised in this appeal, I think it is apt at this stage to give the facts how-be-it briefly. The plaintiff was employed by the defendant in May, 1965 and remained in its employment until his dismissal in February, 1984. During the period of his employment he rose progressively in rank and attained the position of Deputy Life Manager, a post he held until his dismissal from the ser-

vices of the defendant. He also earned commendations from his employer during the period of service. He was dismissed for “grievous misconduct” in that he took loans from his employer without fully repaying earlier loans. He sued the employer, the defendant claiming, by his writ, a declaration and damages for wrongful dismissal. In his final pleadings he claimed only for damages for wrongful dismissal. The plaintiff acted in this court in person. He not only signed the Notice of Appeal to this Court and the Appellant’s Brief, he appeared in person to argue the appeal.

ISSUE (1):

In dealing with issue (1) in Appellant’s Brief, I shall consider it along with issues (1), (2) and (5) in Respondent’s Brief. They are all related to the grounds on which the court below based its judgment now on appeal.

In the lead judgment of Babalakin, J.C.A. (as he then was), after setting out the issues for determination as presented by the defendant (as appellant) and plaintiff (as respondent), the learned Justice of Appeal Court observed: *“In my view the most important issue for determination in this appeal is succinctly put as issue (iii) in respondent’s issue for determination above viz:*

(iii) Whether the lower court was right to have found for the plaintiff/respondent on his 2nd relief claimed for special damages for unlawful dismissal when the first relief praying for an order declaring the letter dated 27th February, 1984 purporting to dismiss the plaintiff/appellant’s service as unlawful, null and void was dismissed. “

He summarised the submissions of learned counsel for the parties on the issue under consideration by him and went on to say:

“It is better to clear the erroneous impression created by learned counsel for the respondent that by paragraph 38 of the 4th Amended Statement of Claim the respondent has abandoned claim in respect of 1st leg of his claim to wit:

An order that the defendant’s letter of dismissal dated 27th February, 1984 purporting to dismiss the plaintiff from the defendant’s service with effect from 25th February, 1984 is unlawful, null and void.’

Earlier at page 23 of the said 4th Amendment (sic) Statement of Claim the respondent had pleaded thus:-

“The plaintiff avers that the next thing he received from the defendant was a letter of dismissal dated 27th February, 1984 that with reference to the defendant’s letter of 17th February, 1984 the defendant had decided to dismiss the plaintiff from its service from 25th February, 1984.

It is obvious and plain to any careful and intelligent reader that the

respondent is claiming the damages in this paragraph because he believes that this dismissal is not (sic) unlawful, null and void.

He cannot therefore be said to have abandoned the first leg of his claim as submitted by his counsel and this is why the learned trial Judge considered it in his judgment."

5 The plaintiff has submitted both in his Brief and in oral argument that the view expressed in the above passage is wrong in law. He submits in his brief:"

It is an elementary principle of law that once a Statement of Claim or an Amended Statement of Claim have been properly filed and served, both the original Writ
10 of Summons or an Amended Writ of Summons will cease to be in operation, and the Court will also cease to have jurisdiction on them. Having obtained the leave of the Hon. Court on the 12-5-86, (see page 172 lines 5-10 of the records) to file and serve the 4th Amended Statement of Claim, it is submitted that both the Amended Writ of Summons and the 3rd Amended Statement of
15 Claim inclusive of the reliefs claimed therein became incompetent, ineffective and deemed to have been abandoned, and the Court will cease to have jurisdiction on them, unless the reliefs are re-claimed in the 4th Amended Statement of Claim, (which was not in the present case). The only valid and competent legal document placed before the Court at that point in time was the 4th
20 Amended Statement of Claim. It is equally submitted that since the 4th Amended Statement of Claim did not mention or claim the previous reliefs, they were deemed to have been abandoned, and no issue could be joined in its respect by parties. This principle of law was stated by the Federal Supreme Court in the case of Udechukwu v. Okwuka (1956) 1 F.S.C. page 70 at 71, (1956) SCNLR
25 189. Applying this principle of law to this case, it is submitted that the findings of the learned trial Judge at page 218 lines 1-2 of the records, viz:

'The first relief claimed by the plaintiff fails and it is dismissed.'

