

**SUPREME COURT OF NIGERIA**  
17TH FEBRUARY, 1995, SC189/1992  
**CORAM: M.L. UWAIS, A.B. WALI, E.O. OGWUEGBU,**  
**U. MOHAMMED, S.U. ONU, JJSC.**

MRS. MARGARET AGOMA ..... APPELLANT

AND

GUNNESS NIGERIA LTD ..... RESPONDENT

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**ACTIONS** - Relief not claimed - In the appellant's action - Any evidence on that relief - Went to no issue.

**APPEALS** - Interfering with trial court's finding of fact - That was not supported by evidence - And ignored a statutory provision - Whether proper.

**CONTRACTS** - Employment contract - Where no offer was made to appellant vide exh. "B" - Whether any contractual relationship existed between the parties.

**MASTER & SERVANT** - Collection of terminal benefit - Alleged but unproved promise to recall appellant - Whether appellant can maintain action for re-employment or damages - After collecting terminal benefits

**FACTS**

The appellant was employed as a staff nurse by the respondent. Her employment was terminated following a retrenchment exercise. Appellant collected all her terminal benefits which were paid by the respondent. By a document (exhibit "B"), addressed to all employees of the respondent, about 1,000 employees were sought to be employed by the respondent. Exhibit "B" stated that most of those to be employed were respondent's workers laid off few months ago. Appellant was invited for a chat with the respondent after which it advertised for staff nurses to be employed.

Appellant felt aggrieved that she was not re-absorbed before the said advertisement in the Observer Newspaper. She filed this action before the Benin - City High Court Claiming inter alia, an order that she is entitled to continue her service under the respondent. The trial court granted this and some other reliefs claimed and refused the others. Respondent's appeal to the Court of Appeal

was upheld. Appellant has now appealed to the Supreme Court to determine amongst other issues, whether Exhibit B created a valid contract between the appellant and respondent.

**HELD** (Unanimously dismissing the appeal per **OGWUEGBU JSC**)

Whether any contractual relationship existed

1. No offer was made to the appellant in exhibit “B” which she could accept. In the circumstance, no contractual relationship existed between her and die respondent as a result of Exhibit “B”. The court below was therefore perfectly right when it held that Exhibit “B” is not a directive that all those who were retrenched must be re-engaged. It took a corrective view of the exhibit. (P.416L. ‘D1’)

Interfering with trial court’s finding of fact

2. The court below did not see any basis for the trial court believing the evidence of die appellant herein against that of die respondent with regard to how die respondent arrived at the decision as to who was to be retrenched. There was no evidence from die appellant as to the criteria used by the respondent in deciding who to retrench. The court below came to the conclusion that the evidence of the respondent on the criteria through D.W.2 stood unchallenged and uncontradicted. There was no basis for the learned trial judge to disbelieve the D. W.2 on that issue. The condition under which a Court of Appeal can interfere with a trial court’s assessment of evidence and finding of fact was present in the matter. The court below was therefore right in reversing that finding which was not supported by evidence and which ignored the proviso to section 20(1 )(b) of the Labour Act. (P. 418 L. ‘A4’)

Master & Servant - Collection of terminal benefits.

3. On the issue of the alleged promise to recall die appellant in exchange for the promise to forbear to sue, I am unable to come to die conclusion that there was any such promise because Exhibit “G” which was served on die appellant on the 14th July, 1984 is plain. The appellant testified that she collected all her entitlements listed in Exhibit “G”. The question is whether die appellant can now maintain this action after collecting her terminal benefits? It is the law that she cannot. She had put paid to any contract, real or imagined, which she thought

or imagined that she had with the respondent. The contract was completely and validly determined when she accepted her terminal benefits which included her two months' salary in lieu of notice. (P. 418 E)

Actions - Relief not claimed

4. In addition, the appellant claimed no relief based on the alleged promise to recall her and her forbearance to sue. The trial court and the court below should not have allowed her to advance any argument on it in the absence of any relief based on it. Any evidence or argument on the promise to recall her went to no issue. (P. 419 C)

