

SUPREME COURT OF NIGERIA
8TH JULY, 1994. SC. 129/1991.
CORAM:- M. L. UWAIS, E. O. OGWUEGBU,
S. U. ONU, Y. O. ADIO, A. I. IGUH, JJSC

1. ONDO STATE UNIVERSITY
2. MR. J.G.O. ADEGBITE APPELLANTS
(Registrar Ondo State University)
AND
DR. EZEKIEL ADEKUNLE FOLAYAN RESPONDENT

ADMINISTRATIVE LAW- Power to delegate - University Council - Whether Council has power to delegate some of its functions.

EVIDENCE - Master & Servant - Expiration of probation - No evidence that suggested the plaintiff believed his appointment had been confirmed- By its not being terminated.

EVIDENCE- Presumption of regularity - Arises where an official act is done in a manner consistent with the laid down procedure - Or in a public capacity.

MASTER & SERVANT - Expiration of probationary period - Whether the period was extended- Or the Plaintiffs appointment was confirmed thereby.

MASTER & SERVANT - Probationary appointment - Provisions thereto in aspect of plaintiff's appointment - Proper construction thereof.

MASTER & SERVANT - Relevant provisions - Of employment regulations where ignored by the Court of Appeal - Whether proper.

MASTER & SERVANT - Termination of appointment - By Appointments and Promotions Board of University - Whether lawful.

FACTS

The Respondent as plaintiff filed before the Ondo State High Court an act against the Appellant/Defendants claiming inter alia, a declaration that his appointment with the 1st Defendant is still subsisting. The 1st Defendant

offered an appointment to the plaintiff as Lecturer Grade II. The appointment letter indicated that there was to be a 3 year probationary period and the appointing was made subject to the University regulation and other applicable written conditions. One of such regulations provided that the probationary period can be extended to another 3 year term. The plaintiff accepted the appointment. After he had worked for over 4 years, plaintiff's appointment was terminated with a willingness to pay 3 months salary in lieu of notice to him.

The plaintiffs then instituted this action, contesting that his termination was wrongful. The trial court found against the plaintiff's and dismissed the action in its entirety. Plaintiff's appeal to the Court of Appeal was upheld as some of the reliefs sought by him were granted. The Defendants have now appealed to the Supreme Court which had to determine what became of the plaintiffs appointment after the probation period of 3 years had expired. And whether the termination of the appointment was proper.

HELD (unanimously allowing the appeal)

1. Ignoring relevant provisions

The Court of Appeal ignored the other provisions of regulation 22 and in particular paragraphs (ii) and (iv) which are very relevant to the facts of the case. To this extent, the Court of Appeal was wrong. The provisions of regulation 22 will have to be read as a whole. (P.376 L.2)

2. Construction of probationary appointment

On reading the provisions of regulation 22(i), (ii) and (vi) together, the construction or meaning to be given thereon is that where an appointment to a member of the Academic Staff of the 1st Defendant is probationary, it shall in the first instance be for a period of 3 years. If at the end of the period of three years, the university is satisfied with the performance of the employee, it may either confirm the appointment or it may extend the period of the probation but in doing so it must not extend it by more than 3 years. Again if at the end of a period of 3 years of the probation, the university is not satisfied with the performance of the employee or it did not need his service any more, it may terminate the appointment. (P.376 L.23)

3. Extension of probation

In view of what transpired in the course of the plaintiffs employment, what the plaintiff enjoyed after the expiration of the probation was an extension of the probation and not confirmation. (P.378 L 38)

4. Lack of evidence of belief in confirmation of appointment

There was no evidence at the hearing of the case in the High Court which could be regarded as suggesting or indicating that the plaintiff believed that his appointment had been confirmed by reason of its not being terminated by the 1st Defendant at the end of the 3 years probation. (P.379 L.37)

5. Council's power to delegate

It is quite clear that the Council has the power to delegate some of its functions to a committee, which may be called by any name so long as it is a subsidiary body of the Council. (P.381 L.20)

6. Presumption of regularity

By section 149 subsections (1) and (2) of the Evidence Act there is a presumption of regularity when an official act is shown to have been done in a manner consistent with the procedure laid down or where the officer performing the function did so in a public capacity. (P.381 L.31)

7. Whether plaintiff was lawfully terminated

The Appointments and promotions Board had the power to terminate the appointment of the plaintiff and since it complied with the conditions governing the appointment of the Plaintiff, it had done so lawfully. (P.382 L.3)

NOTABLE POINTS OF INTEREST

UWAIS.JSC

1. Interpretation - Construction of headings

It is a principle of interpretation of legislation that headings which are given to a section or group of sections cannot be relied upon to construe the plain words of the section or sections, unless such words are found to be ambiguous or there is any doubt as to their ordinary meanings (P.376L9)

2. Whether appointment lapsed after expiration of probation

When the plaintiffs period of probation expired and he was allowed to remain in the service of the 1st Defendant did his appointment in fact lapse in accordance with regulation 22 (ii), since he was neither confirmed nor his Probation extended? The presumption is that his appointment remained ex could not be said to have lapsed. (P.378 L.25)

ONUJSC

3. Proper construction of the phrase “subject to”

“I take the view that the words subject to constitute words of qualification which, properly construed, must be taken to mean that the extent of the plaintiffs probationary appointment would not be absolute or automatic but qualified by the relevant provisions of 1st defendant’s Regulations”. (P.387 L9)

4. Foisting a servant on an unwilling master

It has not been the policy of courts in this country to foist a servant on an unwilling master, unless such an employee is qualified by employment to a permanent and pensionable position. As the plaintiff was not confirmed and never was until Exhibit E issued on him, he was neither qualified to a permanent nor a pensionable position. (P.389 L.26)

5. Delegating authority is bound by the delegate’s decision

It is a trite principle of Administrative Law that where a power has been delegated, the delegating authority will be bound by the decision of its delegate and will therefore be incapable of rescinding that decision. (P.393 L.16)

IGUHJSC

6. Confirmation of plaintiff’s appointment is not automatic

The plaintiff, under the terms of his contract, could serve on probation for a total of six years. It must be stressed therefore that the plaintiff’s confirmation as was erroneously suggested by the court below, was not automatic at the end of the first three years of his appointment. (P.3 97 L.35)

REPRESENTATION

Professor M.I. Jegede with I. Ajomo ESQ for the 1st defendant/appellant
Chief W. Olanipekun SAN with B. Eniwaye for the Plaintiff/Respondent

CASES REFERRED TO

- Shitta-Bey v. The Federal Public Service Commission (1981) 1 S.C. 40
- Carlton (Nig) Ltd. v. University of Jos & (1994)1 N.W.L.R. (pt. 323)631
- Obafemi Awolowo University v. Dr. Onabanjo (1991) 5 N.W.L.R. (pt. 193) 549 at p. 569 G - H.
- Schroeder & Co. v. JMajor & Co. Ltd (1989) 2 N.W.L.R. (Part 101) 1 at p. 9E
- Igah v. Amakiri (1976)11 S.C. 1 at pp. 12 - 13
- Rourafic & Far Eastern Ltd. v. Chief Ayberake (1958) W.R.N.L.R. 92
- R. v. Surrey (North-East Area) Assessment Committee (1948) 1 K.B. 29
- Hammersmith & City Rly v. Rand (1869) L.R. 4 H.L. 171

Fletcher v. Birkenhead Corp. (1907) 1 K.B. 205

Yerokun v. Adeleke 5 F.S.C. 126 at p. 129

Vine v. National Dock Labour Board (1956) 3 All E.R. 939 948

Olatunbosun v. Niser (1988) 3 NWLR (part 80) 25 at 50 5

Ihezukwu v. University of Jos & others (1990) 4 NWLR (part 146) 598 at 615

Carlen (Nig.) Ltd. v. University of Jos & Anor (1994) 1 NWLR (part 323) 631 5

Western Fish Products v. Penwith D.C. (1981) 2 A.E.R. 204 at 219

Animashawun v. Osuma (1972) 4 SC. 200 at 211

Western Nigeria v. Adebajo (1971) 1 All NLR 178 (per Coker, J.S.C.)

STATUTES REFERRED TO

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Evidence Act ss. 150, 149(1) & (2)

Interpretation Act 1964 s. 11 (1) (c)

Ondo State University Law s. 21(3)

LEAD JUDGMENT BY UWAIS JSC

15

The respondent brought an action in the High Court of Ondo State sitting at Ado-Ekiti, against the appellants, claiming as follows, as per paragraph 21 of his statement of claim:-

“(i) A declaration that the plaintiff’s appointment with the 1st defendant is still subsisting;

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(ii) A declaration that the purported determination or termination of the plaintiff’s appointment with the 1st defendant vide the 2nd defendant’s letter reference number AD/EST/OAU/ACSE/37/73 of 31st May, 1988 is a violation of:

(a) the plaintiff’s letter of appointment dated 29th April, 1983; 25

(b) memorandum of agreement dated 29th April, 1983 between the plaintiff and the 1st defendant;

(c) regulations regulating the condition of service of senior staff of the 1st defendant;

(d) section 15 of the Ondo State University Edict Law of 1982; 30

(e) section 33 of the Constitution of the Federal Republic of Nigeria 1979; and

(f) the rules and norms of natural justice.”

At the hearing in the High Court, each of the parties called evidence with the appellant (hereinafter referred to as “plaintiff”) testifying on his behalf and the 2nd Respondent testifying for himself and the 1st respondent (hereinafter referred to as “2nd defendant” and “1st defendant” respectively).

35

The facts of the case, which are not in dispute, may be summarised as follows. By a letter dated the 29th day of April, 1983, the plaintiff was offered an appointment by the 1st defendant as Lecturer Grade II. The letter, which was signed by the 2nd defendant on behalf of the 1st defendant, reads thus:-

“29th, April, 1983

5 Mr. Michael Adekunle Folayan,
2622 Kirkwood Place, #202,
Hyattsville, Maryland 20782,
U.S.A.

10 Dear Sir,

Offer of Appointment

I write on behalf of the Council of the Obafemi Awolowo University to offer you an appointment as Lecturer Grade II in the Department of Economics on a salary scale USS Step 1, i.e. N7,550 per annum, with effect from
15 1st September, 1983, or as soon as possible thereafter.