And also the findings of their Lordships as at Court below at page 454 lines 16-25 of the records, viz:

30 'It is better to clear the erroneous impression created by learned counsel for the respondent that by paragraph 38 of the 4th Amended Statement of Claim the respondent has abandoned claim in respect of 1st leg of his claim to wit:

*'An order that the defendant's letter of dismissal dated 272-84 pur-
35 porting to dismiss the plaintiff from the defendant's service with effect from 25-2-84 is unlawful, null and void.'*

And also the findings of their Lordships at the Court below at page 454 line 39-41 of the records, viz:

'He (respondent) cannot therefore be said to have abandoned the 1st

leg of his claim as submitted by his counsel and this is why the learned trial Judge considered it in his judgment’
and also at page 455 lines 25-30 of the records viz:

The 1st relief which the learned trial Judge dismissed reads:

‘An order that the defendant’s letter of dismissal dated 27-2-84 purporting to dismiss the plaintiff from the defendant’s service with effect from 25-2-84 is 5 unlawful, null and void, were exercise in futility as the so called relief was neither claimed nor placed before the Court in the 4th Amended Statement of Claim. It is submitted that any relief not mentioned in the 4th Amended Statement of Claim will be deemed to have been abandoned. It is equally submitted that the findings of both the trial court and that of the court below on this 10 issue were fruitless, as the amended Writ of Summons containing the previous reliefs was no more before the Court, having been superseded by the relief claimed in paragraph 38 of the 4th Amended Statement of Claim. It is submitted that a Court has no jurisdiction to adjudicate on matters not placed before it. See: Ochonma v. Unosi (1986) (Sic) NMLR page 321. It is also submitted that any appeal lodged against the fruitless findings of the trial court 15 could not be an issue before the Court of Appeal, and their Lordships at the Court below would have no jurisdiction or power to entertain such appeal. It is further submitted that the only relief properly placed before the trial court was the relief claimed in paragraph 38 of the 4th Amended Statement of Claim, 20 viz:

‘Whereof, the plaintiff claims the said sum of N431,264.08 as Special Damages for wrongful dismissal.’

In the Respondent’s Brief learned counsel for the defendant has argued thus: 25

“1. The respondent contends that in a case as the instant one of master and servant, where master dismisses the servant as provided in the contract of service and the servant claims damages against the master for unlawful dismissal, it is proper and right that the court should consider first from the state of the pleadings and totality of, evidence adduced whether 30 there was in fact an unlawful dismissal. It is respectfully submitted that in the instant case, the court (High Court) was right to make a specific finding on this issue first. The first relief in the plaintiff’s (appellant’s) writ of summons dated the 7th March, 1984 (Page 3 line 10 of Record), and the first relief in the amended writ of summons (Page 38 of Record), and paragraphs 23 and 25 35 (Page 177), and paragraph 38 (Page 180 of Record) support the submission that it was incumbent on the court to make a finding on this core question of unlawful dismissal before proceeding to the issue of liability for damages.

2. Having come to the right conclusion that the dismissal of the appellant by the respondent was lawful (page 218), the court was in error to proceed to consider the issue of liability for damages for unlawful dismissal. In the case of *Bahatunde Ajayi v. Texaco Nigeria Limited and Ors* (1987) 3 NWLR (Pt.62) 577 (1987) 9-10 Supreme Court of Nigeria Judgments (SCNJ) Page 1, Obaseki, J.S.C., at Page 12 stated the applicable proposition of law as follows:
'If there is no wrongful termination of employment, there can be no liability for breach of contract of employment.'

