

SUPREME COURT OF NIGERIA
25TH MARCH, 1994. SC. 284/1990
CORAM:- M. L. UWAI. O. OLATAWURA,
M. E. OGUNDARE, E. O. OGWUEGBU, Y. O. ADIO, JJSC.

FEDERAL CAPITAL
DEVELOPMENT AUTHORITY APPELLANT
AND
JOSHUA GYUHU SULE RESPONDENT

ADMINISTRATIVE

LAW - Termination of Appointment - By the appropriate authority - (Whether) termination letter signed on behalf of the permanent Secretary - Cannot properly terminate the appointment.

APPEALS - Issues - General rule that all issues submitted or court's consideration should be treated - Exceptions thereto - Whether in the instant case any miscarriage of justice was occasioned - By Court of Appeal's failure to treat all issues raised by the appellant.

MASTER &

SERVANT - Termination of appointment - purported to be done under Decree No. 17 of 1984 - that ousts court's jurisdiction - (Whether) it has not been shown that the termination was done by the appropriate authority.

PRACTICE &

PROCEDURE - Evidence - No challenge to document tendered - Challenge held unnecessary as the document was of no use to the relevant issue.

STATUTES - Applicability - Interpretation Act S. 10 (2) - Counsel's failure to distinguish between issues - move to rely on the Act - Provision of S.10 (2) held not applicable.

FACT

The Plaintiff/Respondent was employed by the Defendant/Appellant as Architect Grade 1 in its Building Department. The Plaintiffs service was later suspended by the Defendant. A committee was set up to look into the entire operations of the Building Department. The plaintiff and others appeared before the committee without any specific allegation of wrongdoing put to them. A White Paper was published following the finding of the Committee upon the Minister's approval. Thereafter, the Plaintiff's appointment was terminated by a letter (Exch. 10) which was signed by one fellow on behalf of the permanent Secretary of the Federal Capital Development Authority Abuja. The Plaintiff filed an action before the High Court for declarations that his termination being in breach of principles of natural justice and not done under Decree No. 17 of 1984, is illegal, irregular, null and void.

The Defendant's preliminary objection on the ground that the termination was done under Decree No. 17 of 1984 which ousts the court's jurisdiction was overruled by the trial court. After the hearing of the case, the trial court found in favour of the Plaintiff and granted four of the declarations sought. The Defendant's appeal to the Court of Appeal was dismissed by that Court. On further appeal to the Supreme Court, the Court was asked to determine whether by the approval of publication of the White Paper as a whole instead of an item on the termination of Plaintiff's appointment, the Honourable Minister being the appropriate authority approved the termination of the Plaintiffs appointment for the purposes of the Public Officers (Special Provisions) Decree No. 17 of 1984. That is, towards establishing that the Court has no jurisdiction. It was further contended that the Court of Appeal did not fully determine the issue raised in the Appellant's appeal before it.

HELD (unanimously allowing the appeal)

1. To the general rule that all issues submitted for the consideration of the Court should be treated are some exceptions such as that where the court finds that there is no jurisdiction, it is unnecessary to consider other issues. In the instant case, the major issue pursued was dealt with by the Court of Appeal and failure of that Court to consider other issues raised has not occasioned a miscarriage of justice. (P117 L 20)

2. The Decree under consideration defines an appropriate authority and inference, analogy or answer by implication will not meet the requirement that the termination of appointment must be by the appropriate authority. Thus, it has not been shown by evidence that the power to terminate the Respondent's appointment was exercised by the appropriate authority. (p. 119 L 26)

3. Seeing that the only reasonable interpretation that can be placed on the Honourable Minister's minutes is that it was his approval for the publication of the White Paper it was no use challenging the minutes. (p.120 L 2)

4. Counsel's failure to distinguish between a mandatory approval for termination of appointment of a public officer by the appropriate authority and inference of termination of appointment "traceable to the Minister's approval" has led to his reliance on S. 10 (2) of the interpretation Act which is not applicable. (p. 120 L7)

5. Whereas the Minister is the appropriate authority, a termination letter (Exch. 10) signed on behalf of the permanent Secretary who is not the appropriate authority under Decree 17 of 1984 did not properly terminate the Respondent's appointment, and any termination under the Decree not done by the appropriate authority is ineffectual. (p120 L17)

PER OGWUEGBU JSC "It is equally obligatory on all organs of government vested with responsibility to apply the provisions of the Decree to act humanely and with the highest sense of responsibility and not to act hastily or capriciously but ensuring that at every of the procedure, no public officer is unjustly removed from office." (p. 137 L8)

PER ADIO JSC "There is a misconception that however careless those concerned with the administration or application of the provisions of Decree No. 17 of 1984 to public officers at administrative level might be, the provisions of the Decree ousting the jurisdiction of the courts could always be relied upon or invoked to cover up such carelessness or irregularities even in cases of misapplication of the provisions of the Decree to public officers in circumstances in which it was obvious that the provisions were not applicable." (p.138 L37)

REPRESENTATION:

Adetunji Oyeyipo for the Appellant.

Karina Tunyan for the Respondent.

5 **CASES REFERRED TO**

1. Madukolu & Ors. v. Nkemdilim (1962) All N.L.R. 587.
2. Ajani v. Giwa (1986) 3 N.W.L.R. (pt.32) 796 at 804-5.
3. Governor of Kaduna State v. Dada (1986) 4 N.W.L.R.
- 10 4. Balogun v. Labrinran (1988) 1 N.S.C.C. 1056/1066.
5. Attorney General of Lagos State v. Dosunmu (1989) 2 N.S.C.C. 545.
6. Anya v. Iyayi (1993) 9 S.C.NJ. 53.
7. Wilson v. Attorney-General of Bendel State & Ors. (1985) 1 N.S.C.C. 191.
8. Nwosu v. Imo State Environmental Sanitation Authority (1990) 2 NWLR
- 15 (pt.135) 688, 725 D-F, 732 - 733.
9. Peenok Investments Limited v. Hotel Presidential Ltd. (1982) 12 SC. 1, 25.
10. Garba v. Federal Civil Service Commission (1988) 2 SCNJ 270, 277.
11. Wilson v. Attorney-General of Bendel State (1985) 1 NWLR (pt.4) 572, 589.
12. Rossek & Ors. v. A.C.B. Ltd (1993) 8 NWLR 382.
- 20 13. Bellow v. The Diocesan Synod of Lagos - East Central State of Nigeria Law Reports 1973 vol. 3 part 1, p. 330.
14. Re Browman, South Shields (Thomas Street) Clearance Order (1931) 2 K.B. 621 at 663.
15. Garba v. Federal Civil Service Commission (1988) 2 SCNJ 270, 277; (1 NWLR
- 25 449.
16. Sapara v. U.C.H. Board (1988) 4 NWLR (pt.86) 58, 82.
17. Onifade v. Olayiwola (1970) 7 NWLR 130.

STATUTES & RULES REFERRED TO

- 30 1. Public Officers (Special Provisions) Decree No. 17, 1984 s.4(2)
2. Federal Capital Territory High Court (Civil Procedure) Rules 1985 order 10 rule 21.
3. Interpretation Act Cap 17 s.10(2)
- 35 4. Constitution, Federal Republic of Nigeria, 1979, s.33(1)

LEAD JUDGMENT BY OLATAWURA JSC

This appeal has raised once again the interpretation of S.4(2) of the Public Officers (Special Provisions) Decree No. 17 of 1984. Before going into the said Decree (hereinafter referred to as Decree No. 17 of 1984), I ought to state the facts which led to the action filed by the respondent.