The appointment is probationary for a period of 3 years and is subject to the regulations of the university and to such conditions governing appointments generally as may be made by the council of the university from time to time.

20 The prospective employee must produce evidence of good health before an appointment becomes valid. For this purpose, you are required to obtain a medical certificate of fitness from the Director of Health services of the Obafemi Awolowo University or a medical doctor designated by the University.

If you accept the offer, please sign the duplicate copy of the Memo-
25 randum of Appointment over a twenty kobo stamp, stating how soon you expect to be able to take up your appointment and return it to me together with your medical certificate as soon as possible.

Yours faithfully,

(Signed)

30 J.G.O. Adegbite
Registrar
cc: Vice-Chancellor,
Bursar,
Senior Accountant,
35 Dean, Faculty of Social Sciences.

“Subject to your obtaining PH. D.”

This letter was put in evidence as Exhibit A and Memorandum of Appointment which was attached to it was admitted in evidence as Exhibit A1. The plaintiff accepted the offer of the appointment on the 8th day of July, 1983 by signing Exhibit A1 and indicating therein that he would take up his duties on the 1st day of September, 1983. The portion of Exhibit A1 signed by the plaintiff is on page 3 of the Exhibit. It reads in part as follows:

“ACCEPTANCE

I accept with pleasure the offer of appointment upon the terms and conditions set forth above, and I shall take up my duties on 1st September, 1983.

Appointee’s

Signature:

(Signed)”.

Now paragraphs 6 and 8 of Exhibit A1 read:

“6. Subject to the provisions of paragraph 7 below, the council shall not terminate the appointment of the appointee without having given six month’s notice in the case of a full professor or three months notice in the case of a non-professional member of staff, in writing of its intention to do so, or having tendered payment of the amount applicable to the period of notice unexpired and upon its doing so, the appointment of the appointee shall determine immediately.”

“8. The appointment shall be subject to confirmation after a period of three years in the case of academic staff and two years in the case of administrative staff and if confirmed shall become permanent. The appointee shall then retire at the close of the academic session (for this purpose 30th September) in which he attains his 60th birthday unless invited by resolution of the council to continue in office for a specific period, not exceeding five years. Only appointments of the rank of professorship made on permanent basis shall be tenable until the normal retirement age of 60 without the three year probation period.” (Emphasis mine).

It is pertinent to point out that the name “Obafemi Awolowo University” was later changed to Ondo State University and this is common ground between the parties to this case.

Apart from the aforementioned conditions, the appointment of the plaintiff was also made, by Exhibit A, subject to the Regulations Governing the Service of Senior Staff (Exhibit F). The Regulations provide for an Appointments and Promotions Board whose composition is as follows:-

“(i) The Vice-Chancellor (Chairman)

(ii) *Two members of council, not being members of senate appointed by council*

(iii) *The Deans/Acting Deans of Faculties.*

(iv) *The Head of Department of the candidate concerned.*

(v) *The registrar as secretary”.*

5 The terms of reference of the Appointments and Promotions Board include responsibility- .

“To consider all appointments to, confirmation of, and promotions within the academic, Senior Administrative, Technical and Professional staff.”

The plaintiff assumed duty in accordance with the date given by him
10 to do so, that is the 1st September, 1983, in the Department of Economics of the 1st defendant. He remained in the employment and carried out academic and extra- curricular activities that had been assigned to him from time to time by the authorities of the 1st defendant, until the 31st day of May, 1988 when he was served with a letter (Exhibit E) written by the 2nd defendant; which
15 terminated his appointment with the 1st defendant. The letter, as relevant, reads:-

“31st May, 1988

Dr. E.A. Folayan,

Ondo State University,

20 *ADO-EKITI*

APPOINTMENT WITH THE UNIVERSITY

I am writing to inform you that the Appointments and Promotions
25 *Board at its meeting on Friday, 29th April, 1988 reviewed your appointment and the totality of your career in the University and was unable to confirm your appointment. The Board unanimously decided that your probationary appointment in the University be determined with immediate effect.*

Your appointment as a lecturer in the department of Economics in
30 *this University is therefore determined with effect from today Tuesday, 31st May, 1988.*

By a copy of this letter, the Bursar is being informed to pay you
three months salary in lieu of notice and also to work out your other entitle-
ments as well as your indebtedness to the university, so that they can be
35 *settled.*

(signed)

J. G. O. Adegbite.

Registrar.”

Hence the action brought by the plaintiff in the High Court against the defendants. In his considered judgment, the learned trial Judge, Akintan J. (as he then was) found as follows:-

“It is clear from the contents of the plaintiff’s letter of appointment (Exhs. A & AI) as well as the provisions of Articles 14(c) and 22 of the Rules (sic Regulations), that the plaintiff’s appointment as Lecturer Grade II was on probation for three years and that it would only be confirmed if the appropriate authority of the University charged with exercising that function considers the plaintiff’s service to be satisfactory, he shows evidence of academic or scholaristic (sic) potential also to the satisfaction of the same authority. 5 10

I also have no doubt in holding that by virtue of the powers conferred on the Board in Article 3(B) of the Regulations, it is that Board that is conferred with the power to take a decision as to whether or not the plaintiff’s appointment should be confirmed. 15

The question to be answered is whether the decision to confirm an appointment can be inferred or presumed in the present case or whether the court can, based on the facts proved, in this case, hold that the plaintiff’s appointment has, in fact been confirmed. In [1994] 7 NWLR Ondo State University v. Folayan (Uwais, J.S.C.) 17 answering this question reference must again be made to paragraph 8 of the Memorandum of Agreement (Exh. A 1) which requires that the plaintiff’s appointment’ shall be subject to confirmation after a period of three years.’ 20

It is clear from that provision that the plaintiff’s appointment can only be confirmed after and not before he has served for three years. When that provision is read along with Article 22(vi) of the Rules which provides that probationary period of a member of that academic staff shall not be more than a total of six years, it means that the probationary appointment of an academic staff can only be confirmed after this third year of service but not later than his sixth year of service in case he was granted an extension.” 25 30

The learned trial Judge considered also whether the plaintiff’s probationary appointment had in fact been confirmed by the conduct or omission of the defendants. He held that the Regulations Governing the Service of Senior Staff (Exh.F) were made pursuant to the power conferred on the Council of the University by virtue of sections 6 subsection (5) and 9 subsection (1) of the Ondo State University Law, 1982. He, consequently, came to the conclusion that the Regulations had legal force, and by virtue of that, had invested in the senior academic staff of the university a legal status, which the senior 35

staff could legally enforce, on the authority of the case of Shitta-Bey v. Federal Public Service Commission, (1981)1 S.C. 40. The learned Judge observed that the letter terminating the appointment of the plaintiff (Exh. E) was issued on the 31st May, 1988, that is after the plaintiff had been in the employment of the 1st defendant for a period of four years and eight months, which falls
5 within the maximum 6 years of probation prescribed by regulation 22(vi) of Exhibit F. He then stated as follows:-

*“The question then is: can a court assume that the plaintiff’s probationary employment has been confirmed through the conduct of the parties in this case, having regard to the facts summarised hereof? I have no doubt
10 in answering the question in the negative.”*

Learned trial Judge also considered the issue whether the 1st defendant was right in determining the plaintiff’s appointment and held that the 1st defendant was justified in doing so. Finally, he held that the plaintiff’s claim had no merit. He, therefore, dismissed it in its-entirety.

15 The plaintiff appealed from the decision of the trial court to the Court of Appeal. The appeal succeeded. In reversing the judgment of the learned trial Judge, the Court of Appeal (Omo J .C.A, as he then was, Ndomo-Egba and Salami J.J.C.A.) considered the question whether the plaintiff’s appointment was confirmed, having been in the employment of the 1st defendant for more
20 than 4 years. The court (per Ndoma-Egba, J.C.A.) held that-

*“The appellant was in the employment as an academic staff. On resumption of duties on 19/4/83 in pursuance to Exh. A, the appellant was considered fit and sufficient to serve in the Department of Economics of the Institute where he worked for well over four years as a lecturer until his
25 appointment was purportedly terminated by the Appointment and Promotion Board of the 1st respondent and this was long after the probation period had expired. The contract of employment between him and the respondents was complete.*

*After serving for well over four years, without confirmation of his
30 appointment nor determination (sic) of it, the appellant genuinely assumed that his appointment was confirmed. The respondent cannot now resile from the position they had, by conduct, acknowledged. There was no evidence that the period of probation had been extended. In Majekodunmi v. NBN, (1978)3 S.C. 119 it was decided that in determining that whether there had
35 been acceptance of an offer, the total circumstance of the case including the conduct of the offer or (sic) and offer or are factors to be taken into consideration*

This, in my view, is precisely the position in the instant appeal. The

respondent cannot withdraw from their written commitment that the appellant's appointment was a probation for three years. The words "after three years" do not imply the communication of the confirmation of his appointment or otherwise, should be indefinitely delayed

.....
Silence or inaction in the instant case may be inferred as an admission of the confirmation of the appellant's appointment."
 (emphasis mine).

The court also considered the competence of the Appointments and Promotion's Board to terminate the appointment of the plaintiff without reference to the 1st defendant for its approval or ratification. The court (per Ndoma-Egba JCA.) held as follows:- 10

"It cannot be disputed that the appellant's appointor is the University Council, the duty of which, by the law creating it, is to administer the Institution, including the disciplinary control of all categories of staff, their employment and deployment. See section 6 of the Ondo State University Law, (1982) as amended in 1985. 15

Exhibit "A" by which the appellant was initially appointed Lecturer grade II reads:

'I write on behalf of the council of the University of Obafemi Awolowo (Now Ondo State University) to offer you appointment as Lecturer Grade II.....' 20

This confirms the assertion that the council is the appointor of the appellant. see also Clauses 7, 8 and 9 of Exhibit "A1" of (sic) the memorandum or appointment, Article 25B of the 1st respondent (Council) (sic) states: 25

'For good cause, any member of staff may be suspended or (sic) from his duties or his appointment terminated by the council'.