## NOTABLE POINTS OF INTEREST

### OGWUEGBUJSC

#### *1. Misconstruction of Exhibit by appellant*

I must say straight away that it is the appellant who misconstrued Exhibit "B" and not the court below. Exhibit "B" was addressed to all employees of the respondent company as at 29th October 1984. Under no circumstance can it be construed as being addressed to its ex-employees even though the application of the directive would apply to them i.e. those laid off. The directive instructed the Personnel Department of the respondent company to recruit at least 1000 employees - Managers and workers. Most of those to be recruited would be employees of the appellant's class who were laid off a few months ago when the defendant reduced its production. The directive had in mind, employment of 1000 new employees and in doing so majority of those to be engaged would be those who belong to the class of the appellant. (P. 415 E)

### MOHAMMEDJSC

#### *2. Establishment of a contract*

In order to establish a contract, whether it be an express contract or a contract implied by law, there has to be shown a meeting of the minds of the parties, with a definition of the contractual terms reasonably clearly made out, with an intention to effect the legal relationship. An offer is a proposition put by one person to another coupled with an intimation that he is willing to be bound to that proposition. (P. 420. B)

**ONUJSC**

***3. Whether a promise can ground present action***

Discussions based on a chat vide Exhibit C between the Appellant and DW3, a staff of the Respondent, with a view to her being recalled to duty, cannot, in my view, be equated as a promise. Nor can such an alleged promise ground a cause of action, it being settled law that such a promise, if any, can only be ground for a defence. (P. 423 F)

**REPRESENTATION**

F.E. Ayanka Wilson (Mrs.) for the Appellants.

A.O. Alegeh Esq. for the Respondent.

**CASESREFERREDTO**

Carlill v. Carbolic Small Ball Co. (1893) 1 QB 256

Bamgboye v. Olanrewaju (1991) 4 NWLR (Pt.184) 132

Miles v. New Zealand Alford Estate Co. (1886) 32 Ch.D. 266

Bankole v. Pelu (1991) 8 NWLR (Pt.211) 523

Ebba v. Ogodo (1984) 1 SCNLR 372

Fajemirokun v. Nigeria Airways Ltd (1979) 3 LRN 238

Morohunfolu v. Kwara State College of Technology (1990) 4 NWLR (Pt.145) 506.

Olaniyan v. University of Lagos (1985) 2 NWLR (Pt.9) 599

Obe v. The Executive Secretary & Family Planning Council of Nigeria (1975) 3 SC 1

Onateive v. Onokpasa (1984) 12 SC 19

Omoriegie v. Idugiemwanye (1985) 2 NWLR (Pt.5) 41

Tweddle v. Atkinson (1861) 1B & S 393

Onwubiko v. Okoroafor (1974) 4 ECSLR 233

**STATUTEREFERREDTO**

Labour Act Cap 198 1990 s.20 (l) (b)

**LEADJUDGMENTBYOGWUEGBUJSC**

In the High Court of the former Bendel State the appellant herein as plaintiff brought an action against the defendant claiming the following reliefs:

*“(a) a declaration that at all material times, the company is bound by the rule and practice of LIFO;*

*(a1) a declaration that the said custom exists and binds the defen*

408 Agoma v. Guinness Ltd. (1995) 2 KLR Ogwuegbu JSC  
dant Company: i.e. priority of retrenched staff over fresh intakes in the matter of filling resuscitated posts;

- (b) a declaration that the Company is bound by its own policy directive:
- (c) a declaration that having derived goodwill and benefit from its policy Directive of 29th October, 1984, it is too late now for the defendant to renege in the case of the plaintiff: and plaintiff has acquired a vested right to be treated in accordance with the said Policy Directive:
- (d) an order of perpetual injunction that defendant stay action in respect of the advertisement in the Nigerian Observer issue of 9:10:86:
- (e) Special damages being total emoluments due from the date of the original removal until age 55, including all redundancy fees paid, or in the alternative:
- (f)(i) an order that plaintiff is entitled to continue her service under the defendant Company till her retiring age of 55 unless earlier retired on grounds of ill-health or other reasonable grounds including proven inefficiency.
- (ii) an order of reinstatement to the post advertised or any resuscitated position of similar nature:
- (g) general damages.”

Pleadings were filed and exchanged by the parties. The case proceeded to trial before Akpomudjere. J. on a further amended statement of claim and an amended statement of defence both filed with the leave of the court. After hearing which lasted about seven months, the learned trial Judge granted the reliefs contained in paragraphs 23(a), (ai ), (h), (d) and (f) of the further amended statement of claim. Reliefs (c), (e) and (g) were refused.