3. *The respondent concedes that an Amended Statement of Claim generally supersedes the Writ of Summons and earlier Statement of Claim in respect of the claims by the plaintiff. But each case has to be decided on its own circumstances with regard to the pleadings and totality of evidence adduced at the trial. In the present case, the relief which was for a declaration that the dismissal was unlawful, null and void cannot seriously be contended that it has been abandoned in view of the endorsement on the amended writ of summons (Page 21) and paragraphs 23, 25 and 38 of the plaintiff's (appellant's) 4th Amended Statement of Claim. It is submitted with respect that the relief for an order that the dismissal of the appellant was unlawful null and void was not abandoned. By the nature of the claim it subsists, and the court has jurisdiction to consider and determine that crucial question which is the foundation of the plaintiff's case."*

It is well settled that a Statement of Claim supersedes the writ and must itself disclose a good cause of action - *Udechukwu v. Okwuka* (1956) 1 FSC 70, 71, (1956) SCNLR 189; *Otanioku v. Alli* (1977) 11-12 SC 9. To supersede the writ, however, the Statement of Claim must state what is being claimed and not just claiming "as per the writ of summons" - *Keshinro v. Bakare* (1967) 1 All NLR 280, 284. It follows that to supersede the writ, the Statement of Claim must contain a claim or claims therein set out - *Nta v. Anigbo* (1972) 5 SC 156. Any claim in the writ not claimed in the Statement of Claim is taken to have been abandoned - *Lahan v. Lajoyetan* (1972) 6 SC 190.192 where Sowemimo, J.S.C. (as he then was) stated the law thus:

"It is settled law that a Statement of Claim supercedes the writ; hence if some special form of relief be claimed on the writ and not in the Statement of Claim, it will be taken that so much of the claim is abandoned. So also where in the Statement of Claim a consequential reliefs added to the claim in the Writ such additional claim will be deemed as claimed before the Court."

It is equally settled that an amendment of pleading speaks from the

date the original pleading was filed:- Rotimi v. MacGregor (1974) 11 SC 133, 152 where Coker, JSC observed:

“Speaking about the effect of an amendment of pleadings; Hodson, L.J. observed in Warner v. Sampson & Anor (1959) 1 QB 297 at p. 321 thus:-

‘I do not think that this amendment can be ignored. Once pleadings are amended, what stood before amendment is no longer material before the court and no longer defines the issues to be tried. Here the defendant has obtained leave to amend, and there has been no appeal against that order; and, whatever may have taken place at the hearing of the application to amend, the court must, I conceive, regard the pleadings as they stand, the purpose of amendment being to determine the real question in controversy between the parties.....’

Manifestly therefore, the plaintiff’s amended statement of claim filed on the 24th April, 1971 spoke in effect as from the date of the original statement of claim and it should be treated as such once the amendment was effected by leave or order of the court.”

With the law as it stands, I agree with the plaintiff that the court below was in error in regarding relief (1) claimed in the writ of summons as still subsisting when by its non-inclusion in paragraph 38 of the Fourth Amended Statement of Claim it must be taken to have been abandoned. The court below, with profound respect to the learned Justices of that court, was clearly in error when it held, per Babalakin, J.C.A. that:

“He cannot therefore be said to have abandoned the first leg of his claim as submitted by his counsel and this is why the learned trial Judge considered it in his judgment.”

The law that the statement of claim supersedes the writ was conceded by learned counsel for the defendant but I am rather surprised that even with this concession he still argued in defence of the decision of the court below on the issue. The court was equally in error to refer to “respondent’s two legs of claims”. By considering and pronouncing on relief (1) in the writ of summons the learned trial Judge embarked on a fruitless exercise as that relief had been abandoned before trial by the plaintiff. His finding thereon was of no effect.