The power of termination or suspension of all staff thereto rests, exclusively, with the council. The construction of the said provisions confirms that the council of the Institution is the only competent authority to dispense with the service of the appellant after the duration of the probation or within a reasonable time thereafter as contained in Exhibit "A" or confirm it. The assumption by the Appointments and Promotions Board to do so, entirely without the endorsement by the council is a pretence. Even if it could be validly implied by existing regulations of the institution that such power was delegated to the said Board, the council ought to formally endorse the actions purportedly taken on its behalf 30 35

.....

The council of the University is the appointor. It is the only body competent to terminate the appointment of the appointee, the appellant. The learned trial Judge did recognise, rightly in my view that, in sections 3 and 4(3) of the Ondo (sic State) University Law (No.2 of 1982) as amended by the Ondo State University Law (Amendment) Edict, No.9 of 1985 and the Regulations
 5 *Governing the Service of Senior Staff (Exhibit "F", which are binding on the parties.*

Section 2(1) of the Principal Law creating the Ondo State University (as amended), hereinafter referred to as the law, provides that the institution consists of the Chancellors (sic) (a) chairman of council (b) a body
 10 *to be called Council (c) a Vice-Chancellor (d) a body to be called Senate.*

The (Appointments and Promotions) Board having not been expressly mentioned can only be recognised and cannot exercise the powers of the council in regard to appointment and discipline of staff without the
 15 *approval or endorsement of the council."*

(Parenthesis and emphasis mine).

In conclusion, the lower court allowed the plaintiff's appeal granted and declared as follows:

- "1. That the termination of the plaintiff's appointment was invalid.*
- 20 *2. That the plaintiff's appointment with the 1st defendant still subsisted.*
- 3. That the plaintiff be restored to his office and be paid his entitlements with effect from 31st may, 1988.*

and refused to grant the orders sought under claims (iii) and (iv) in the plaintiff's writ of summons.

- 25 I think it is pertinent to point out here, that declaration No.1 above was not sought by the plaintiff in his statement of claim, which I have quoted at the beginning of this judgment nor were the orders sought in respect of claims (iii) and (iv) which appeared only in the plaintiff's writ of summons. In making the declarations, the Court of Appeal was oblivious of the claims in the
- 30 Statement of Claim which has superseded the claims in the Writ of Summons.

The 1st and 2nd defendants were aggrieved by the decision of the Court of Appeal reversing the decision of the trial court. They therefore brought the appeal before us.

- 35 In the brief of argument filed jointly by the 1st and 2nd defendants, the following issues for determination have been formulated:-

"(i) Whether the respondent's probationary appointment was limited to a period of 3 years?

(ii) *Whether the respondent's probationary appointment with the 1st appellant was ever confirmed.*

(iii) *Whether the 1st appellant was estopped from denying that the respondent's appointment had been confirmed.*

(iv) *Whether the power to confirm appointments or do otherwise was vested in the Appointments and Promotions Board.* 5

(v) *Whether Article 25B of the 1st appellant's regulations, to wit, Exhibit F applied to the respondent.*

(vi) *Whether the respondent's appointment was properly terminated by the 1st appellant."*

The plaintiff presented three issues for determination in his brief of 10 argument. The issues read:

"4(1) Whether or not the respondent's appointment was deemed confirmed after the lapse of the probationary period of three years.

4(2) Whether having regard to the facts and the peculiar circumstances of this case, the appellants are estopped from resiling from the state 15 of fact that the appointment of the respondent had been confirmed.

4(3) Whether the Appointments and Promotions Board can validly determine the respondent's appointment with the 1st appellant."

At the hearing of the appeal no oral arguments was advanced by the learned counsel for the parties who, merely adopted their respective brief of 20 argument. I will therefore present, in this judgment, the contentions of the parties as contained in the briefs in question.

The defendants state that the appointment offered to the plaintiff by the 1st defendant was initially probationary and was made subject to the Regulations of the University (Exh.F) it is, therefore, contended that the ap- 25 pointment was not absolute but qualified by the provisions of the regulations which are relevant. It is then submitted that clause 22(i), (ii) and (vi) of Exhibit F are relevant to the appointment and that the effect of these provisions of clause 22 is not to limit the period of the plaintiff's probation to 3 years but to an upper limit of 6 years. Therefore, this upper limit implies to- 30

(a) Members of staff of the University who have not been confirmed after 3 years of probationary appointment;

(b) Members of staff whose appointments have not been terminated after three years of probation; and

(c) Members of staff whose probationary appointment had ended
5 after 3 years.

It is, therefore, argued that the plaintiff's appointment was not limited to a period of 3 years but to the extended period of 6 years. With regard to the confirmation of the plaintiff's appointment, it was argued that there was no evidence to show that that was done. On the contrary, there was sufficient
10 evidence that the Appointments and Promotions Board had not taken any decision on the confirmation until 29th April, 1988 when it decided, as per Exhibit N, not to confirm the appointment. The unchallenged testimony of the 2nd defendant that the plaintiff's appointment was never confirmed and the letter from the 2nd defendant addressed to the plaintiff, (Exhibit K), which was
15 dated the 2nd February, 1988, requesting the plaintiff to supply to the Appointments and Promotions Board his curriculum vitae for the purpose of assessment for confirmation, were called to our attention in support of the argument. It was then contended, relying on the date when Exhibit K was written that it was wrong to deem that the appointment was confirmed on the
20 expiration of the 3 year's service. The only occasion when the confirmation could rightly be deemed to have taken place, it is stated would be at the end of the period of 6 years if the plaintiff had been allowed to remain in the employment.

It has been conceded by the defendants that at the expiration on years,
25 there was no confirmation of the appointment. It is then submitted that the conclusion to be drawn from that position is that the probation period had by implication been extended to another 3 years in accordance with the powers of the Appointments and Promotions Board under regulation 22 of Exhibit F

Next, it was argued that the Appointments and Promotions Board
30 had the power to exercise the powers conferred upon the council of the 1st defendant by virtue of section 20 subsection (i) (a) of the Ondo State University Law, 1982; since the council is thereby authorised to delegate its functions to committees, appointed by it, and the Appointments and Promotions Board is one of such committees. Relying on regulation 22 of Exhibit F, it is
35 further argued that in view of the regulation, it is incontestable that the appro

priate authority to confirm appointments, or otherwise, of the Academic Staff in the employment of the 1st defendant, is the Appointments and Promotions Board. Therefore, it is submitted that the action of the Board in not confirming the plaintiff's appointment should be ascribed to the council since that power was, by virtue of Exhibit F, exercised by the Board on behalf of the council. For the same reason, it is submitted that the Board had the power to appoint or 5 remove Academic Staff in the University.

Finally, it is submitted that the provisions of regulation 25B in Exhibit F have no application to employees of the 1st defendant (like the plaintiff), who have not been confirmed, in view of the provisions of regulation 22 which 10 contrary to regulation 25B, made special and not general provisions on the removal of employees whose appointments have been unconfirmed.

After hearing the appeal, learned counsel to the defendant Professor Jegede, wrote a letter to the court citing the case of Carlen (Nigeria) Ltd. v. University of Jos & anor (1994) 1 NWLR (Pt.323) 631, which he wants to rely 15 on with regard to whether the plaintiff's appointment was properly terminated by the 1st defendant.

The plaintiff's case as stated in his brief of argument is as follows. The 3 year probation, which the plaintiff was to serve, expired on 1st September, 1986. At the time his appointment was purportedly terminated (31st May, 1988) he had been in the employment of the 1st defendant for 1 year and 9 20 months since the expiration of the probation. The probation period had not been extended in writing by the 1st defendant in accordance with section 22 of the Ondo State University Law, which stipulates that every notice emanating from the 1st defendant shall be in writing. It is submitted that by the operation of law, the plaintiff's appointment was deemed confirmed with effect from 1st 25 September, 1986. Although, there was no offer and acceptance of the confirmation, these are to be presumed from the conduct of the 1st defendant. Support for this proposition is placed on the case Obafemi Awolowo University v. Dr. Onabanjo, (1991) 5 N.W.L.R. (Pt.193) 549 at p.569 G-H.

The words "subject to the regulations of the University" in Exhibit A should be read as qualifying the word "appointment" therein and "3 years" which relate to probation. It is, therefore, submitted that the statement of 3 30 years in Exhibit A is specific and, therefore, it overrides the statement "subject to the regulation of the university." Schroeder & Co. v. Major & Co. Ltd., 35 (1989) 2 N.W.L.R. (Pt.101) 1 at P.19E was cited in support.

It is further argued that the provisions of regulation 22 (i), (ii) and (vi) relied upon by the defendants to show that the plaintiff's probation period

was extendable and that it was so extended by implication cannot support the plaintiff's case since there was neither express nor implied extension of the probation period.

Relying on section 150 of the Evidence Act and the cases of Joe Igah & ors. v. Amakiri & ors. (1976) 11 S.C. 1 at Pp. 12-13; Rourafric & Far Eastern Ltd. v. John Chief Avberake & Ors. (1958) W.R.N.L.R. 92 and Obafemi Awolowo University v. Dr. Onabanjo, (supra) at Pp.566 B.-C., it is submitted that the period of probation agreed by the parties was three years and confirmation was to follow thereafter. The fact that the plaintiff's appointment continued for 2 years after the expiration of the probation and that he was treated by the 1st defendant as a member of its staff, by placing him on its pay-roll and treating him as a full-fledged employee, would not make it possible for the defendants to resile from the natural result of their conduct and representation. Therefore, the defendants are estopped, as held by the Court of Appeal, from contesting that the plaintiff's appointment was confirmed.

On whether the Appointments and Promotions Board could validly terminate the appointment of the plaintiff, it is submitted that it cannot and that section 20 subsection (1)(a) of the Ondo State University Law, 1982, which the defendants rely upon, does not empower the council of the university to delegate the function of appointing and terminating the staff of the University to the Appointments and Promotions Board. Assuming (but without conceding) that the council has the power to delegate to the Board the function to terminate the appointment of the plaintiff there is no proof that the Council had made such delegation to the Board. It is argued.