The respondent who was a Principal Architect under the appellant filed an action in the High court of Justice of Federal Capital Territory, Abuja and by his amended Statement of Claim claimed the following reliefs: 10

"(1) Declaration that the letter reference No. FCDA/55/S.4/Vol.1/149 dated 31st of December, 1985 and signed by Shehu Dawaki purporting to terminate his appointment as Principal Architect with the defendant is illegal, null and void having been issued in disregard of rules of Natural Justice. 15

(2) Declaration that the purported termination of the plaintiff's appointment by a Permanent Secretary vide letter reference No. FCDA.55/S.4/Vol. 1/149 is irregular and/in bad faith, and/or in breach of rules of Natural Justice and/or done without any legal authority and is therefore null and void. 20

(3) Declaration that the purported termination of the plaintiff's appointment by a Permanent Secretary Federal Capital Development Authority, Abuja vide letter reference No. FCDA.55/S.4/Vol. 1/149 dated 31st of December, 1985 was not done or purported to be done under Decree No. 16 of 1984, or and Decree No. 17 of 1984, therefore is null and void. 25

(4) Declaration that the plaintiff has been an Architect in the Building Department of the Federal Capital Development Authority Abuja since 3rd of August, 1978 and is still a Principal Architect in the Federal Capital Development Authority Abuja, and therefore entitled to rights, benefits and privileges (including) salaries attached to his office as Principal Architect in the Federal Capital Development Authority Abuja. 30 35

ALTERNATIVELY:

(5) Declaration that the plaintiff is entitled to salaries and other allowances attached to his post as Principal Architect as damages for loss

of his post as Principal Architect of the Building Department of Federal Capital Development Authority Abuja until he attains the age of 65 years."

The appellant in paragraphs 10 and 13 of its Statement of Defence among other things relied on Decree No. 17 of 1984 and that the action filed by the respondent was frivolous and incompetent. To bring out this defence, I reproduce hereunder paragraphs 10 and 13 of the Statement of Defence which read as follows:

"(10) In answer to paragraph 18(3) of the Statement of Claim, the defendant avers that the plaintiff's appointment was terminated as required under Decree No. 17 of 1984 which specifically ousts the jurisdiction of the court in this suit. The defendant will lead evidence to this effect and calls on the plaintiff to proof (sic) the contract strictly.

(12) x x x x

(13) The defendant urges this Hon. Court to strike out this case because it is frivolous, vexatious and most of all incurably incompetent as the Court has no jurisdiction to entertain the matter, and the defendant would before or at the hearing be heard to argue this paragraph pursuant to the provisions of order 10 Rule 21 of the Federal Capital Territory High Court (Civil Procedure) Rules 1985."

I will now refer to the appellant and the respondent as defendant and plaintiff respectively.

It is common ground in the action that the plaintiff was employed by the defendant on 3rd day of August, 1978 as Architect Grade 1 in the Building Department of the defendant. He was promoted in the course of his employment and later became the Principal Architect and was in this position until 31st December, 1985. It was however on 8th October, 1985 that the plaintiff's services were suspended by the defendant and he was asked to submit a written report on four issues. A committee was set up by the defendant to look into the entire operations of the Building Department. He and others appeared before the committee but that there was no specific allegation or wrong-doing put to him. He and others were merely asked routine questions without any specific allegation or accusation of any wrong-doing. It was through the defendant's letter reference No. FCDA/55/S.4/Vol. 1/149 dated 31st December 1985 and signed by one Shehu Dawaki that his appointment was purportedly

terminated. As at the time the said letter was handed over to him he was 33 years of age and by the terms of his employment he should be with the defendant until he has attained the age of 65 years. It was his case that the purported termination of his appointment was a violation of the Federal Civil Service Rules which govern his appointment.

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The defence filed by the defendant admitted that the plaintiff was employed by the defendant in the capacity stated by him. It however averred that when the late Major-General Mamman Vatsa was the Minister in charge of the Federal Capital Territory, he carried out an official inspection of the building operations in Abuja. It was as a result of his findings that the Minister decided to suspend the Director of Building and 17 of his subordinates of which the plaintiff was one. It was after the suspension that a committee was set up by the Minister to investigate the operation and performance of the Building Department of the defendant. The committee submitted its report and recommendations. A White Paper was issued and that the Minister approved the termination of the plaintiff's appointment. As earlier stated, the defendant relied on Decree 17 of 1984 which ousts the jurisdiction of the Court.

The defendant later filed a motion on notice praying the Court to strike out the suit filed for lack of jurisdiction. There was an affidavit in support of the prayer. Paragraphs 10 and 11 of the affidavit are germane to the objection raised to the competence of the suit. They read:-

"10. That after the committee's report and recommendation, a "White Paper" known as the Minister's views and comments was issued on the committee's finding and recommendations.

The Minister's views and comments would be founded upon at the hearing of this motion: Annexure 'B'.

11. That it was after the Minister had approved his termination of appointment that a letter to that effect reference No. FCDA.55/S.4/Vol.II/149 of 31st December, 1985 was issued and served on the plaintiff/respondent.

The Minister's approval would be founded upon at the hearing of this motion: Annexure C."

On 7th August, 1986, the learned Chief Judge, Saleh, C.J., over-ruled the objection raised as to his jurisdiction and the case was adjourned to 27th October, 1986 for hearing. On 27th October, 1986, the plaintiff gave evidence and tendered 10 documents as exhibits. He was not cross-examined on that day because learned counsel for the defendant, Mrs. C. C. Abalaka asked for

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adjournment to study the "papers"; apparently the exhibits tendered. The case was then adjourned to 11th November, 1986. From the record of appeal, the case came up on 11th November, 1986 but it was not until 19th September, 1988 that Mrs. Abalaka indicated that she had no questions. She did not cross-examine. The plaintiff then closed his case. Defence counsel did not call
 5 any witness. Mr. Tunyan addressed the court. After Mrs. Abalaka has reviewed the plaintiff's case, the records reads thus:

"Abalaka: I wish to say I have no reply to the points of law and I wish to close my case."

10 *(See p. 56 lines 19-20 of the record of appeal)."*

The Court then adjourned for judgment. On 15th December, 1988, Saleh, C.J., granted all the declarations sought as per the Amended Statement of Claim. The defendant appealed to the Court of Appeal, Kaduna Division.
 15 The Court of Appeal coram: Uthman Mohammed, J.C.A., (as he then was) Ogundare and Achike, JJ.CA., in a unanimous decision dismissed the appeal. The defendant has again appealed to this Court. The issue of jurisdiction raised in this Court was raised also in the lower court.

20 The parties filed their briefs. The defendant in its brief of argument formulated two issues:-

*'(a) Whether or not by approving the White Paper as a whole instead of item 'iv' in the Permanent Secretary's minutes specifically the Honourable Minister, Ministry of Federal Capital Territory approved the
 25 termination of the respondent's appointment and that his act was done for the purposes of the Public Officers (Special Provisions) Decree No. 17 of 1984.*

*(b) Whether the court below considered all the appellant's complaints as contained in the grounds of appeal filed and argued before it and
 30 whether the court below determined fully the issue raised in the appellant's appeal before it."*

The plaintiff did not formulate any issue but it would appear he agreed with the issues formulated by the defendant as the plaintiff's brief was a reply to the two issues raised by the defendant. Suffice it to say the two
 35 grounds of appeal filed against the judgment of the lower court are covered by the two issues formulated in the defendant's brief.