After referring to the evidence for the defence about the consequences of a dismissal from employment, the court below, per Babalakin, J.C.A. went further to say:

“With all these before the learned trial Judge and having found that ‘the first relief claimed by the plaintiff fails and it is dismissed’ which means that the respondent was rightly dismissed, there is no way in which the respondent will be entitled to any damages because of his dismissal. The

1st relief which the learned trial Judge dismissed reads:

‘An order that the defendant’s letter of dismissal dated 27th February, 1984 purporting to dismiss the plaintiff from the defendant’s service with effect from 25th February, 1984 is unlawful, null and void.’ The learned trial Judge is clearly in error to have awarded damages in favour of the respondent in view of his own findings. I will now examine how the learned trial Judge fell into this error.”

The learned Justice of Appeal examined the judgment of the trial court and proceeded thus:

“In my view, the learned trial Judge is estopped from embarking on the above exercise that led him to conclude that the respondent is entitled to damages because in the 1st part of his judgment he considered in full and in all its ramifications what the appellant complained to amount to grievous misconduct on the part of the respondent that made the appellant to issue him the letter of dismissal which the learned trial Judge eventually held not to be null and void, the learned trial Judge cannot therefore overrule himself in the same judgment to find that the appellant has failed to show the respondent’s act of grievous misconduct to justify his summary dismissal. I think that it is a grave error for him to do so.”

He concluded his Judgment (with which Ademola, J.CA. and Akpata JCA he then was, agreed) words:-

“There must be liability and/or injury before damages can arise. The law is *ubi jus ibi remedium* i.e. where there is an injury, there is always a remedy. In this case the learned trial Judge had proclaimed that there was no injury to the respondent and therefore no damages can arise.

Furthermore, on the facts of this case the parties are bound by the term of Exh. B conditions of the respondent with the appellant. It is only if a term of this contract is breached that the party aggrieved will be entitled to damages. In this case the finding of the learned trial judge amounted to the position that the term of the contract as contained in Exh. B has not been breached, the question of award of damages does not therefore arise. This appeal is therefore allowed.

The judgment of Olusola Thomas J, delivered on 21st November, 1986 is hereby set aside.”

Akpata, J.CA., in his concurring judgment observed:

“I agree with the reasoning of my learned brother Babalakin, JCA., in resolving an apparently conflicting decision of the court below. I have tried to see whether a different connotation could be given to the finding of the learned trial Judge that the dismissal of the respondent was not unlaw-

ful. The position is that, for this finding to be justifiably subject to review, the respondent ought to have appealed against it. He has not. It is for this reason I share the same view with my learned brother that the award of damages has no valid basis whatsoever.”

With profound respect to their Lordships of the court below, they are wrong in their reasonings and conclusion. They premised their conclusion on the reasoning that by refusing relief (1), the learned trial Judge held that plaintiff’s dismissal was lawful. The trial Judge made no such finding either expressly or by implication. In the first place, had the court below properly directed itself on the law, it would have found the trial Judge consideration of relief(1) which had been abandoned, was an exercise in futility and that any finding thereon was of no binding effect. Secondly, if their Lordships of the court below had considered correctly the reasons given by the trial Judge for refusing relief (1), they would not have held that he found plaintiff’s dismissal lawful.

Relief (I) in the writ reads:

“An Order that the defendant’s letter of dismissal dated the 27th February, 1984 purporting to dismiss the plaintiff from the defendant’s service with effect from the 25th February, 1984 is unlawful, null and void. (italics mine)

What the plaintiff sought to declare “unlawful, null and void” was the letter of dismissal served on him by the defendant. And the basis of the declaration sought was paragraph 25 of the Fourth Amended Statement of Claim which reads:

“25. The plaintiff avers that the said letter of dismissal dated 27th February, 1984 is unlawful, null and void and of no effect to dismiss the plaintiff summarily, and the plaintiff will contend that he was denied a fair hearing by virtue of the provisions of the Civil Service Rules which applied to all staffs of the Company.”