Having narrated the arguments by the parties, I think the main issues to be determined in this case are; what happened to the plaintiff's appointment after the probation period of 3 years had expired? Whether the probation was extended or the appointment confirmed: was the termination of the appointment proper?

It is not in dispute that the plaintiff was given an appointment as a lecturer by the 1st defendant as per Exhibit A and the appointment was made subject to probation. The contention of the parties is on the duration of the probation. If reliance were placed on Exhibit A. the probation period would be 3 years, but that is not all, because the second paragraph of Exhibit A, which makes mention of the probation period, makes reference also the Regulations of the University, Exhibit F. The paragraph reads:

"The appointment is probationary for a period of 3 years and it is subject to the regulations of the University and to such conditions govern

ing appointments generally as may be made by the Council of the University from time to time.”

Now, it seems to me from this, that the appointment had been made subject to three conditions, namely;

1. Probation for a period of 3 years.
2. Subject to the Regulations of the University (Exhibit F) and 5
3. Subject to such conditions governing appointments generally as may be made by the Council of the University from time to time.

The first condition had been satisfied by the plaintiff since the period of 3 years had since expired at the time the plaintiff was served with the letter of termination of his appointment-Exhibit E. With regard to the second 10 condition, the Regulations of the University are contained in Exhibit F. Regulations 22 paragraphs (i), (ii) and (iv), which I consider apposite here, provide as follows:-

“22. Confirmation of Appointment

(i) All appointments to posts below the rank of professorship made 15 on permanent basis shall, in the case of members of Academic Staff be subject to three years probation and two years in the case of Administrative and Technical Staff and thereafter subject to consideration for confirmation or termination.

(ii) All appointments subject to confirmation shall lapse at the end 20 of the probationary period unless confirmed or extended by the Appointments and Promotions Board or by the Administrative and Technical Committee as the case may be.”

(vi) Where extension of period of probationary service is granted, 25 member of Academic Staff shall not have more than a total of six years nor member of Administrative and Technical Staff more than a total of four years during which his/her appointment shall be confirmed or terminated. “

It is the interpretation given to this Regulation that brought about the difference in the decisions of the lower courts. Regulation 22(i) prescribes, 30 as the first condition in Exhibit A (as shown above), that the period of probation in the plaintiff’s appointment as a member of the Academic Staff would be 3 years. But it goes further than Exhibit A to state that at the expiration of the 3 years the appointment would be subject to either confirmation or termination. The Court of Appeal relied on this provision to hold that the plaintiff was 35 deemed to have been confirmed since his appointment was not terminated

after the probation. With respect, the Court of Appeal ignored the other provisions of regulation 22 and in particular paragraphs (ii) and (iv) which are very relevant to the facts of the case. To this extent, the Court of Appeal was wrong. The provisions of regulations 22 will have to be read as a whole.

5 Although as headed, the regulations deals with confirmation of appointment only; when all the paragraphs under the heading are read together it would be seen that its scope goes, by far, beyond the confirmation of appointment simpliciter. It is a principle of interpretation of legislation that headings which are given to a section or group of sections cannot be relied upon to construe
10 the plain words of the section or sections, unless such words are found to be ambiguous or there is any doubt as to their ordinary meanings - *R. v. Surrey (North-East Area) Assessment Committee* (1984) 1 K.B. 29; *Hammersmith & City Rly v. Brand* (1869) L.R. 4 H.L. 171 and *Fletcher v. Birkenhead Corp.* (1907) 1 K.B. 205.

15 Apart from regulation 22(i) there is regulation 22 (ii) which goes further than the former. It provides that apart from the confirmation and termination of the appointment, the period of probation may be extended beyond the 3 years prescribed by regulation 22(i). However, it is silent as to the length of the extension. It is regulation 22 (vi) which states that the extension in the case
20 of Academic Staff must not be for more than 3 years, so that altogether the period of probation will not in the aggregate be more than 6 years.

Therefore, on reading the provisions of regulations 22(i), (ii) and (vi) together, the construction or meaning to be given thereon is that where an appointment to a member of the Academic Staff of the 1st defendant is proba-
25 tionary, it shall in the first instance be for a period of 3 years. If at the end of the period of three years, the University is satisfied with the performance of the employee, it may either confirm the appointment or it may extend the period of the probation but in doing so it must not extend it by more than 3 years. The decision to confirm the appointment or extend the probation is that of the
30 university and not the member of staff concerned. Again if at the end of a period of 3 years of the probation, the University is not satisfied with the performance of the employee or it did not need his service any more, it may terminate the appointment. It is in the context of this meaning that the facts of this case should be considered. This is what the Court of Appeal failed to
35 do.

The trial court, on the other hand, restricted itself to interpreting paragraph 8, of Exhibit A1 (quoted above) vis-a-vis regulation 22(vi) , and without advertng to regulation 22(i); and (ii) came to the following conclusion:

“It is clear from that provision (of paragraph 8) that the plaintiffs appointment can only be confirmed after and not before he has served for three years. When that provision is read along with Article 22 (vi) of the Rules (sic regulation 22 (vi) which provides that probationary period of a member of the Academic Staff shall not be more than a total of six years. It means that the probationary appointment of an academic staff can only be confirmed after his third year of service but not later than his sixth year of service in case he was granted an extension.”

In my view, and from what I have stated earlier on, this decision of the High Court is correct, even though it failed to take into consideration the provisions of regulation 22 (i) and (ii) of Exhibit F. 10

With regard to the third condition in Exhibit A, no reference was made to any condition laid by the Council of the University which came into force after the plaintiff assumed his appointment with the 1st defendant. There is, however, the Memorandum of Appointment (Exhibit A1) which Exhibit A referred to in its (Exhibit A) last paragraph, which reads: 15

“If you accept the offer, please sign the duplicate copy of the Memorandum of Appointment over a twenty-kobo stamp, stating how soon you expect to be able to take up your appointment and return it to me together with your medical certificate as soon as possible.”

Undoubtedly, Exhibits A1 forms part of Exhibit A in view of the signature of the plaintiff appended to it, showing in the certificate thereof (quoted above) that he “accepted the terms and conditions set forth above.” These terms and conditions are (a) the ones stated in Exhibit A, which include the Regulations Governing the Service of Senior Staff (Exhibit F) and (b) those contained in the memorandum of Appointment (Exhibit A1). Paragraph 8 of Exhibit A1(quoted above) further states that after a period of 3 years the appointment shall be subject to confirmation and if confirmed shall become permanent. 20 25

Now, Exhibit A1 may be considered as part of the third condition in Exhibit A. 30

Exhibit A is silent about what follows after the period of probation. It is Exhibit A1 in paragraph 8 thereof and Exhibit F in regulation 22 (i)(ii) and (vi) that make reference to confirmation. Exhibit A1 merely talks of confirmation after 3 year’s probation while Exhibit F goes further than that to state that the probation could be extended before confirmation or the appointment could be terminated after the probation. Since all the documents - Exhibits A, A1 and F form the conditions of the plaintiff’s service, they must be read together. If that is done it becomes clear that if the contents of Exhibit F are taken, they cover 35

what Exhibits A and A1 provide and in addition more.

When the plaintiff's period of probation expired and he was allowed to remain in the service of the 1st defendant did his appointment in fact lapse in accordance with regulation 22(ii), which reads:

5 “(ii) *All appointments subject to confirmation shall lapse at the end of the probationary period unless confirmed or extended by the Appointments and Promotion Board*”

since he was neither confirmed nor his probation extended? The presumption is that his appointment remained extant and could not be said to have lapsed.

10 This premise is in accord with section 150 of the Evidence Act (now section 151 of Cap. 112 of the Laws of the Federation of Nigeria, 1990) which provides:-

15 “150. *When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative in interest shall be allowed, in any proceedings between himself and such person or such person's representative in interest, to deny the truth of that thing,*”

See also Joe Igah & Ors v. Amakiri & Ors., (supra), where this court (per 20 Obaseki, Ag. J.S.C.) observed as follows at p.12 thereof:

25 “..... *if a man either in express terms or by conduct, makes a representation to another of the existence of a state of facts which he intends to be acted upon in a certain way, and it be acted upon in that way, in the belief of the existence of such a state of facts, to the damage of him who so believe and acts, the first is estopped from denying the existence of such a state of facts.*”

What is in contention in this case is not that the plaintiff ceased to be in the employment of the first defendant after the expiration of his probation, but what was the nature of the employment after the period of probation? Was 30 it on further probation by extension or on a permanent (i.e. confirmed) basis as provided under regulation 22(vi)? Under regulation 22(vi) it is possible for the appointment to be either confirmed or extended for a further period of probation of up to 3 years. If what happened after the first three years were an extension of the probation, then, the plaintiff had had about 21 months of that. 35 Similarly, if it were a confirmation, the duration of the confirmation had been for the same period before the action in this case was instituted by the plaintiff. However, in view of what transpired in the course of the plaintiffs employment, I am inclined to hold that what the plaintiff enjoyed after the expiration

of the probation was an extension of the probation and not confirmation I come to this conclusion in the light of the report of the Faculty of Social Sciences on annual Review on Academic Staff for the period 1986/87, which was issued on 18th January 1988 (Exhibit J. Page 2 of the report reads in part thus:-

“Dr. E.A. Folayan - Lecturer Grade II Assessment 5

Dr. Folayan assumed duties in the University on September 1, 1983 as Lecturer Grade II. His present position is Lecturer Grade II. The reports reaching the Panel was that he is a good teacher who communicates effectively with his students.