At the hearing of this appeal, Mr. Oyeyipo, the learned counsel for the defendant after referring us to pages 17B and 17C filed so as to complete the record of appeal adopted his brief filed on 29/2/91.

Learned counsel said it was not in dispute that the Minister for the Federal Capital Authority is the appropriate authority by virtue of S. 1(1)(d) of Decree 12 of 1985 - Minister of the Federal Capital Territory (Delegation of Powers) Decree. According to learned counsel, the issue now is whether the Minister for the Federal Capital Development Authority took the decision to terminate the plaintiff's employment. He pointed to Exhibit 10, the letter of termination of the plaintiff's appointment which was not signed by him. He contended that the decision to terminate the plaintiff's appointment was made by the Minister. He referred to Pages 13 - 20 of the record of appeal and Pages 17B and 17C and item 11 on Page 17C, and that paragraph 11 of the affidavit in support of the motion filed to strike out the plaintiff's suit for lack of jurisdiction "supplied the missing link". He finally urged the Court to allow the appeal. We did not call on Mr. Tunyan, the learned counsel for the plaintiff to reply.

Before going into the major argument and submissions in respect of Decree 17 of 1984, I will treat issue II, i.e. that the lower court made no pronouncement in respect of other grounds of appeal covered by issue II before that court.

The general rule is that all issues submitted for the consideration of the court should be treated. Non-consideration of the issue submitted by a party may lead to a miscarriage of justice. To this general rule there are exceptions. The issue of jurisdiction is so fundamental to every adjudication that it must be considered. Where the Court lacks jurisdiction, it is unnecessary to consider other issues: *Madukolu & Ors. v. Nkemdilim* (1962) All NLR 587. I agree with the conclusion reached by the defendant's counsel where in his brief the learned Senior Advocate said:

"It is conceded that a Court of Appeal may determine an appeal by considering one ground of appeal only out of many grounds if determination of that ground finally determines the matter;"
(underlining supplied for emphasis).

He cited *Ajani v. Giwa* (1986) 3 NWLR (Pt.32) 796 at 804-5. Governor of Kaduna State v. Dada (1986) 4 NWLR (Pt. 38) 687/695. The major issue pursued was dealt with by the lower court, but even on the evidence adduced at the trial and the consideration given to the case of the parties, and even if these grounds of appeal covered by the issues raised in the lower court were not dealt with, it has not occasioned a miscarriage of justice: *Balogun v.*

Labinran (1988) 1 NSCC 1056/1066; (1988) 3 NWLR (Pt.80) 66.

I now come to issue NO.1 which in the main is whether the termination of the plaintiff's appointment was done by the appropriate authority. It is accepted by both sides that by virtue of Decree No.12 of 1985, i.e. Federal
 5 Capital Territory (Delegation of Powers) Decree, the Minister of the Federal Capital Territory is an appropriate authority. It is also not in dispute that the plaintiff up till the time of his purported termination of appointment was a public officer: See section 4(1) of Decree 17 of 1984. In the defendant's brief, the learned Senior Advocate, in his attack on the conclusions reached by the
 10 lower court that the Honourable Minister for the Federal Capital Territory did not approve the recommendation that the plaintiff's appointment be terminated, said:-

*"The Court below however, in appellant's submission erred when it held that Public Officers (Special Provisions) Decree No. 17 of 1984 did not
 15 apply in this case because as the Honourable Justice held the Honourable Minister did not authorise the termination of the respondent's employment."*

Learned Senior Advocate then referred to the lead judgment of Ogundare, J.C.A., where the learned Justice said:-

20 *"It is quite obvious that of the recommendations (i), (ii), (iii), (iv) the Minister only approved recommendation (ii) the publication of the White Paper on the report. Recommendation (iv) seeking Minister's approval for the termination of the appointment of the officers listed in paragraph (xi) of the White Paper was not approved."*

25 Learned Senior Advocate then further submitted that the Honourable Minister did not approve recommendation (ii) only. The crucial point in this appeal is whether by the approval of the White Paper the Honourable Minister has approved, whether by implication, the termination of the plaintiff's
 30 appointment. This argument is based on the assumption that once the White Paper was approved, the termination of the respondent's appointment which was a part of the White Paper was also approved. The learned Senior Advocate's submission overlooks the contents of the minutes which read:

35 *"Minister'*

Pages 1 to 7 contain the recommendations and the Minister's suggested views on the recommendation. The highlight of the recommendations are contained in paragraphs (ix), (x) and (xi) on pages 6 and 7 in which certain named officers have been recommended for commendation, lifting of

suspension and termination of appointments respectively.

2. You will wish to approve:-

(i) *the minister's suggested views;*

(ii) *the publication of the White Paper on the report;*

(iii) *the suspension of the termination of the officers listed in para- 5 graph (x) of the White Paper;*

(iv) *the termination of appointment of officers listed in paragraph (xi) of the White Paper.*

(Sgd.)

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A. M. Wazirin Fika,

Permanent Secretary,

17th December, 1985.

'A'

The White Paper is approved,

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(Sgd.)

17.12.85"

I am sure learned Senior Counsel will admit that four matters were sent to the Honourable Minister for his approval. I believe also that the Permanent Secretary who minuted to the Minister knew the implication hence he specifically asked for approval of four issues. The approval of the White Paper is different from minute (iv) which specifically asked for the Minister's approval of:- 20

"the termination of appointment of officers listed in paragraph (xi) of the White Paper." 25

The requirement of Decree No. 17 of 1984 in so far as approval is concerned is spelt out under S.4(2)(ii) which defines appropriate authority as "the Head of the Federal Military Government or any person authorised by him or the Supreme Military Council". A specific request requires a specific answer. Inference or analogy or answer by implication will not meet the requirement that the termination of the appointment (as in this case) must be by the appropriate authority. Any statute ousting the jurisdiction of the Court must be construed strictly as clear words are required to oust the jurisdiction of a court more so when such act cannot be questioned in any court of law: Attorney-General of Lagos State v. Dosunmu (1989) 2 NSCC 545; (1989) 3 NWLR (Pt.111) 552; Anya v. Iyani (1993) 9 S.C.N.J. 53. It has not been shown not even by evidence before the Court that the power to terminate the respondent's appointment was done by the appropriate authority. The 30 35

approval given by the Hon. Minister was to publish the White Paper.

Learned counsel has argued further that the minutes by the Permanent Secretary was not challenged. It appears to me patent on the minutes that there was
 5 nothing to challenge because the only reasonable interpretation one can place on the clear and unambiguous minutes of the Honourable Minister was his approval for the publication of the White Paper. Furthermore learned Senior Advocate has failed to distinguish between a mandatory approval for termination of appointment of a public officer by the appropriate authority and
 10 inference of termination of appointment "traceable to the Minister's approval". Learned Senior Advocate has relied on section 10(2) of the Interpretation Act which reads:-

*"An enactment which confers power to do any act shall be construed as also conferring all such other powers as are reasonably necessary
 15 to enable that act to be done or are incidental to the doing of it."*

I have no hesitation in saying that section 10(2) of the Interpretation Act Cap 192 is inapplicable. What did Exh. '10' say and where did it emanate from? Exhibit "10" is a letter of termination signed by one Shehu Dawaki for the Permanent Secretary, Federal Capital Development Authority. As said earlier in this judgment, the Hon. Minister of the Federal Capital Territory is the appropriate authority. Exhibit 10 was signed on behalf of the Permanent Secretary who under Decree No. 17 of 1984 is not the appropriate authority. Was
 20 there any evidence before the trial court to show that Exhibit 10 was signed by the appropriate authority or on the authority of the Honourable Minister? The answer is in the negative. As was the case in *Wilson v. Attorney-General of Bendel State & Ors.* (1985) 1 NSCC 191; (1985) 1 NWLR (Pt.4) 572, any termination of appointment under Decree No. 17 of 1984 not done by the appropriate authority is therefore ineffectual. See also S.1(d) of Decree No. 12 of 1985. I
 25 have therefore come to the conclusion that the appointment of the respondent was not properly terminated. I will therefore grant the following reliefs 1, 3 and 4 which read:

*"(1) Declaration that the letter reference No. FCDA/55/S.4/Vol.1/149 dated 31st December, 1985 and signed by Shehu Dawaki purporting to terminate the plaintiff's appointment as Principal Architects with the defendant is illegal, null and void having been issued in disregard of rules of
 35 Natural Justice.*

(3) *Declaration that the purported termination of the plaintiff's appointment by a Permanent Secretary Federal Capital Development Authority, Abuja vide letter reference No. FCDA.55/S.4/Vol.1/149 dated 31st of December, 1985 was not done or purported to be done under Decree No. 16 of 1984 or/and Decree No. 17 of 1984, therefore is null and void.* 5

(4) *Declaration that the plaintiff has been an Architect in the Building Department of the Federal Capital Development Authority Abuja since 3rd of August, 1978 and is still a Principal Architect in the Federal Capital Development Authority Abuja, and therefore entitled to rights, benefits and privileges (including) salaries attached to his office as Principal Architect in the Federal Capital Development Authority Abuja."* 10

The appeal fails and is hereby dismissed with costs assessed at N1,000.00 in favour of the plaintiff.

UWAIS JSC

I have had the advantage of reading in draft the judgment read by my learned brother Olatawura, J.S.C. I agree that the appeal has no merit.

It is clear that the Minister of the Capital Territory either did not understand the minutes sent to him by the Permanent Secretary or he understood the minutes but was careless in his response. The result is that the Minister failed to indicate if he was agreeable that the appointment of the respondent and other officers "listed in paragraph (xi) of the White Paper" should be terminated. This led to the wrongful termination of the respondent's appointment by the Permanent Secretary, who was not the prescribed authority under the Public Officers (Special Provisions) Decree, No. 17 of 1984 (now Cap. 381 of the Laws of the Federation of Nigeria, 1990) as averred by the appellant in paragraph 10 of its Statement of Defence. Consequently, I hold that the Minister who was the prescribed authority under Decree No. 17 of 1984 neither terminated nor approved the termination of the appointment of the respondent.

It is for these reasons and the fuller reasons contained in the judgment of my learned brother Olatawura, J.S.C., that I too dismiss the appeal. I adopt the order stated in the said judgment.

OGUNDARE.JSC

I have had a preview of the judgment of my teamed brother Olatawura J.S.C. just delivered. I agree with him that this appeal is lacking in merit and should be dismissed. In view, however, of the nature of the issues raised in the appeal I consider it necessary to say a few words of my own.

The facts are not in dispute. The defendant, who is now the appellant before us, employed the plaintiff, now respondent, as an Architect in August 1978. By October of 1985 he had risen to the post of Principal Architect. On 8th October, 1985 the plaintiff was suspended from duty. Meanwhile a Committee was set up by the Management of the defendant to look into the operations of the Building Department of the defendant Authority. The Committee by a letter dated 18th October, 1985 invited the plaintiff to submit a report on some issues listed in the said letter. He complied. The plaintiff and other members of staff of the Building Department appeared before the Committee on its invitation and were asked questions. None of them was however, charged with any specific wrong-doing. Following the report of the Committee the defendant wrote a letter dated 31st December, 1985 terminating the plaintiff's appointment. The plaintiff was at the time 33 years old and by the terms of his employment he was to serve until he attained the age of 65 years.

The plaintiff instituted the action leading to this appeal claiming as per paragraph 18 of his amended statement of claim:

"(1) Declaration that the letter reference No. FCDA/55/S.4/Vol. 1/149 dated 31st of December, 1985 and signed by Shehu Dawaki purporting to terminate his appointment as Principal Architect with the defendant is illegal, null and void having been issued in disregard of rules of natural justice.

(2) Declaration that the purported termination of the plaintiff's appointment by a Permanent Secretary vide letter reference No. FCDA.55/S.4/Vol. 1/149 is irregular and/in bad faith, and/or in breach of rules of natural justice and/or done without any legal authority and is therefore null and void.

(3) Declaration that the purported termination of the plaintiff's appointment by a Permanent Secretary Federal Capital Development Authority, Abuja vide letter reference No. FCDA.55/S.4/Vol. 1/149 dated 31st

of December, 1985 was not done or purported to be done under Decree No. 16 of 1984 or/and Decree No. 17 of 1984, therefore is null and void.

(4) Declaration that the plaintiff has been an Architect in the Building Department of the Federal Capital Development Authority Abuja since 3rd of August, 1978 and is still a Principal Architect in the Federal Capital Development Authority Abuja, and therefore entitled to rights, benefits and privileges (including) salaries attached to his office as Principal Architect in the Federal Capital Development

Authority Abuja.

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ALTERNATIVELY

(5) Declaration that the plaintiff is entitled to salaries and other allowances attached to his post as Principal Architect as damages for loss of his post as Principal Architect of the Building Department of Federal Capital Development Authority Abuja until he attains the age of 65 years."

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The defence of the defendant was to the effect that it was the Minister of the Federal Capital Territory, Major-General Mamman Vatsa (now deceased) that authorized the termination of the appointment of the plaintiff and that therefore, by virtue of Decree No. 17 of 1984 titled "Public Officers (Special Provisions) Decree" that termination could not be questioned in any Court. The penultimate paragraphs of the statement of defence read as follows:-

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"(4) In answers to paragraphs 8 to 14 of the statement of claim, the defendant have this to say:-

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(a) that after suspending the officers of the Building Department including the plaintiff, J. G. Sule, a Committee was set up by the then Hon. Minister on 9th day of October, 1985 to investigate the operation and/or performance of the Building Department of FCDA;

(b) that part of the committee's report and recommendation was the termination of appointment of the plaintiff J. G. Sule amongst seven other officers.

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The report of the committee would be founded upon at the trial of this suit.

(c) that after the committee's report and recommendation a 'white paper' known as the Minister's views and comments was issued on the committee's finding and recommendation. The Minister's views and comments would be founded upon at the trial of this suit.

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(d) that it was after the Minister had approved his termination of appointment that a letter to that effect reference No. FCDA. 55/S.4/Vol. 11/149 of 31st December, 1985 was issued and served on the plaintiff.

The minister's approval would be founded upon at the trial of this suit.

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10. In answer to paragraph 18(3) of the statement of claim, the defendant avers that the plaintiff's appointment was terminated as required under Decree No. 17 of 1984 which specifically ousts the jurisdiction of the court in this suit. The defendant will lead evidence to this effect and calls on the plaintiff to proof (sic) the contrary strictly (sic)."

At the trial plaintiff gave evidence and closed his case. The defendant adduced no evidence but rested its case on the case for the plaintiff. In a reserved judgment the learned trial Chief Judge of the High Court of the Federal Capital Territory Abuja found:

"1. Procedure adopted in discussing (sic) the plaintiff has not been shown to be in compliance with civil service rules or any rule applicable to FCDA by defendant and it therefore remained to be in contravention of natural justice and therefore not proper. As held earlier in my ruling Decree 16 or 17 of 1984 does not apply. In view of this I grant the declaration sought in paragraph 18(1) of the statement of claim.