The learned trial Judge in refusing that relief observed:

“In my humble view, Mr. Bola Akinyele’s contention is untenable. Granted that the defendant/company by its pleading did admit that the defendant/company is a company in which the Government of Nigeria had a controlling share and by this fact the defendant/company is brought within the definition of a company in the public service of the Federation (vide section 277(1) of the Constitution of the Federal Republic of Nigeria 1979), there is no evidence that the staff in the public service of the Federation are appointed by the Public Service Commission so as to make the Civil Service Rules applicable to their staff. This fact must even have been pleaded by the

plaintiff before evidence is admissible thereon. The case of *Shitta Bey v. Civil Service Commission* cited by learned counsel is irrelevant to the case of the plaintiff as framed. *Shitta Bey* was an appointee of the Civil Service Commission and the court could in such a situation take judicial notice of the Civil Service Rules governing his appointment. Different situation clearly applies in the present case. To enable the Court declare that the plaintiff's dismissal was of no effect because he was denied fair hearing pursuant to the Civil Service Rules, it must be pleaded and proved that the Civil Service Rules applied to the plaintiff's employment. The first relief claimed by the plaintiff fails and it is dismissed."

(italics mine)

Thus, the basis for refusing that relief was not that the plaintiff's dismissal was lawful (as was erroneously, in my humble view, held by the Court below) but that plaintiff did not prove that the Civil Service Rules applied to him.

After concluding the unnecessary exercise of the consideration of relief (1) that had been abandoned by the plaintiff, the learned trial Judge proceeded to consider the only claim validly before him, that is, damages for wrongful dismissal. It was in the process that he considered, and as rightly submitted by learned counsel for the defendant, the wrongfulness or otherwise of plaintiff's dismissal and held it was wrongful. I can see nothing in his finding on relief (1) that could be said to estop him from embarking on the consideration of the real issue before him. Nor do I share the view that his finding on the wrongfulness of the dismissal was in conflict with his finding that plaintiff did not prove that the Civil Service Rules applied to him - the trial Judge's reason for refusing relief (1).

The conclusion I reach is that the court below was in error in the reasons given for allowing the defendant's appeal to it and setting aside the judgment of the trial court. This appeal therefore, succeeds and it is allowed by me. The judgment of the court below is hereby set aside by me.

I now have to consider the consequential order I ought to make. I have elsewhere in this judgment remarked that the court below decided the defendant's appeal before it on one of four issues put before it; it made no pronouncements on the other issues. Nor did it pronounce on the Plaintiff's objections to some of the defendant's grounds of appeal or the Plaintiff's Notice of Intention to vary trial court's judgment. I am aware that some of the issues formulated before us cover these points but such issues cannot be said to arise from the grounds of appeal which grounds are directed at the decision appealed against. In the circumstance, those issues cannot be canvassed in this appeal nor can we pronounce on them. Moreover, as this Court has not had the benefit of the opinion of the court below on those issue the

proper course, in my humble view, is to remit this case to the court below for it to consider and decide all the other issues placed before it by the parties as disclosed in their Briefs of Arguments before that court.

Consequently, I remit this case to the Court below for it to consider and decide on the other issues raised by the parties in the appeal before it.

I award to the plaintiff the costs of this appeal assessed at N1,000.00.

BELGORE JSC

I agree with the judgment of my learned brother, Ogundare, J.S.C., that this appeal has merit and ought to be allowed. In all actions in our superior Courts of record where pleadings set out the facts relied upon by each party, a writ must first be taken out of the Court's registry. But once the pleadings are filed and exchanged, the Statement of Claim therefrom supercedes the writ. It is the law that the writ itself must disclose reasonable cause of action, in many cases the Statement of Claim more than a writ amplifies through facts averred the real action a party pursues. *Nta v. Anigbo* (1972) 5 SC 156; *Uchechukwu v. Okwuka* (1956) 1 FSC 70 at 71 (1956) 1 SCNLR 189. It is however necessary for the statement of claim to aver clearly its purport and the practice whereby at the conclusion of the Statement of Claim the plaintiff avers "The plaintiff therefore claims as per writ of summons" should be discouraged. It is in the interest of justice to state clearly all that a party claims and reference to writ of summons is a lazy way of pleading. *Keshinro v. Bakare* (1967) 1 All NLR 280, 284.