The defendant company appealed to the Court of Appeal which in a unanimous judgment dated 14:10:91 allowed its appeal and dismissed the plaintiff's claims. The plaintiff then appealed to this court. Both learned counsel filed briefs of argument which they expatiated in their oral argument. The appellant submitted the following issues for determination:-

- “(i) Whether Exhibit B is not an offer (a Representation, a proposal) by the defendant Company to any member of a class’(to wit the class of the retrenched) which proposal any member of that class ( to wit plaintiff) may be word or act accept and that in so accepting a valid contract is created between the plaintiff and the defendant.
- (ii) Whether there were any special circumstances in the judgment of the trial court that gave the appellate court below any competence to interfere in the trial court's findings of fact’?
- (iii) Whether, before Exhibit “G” was delivered, there was a Com-promise Agreement between the parties, effective in law to create a contractual relationship between them.

For a better appreciation of the issues for determination, I will set out in a summary form the case presented at the court of trial by both parties.

The plaintiff/appellant's case is that she was employed by the defendant on 21st May, 1979 as a Staff Nurse having qualified as State Registered Nurse and a State Certified Midwife in the United Kingdom. She discharged her duties very well and without any query throughout the period of her employment. B

On 7:7:84, her departmental head, Mr. Omozee (DW4) called a meeting in the defendant's clinic which she attended. At the meeting, PW4 told the workers that the defendant company would soon retrench some of them temporarily because of the inability of the defendant to cope with the wage bills of its employees. On the 14th of the same month, she got a letter from the defendant terminating her employment. C

She collected all her entitlements and left the service of the defendant even though she protested the unfair retrenchment in that some employees who were employed after her were not retrenched. It was her case that three months after, the defendant's Managing Director issued a policy circular (Exhibit "B") in which it was directed that those who were retrenched should be reabsorbed into the defendant's establishment. D

Upon learning of this policy directive, she went to the office of the defendant to register herself as still interested in working for the defendant as directed in a radio announcement made to that effect by the defendant. She afterwards received a letter on 16:5:86 from the Personnel Department of the defendant requesting her to come to its office for a chat. She reported to the Manager of that department and after their discussion she claimed that she was told that a letter would be forwarded to her later. E

Instead of receiving the letter, she was surprised to read in the Observer Newspaper of 9:10:86 an advertisement wherein the defendant requested persons interested in being employed as Staff Nurses and who had qualifications listed in the advertisement to apply. F

She was unhappy about the advertisement and wrote a letter to the defendant (Exhibit "D") and when she could not get a reply, she caused her solicitor to write Exhibit "E". On failing to get any reply to the two letters, she commenced these proceedings. G

The case of the defendant at the trial was that the plaintiff was retrenched when it decided to reduce its labour force and in carrying out the exercise, it took into account the relative performance of its employees. In the case of the plaintiff, the defendant decided to retrench her along with her other colleague as their credit ratings were not as high as the defendant wanted. H

Following these, the defendant terminated the employment of the

plaintiff by Exhibit “G” and she collected all her entitlements. It was also the case of the defendant that the plaintiff was never told that her retrenchment was temporary in nature.

As a result of a policy directive issued by the Managing Director of the defendant in October, 1984 (Exhibit “B”), retrenched workers who were reengaged applied and were considered on the bases of qualifications required of them by the defendant.

The defendant admitted that it placed the advertisement in the Observer Newspaper in respect of Staff Nurses and that W.A.S.C. or G.C.E. “O” Level with five credits in one sitting was required of registered nurses. The defendant admitted that the plaintiff was invited for a chat: that the chat was not an interview for employment and that it was to ascertain whether the plaintiff had improved in her educational qualification.

It was the contention of Mrs. Wilson, learned appellant’s counsel that the court below did not understand the nature of Exhibit “B” which is a letter of authority written by the Managing Director of the defendant company to all employees of the defendant comprising those still in the employment of the defendant and those who were laid off when production was reduced. She quoted a passage of Exhibit “B” which stated: *“The Personnel Department has been instructed to liase.....to recruit as least 1,000 employees.....most of those to be recruited will be.....those laid off a few months ago.....”*

.....  
She submitted that Exhibit “B” was an offer to every member of the class of *“laid off persons”* to which the appellant belonged: that the appellant replied that she was ready, willing and available and accepted the offer thereby creating a contractual relationship between herself and the defendant respondent by reason of Exhibit “B”. She further submitted that the respondent’s refusal to perfect the recall of the plaintiff was a breach of that contract. She cited the case of *Carlill v. Carbolic Smoke Ball Co. (1893) 1 Q.B. 256*.