Declaration (1) in substance covers declaration sought in paragraph 18(2) of the statement of claim and I also grant it. The earlier ruling already dealt with the declaration sought in paragraph 18(3) and this declaration was already granted.

The plaintiff is not specific in declaration in paragraph 18(4) for declaration in paragraph 18(5) is sought in the alternative declaration in paragraph (5) can not be entertained because the court can not on evidence before it pronounce a termination null and void and then proceed to consider declaration 18(5) for this proceed on validity of termination. The consequential declaration that naturally flows from declaration 3 is declaration sought in paragraph 18(4) of the amended statement of claim and this also grant. In the result all the declaration (sic) of the plaintiff are hereby granted."

He had earlier, on the application of the defendant to strike out the action in limine, which application he dismissed, ruled that the jurisdiction of the court was not ousted as Decree No. 17 of 1984 did not apply.

Being dissatisfied with the judgment of the learned trial Chief Judge the defendant unsuccessfully appealed to the Court of Appeal (Kaduna Division) which latter court unanimously affirmed the judgment of the trial court. It is against this judgment that the defendant once again has further appealed to this Court upon two grounds of appeal which without their particulars read 5 as follows:-

"ERROR IN LAW"

(1) *The learned Justices of the Court of Appeal erred in law by holding that the termination of the respondent's appointment was not approved by the Minister, being the appropriate authority to do so under the provisions of the Public Officers (Special Provisions) Decree No. 17 of 1984 and the Federal Capital Territory (Delegation of Powers) Decree No. 12 of 1985, and therefore, 'the learned Chief Justice (sic) had jurisdiction to entertain the calm. Decree Nos. 16 and 17, 1984 did not come into play at all,' thus thereby occasioning substantial miscarriage of justice.* 10 15

(2) *The learned Justices of the Court of Appeal erred in law by failing to consider at all the issues properly raised in grounds 2, 3 and 4 of appeal before it, thus thereby violating the appellant's Constitutional rights to fair hearing and the determination of its appeal on the merits, which failure has occasioned substantial miscarriage of justice.* 20

These 2 grounds of appeal form the basis of the 2 issues raised in the appellant's Brief in this Court and upon which this appeal is now to be determined. The 2 issues as set out in the appellant's Brief are as follows:- 25

"(a) Whether or not by approving the White Paper as a whole instead of item 'iv' in the Permanent Secretary's minutes specifically the Honourable Minister, Ministry of Federal Capital Territory approved the termination of the respondent's appointment and that this act was done for the purposes of the Public Officers (Special Provisions) Decree No. 17 of 1984. 30

(b) Whether the Court below considered all the appellant's complaints as contained in the grounds of appeal filed and argued before it and whether the court below determined fully the issue raised in the appellant's appeal before it." 35

I shall consider first, issue (a). In respect of this issue learned Senior Advocate, Alhaji Abdullahi Ibrahim who prepared the Brief on behalf of the

appellant referred to paragraph 10 of the Statement of Defence where the issue of the jurisdiction of the court was raised. He also referred to an earlier application brought by the defendant praying that the action be struck out and to which some annexures were exhibited. He made copious references to these annexures and submitted that as the Honourable Minister in the Ministry of Federal Capital Territory was an appropriate authority under Decree No. 17 of 1984 by virtue of the Federal Capital Territory (Delegation of Powers) Decree No. 12 of 1985, his action in terminating the appointment of the plaintiff was done under the said Decree No. 17 of 1984 and this legally terminated plaintiff's employment and also ousted the jurisdiction of the court. Learned Senior Advocate further submitted that both the lower court and the trial court were in error when they held that the Minister did not approve the termination of the appointment of the plaintiff, among others. It was learned Senior Advocate's contention that by approving recommendation (ii) in Annexure C made to the Minister, he would be deemed to have approved in totality all the four recommendations made to him by the Permanent Secretary of the Ministry, that is, items (i) to (iv). Learned Senior Advocate observed that items (i), (iii) and (iv) in Annexure C were contained in the draft White Paper and therefore, by approving the publication of the White Paper, as the Minister did, he must be taken to have approved the termination of the plaintiff's appointment. Learned counsel submitted that there was sufficient evidence before the trial court to link the Minister to the approval to terminate the plaintiff's appointment. He refers to *Nwosu v. Imo State Environmental Sanitation Authority* (1990) 2 NWLR (Pt.135) 688, 725 D-F. Learned Senior Advocate further argued in the Brief that, under the Decree, all that the appropriate authority needs do was to decide that he was satisfied from the materials placed before him that he could act and where he so acted, the act could not be queried or questioned. He finally submitted that the plaintiff was properly removed from his employment by the Minister by virtue of the powers conferred upon the latter under the provisions of the Public Officers (Special Provisions) Decree No. 17 of 1984 and the Minister of Federal Capital Territory (Delegation of Powers) Decree No. 12 of 1985. Learned Senior Advocate further submitted that Section 3(3) of Decree No. 17 of 1984 ousted the jurisdiction of the trial court to entertain plaintiff's claim.

Mr. Oyeyipo learned counsel who appeared for the defendant/appellant at the hearing of this appeal, in oral argument, observed that

there was no dispute that the Minister was the appropriate authority under Decree No. 17 of 1984 by virtue of section 1(1)(d) of the Decree No. 12 of 1985. Learned counsel further observed, and quite rightly in my view, that the dispute was as to whether the Minister took the decision to terminate the appointment of the respondent. He conceded that Exhibit 10, that is, the letter terminating the plaintiff/respondent's employment was not signed by the Minister but submitted that the decision to terminate the appointment was made by the Minister. He referred to some pages of the record particularly page 18 where the Minister's approval of the publication of the White Paper was given. While conceding that there was a lacuna as to whether the Minister approved the termination of the respondent, among others, he however urged the Court to hold that by the approval of the publication of the White Paper, the Minister had authorised the termination of the appointment of the plaintiff.

Learned counsel for the plaintiff/respondent in the respondent's Brief conceded that the Minister of the Federal Capital Territory was a proper authority under Decree No. 17 of 1984. He however, submitted that the Minister's power was limited and that being a delegatee he could not delegate his power, but must personally sign the letter of dismissal or removal of a staff from the service of the defendant Authority. He submitted that as Decree No. 17 of 1984 gave power to the appropriate authority to take away vested rights of a citizen without the victim having recourse to the law courts to seek redress, the Decree ought to be construed narrowly and strictly. He relied on the following cases: *Peenok Investments Limited v. Hotel Presidential Ltd.* (1982) 12 sc. L 25; *Garba v. Federal Civil Service Commission* (1988) 2 SCNJ 270,277; (1988) 1 NWLR (Pt.71) 449; and *Wilson v. Attorney-General of Bendel State* (1985) 1 NWLR (Pt. 4) 572, 589. Learned counsel submitted that before exhibit 10, the letter of termination could be said to be the act of the appropriate authority, that is, the Minister it must be signed by him. He observed that exhibit 10 was not signed by the Minister. Learned counsel further referred to the memorandum which the Permanent Secretary in the Ministry of the Federal Capital Territory sent to the Minister in which he requested the Minister to approve four items. The Minister approved only one, that is, the publication of the White Paper. Learned counsel, therefore, submitted that the removal of the plaintiff, among others was not approved by the Minister and that therefore, the plaintiff's removal from office was not done under Decree No. 17 of 1984. He urged the Court to

dismiss the appeal.

We did not call on learned counsel to the plaintiff/respondent to address us in oral argument.