The judgment of Ogundare, J.S.C., reviews the whole facts succinctly that I need not repeat them here but suffice to say that I am in full agreement with him that this appeal has merit and it ought to be allowed. For the foregoing reasons and more comprehensive reasons in the judgment of my learned brother. I also allow this appeal and make the same consequential orders of remitting the case to the Court below to decide all the issues canvassed by the parties but not alluded to. I award N1,000.00 against the respondent as costs in this appeal.

WALI JSC

I have read the lead judgment of my learned brother, Ogundare, J.S.C. and agree with it.

For the reasons contained in the lead judgment, I also allow this appeal. The decision of the Court of Appeal and its consequential orders are

hereby set aside. The appeal is remitted to the Court of Appeal to consider and decide the other issues placed before it by the parties in this case in their respective briefs of argument. The appellant is awarded N1,000.00 costs in this appeal against the respondent.

5

ADIO JSC

I have had the privilege of reading, in advance, the judgment just
 10 read by my learned brother, Ogundare, J.S.C. and I agree that the appeal succeeds. I allow the appeal. I abide by the consequential orders, including the order for costs.

15

IGUH JSC

I had a preview of the lead judgment of my learned brother, Ogundare, J.S.C. just delivered and I entirely agree with his reasoning and conclusion.

The plaintiff in the High Court of Lagos State claimed against the
 20 defendant as follows:-

- “1. An order that the defendant’s letter of dismissal dated the 27th February, 1984 purporting to dismiss the plaintiff from the defendant’s service with effect from the 25th February, 1984 is unlawful, null and void.
- 25 2. The sum of N60,000.00 being N41,309.12 special damages and N16,690.88 general damages against the defendant for the unlawful dismissal of the plaintiff by the defendant as per the said defendant’s letter of 27th February, 1984.”

Pleadings were duly ordered and were settled, filed and exchanged.

30 By paragraph 38 of the plaintiff’s fourth amended statement of claim, the relief claimed from the defendant is couched thus -

“38. Whereof the plaintiff claims the sum of N431,264.08 as special damages for wrongful dismissal”

It seems to me plain from the plaintiff’s fourth amended statement of claim that
 35 the first relief he originally claimed as per his writ of summons was subsequently abandoned. This is because the law is settled that a statement of claim supersedes the writ and any relief claimed on the writ but not contained in the Statement of Claim will be deemed to have been abandoned. See *Udechurkwu v. Okwuka* (1956) 1 F.S.C. 70 at 71, *SCNRL Otanioku v. Alli* (1977) 11-12 SC. 9

and Lahan v. Lajoyetan (1972) 6 S.C. 190 at 192.

The learned trial Judge at the conclusion of trial exhaustively considered the plaintiff's said claim and, perhaps, by inadvertence, pronounced *inter alia* as follows:-

".....The first relief claimed by the plaintiff fails and it is dismissed."

I do not think it can be seriously contended that the learned trial Judge did not err in law in treating the original first relief claimed by the plaintiff as subsisting when the same had been abandoned by operation of law. And the principle is also well established in law that a court must not grant to a party a relief which he has not sought or which is more than he has sought. See *Ekpenyong v. Nyong* (1975) 2 SC. 71 at 81-82, *Kalio v. Daniel-Kalio* (1975) 2 SC 15 at 17-19, *Nigerian Housing Development Society Ltd v. Mumuni* (1977) 2 SC. 57 at 81, *Union Beverages v. Owolabi* (1988) 2 NWLR (Pt.68) 128 at 133, *Makanjuola v. Balogun* (1989) 3 NWLR (Pt.108) 192 at 206 and *Olurotimi v. Ige* (1993) 8 NWLR 257 at 271.