On the second issue, learned counsel submitted that the trial court made a finding of fact and that it was no more within the competence of the Court of Appeal to interfere with the findings except in exceptional circumstances where. For example, the findings are perverse or against the law or are not admissible as evidence. She referred to the case of *Bamgboye & Ors. v. Olanrewaju (1991) NWLR (Pt.184) 132*.

Learned counsel further contended that the plaintiff went to court claiming reliefs and damages for the breach of a compromise agreement and

not for her dismissal in breach of the principle of LIFO (“*Last In*”, “*First Out*”) nor for a determination as to the adequacy of the consideration to sustain an emergent contract.

Counsel stated that the learned trial Judge made it clear in his judgment that he was concerned primarily with a determination as to whether there was forbearance to sue in consideration for a promise to recall and whether the resultant agreement was breached. B

She submitted that the court below approached the question by asking itself wrong questions in the two issues for determination formulated by the said court and impliedly reversed the findings of the learned trial Judge while answering the questions without showing any special circumstance to warrant their intervention. C

The findings of the trial court alleged to have been reversed by the court below are:

“*That DW2 is not a witness of truth when he testified that:* D

(i) “*I did not make any promise to anybody*”

“*The plaintiff did not make any protest (page 63); and also when he said:*

(ii) *The plaintiff was properly retrenched, in accordance with the defendant company’s modified process for the implementation of the principle of LIFO within the defendant company;* E

(iii) *I did not cause any press or radio announcement to be made in Benin (up to December, 1984);*

(iv) *If a vacancy exist., then the post is advertised and the qualification analysed, anybody qualified is shortlisted ..... ”* F

The above are the alleged findings of fact by the learned trial Judge which the court below reversed.

Mrs. Wilson submitted on the third issue that the question whether there was a compromise agreement between the parties before Exhibit “G” should be answered in the affirmative and that the agreement was effective to create a contractual relationship enforceable at law between the parties. She referred the court to the case of *Miles v. New Zealand Alford Estate Co.* (1886) 32 Ch.D. 266. We were urged to allow the appeal. G

Mr. Alegeh, learned respondent’s counsel submitted in his brief of argument that the court below did not raise fresh issues for determination hut merely fixed an issue clearly which arose from the grounds of appeal filed. He showed that the second issue for determination raised by the court below is based on the first and second issues formulated by the appellant in that court and that the subsidiary issue was based on the appellant’s fourth issue in that H



court. He submitted that the court below did not raise any fresh issue for the parties but determined the appeal upon issues submitted for determination and properly arising from the grounds of appeal. He cited and relied on the cases of Bamgboye v. Olanrewaju (1991) 4 NWLR (Pt.184) 132 and Bankole v.

B Pelu (1991) 8 NWLR (Pt.211) 523.

Counsel further submitted that the court below did not re-evaluate and act on the entire evidence of DW2: that the court had recourse to the said evidence in resolving the issue of compliance with the provisions of section 20(1)(b) of the Labour Act which is in *pari materia* with the provisions on redundancy set out in Exhibit “H” - the terms and conditions of service governing the relationship between the appellant and the respondent. It was the contention of counsel that the evidence of DW2 reviewed at pages 147 - 147(a) of the record was to establish that the termination of the appellant was proper: that the evidence was not challenged and that the respondent herein D who was the appellant in the court below attacked the interpretation of section 20 (1) (b) of the Labour Law by the learned trial Judge at page 117 of the record of appeal.

He submitted that the court below acted correctly in giving effect to the evidence of DW2 which evidence was properly admitted and not challenged or contradicted. We were referred to the cases of Ebba v. Ogodo (1984) 1 S.C.N.L.R, 372 Imana v. Robinson (1979) 3-4 S.C.1. Finnih v. Imade (1992) 1 NWLR (Pt.219) 511 among others.

Learned counsel submitted in the alternative, that it is trite law that where a termination is wrongful, the only remedy in damages is the salary for the period of the notice: that in this case the salary was one month’s salary in lieu of notice and the appellant admitted receiving her entitlements set out in Exhibit “G”. He referred to the cases of Fajemirokun v. Nigeria Airways Ltd. (1979) 3 LRN 238. N.P.M.B. v. Adewunmi (1972) 1 All N.L.R. (Pt.2) 433 and W.N.D.C. v. Abimbola (1966) 1 All NLR 159.