One fact is not in dispute and that is that the plaintiff's removal was not in accord with the Civil Service Rules governing his contract of employment. His evidence at the trial stated as much and this evidence remains un rebutted as the defence led no evidence whatsoever in challenge of plaintiff's evidence. Indeed he was never cross-examined. On the evidence alone the judgment entered in favour of the plaintiff by the learned trial Chief Judge was justifiable.

10 The defence counsel however, in her address before the trial court fell back on materials used in support of the application to dismiss the action in limine. That is, annexures A, B and C to the affidavit in support of the application to dismiss the action. The defendant's application to dismiss the action in limine was refused by the learned trial Chief Judge and there was no
15 appeal against that ruling. In his ruling on that preliminary application the learned trial Chief Judge had held at pages 50-51 of the record:

*"I therefore hold the view the decision to terminate plaintiff is that of the Chairman FCDA under powers given to FCDA in Decree 6 of 1976 and
20 as Decree 6 of 1976 has not ousted Chief Judge's jurisdiction, I hold that this court has jurisdiction to entertain the suit."*

This finding remains subsisting until it is set aside. See - Rossek & Ors. v. A.C.B. Ltd. (1993) 8 NWLR (Pt.312) 382. As that finding has not been
25 set aside at the time final addresses were made in this case, it was not open, in my respectful view, for the defence to once again contend that the plaintiff was removed from office by the Minister. The judgment entered in plaintiff's favour by the learned trial Chief Judge was, rightly in my view, affirmed by the Court of Appeal. On this ground alone, I would hold that this appeal must be
30 dismissed. Annexures A, B and C were not in evidence at the hearing of the action before the learned trial judge.

Be that as it may, even assuming, but without so deciding, that the defendant could contend in the final address that the plaintiff was removed by
35 the Minister under powers vested in the appropriate authority by Decree No. 17 of 1984, I would now have to consider whether the Decree would apply. The general law is that a Statute that seeks to take away vested rights of a citizen without the victim having recourse to the law court must be construed narrowly and strictly. - See Peenok Investments Ltd. v. Hotel Presidential Ltd.

(supra) where Irikefe JSC (as he then was) restated the law in these words:-

"It is an accepted cannon of interpretation of statutes that any law which seeks to deprive one of his vested proprietary rights must be construed strictly against the lawmaker. See Bello v. The Diocesan Synod of Lagos - East Central State of Nigeria Law Reports 1973 Vol.3 Part 1 p. 330, 5 where Coker, J.S.C. delivering the judgment of this court stated thus at p. 344 of the report:-

'The principle on which the courts have acted from time immemorial is to construe, fortissime contra proferentes' any provision of the law which gives them extraordinary powers of compulsory acquisition of the properties of citizens. In re Bowman, South Shields (thames Street) Clearance Order, (1931) (1932) 2 K.B. 621 at 633, Swift J., described the position thus:-

'When an owner of property against whom an order has been made under the Act comes into this court and complains that there has been some irregularity in the proceedings and that he is not liable to have his property taken away, it is right, I think, that his case should be entertained sympathetically and that a statute under which he is being deprived of his right to property should be construed strictly against the local authority and favourably towards the interest of the applicant, in as much as he for the benefit of the community is undoubtedly suffering a substantial loss, which in my view must not be inflicted on him unless it is quite clear that parliament has intended that it shall.'

See also Garba v. Federal Civil Service Commission (1988) 2 SCNJ 270, 277; (1988) 1 NWLR 449. Therefore, to rely on Decree No. 17 of 1984 in justification of the removal of the plaintiff, the defendant must prove that his removal was effected under the Decree, that is, that the plaintiff was so removed by the Minister. There is nothing in Exhibit 10(the letter of termination) to establish this. Paragraph 1, which is the penultimate paragraph of that letter reads:-

"Following the final report of the Committee set up recently by the Management to investigate certain abnormal situation in the Department of Building, I am directed to inform you with regret that your services are no longer required by this Authority and your appointment is being terminated with immediate effect."

(Italics are mine for emphasis)

The letter was signed by one Shehu Dawaki for the Permanent Secretary. The letter shows that the Committee that investigated "certain abnormal situation" in the Department of Building was set up by the Management of the Authority and that in consequence of the report of that Committee the Authority no longer required the services of the plaintiff and hence proceeded to terminate his appointment. From this analysis of paragraph one of that letter, it is clear that the termination could not have been authorised by the Minister more so that there is no evidence whatsoever on the record to this effect nor is "this Authority" synonymous with the Minister. It may be noted that it was Management that approved plaintiff's suspension - see paragraph 2 of Exhibit 6.

The defence sought to link the termination of plaintiff's appointment with the approval given by the Minister to the publication of a white paper. At pages 13 to 17(c) of the record of appeal is set out the draft of the Minister's suggested views on the report of the Committee mentioned in paragraph 1 of Exhibit 10. At page 18 of the record one Wazirin Fika, the Permanent Secretary in the Ministry of the Federal Capital Territory minuted to the Minister as follows:-

20 "Minister;

Pages 1 to 7 contain the recommendations and the Minister's suggested view on the recommendation. The highlight of the recommendations are contained in paragraphs (ix), (x) and (xi) on pages 6 and 7 in which certain named officers have been recommended for commendation, lifting of suspension and termination of appointments respectively.

25 2. You will wish to approve:-

(i) the Minister's suggested views;

(ii) the publication of the White Paper on the report;

30 (iii) the suspension of the termination of the officers listed in paragraph (x) of the White Paper;

(iv) the termination of appointment of officers listed in paragraph (xi) of the White Paper."

The Permanent Secretary recommended to the Minister for approval 4 distinct items. The Minister in reply to this memorandum or minute wrote in his handwriting thus -

"The White Paper is approved"

He had thus not given decision on items (i), (iii) and (iv), but only in respect of item (ii). The White Paper which the Minister approved was not in evidence. What was in evidence on pages 13-17(c) were the Minister's sug-

gested views on the report, that is, item (i). Even if it is expected that pages 13-17(c) made up the White Paper, the Minister still did not give his approval to items (i), (iii) and (iv). In my respectful view, therefore, both the learned trial Judge and the Justices of the Court of Appeal were right in holding that the decision to terminate the appointment of the plaintiff was not shown to be that of the Minister. While in my view, it is not the law that the letter of termination must show on its face that it was issued pursuant to Decree No. 17 of 1984 or must be signed by the Minister, there must however be evidence to satisfy the court that the decision to terminate plaintiff's appointment was taken by the Minister - See: Nwosu v. Imo State Environmental Sanitation (supra). That not having been the case in the matter on hand, I must hold that I find no substance in the submission proffered by learned counsel for the defendant/appellant. 5 10

Issue (b):

The appeal to the Court of Appeal was based on 3 grounds and in the appellant's Brief in that court, three issues were set out for determination to wit: 15

"(a) Whether the learned trial Chief Judge lacked jurisdiction to entertain and determine the respondent's claim in the suit having regard to the provisions of the Public Officers (Special Provisions) Decree No. 17 of 1984. 20

(b) Whether having regard to the evidence, the procedure adopted in terminating the respondent's appointment was in compliance with the terms of his employment as contained in Exhibit 1 and not the Civil Service Rules or any rule applicable to the Federal Capital Development Authority. 25

(c) Whether the learned trial Chief Judge was right in granting all the declaration of the plaintiff as he did in this case having regard to the evidence adduced before the Court." 30

Arguments were proffered in the Brief in support of these 3 issues. In determining the appeal however, the court below considered only issue (a) and said nothing on the other issues. Learned Senior Advocate for the defendant/appellant has in his Brief submitted that the court below had not considered the defendant's complaints in their entirety. He however, conceded that an appellate court might determine an appeal by considering one ground of appeal only out of many grounds if the determination of that ground finally 35

determined the appeal. He further submitted that in the case on hand, the determination of issue (a) before the court below, could not bring the matter to an end and that the court below was obliged to consider and pronounce on the other issues raised in the appeal before it. He further submitted that if the
5 court below had considered all the issues placed before it, it could not have arrived at the conclusion it reached. Learned Senior Advocate opined that the court below would have granted the plaintiff/respondent damages by way of one month salary as per his terms of employment contained in the letter of employment instead of ordering that he be reinstated. Learned Senior Advoca
10 cate observed that the court below failed to examine the defendant's complaints by granting all the declarations which the learned trial Chief Judge made. He then submitted that the failure of the court below to consider other issues raised by the defendant/appellant before it occasioned a miscarriage of justice and that it amounted to a breach of the provisions of section 33(1) of
15 the 1979 Constitution.