*He has published an article in International Journal of Economics. 10
A monograph of this has also been published by the Vantage Press, New York. These two publications indicate that he is making progress in research and he needs to be encouraged further.*

Recommendation

*It is recommended that Dr. Folayan be promoted Lecturer Grade I on 15
the basis of his (1) effective teaching, (2) his publications, (3) the fact that he has served 4 years as Lecturer Grade II.*

The panel scored Dr. Folayan as follows:-

*45 for research; 20 for teaching and 8 for service. His total score was 73. The Panel recommends the confirmation of appointment for Dr. 20
Folayan with the University till retiring age.” (emphasis mine).*

It is significant that Exhibit J. was tendered in evidence, at the hearing in the High Court, by the plaintiff. So that at the time the action was instituted, the plaintiff was quite aware of the fact that his appointment with the 1st defendant had not been confirmed and a plea for the confirmation had 25
been made by the Board of the Faculty of Social Science at its meeting which was held on 13th January, 1988. In the testimony of the plaintiff, he said in his evidence-in-chief:-

*“On 13/1/88 there was a Faculty of Social Services Board review 30
meeting. I was not present at the meeting but I later saw a copy of the minutes of the decision reached at the meeting. I served the defendants notice to produce before this court a copy of the minutes of that meeting. The copy now produced by defendants and shown to me is the said copy. It is admitted without objection as Exhibit J. The portion dealing with me is on page 2 of Exhibit J.” 35*

There was no evidence at the hearing of the case in the High Court which

could be regarded as suggesting or indicating that the plaintiff believed that his appointment had been confirmed by reason of its not being terminated by the 1st defendant at the end of the 3 year's probation.

I now turn to the question whether the appointment was properly terminated. By paragraph 6 of the Memorandum of Agreement (Exhibit A1), which has
5 been quoted earlier in this judgment, a non-professorial member of the academic staff is entitled to a three months notice in writing that the Council of the University intends to terminate his appointment or "*the payment of the amount applicable to the period of notice unexpired.*" And on doing either of these, the appointment terminates forthwith. The power to terminate the
10 appointment of the plaintiff is clearly vested in the Council of the University.

The Council is created under section 2 subsection (i) of the Ondo State University Law, 1982, and section 6 subsection (1) of the Law specifies the function of the Council to "*be the governing body of the University and shall be charged with the general control and superintendence of the policy,*
15 *finances and property of the University.*" Under section 20 of the Law, the council is empowered to appoint committees to exercise some of its functions. The section reads:

"20(1) Any body of persons established by this law shall without prejudice to the generality of the powers of that body have power to appoint
20 committees which need not consist exclusively of members of that body, and authorise a committee established by it:

(a) to exercise, on its behalf such of its functions as it may determine
....."

The learned trial Judge found that the parties accepted that the Regulations Governing the Service of Senior Staff (Exhibit F) binds them. He also
25 found that-

"There is no doubt that the Regulations Governing the Service of Senior Staff Exhibit F were made pursuant to the powers conferred on Council of the University by virtue of the powers conferred on them in the Ondo
30 State University law, 1982 as amended."

These findings have not been challenged before us nor are they shown to be perverse.

The letter terminating the appointment of the plaintiff (Exhibit E) which was written on 31st May, 1988 by the 2nd defendant reads in part thus:

35 "APPOINTMENT WITH THE UNIVERSITY

I am writing to inform you that the Appointments and Promotions Board at its meeting on Friday, 29th April, 1988 reviewed your appointment

and the totality of your career in the University and was unable to confirm your appointment. The Board unanimously decided that your probationary appointment in the university be terminated with immediate effect.

Your appointment as a Lecturer in the Department of Economics in this University is therefore terminated with effect from today Tuesday, 31st May, 1988

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.....

By a copy of this letter, the Bursar is being informed to pay you three months salary in lieu of notice and also to work out your other entitlements as well as your indebtedness to the University, so that they can be settled.

10

(Signed)

J.G.O. Adegbite

Registrar."

There is no doubt that the contents of this letter satisfy the condition of appointment in paragraph 6 of Exhibit A1, for the termination of the plaintiff's appointment. But what remains unanswered is the question: whether the Council of the University did delegate to the Appointments and Promotions Board the power to terminate the appointment, as envisaged by section 20 subsection (1)(a) of the Ondo State University Law, 1982. It is quite clear that the council has the power to delegate some of its functions to a committee, which may be called by any name so long as it is a subsidiary body of the council. Exhibit F shows, in regulation 3 thereof, that the Appointments and Promotions Board is empowered to exercise the function of the council with regard to matters such as appointments, promotions, discipline and termination of the appointment of the different categories of employees of the university. The membership of the Board, which includes the Vice-Chancellor, members of the Senate, Deans of Faculties and the Registrar of the University, cannot under the normal circumstances be expected to exercise those powers without the authorisation of the council.

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By section 149 subsections (1) and (2) of the Evidence Act (now section 150 subsections (1) and (2) of Cap. 112 of the Laws of the Federation of Nigeria, 1990) there is a presumption of regularity when an official act is shown to have been done in a manner consistent with the procedure laid down or where the officer performing the function did so in a public capacity. The subsections read:-

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"149(1) When any judicial or official act is shown to have been done in a manner substantially regular, it is presumed that formal requisites for its validity were complied with.

(2) When it is shown that any person acted in a public capacity it is

presumed that he had been duly appointed and was entitled so to act.”

In *Yerokun v. Adeleke* (1960) 5 F.S.C. 126 at Pp.129; (1960) SCNLR 267 at 270-271, the Federal Supreme Court. per Brett, FJ. (as he then was) stated as follows:-

“*Mr. Fani-Kayode, who appeared for Yerokun, submitted that it was not proved that Yerokun was regularly appointed, on the ground that the court could not take cognizance of any notice which appeared in a Gazette which was not produced, and that Mr. Brett’s evidence, by showing that it was he and not the Governor-General who made the appointment, rebutted the presumption of due appointment which would otherwise have arisen under s.147(2) (sic 149(2) of the Evidence Ordinance (now s.150(2) of Cap. 112) from the fact that Mr. Yerokun acted in the office. We do not accept this submission. Mr. Brett’s evidence may fail to prove positively that the appointments was validly made, but the office being, as we have held, one to which the Governor-General could lawfully delegate his power of appointment, Mr. Brett’s evidence is in no way inconsistent with the presumption arising under the Evidence Ordinance, and since no evidence to rebut the presumption was given we consider that Irwing, Ag, CJ., was justified in accepting it as proved that Yerokun was validly appointed.*”
(Parenthesis mine)

In the present case, the presumptions under section 149 subsection 20 (1) and (2) of the Evidence Act, apply to the fact that the Appointments and Promotions Board is a delegatee of the Council of the university. The burden is on the plaintiff, who challenged the competency of the Board, to rebut the presumptions by evidence and this he did not do in the trial court or indeed in this or the lower court. I, therefore, hold that the Appointments and Promotions Board had the power to terminate the appointment of the plaintiff and since it complied with the conditions governing the appointment of the plaintiff, it had done so lawfully.

Other subsidiary or auxiliary issues including the applicability of regulation 25B of Exhibit F have been raised and argued by the parties. As 30 those issues are not necessary for our decision nor are they capable of affecting the conclusions which I have so far reached in this judgment, I do not deem it necessary to allude to them.

In the result, this appeal succeeds. The decision of the Court of Appeal is hereby set aside. For the avoidance of doubt I reiterate that the 35 appointment of the plaintiff was lawfully terminated in accordance with the terms in Exhibit E. The 1st and 2nd defendants are entitled to the costs of this appeal which I assess at N1 ,000.00 against the plaintiff.

OGWUEGBUJSC

I have had a preview of the judgment read by my learned brother Uwais, J.S.C. I entirely agree with the reasons and conclusion. The appointment of the respondent was lawfully terminated.

Accordingly, the appeal is hereby allowed by me with N1,000.00 costs in favour of the respondents.

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ONUJSC

I had the advantage of reading in draft the judgment of my learned brother, Uwais, J.S.C. I agree with him that this appeal is meritorious and ought to succeed. It accordingly succeeds and is allowed by me.

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I wish, however, to interpose the following words of mine in expatiation. This appeal is sequel to the decision of the Court of Appeal, Benin Division holden in Benin City, which on the 17th day of July, 1989 allowed the appeal of the plaintiff, herein respondent, in an action he had instituted in the High Court of Ondo State sitting in Ado Ekiti, claiming in paragraph 21 of his Statement of Claim against the defendants, herein appellants the following reliefs:

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“(i) A declaration that the plaintiff’s appointment with the 1st defendant is still subsisting.

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(ii) A declaration that the purported determination or termination of the plaintiff’s appointment with the 1st defendant vide 2nd defendant’s letter reference number AD/EST/OAU/ACSE/17/73 of 31st May, 1988 is a violation of:-

(a) the plaintiff’s letter of appointment dated 29th April, 1983;

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(b) memorandum of agreement dated 29th April, 1983 between the plaintiff and the 1st defendant;

(c) regulations regulating the conditions of service of senior staff of the 1st defendant;

(d) section 15 of the Ondo State University Edict/ Law of 1982;

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(e) section 33 of the Constitution of the Federal Republic of Nigeria, 1979 and

(f) the rules and norms of natural justice and is therefore null and void and of no effect whatsoever;

(iii) A declaration that the plaintiff having completed his 3 years probationary period with the 1st defendant since September, 1986 has since then ceased to be on probationary appointment with the 1st defendant and therefore deemed to be confirmed staff or permanent appointee of the 1st

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defendant since 1st September, 1986.

(iv) *Order of injunction restraining the defendants either by themselves, agents, privies, servants or through any person or persons howsoever from preventing the plaintiff from performing any of the functions and duties of his office or interfering in any way whatsoever with the enjoyment of the*
5 *rights, privileges and benefits attached to his office.*

(v) *An order commanding the defendants to restore the plaintiff to his post, office and/or status and to pay all his salaries, allowances, entitlements and other benefits from 31st May, 1988 until the date of judgment."*

Pleadings were ordered, duly filed and exchanged. The case went to
10 trial and in a considered judgment, the learned trial Judge (Akintan, J. as he then was) dismissed the claims of the plaintiff in their entirety.

For a better appreciation of the case, it is well to set out in outline the brief facts as follows:-

On 29th April, 1983 the respondent, then resident in the United States of
15 America, was offered the post of a Lecturer Grade II in the 1st appellant's Department of Economics with effect from 1st September, 1983 vide Exhibit A. The appointment was to be probationary for a period of 3 years and expressly made subject to the regulations of the 1st defendant which prescribed a maximum probation period of six years for staff below professorial cadre (see Exhibit F, Clause 22).