Mr. Alegeh further stated that once a party collected all his benefits upon the termination of his appointment he cannot maintain an action for wrongful termination. He cited and relied on the cases of Morohunfola v. Kwara State College of Technology (1990) 4 NWLR (Pt.145) 506 and Ajolore v. K.S.C.T. (1986) 2 SC 374.

We were urged to hold that the learned trial Judge misapplied section 20 (1) (b) of the Labour Act without reference to its proviso and that the court below was bound in law to give full effect to the proviso.

It was also the contention of Mr. Alegeh that the competence of the action of the appellant is vital. He referred to paragraphs 4, 12 and 13 of the

amended statement of defence and the evidence of the appellant to the effect that she collected all her terminal benefits including the salary in lieu of notice. He urged the court to apply the principles of law set out in *Olaniyan v. University of Lagos* (1985) 2 NWLR (Pt.9) 578, *Ajolare v. Kwara State College of Technology* (1986) 2 S.C. 374 and *Morohunfola v. Kwara State College of Technology* (1990) 4 NWLR (Pt.145) 506. It was further submitted that the court should ignore the appellant's contention that she did not protest because of the alleged promise to recall her and that this contention is misconceived in that there was no pleading or evidence led in support of it. B

Mr. Alegeh stated that from the pleading and the evidence, the alleged promise was before Exhibit "G" that from the exhibit, it was clear that the termination was permanent and not temporary and the appellant accepted the terms of Exhibit "G". The court was referred to Exhibits "C" and "D" and that no mention of any promise to recall the appellant was made in both exhibits. C

On the alleged promise to recall the appellant, it was contended that no relief was formulated based on the alleged promise and that it is now too late to seek to rely on any such promise. D

On Exhibit "B", it was submitted that it stated that most of those to be recruited would be employees who were laid off and not all that were retrenched. Mr. Alegeh referred the court to the appellant's relief (b) which the learned trial Judge refused to grant, that this relief was based on Exhibit "B" and the appellant did not cross-appeal against it. It was submitted that it is too late to raise the issue in this court. E

The whole arguments of the appellant appear to hinge on Exhibits "B" and "G" as well as the said promise to recall her. To appreciate the purport and scope of Exhibits "B" and "G", it is necessary to reproduce their relevant portions. F

**Exhibit "B"**

***"Guinness Nigeria Limited  
Managing Director's information  
Sheet No 10, 29th October, 1984***

*To all employees of Guinness Nigeria Limited. I send warm greetings. The past few months have been very difficult for us and I congratulate all of you for your steadfastness, commitment to and faith in the company.*

*The Nigerian economy is still experiencing difficulties but we have managed to make certain financial arrangements which will enable us receive essential raw materials next month. Accordingly, although we have not yet received the 1985 licence, we have decided to go back to full production by the end of November, 1984,*

1. *Increase in production level*

*The Personnel Department has been instructed to liaise with all breweries and heads of departments in Headquarters to recruit at least 1000 employees - Managers and Workers.*

*Most of those to be recruited will be employees who were laid off a few months ago when we reduced production and there were no jobs for them. In the case of such employees, we have decided that the period they were out of employment will be regarded as leave without pay. The entitlements already collected by them will be treated as advance against future entitlements. In this way, there will be no break in their service with the company.*

2. ....”

*Exhibit “G”*

*OUR REF: PF/CL/2620 1/9087/84*

*7TH JULY, 1984.*

*Mrs. Margaret Agoma*

*Personnel/Clinic*

*GNL*

*cc. Personnel Manager*

*Benin*

*Dear Madam,*

*Re organisation*

*We regret to inform you that due to circumstances beyond our control, it has become inevitable that we must re-organise our business. Consequently, the post which you now hold in your department has been declared redundant with effect from 14th July, 1984. Therefore, we are reluctantly compelled to terminate your employment with effect from that date. Your will be paid as follows:-*

*(a) Your salary up to; and including 13 July, 1984, at the rate of N4,408.00 per annum.*

*(b) Two months wages in lieu of notice at the rate of N4,408.00 per annum = N734,06*

*(c) N1,377.49 which is the Gratuity pay due to you from the Company.*

*(d) Your contribution to Guinness Nigeria Limited Provident Fund Scheme to date = N976.10*