Learned counsel for the plaintiff/respondent in reply referred to the lead judgment of Ogundare JCA and submitted that the concluding part of this judgment also covered issue (b). He also argued that on a reading of the
20 judgment of Ogundare JCA it would be discovered that he also considered arguments proffered by learned counsel for the parties on issue (c).

I have considered the submissions made on issue (b), it would appear from the judgments of the learned Justices of the court below that focus
25 was on issue (a) before it. That is not to say however, that they did not give consideration to the other issues, how-be-it obliquely. The learned Senior Advocate is right in saying that it is open to a court of appeal to consider and determine an appeal on only one issue, among many, placed before it if that issue will determine the appeal without the necessity of considering the other
30 issues. Take for instance where a judgment of a trial court is being challenged on the ground of lack of jurisdiction, among other grounds such as the judgment being against the weight of evidence. As the question of jurisdiction will finally determine the appeal an appellate court may take it up and if that complaint is found to be well taken, it may determine the appeal on it. No useful
35 purpose will be served in considering other grounds such as weight of evidence. I do not think however, that that consideration applies in the matter on hand. I agree with learned Senior Advocate that a decision on issue (a) before the court below would not necessarily determine the appeal. Therefore, it was incumbent on the part of that court to consider the other two issues. If the

Justices of the Court failed to do this, they would have failed in their duty to consider and determine the complaints of the defendant. See *Sapara v. U.C.H. Board* (1988) 4 NWLR (Pt.86) 36, 82; *Onifade v. Olayiwola* (1990) 7 NWLR (Pt.161) 130.

5

I will now consider whether there was any failure of duty on the part of the learned Justices of the Court below. As I have mentioned earlier learned counsel proffered in their Briefs arguments on all the issues placed before the court. In his lead judgment Ogundare JCA set out the three issues on which the appeal was fought. He summarised the submissions made by each counsel in respect of all the three issues. In determining the appeal, and after considering the arguments proffered on issue (a), he concluded thus:- 10

"The arguments of Karina Tunyan learned counsel for the respondent that the Decree does not cover determination of appointment is therefore misconceived. He was however right in his submission that there was no legal authority either under Decree No. 17 of 1984 or Civil Service Rules for the termination of respondent's service. 15

The learned Chief Judge had jurisdiction to entertain the claim. Decree Nos. 16, and 17, 1984 did not come into play at all." 20

It is clear from the lead judgment of Ogundare JCA that he did not consider issue (c) at all and his consideration of issue (b) was rather oblique. The other Justices did not improve on Ogundare JCA.'s judgment either. I must come to the inevitable conclusion therefore, that issue (c) was not determined by the court below. Issue (b) was however, pronounced upon in the lead judgment, how-be-it obliquely. As it cannot be said that a determination on issue (c) was unnecessary, issue (a) having been pronounced upon, the learned Justices of the Court of Appeal, with profound respect to them, failed in their duty to consider and determine all the complaints put before them by the defendant/appellant. 25 30

Having concluded as above the question arises - what must this Court do? Has the lapse occasioned a miscarriage of justice? If the answer to the latter question is in the affirmative, then the proper order we should make is one sending the matter back for rehearing. If the answer, however, is in the negative, then it would have no effect on the judgment of the court below. 35

I have set out the three issues before the court below. There is no doubt that issue (a) was adequately considered and determined by that court. Issue (b) was obliquely determined. Having considered the evidence on record, I am satisfied that the Civil Service Rules apply to the plaintiff. I am equally satisfied that there had been non-compliance with those rules in the termination of the appointment of the plaintiff. Consequently I must resolve issue (b) in plaintiff's favour. In regard to issue (c) in the court below, I think this Court is in a position to determine it without the necessity of sending the appeal back to, the Court of Appeal for rehearing. Plaintiff's claims are set out in paragraph 18 of his amended statement of claim, the learned trial Chief Judge granted all the declarations sought by the plaintiff. Having regard however to what the learned Chief Judge said in the concluding part of his judgment which I have set out in the earlier part of this judgment, I think it is wrong for him to have concluded as he did that "in the result all the declarations of the plaintiff are hereby granted." Having held that declaration (1) covers declaration (2), he should not have granted declaration (2). This is more so that there was no evidence of bad faith before him. Declaration (3) is a variant of declaration (1), there seems to be no serious objection for it in view of the conclusion reached on the applicability of Decree No. 17 of 1984 to the facts here.

Having granted declaration (1) the learned trial Chief Judge was also right in granting declaration (4). The learned trial Chief Judge is also right in saying that "paragraph 18(5) is sought in the alternative; declaration in paragraph (5) cannot be entertained because the court cannot on evidence before it pronounce a termination null and void and then proceed to consider declaration 18(5) for this proceed (sic) on validity of termination. "True enough, declaration (5) is alternative to declaration (4) and having granted declaration (4), declaration (5) must be refused. In sum total what the learned trial Chief Judge should have granted are declarations (1) and (4) and refuse the other declarations. The failure of the court below to consider issue (c) before it has not occasioned any miscarriage of justice and I, therefore, see no cause to send the appeal back to that Court for rehearing.

The learned Senior Advocate for the appellant has, in the appellant's Brief, urged that the plaintiff could be compensated with a month's salary in lieu of notice under the alternative declaration (5) and would, therefore, rather have that declaration granted instead of declaration (4). I

regret I cannot accede to this suggestion. Plaintiff's contract of employment is not one of ordinary master and servant relationship; it is tinged with a statutory flavour and having held his termination null and void, the justice of the case demands that declaration (4) be granted.

In conclusion, I too dismiss this appeal for the reasons which I have set out above. I will however, vary the judgment of the learned trial Chief Judge. Judgment is hereby entered for the plaintiff in the following terms:- 5

It is declared:-

(1) that the letter reference No. FCDA/55/S.4/Vol. 1/149 dated 31st of December, 1985 and signed by Shehu Dawaki purporting to terminate plaintiff's appointment as Principal Architect with the defendant is illegal, null and void having been issued in disregard of rules of natural justice. 10

(2) declaration that the purported termination of the plaintiff's appointment by a Permanent Secretary Federal Capital Development Authority, Abuja vide letter reference No. FCDA.55/S.4/Vol. 1/149 dated 31st of December, 1985 was not done or purported to be done under Decree No. 16 of 1984 or/and Decree No. 17 of 1984, therefore is null and void. 15

(3) that the plaintiff has been an Architect in the Building Department of the Federal Capital Development Authority Abuja since 3rd of August, 1978 and is still a Principal Architect in the Federal Capital Development Authority Abuja, and therefore entitled to rights, benefits and privileges (including) salaries attached to his office as Principal Architect in the Federal Capital Development Authority Abuja. 20 25

The costs awarded by the two lower courts are hereby affirmed and I award N1,000.00 costs of this appeal to the plaintiff/respondent.