20 On 31st May, 1988 by a letter reference NO.AD/EST/OAU/ACSE/17/73 (Exhibit E) signed by the 2nd defendant and purporting to act on behalf of the Appointments and Promotions Board of the 1st defendant, terminated the plaintiff's probationary appointment with three months' pay in lieu of notice. It was the defendants' assertion that the termination of plaintiff was done
25 wholly in accordance with the regulations of 1st defendant and was therefore lawful.

On behalf of the plaintiff, it was contended that his probationary appointment would be deemed confirmed after 3 years. That while Exhibit E disclosed grave allegations of misconduct before it was written, the plaintiff
30 was not heard in violation of his constitutional right of fair hearing. Moreover, that the Appointments and Promotion Board of the 1st defendant lacked power to terminate his appointment.

The learned trial Judge, as hereinbefore alluded to, found that the termination of the plaintiff's appointment was wholly consistent with the laws
35 and regulations of the 1st defendant (formerly known and called Obafemi Awolowo University) and so proceeded to dismiss the case of the plaintiff.

The Court of Appeal sitting in Benin, before which the plaintiff appealed, however, set aside the judgment of the trial court, holding *inter alia* that:-

(a) *“After serving for well over four years without confirmation of his appointment nor determination of it, the appellant genuinely assumed that his appointment had been confirmed.”*

(b) *“The power of termination or suspension of all staff therefore rests, exclusively with the council*

.the assumption by the Appointments and Promotions Board to do so, entirely without the endorsement by the council is a pretence.”

The defendants have appealed to this court filing nine grounds of appeal embodied in their Notice of Appeal dated 27th July, 1989. Six issues in all distilled from those nine grounds have been submitted at their instance for determination. They are:-

1. Whether the respondent’s probationary appointment was limited to a period of 3 years?(Grounds I and III)

2. Whether the respondent’s probationary appointment with the 1st appellant was ever confirmed. (Ground II)

3. Whether the 1st appellant was estopped from denying that the respondent’s appointment had been confirmed. (Grounds IV and V).

4. Whether the power to confirm appointments or do otherwise was vested in the Appointments and Promotion Board (Ground VI)

5. Whether Article 25B of the 1st appellant’s regulations to wit Exhibit F applied to the respondent. (Ground VII)

6. Whether the respondent’s appointment was properly terminated by the 1st appellant. (Grounds VI, VIII and IX).

The three issues formulated by the plaintiff are:-

1. Whether or not the respondent’s appointment was deemed confirmed after the lapse of the probationary period of three years - Grounds of Appeal Nos. 1,2,3 and 5.

2. Whether having regard to the facts and the peculiar circumstances of this case, the appellants are estopped from resiling from the state of fact that the appointment of the respondent had been confirmed Ground of Appeal No.4.

3. Whether the Appointments and Promotions Board can validly determine the respondent’s appointment with the 1st appellant- Grounds of Appeal Nos. 6, 7, 8 and 9.

Of the six issues proffered at the instance of the defendants and the three submitted on plaintiff’s behalf, both of which in essence overlap and amount to much the same thing, I only wish to comment on five of the defendants’ issues namely issues 1 and 2 (together) and 4 (separately) and 5 & 6 (together) as follows:-

ISSUES 1 AND 2:

The letter of appointment (Exhibit A) to which was attached the Memo-

randum of Appointment (Exhibit A1) and duly accepted by the plaintiff are clear enough to admit of no controversy. Albeit, it is imperative to set out for the avoidance of doubt excerpts thereof. For instance, Exhibit A in the penultimate paragraph states:-

“The appointment is probationary for a period of 3 years and is subject to the regulations of the University and to such conditions governing appointments generally as may be made by the Council of the university from time to time..... “

(Italics is for emphasis)

In accepting the offer embodied in Exhibit A from the United States on 8th July, 1983, the Plaintiff indicated that he would resume duties on 1st September 1983 and signed the portion of Exhibit A1 in the relevant part which states:

“ACCEPTANCE

I accept with pleasure the offer of appointment upon the terms and conditions set forth above, and I shall take up my duties on 1st September, 1983.

Appointee’s

Signature

(Signed)”.

Now, Paragraphs 6 and 8 of Exhibit A1 state:

“6. Subject to the provisions of paragraph 7 below the Council shall not terminate the appointment of the Appointee without having given six month’s notice in the case of a full Professor, or three months notice in the case of a non-Professorial Member of Staff, in writing of its intention to do so, or having tendered payment of the amount applicable to the period of notice unexpired and upon its doing so, the appointment of the Appointee shall determine immediately.”

8. The appointment shall be subject to confirmation after a period of three years in the case of academic staff and two years in the case of administrative staff and if confirmed shall become permanent. The appointee shall then retire at the close of the academic session (for this purpose 30th September) in which he attains his 60th birth-day unless invited by resolution of the Council to continue in office for a specific period, not exceeding five years. Only appointments of the rank of Professorships made on permanent basis shall be tenable until the normal retirement age of 60 without the three year probation period.”

(Italics mine for emphasis)

By the above provisions it is clear that the plaintiff’s appointment was

one “*subject to confirmation after a period of 3 years as an academic staff.*”

It is common ground that the plaintiff assumed duties in the employment of the 1st defendant on 1st September, 1983 in the Department of Economics as Lecturer Grade II and so remained until 31st May, 1988 when he was served with a letter of termination (Exhibit E) written by the 2nd defendant. It is also not in doubt that from the terms of Exhibit A, plaintiff’s employment was initially probationary for 3 years and made subject to the 1st defendant’s Regulations. I take the view that the words subject to constitute words of qualification which, properly construed, must be taken to mean that the extent of the plaintiff’s probationary appointment would not be absolute or automatic but qualified by the relevant provisions of 1st defendant’s Regulations. The question then is what are these Regulations that make the probationary period elastic?

It is in this regard that reference to Regulation 22(i), (ii) and (vi) in Exhibit F becomes relevant. It states:

“22(i) *All appointments to posts below the rank of professorship made on permanent basis shall, in the case of members of Academic Staff be subject to three years probation.....and thereafter subject to consideration for confirmation or termination*”

“22(ii) *All appointments subject to confirmation shall lapse at the end of the probationary period unless confirmed or extended by the Appointments and Promotions Board* “

“22(vi) *Where extension of probationary service is granted, members of Academic Staff shall not have more than a total of six yearsduring which his/her appointments shall be confirmed or terminated.*”
(Italics is for emphasis)

The cumulative effect of these Regulations, in my view, is not to limit the probationary period of staff of plaintiff’s cadre to 3 years but rather to prescribe an upper limit of six years therefore.

From the totality of the evidence adduced before the trial court there was nothing to show that plaintiff’s probationary appointment was ever confirmed either at the end of the initial 3-year probationary period or at all by the Appointments and Promotion Board. On the contrary, there was clear evidence to show that the Appointments and Promotion Board had not taken a decision to confirm plaintiff’s appointment until 29th April, 1988 when it decided not to confirm his appointment vide Exhibit N (being the minutes of the Board’s meeting). Other pieces of evidence upon which one would come to

the inevitable view that plaintiff was not confirmed are:

(a) The 2nd defendant who happened to be also the Secretary to the Appointments and Promotion Board gave unchallenged evidence that the plaintiff's probationary appointment was never confirmed. Such a confirmation, 2nd defendant asserted in evidence ought to be in writing to the affected member of staff which was not done in the instant case.

(b) That earlier on, on the 2nd February, 1988, the defendants by the hand of 2nd defendant wrote Exhibit K to show that the plaintiff was still being considered for confirmation.

Exhibit K states:-

"AD/EST/OSUA/ACSE/37/70 2nd February, 1988

Dr. E. A. Folayan,

CONFIRMATION OF APPOINTMENT

At its meeting held on October 30th 1987 the Appointments and Promotion Board was unable to review your appointment for the purpose of confirmation because you did not submit your Curriculum Vitae to your Faculty's Review Panel for assessment.

The Board has directed that you forward your up-to-date Curriculum Vitae to the Registrar for consideration at the next meeting of the Board which takes place on 19th February, 1988. Please send your Curriculum Vitae as soon as possible.

Yours sincerely,

Sgd. J.G.O. Adegbite

Registrar

cc:- Vice Chancellor

Dean, Faculty of Social Sciences"

Besides, it was not the case of the plaintiff based on his pleadings that his probationary appointment was ever confirmed, for instance, in paragraph 10 of the Statement of Claim the plaintiff averred thus:-

"The plaintiff avers that in recognition of his devoted services to the 1st defendant and unalloyed commitment to his duties as a Lecturer; that the 1st defendant's Board of Review for the Faculty of Social Sciences at its meeting held on 13th, January, 1988 recommended not only that the plaintiff be promoted to the post of Lecturer Grade I but also that his appointment with the 1st defendant be confirmed. The minutes of the Review Board shall be founded upon at the trial."

In the premises, the plaintiff's probationary appointment could not therefor be said to have been confirmed. Nor could it be said that there was a

deemed confirmation in the face of express provisions in Regulations 22(ii) of

Exhibit F which stipulates that:-

“All appointments subject to confirmation shall lapse at the end of the probationary period unless confirmed or extended by the Appointments and Promotion Board.”