The first relief originally claimed by the plaintiff having been abandoned could no more be deemed to form part of his claims and it was erroneous on point of law for the trial court to have purported to consider and dismiss the same.

The learned trial Judge then proceeded to consider the second relief in damages claimed by the plaintiff and awarded N36,903.33 to him as special and general damages for unlawful dismissal. The defendant being dissatisfied with this decision appealed to the Court of Appeal which in a unanimous judgment on the 23rd February, 1989 allowed the appeal, set aside the judgment of the High Court and dismissed the plaintiff's claim. It is against that judgment that the plaintiff has now appealed to this court.

The court below per the lead judgment of Babalakin, J.C.A., as he then was, justified the dismissal by the trial court of the said first relief originally claimed by the plaintiff as follows:-

"It is obvious and plain to any careful and intelligent reader that the respondent is claiming the damages in this paragraph because he believes that this dismissal is not (sic) "unlawful, null and void." He cannot therefore be said to have abandoned the first leg of his claim as submitted by his counsel and this is why the learned trial Judge considered it in his judgment."

The learned Justice of Appeal, as he then was, examining the consequence of the said dismissal had this to say:

"With all these before the learned trial Judge and having found that "the first relief claimed by the plaintiff fails and it is dismissed" which means that the respondent was rightly dismissed, there is no way in which the respondent will be entitled to any damages because of his dismissal. The

1st relief which the learned trial Judge dismissed reads:-

“An order that the defendant’s letter of dismissal dated 27th February, 1984 purporting to dismiss the plaintiff from the defendant’s service with effect from 25th February, 1984 is unlawful, null and void.” The learned trial Judge is clearly in error to have awarded damages in favour of the
5 respondent in view of his own findings.”

He concluded as follows:-

“There must be liability and/or injury before damages can arise. The law is *ubi jus ibi remedium* i.e. where there is an injury, there is always a remedy. In this case the learned trial Judge had proclaimed that there was
10 no injury to the respondent and therefore no damages can arise.

Furthermore, on the facts of this case the parties are bound by the term of Exh. B - conditions of the respondent with the appellant. It is only if a term of this contract is breached that the party aggrieved will be entitled
15 to damages. In this case the finding of the, learned trial Judge amounted to the position that the term of the contract as contained in Exh. B has not been breached; the question of award of damages does not therefore arise.

This appeal is therefore allowed. The judgment of Olusola Thomas J., delivered on 21st November, 1986 is hereby set aside.”

20

It is crystal clear from the judgment of the court below that the plaintiff’s only claim for damages for wrongful dismissal was disallowed on the ground that the trial court having dismissed the claim for unlawful dismissal, the plaintiff could not be entitled to damages in accordance with the
25 principle *ubi jus ibi remedium*.

With due respect to the Court of Appeal, I find myself unable to accept its reasoning and conclusion in the matter of the dismissal of the plaintiff’s claim in respect of damages for unlawful dismissal. In the first place, a close study of the judgment of the trial court does not disclose that the learned trial
30 Judge found that the plaintiff’s dismissal was lawful. All he found was that the plaintiff did not prove that the Civil Service Rules applied to him. I am also of the considered view that the court below erred in law by holding that the first relief claimed by the plaintiff was not abandoned. I think it can rightly be said that the court below would not have held that the trial court found the plain-
35 tiffs dismissal lawful if it had appreciated that the first relief claimed by the plaintiff had been abandoned and if it had correctly considered the reasons given by the learned trial Judge for purporting to dismiss the said relief.

In the light of the above and for the more detailed reasons contained in the lead judgment of my learned brother, this appeal succeeds and it is hereby

allowed. The judgment of the court below is hereby set aside. I abide by the consequential orders including the order as to costs therein contained.

5

10

15

20

25

30

35