OGWUEGBU JSC

I have had the advantage of reading in draft the judgment just delivered by my learned brother Olatawura, J.S.C. I agree that the appeal be dismissed. 30 35

The termination of the appointment of the respondent is based on the purported approval given by the Honourable Minister of the Federal Capital Development Authority in Annexure "C" to the *"Minister's Views On The Report Of The Committee Set Up To Investigate The Performance Of The*

Building Department of The Authority". - See pages 13 - 17 of the records of appeal.

Annexure "C" reads:

"Minutes,

Page 1 to 7

contain the recommendations and the Minister's suggested views on the recommendation. The highlight of the recommendations are contained in paragraphs (ix), (x) and (xi) on pages 6 and 7 in which certain named officers have been recommended for commendation, lifting of suspension and termination of appointments respectively.

2. You will wish to approve:-

(i) the Minister's suggested views;

(ii) the publication of the White Paper on the report;

(iii) the suspension of the termination of the officers listed in paragraph (x) of the White Paper;

(iv) the termination of appointment of officers listed in paragraph (xi) of the White Paper.

Signed. M. A. Fika,

Permanent Secretary,

17th December, 1985."

The minute of the Honourable Minister on the above reads:"

The White Paper is approved.

Sgd.

17/12."

The respondent is one of the officers whose names were listed in paragraph (xi) for termination. Based on the above minute of the Honourable Minister, the appointment of the respondent was terminated by the letter dated 31st December, 1985 addressed to him and signed by one Shehu Dawaki for the Permanent Secretary.

One of the issues raised in this appeal is whether the approval of the White Paper by the Honourable Minister as indicated above, amounts to approval of the termination of the appointment of the respondent. The Hon. Minister did not address himself to any of the four issues requiring his approval in Annexure "C". He did not direct his mind to items (i), (iii) and (iv) at all. His minute in Annexure "C" is vague and cannot form the basis of any action on items (i) to (iv).

The Public Officers (Special Provisions) Decree No. 17 of 1984, in its application, takes away the vested right of a public officer in certain circum-

stances and at the same time restricts his right of access to the courts. The courts construe such provisions very narrowly and strictly against anyone claiming its benefits. See Peacock Investment Ltd. v. Hotel Presidential Ltd. (1983) 12 S.C. 1 at 25, Garba v. Federal Civil Service Commission & Anor. (1988) 5 NWLR (Pt. 71) 449 at 477 and Nwosu v. Imo State Environmental Sanitation Authority & Ors. (1990) NWLR (Pt. 135) 688 at 732 - 733.

It is equally obligatory on all organs of government vested with responsibility to apply the provisions of the Decree to act humanely and with the highest sense of responsibility and not to act hastily or capriciously but ensuring that at every stage of the procedure, no public officer is unjustly removed from office. In the instant case, the appointment of the respondent was terminated with undue haste and not in accordance with the provisions of Decree No. 17 of 1984.

For these reasons and the detailed reasons contained in the judgment of my learned brother, Olatawura, J.S.C. I dismiss the appeal as lacking in merit. I also abide by all the consequential orders contained therein including the order as to costs.

ADIO JSC

I have had a preview of the judgment just read by my learned brother, Olatawura, J.S.C., and I agree with it, I dismiss the appeal with N1,000.00 costs.

I, however, wish to make some comments. My learned brother, Olatawura, J.S.C., has, in the lead judgment, fully summarised the facts of the case and I need not repeat them. This case has shown clearly that, at times, some of the functionaries concerned with the operation or application of the provisions of Decree No. 17 of 1984 to public officers at administrative level do not show the seriousness or demonstrate the degree of care which matters being dealt with under the provisions of the Decree deserve: The provision in the Decree ousting the jurisdiction of the courts does not authorise application of the provisions of the Decree to public officers in case in which the provisions are inapplicable or flagrant disregard of the salient provisions in cases in which the Decree is applicable. Officers against whom the provisions are improperly or irregularly applied may approach the court' by instituting an action for remedy and the court may, in appropriate cases, grant such a rem-

edy notwithstanding the ouster provisions in the Decree.

In the present case, the Permanent Secretary was very careful in summarising, in his minute, the matters and the specific issues which he was referring to the Honourable Minister for approval. In particular, paragraph 2 of his minute, concerning the specific issues which he asked the Hon. Minister to approve, was as follows:-

"2. You will wish to approve:-

(i) the Minister's suggested views;

10 (ii) the publication of the White Paper on the report;

(iii) the suspension of the termination of the officers listed in paragraph (x) of the White Paper;

(iv) the termination of the appointment of the officers listed in paragraph (xi) of the White Paper."

15 The minute of the Hon. Minister was: "the White Paper is approved."

It is very surprising that not only did the minute of the Hon. Minister fail to respond specifically to item (iv) of the minute of the Permanent Secretary which concerned the termination of the appointment of the respondent, it did not respond to the issues raised in the other items, namely items (i), (ii) and (iii) of the minute of the Permanent Secretary. The Hon. Minister was not requested in the aforesaid minute of the Permanent Secretary to approve the White Paper. What he was asked to approve under item (ii) of the minute was the publication of the White Paper which was not the same thing as the approval of the White Paper itself. The implication was that the Hon. Minister never specifically focused his attention on the question whether or not to terminate the appointment of the respondent and consequently did not specifically approve it.

As it was clear that the minute of the Hon. Minister did not show that he approved or did not approve items (i), (ii), (iii) and (iv) in the minute of the Permanent Secretary, the matter should have been re-submitted to him and his attention drawn specifically to the necessity for his approval or disapproval, as the case may be, of the issue raised in item (iv) of the minute, concerning the termination of the appointment of the officers listed in paragraph (xi) of the White Paper, including the respondent.

There is a misconception that however careless those concerned with the administration or application of the provisions of Decree No. 17 of 1984 to public officers at administrative level might be, the provisions of the

Decree ousting the jurisdiction of the courts could always be relied upon or invoked to cover up such carelessness or irregularities even in cases of mis-application of the provisions of the Decree to public officers in circumstances in which it was obvious that the provisions were not applicable. In *Garba v. Federal Civil Service Commission & Anor.* (1988) 1 NWLR (Pt. 71) 449, this court notwithstanding the ouster provisions in the Decree, held that the provisions of the Decree were not applicable in the case of the interdiction of a public officer. There are other safeguards, for example, the mere fact that the relevant instrument, terminating the appointment of an officer or removing him from office, says on the face of it that the act or thing was done under the Decree is not conclusive. The court will still find out if the act or thing done was within the contemplation of the Decree, and, in this connection, the court will be strict, as it has done in this case, in requiring that statutory powers should be exercised by the person or authority on whom it is conferred and by no one else. See *Nwosu v. Imo State Environmental Sanitation Authority & Ors.* (1990) 2 NWLR (Pt. 135) 688. In the present case, the appropriate authority had not at any time approved the termination of the appointment of the respondent. The relevant provision of Decree No. 17 of 1984 were, therefore, not applicable to this case and the letter purporting to terminate the respondent's appointment was of no effect whatsoever.

It is for the foregoing reasons and the fuller reasons stated in the judgment of my learned brother, Olatawura, J.S.C. that I agree with the lead judgment. I too dismiss the appeal with N1,000.00 costs and abide by the consequential order.

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