The power vested in the Appointments and Promotion Board to extend the probationary period even though appears to be unfettered, its power to confirm is made subject to the condition in Regulation 22(iii) and (v) of Exhibit F both of which read:

“22(iii) In deciding on confirmation of appointment the aforesaid Boardwill consider an up-to-date curriculum vitae of the member of staff concerned as well as recommendations from his/ her Dean of Head of Department”

“22(v) Confirmation to retiring age after the probationary service shall for the Academic Staff be subject to satisfactory service, evidence of scholarly research and teaching ability displayed by the staff concerned

A literal reading of the above sub-regulations would appear clear that the power to confirm is not automatic but subject to the conditions set out therein. In other words a deemed Confirmation under Regulation 22(iii) of Exhibit F would therefore be ultra vires where the conditions under Regulation 22(iii) and (v) had not been complied with. In the plaintiff’s case there is clear evidence that these conditions were not fulfilled until his appointment was terminated by Exhibit E. In this wise, the circumstances of the plaintiff’s case would, in my view, warrant a “deemed extension” as more justifiable than a “deemed confirmation”, the latter which would be manifestly absurd. In addition, it has not been the policy of courts in this country to foist a servant on an unwilling master, unless such an employee is qualified by employment to a permanent and pensionable position. See *Vine v. National Dock Labour Board* (1956)3 All E.R. 939 and *Olatunbosun v. Niser* (1988)3 NWLR (Pt.80) 25 at 50para. H. As the plaintiff was not confirmed and never was until Exhibit E issued on him, he was neither qualified to a permanent nor pensionable position. As this court (per Olatawura, J.S.C.) had occasion to point out in *Simeon O. Ihezukwu v. University of Jos & ors* (1990)4 NWLR (Pt.146) 598 at 615 paragraphs C-E

“It appears to me a startling proposition that during a probationary period an employer has no right to terminate the appointment of the employee notwithstanding the breach of the terms of his appointment or has done anything contrary to the interest of his employer. The sole purpose of putting an employee on probation is to give the employer an assurance that

the employee is a fit and proper person to be placed on permanent appointment. Probationary period is a period of observation by the employer. It therefore follows that once the condition laid down for the termination of appointment during the probationary period is satisfied or complied with, an employee cannot justifiably complain: Olayinka Kusamotu v. Wemabod Estate Ltd. (1976) II S.C. 279."

The learned trial Judge was therefore right, in my view, when in his considered judgment he held, inter alia that-

"It is clear from the contents of the plaintiff's letter of appointment (Exhibit A & A1) as well as the provisions of Article 14(c) and 22 of the Rules (sic), that the plaintiff's appointment as Lecturer Grade II was on probation for three years and that it would only be confirmed if the appropriate authority of the University charged with exercising that function considers the plaintiff's service to be satisfactory he shows evidence of academic or scholastic potential also to the satisfaction of the same authority.

I also have no doubt in holding that by virtue of the powers conferred on the Board in Article 3(B) of the Regulations, it is that Board that is conferred with the power to take a decision as to whether or not the plaintiff's appointment should be confirmed.

The question to be answered is whether the decision to confirm an appointment can be inferred or presumed in the present case or whether the court can, based on the facts proved, in this case, hold that the plaintiff's appointment has, in fact been confirmed. In answering this question reference must again be made to paragraph 8 of the Memorandum of Agreement (Exhibit) A1) which requires that the plaintiff's appointment shall be subject to confirmation after a period of three years."

It is clear from that provision that the plaintiff's appointment can only be confirmed after and not before he has served for three years. When that provision is read along with Article 22(vi) of the Rules (sic) which provides that probationary period of a member of the academic staff shall not be more than a total of six years, it means that the probationary appointment of an academic staff can only be confirmed after his third year of service but not later than his sixth year of service in case he was granted an extension."

It is in the light of all that I have said that I hold as palpably erroneous the conclusion arrived at by the Court of Appeal (per Ndoma-Egba, J.C.A.) when it held among others as follows:-

"The appellant was in the employment as an academic staff. On resumption of duties on 19/4/83 (sic) in pursuance to Exhibit A the appellant was considered fit and sufficient to serve in the Department of Econom-

ics of the Institute where he worked for well over four years as a lecturer until his appointment was purportedly terminated by the Appointment and Promotion Board of the 1st respondent and this was long after the probation period had expired. The contract of employment between him and the respondents was complete.

After serving for well over four years, without confirmation of his appointment nor determination (sic) of it, the appellant genuinely assumed that his appointment was confirmed.

The respondent cannot now resile from the position they had by conduct, acknowledged. There was no evidence that the period of probation had been extended. In *Majekodunmi v. N.B.N.* (1978) 3 S.C. 719 it was decided that in determining that whether there had been acceptance of an offer, the total circumstance of the case including the conduct of the offeror (sic) and offeree are factors to be taken into consideration.....

This, in my view, is precisely the position in the instant appeal. The respondent cannot withdraw from their written commitment that the appellant's appointment was a probation for three years. The words "after three years" do not imply the communication of the confirmation of his appointment or otherwise, should be indefinitely delayed.

..... Silence or inaction in the instant case may be inferred as an admission of the confirmation of the appellant's appointment."

The case of *Obafemi Awolowo University v. A.K Onabanjo* (190 ..) 5 NWLR (Pt. 193) 549 for the proposition that an employer may by conduct confirm the appointment of an employee upon the expiry of the probationary period, is in my respectful view, not apposite here. In the case in hand, evidence points to the fact that the defendants and the plaintiff did not labour under any misapprehension that the plaintiff's appointment had been tactically confined. Vide Exhibit K. Regulation 22(ii) of Exhibit F (ibid) says it all by its express provision that "all appointments subject to confirmation shall lapse at the end of the probationary period unless confirmed or extended by the Appointments and Promotions Board

....."

I am left in no doubt that as at the time Exhibit E was written on 31st May, 1988 plaintiff's appointment had not been confirmed. My answer to issues 1 and 2 considered together is inevitably the negative.

Issue 4

"The poser here is whether the power to confirm appointment or do otherwise was vested in the Appointments and Promotion Board. As much of what I will say under this issue has already been said in my consideration of

issues 1 and 2, I adopt the latter in so far as those points overlap.

It is clearly an established principle that the 1st defendant being a creature of statute must act in accordance with its enabling Law, to wit, the Ondo State University Law, 1982. Section 4(i)(b) and (j) of that Law empowers the 1st defendant to institute academic posts and make appointments thereto, to enter contracts and to employ and act through agents. This was the principle given expression by this court in the case of Carlen (Nig.) Ltd. v. University of Jos & anor. (1994) 1 NWLR (Pt.323) 631 at pages 669-670 while interpreting the provision of Section 3(1) of the University of Jos Act, 1979 which is in pari materia with section 4 of the Ondo University Law, 1982.

Now, it is common ground that it was the council of the 1st defendant that appointed the plaintiff in the first instant. The said Council is a Statutory Body created and empowered by Section 6 of the Ondo University Law, as amended. It was pursuant to the powers conferred on the Council that 2nd defendant wrote Exhibits A and A1, namely the Letter of Appointment of the plaintiff and Memorandum of Appointment respectively. The question is, is it the Council alone as the appointor of the plaintiff that is the only body that can terminate his appointment? The answer in my view, will depend on whether the many powers Council exercises on behalf of the 1st defendant are delegable. It is clear that while by virtue of Regulation 25 of Exhibit 5 the power to remove any member of the academic staff is solely vested in the Council by section 20(1)(a) of the University Law (supra), the Council may act through committees. The section provides:-

“(1) Any body of persons established by this Law shall without prejudice to the generality of the powers of that body have power to appoint committees which need not consist exclusively of members of that body, and to authorise a committee established by it

(b) to exercise, on its behalf such of its functions as it may determine.....”

In other words, on a literal construction, the above section empowers the Council of the University to appoint committees to exercise any of its functions including the power to make appointments to academic posts. A fortiori, it (the Council) under the above sections may delegate the power to remove University staff from academic posts to a committee of its choice. That the Council of the 1st defendant has indeed expressly delegated to the Appointments and Promotion Board some or such of its powers of confirmation of appointment of staff can be seen from the provisions of Regulation 22(ii) and (iii) which states:-

“(ii) All appointments subject to confirmation shall lapse at the end of the probationary period unless confirmed or extended by the Appointments and Promotions Board or by the Administrative and Technical Staff Committee as the case may be.

(iii) In deciding on confirmation of appointment the aforesaid Board or Committee as the case may be will consider an up-to-date Curriculum Vitae of the member of staff concerned as well as recommendations from his/her Dean or Head of Department.”

And on power to remove persons from academic post; Section 11(1)(c) of the Interpretation Act, 1964 provides as follows:-

11(1) Where an enactment confers a power to appoint a person to an office or to exercise any functions, whether for a specified period or not the power includes.....

(c) power to remove or suspend him.....”

It is trite principle of Administrative Law that where a power has been delegated, the delegating authority will be bound by the decision of its delegate and will therefore be incapable of rescinding that decision. See *Western Fish Products v. Penwith D.C* (1981) 2 All.E.R 204 at 219 where Megaw L.J. stated as follows:-

“If an authority delegates certain powers to determine specific functions such decisions cannot be revoked.”

On this point, see also *Wade Administrative Law*, 5th Edition at page 326, where the learned Author stated that:-

“A statutory power to delegate will normally include a power to revoke the delegation when desired.”

In the instant case, if the question be asked, whether power to appoint and/or remove staff is delegated to the Appointments and Promotions Board, my answer would be in the affirmative. This is so because it is indisputable that in Exhibit F the rules and regulations governing the conditions of senior staff in the 1st defendant’s establishment were made by Council. Said the learned trial Judge on this point in his judgment:-

“There is no doubt that the regulations governing the service of Senior A Staff Exhibit F were made pursuant to the powers conferred on Councilor the University by virtue of the powers conferred on them in the Ondo University Law 1982 as amended.”

Further, when it is known that by Regulation 2(A) of Exhibit F, the Appointments and Promotions Board is duly constituted as a Committee of the Council of the University with membership constituting the Vice-Chancellor as Chairman, two members of council, not being members of the Senate appointed by council, the Deans/ Acting Deans of Faculties, the Head of the

Department of the candidate concerned and the Registrar as Secretary, then the Board must be a highly recognised organ and agent of 1st defendant and whose acts bind it. See also the wide powers conferred on the Board as contained in its terms of reference under Regulation (B) of Exhibit F thereof.

5 Moreover, it is not in doubt that Exhibit F is binding on the plaintiff and forms part of his contract of employment with 1st defendant to wit: Exhibit A. Furthermore, not only in Exhibit F is the responsibility for and power to confirm appointments of academic staff to retiring age placed wholly on Appoint-
10 ments and Promotions Board, Clause 22 of Exhibit F makes provisions for the Board to confirm or not to confirm the appointments of academic staff. It would therefore seem clear that from Regulation 22 of Exhibit F, there is no requirement whatsoever for the ratification or approval of council (before or after its exercise) once a decision has been taken by the Board and such a requirement cannot be implied. The maxim *expressio unius est exclusio* there-
15 fore has sway here, in that the document itself is plain and its literal meaning (i.e. devoid of gloss) must be adhered to. See *Animashdun v. Osuma* (1972) 4 S.C. 200 at 211; and *S.C. Western Nigeria v. Adebajo* (1971) 1 All NLR 178 (per Coker, J.S.C.). My answer to Issue 4 is clearly in the affirmative.

20 Issues 5 and 6:

These issues ask whether Regulation 25B of the 1st defendant's regulations to wit: Exhibit F applied to the plaintiff and whether the plaintiff's appointment was properly terminated by the 1st defendant. In answering these issues, it is well to point out that all I have discussed in issues 1 and 2 as well
25 as issue 4 above equally apply here and I respectfully adopt the views I had hitherto expressed therein.

Now, firstly from the testimony of the 2nd defendant, it was common ground that noticeable lapses observed in the plaintiffs performance of his duties were brought to his notice in writing vide Exhibits G and G1. Regulation
30 25B provides inter alia "For good cause, a member of staff may be suspended" from his duties or his appointment may be terminated by council and for the purpose of this subsection "good cause" means:- ".....

(iv) *Conduct which the council considers to be such as to constitute failure or inability of the person concerned to discharge the functions of
35 his office or to comply with the terms and conditions of his service"*

Whether or not Regulation 25B of Exhibit F applied to the plaintiff, and I contend that from the preponderance of evidence adduced at the trial it

does, it ought to be remembered that the sole purpose of the 1st defendant as

an employer being to put the plaintiff (its employee) on probation to give it (the employer) an assurance that he (the plaintiff) was a fit and proper person to be put on permanent appointment, it reserved the unfettered right to terminate the plaintiff's appointment when it becomes impossible for them to be bound by the terms of their agreement as contained in Exhibits A and A1. Hence, subject to the giving of due and adequate notice or payment of salary in lieu thereof as happened in the instant case the 1st defendant by the hand of 2nd defendant, its agent, wrote Exhibit 'E' to rightly terminate the plaintiff's appointment. 5

Secondly, the contents of Exhibit E - the letter which terminated the plaintiff's appointment and signed by 2nd defendant which I had hereinbefore referred to in this judgment is explicit enough. I only wish to add, by saying that the responsibility for confirming appointments in the 1st defendants establishment residing as it did in the Appointments and Promotions Board vide Regulations 22 of Exhibit F, that Board decided on 29th April, 1988 not to confirm plaintiff's appointment. That that decision was properly taken and received 1st defendant approval is exemplified in the unchallenged testimony of 2nd defendant as 1st defendant's Registrar. The communication of the Board's decision of 29/4/88 to plaintiff in Exhibit E constituted formal notice. The authority of 2nd defendant derives from statute. Under section 4A, Schedule of the Ondo State University Amendment Law of 1985, the Registrar is Administrative Officer of the 1st defendant and by virtue of that position is the Secretary to the Council, Senate, Congregation and Convocation. Moreover, by virtue of Section 21(3) of the Ondo State University Law 1982 (in pari materia with Section 22(3) of the Jos University Act and considered in *Carlen (Nig.) Ltd v. Unijos* (supra) at page 484) any contract or instrument which if made or executed by a person not being a body corporate, would not be required to be under seal, may be made or executed on behalf of the University by any person generally or specially authorised to do so by council. 10 15 20 25

From a combined reading of all the laws and regulations, I can come to no other conclusion (inevitable and compelling I dare say) than that Exhibit E was issued by the 2nd defendant, being a person generally authorised by council to act on behalf of the 1st defendant. The undoubted conclusion I arrive at is that the appointment of the plaintiff was effectively terminated by the 1st defendant through the agency of the 2nd defendant. 30 35

For the reasons I have given and the fuller ones set out in the lead judgment of my learned brother Uwais, J.S.C. with which I had before now expressed my concurrence, I allow the appeal and set aside the decision of the court below. The decision of the trial court is accordingly restored. I make the

same order as to costs as contained in the lead judgment.

ADIO JSC

I have had the privilege of reading, in draft, the judgment just delivered by my learned brother, Uwais, J.S.C., and I agree with his reasoning and conclusion, I too allow the appeal and abide by the consequential orders, including the order of costs.

IGUHJSC

10 I have had the advantage of a preview of the lead judgment just delivered by my learned brother, Uwais, J.S.C., and I entirely agree with the reasoning and conclusion therein.

I wish however to make some brief comment by way of emphasis only.

The plaintiff by a writ of summons issued on the 20th day of June, 15 1988 commenced a suit in the High Court of Ondo State, Ado Ekiti challenging the legality of the 1st defendant's action in terminating his appointment with their establishment. His claims were on the 6th December, 1988 dismissed in their entirety by Akintan, J, as he then was.

Dissatisfied with this judgment, the plaintiff lodged an appeal to the 20 Court of Appeal, Benin Division, which on the 17th day of July, 1989 unanimously set aside the judgment of the Ondo State High Court and held that the termination of the plaintiff's appointment was ineffective, null and void. This appeal is against the said decision of the Court of Appeal, Benin Division.

The facts of the case have been fully set out in the lead judgment of 25 my learned brother and I find it unnecessary to repeat them all over again. It suffices to state that the main issue that calls for determination is whether the plaintiff's appointment was properly terminated by the 1st defendant.

It is clear from the plaintiff's letter of appointment. Exhibit A and A1 30 that his appointment was on probation for three years but subject to confirmation by the Appointments and Promotions Board of the 1st defendant after a period of three years this service were found satisfactory and he showed evidence of academic potential. It must however be noted that Article 22(vi) of the 1st defendant's Regulations provides that the probationary period of a member of the academic staff shall not be for more than a total of six years. One 35 may therefore continue to serve in his probationary capacity after a period of

three years but not exceeding a total of six years if he was granted an exten-

sion by the University.

The Appointments and Promotions Board of the 1st defendant decided by Exhibit N on the 29th April, 1988 not to confirm the plaintiff's appointment. Accordingly, the termination letter, Exhibit E, was issued on the 31st May, 1988 and served on the plaintiff. This was after he had been in the employment of the 1st defendant for a total period of four years and eight 5 months.

The Court of Appeal in reversing the judgment of the High Court held that the appointment of the plaintiff was wrongly terminated by the Appointments and Promotions Board of the 1st defendant. It is their view that the plaintiff's appointment was on a probationary period of only three years. 10 They further held that having served for over three years with the University, the plaintiff's period of probation had ended and that he became thereafter a permanent staff of the University, the termination of whose services should be effected by the University Council pursuant to the provisions of section 15 of the Ondo State University Law, 1982. The Court of Appeal per the lead 15 judgment of Ndoma-Egba, JCA. rationalised the matter as follows:-

"After serving for well over four years, without confirmation of appointment nor determination of it, the appellant genuinely assumed that his appointment was confirmed. The respondent cannot now resile from the position they had, by conduct, acknowledged. There was no evidence that 20 the period of probation had been extended....."

The respondent cannot withdraw from their written commitment that the appellant's appointment was on probation for three years."

With profound respect, it seems to me that the above reasoning of the Court of Appeal is a total misconception of the contract of employment 25 between the parties and I find myself unable to accept the same as well founded.

In the first place, it cannot be seriously argued that the plaintiff was not in a position to serve in a probationary capacity after a period of three years but not exceeding six years as this is clearly one of the terms of his employment. The 1st defendant was entitled to withhold the confirmation of 30 the appointment of the plaintiff after the completion of his first period of three years on probation if it did not find his service satisfactory or it was not satisfied that the plaintiff had satisfactorily showed evidence of academic potential. The plaintiff, under the terms of his contract, could serve on probation for a total of six years. It must be stressed therefore that the plaintiff's 35 confirmation as was erroneously suggested by the court below, was not automatic at the end of the first three years of his appointment.

In the second place, there could be no question of the plaintiff assuming that his appointment was confirmed if the same was not terminated at the

end of his first three years of service so long as he had not completed his maximum probation period of six years. It is plain to me that what the plaintiff enjoyed after the expiration of the first three years of his appointment was not a confirmation but an extension of his probationary period of employment as he was yet to complete his maximum probation period of six years. In these
5 circumstances, the question of the University “resiling” from the position it had” by conduct” acknowledged, as postulated by the Court of Appeal cannot, with due respect, be right or, indeed, arise in this case. I am therefore, unable to accept the proposition of the court below that since the plaintiff’s appointment was not immediately terminated at the expiration of his first three
10 years probationary period, the same must be deemed automatically confirmed as the evidence before the court does not justify this view. Under Article 22 of the 1st defendant’s Regulations, a probationary appointment would lapse after three years unless extended. It is plain to me that the plaintiff’s probationary appointment was extended by the 1st defendant by conduct at the
15 expiration of his first three years service hence it was not terminated but the plaintiff was allowed to continue his service with the University.

It cannot be seriously disputed that the power to terminate the appointment of the plaintiff is vested in the Council of the University which under section 20 of the Ondo State University Law, 1982 is empowered to
20 appoint committees to exercise some of its functions. By Exhibit F, the Appointments and Promotions Board which is entitled to exercise the function of the Council in matters concerning the discipline and termination of the University staff duly terminated the appointment of the plaintiff. This termination of the plaintiff’s appointment is in my view proper and lawful and I entertain
25 no doubt that the court below was in error when it held that the said termination was ineffective, null and void.

It is in this light of the above and the more detailed reasons contained in the lead judgment of my learned brother, Uwais, J.S.C. that I too, would allow this appeal.

30 This appeal accordingly succeeds and the decision of the court below is hereby set aside. I endorse the consequential orders including the orders as to costs contained in the lead judgment.