*(e) 50% (per cent) of the Company’s contribution to the Guinness Nigeria Limited Provident Fund Scheme on your behalf = N1,220.11*

*The Brewery Accountant is by copy of this letter advised to please pay you as stated above after deducting any debt outstanding against you*

*from your final entitlements.*

.....  
.....  
*We thank you for your past services to the Company and wish you the best of luck in your future endeavours.*

..... B

.....  
*Yours faithfully*  
*Guinness Nigeria Limited*  
*Sgd.*  
*Personnel Manager.*

C

cc:  
*Brewery Accountant*  
*Personnel Manager,"*

*The court below in its judgment said of Exhibit "B":*

*"True enough the appellant issued policy directives Exhibit B that retrenched staff are to be re-engaged, but there is no evidence to suggest that it is a directive that all those who were retrenched must be re-engaged. Furthermore it is pertinent to observe that though the policy directives were issued about three months after the respondent was retrenched in July, 1984, the respondent did not protest her non-recall until after she saw the advert for fresh appointment put out by the appellant in October, 1986."*

D

E

The above view of Exhibit "B" taken by the court below is being attacked as incorrect. I must say straight away that it is the appellant who misconstrued Exhibit "B" and not the court below. Exhibit "B" was addressed to all employees of the respondent company as at 29th October, 1984. Under no circumstance can it be construed as being addressed to its ex-employees even though the application of the directive would apply to them i.e. those laid off. The directive instructed the Personnel Department of the respondent company to recruit at least 1,000 employees - Managers and workers. Most of those to be recruited would be employees of the appellant's class who were laid off a few months ago when the defendant reduced its production. The directive had in mind employment of 1,000 new employees and in doing so majority of those to be engaged would be those who belong to the class of the appellant.

F

G

In addition, no offer or acceptance could be imported into Exhibit "B" as the appellant has tried to argue. No offer or representation was made to the appellant or any body in Exhibit "B". The case of *Carlill v. Carbolic Smoke Ball Co.* supra was cited and relied on by the learned counsel for the appellant.

H

It was urged that Exhibit “B” was an offer made to everybody in the appellant’s class. The case of Carlill was that of a unilateral contract. The defendants were the makers of a medicinal item called “*The Carbollic Smoke Ball*”. They issued advertisement in which they promised to pay 100.00 to anyone who caught influenza after having sniffed at the smoke ball for a specified period in a prescribed manner. They stated that they had deposited 1,000:00 with their Bankers to show their sincerity. The plaintiff, Mrs. Carlill saw the advertisement, bought the smoke ball, sniffed at it in the prescribed manner and then caught influenza. She sued for the 100 and succeeded. The defence contended that the advertisement was not a true offer but the court held otherwise. Carlill’s case does not apply to the facts of the case before us.

Where an advertisement offers a reward for the return of a lost property, if the finder returns the property, knowing of the reward offer, he is entitled to the reward. No offer was made to the appellant in exhibit “B” which she could accept. In the circumstance, no contractual relationship existed between her and the respondent-as a result of Exhibit “B”. I agree with the learned respondent’s counsel that the position of the appellant herein is worse than that of the plaintiffs in the cases *Ajayi Obe v. The Executive Secretary & Family Planning Council of Nigeria* (1975) 3 S.CA and *Powell v. Lee* (1908) L.T. 284. The court below was therefore perfectly right when it held that Exhibit “B” is not a directive that all those who were retrenched must be re-engaged. It took a corrective view of the exhibit.

As to the interference by the court below with the finding of fact made by the learned trial Judge; it is a fundamental principle that the power of an appellate court to reverse the judgment of the trial court is restricted to the limitations imposed by accepted and universal practice. A Court of Appeal should refrain from fresh appraisal of the evidence on the clear findings of the trial court. See *Onotaire & Ors. V. Onokpasa & Ors.* (1984) 12 S.C. 19 at 87-88, *Omoregbe v. Edo* (1971) 1 All NLR 282 and *Ebba v. Ogodu* (1984) 4 S.C. 84 at 98-103.

Part of the findings of fact made by the learned trial Judge which the court below is said to have interfered with is the acceptance of the evidence of the appellant that before she was retrenched, there was an appeal to her and other workers that they would be recalled when things improved and that it was in that spirit that Exhibit “B” was issued.

The said promise that the appellant’s retrenchment was temporary and her forbearance to sue for her wrongful dismissal was christened “compromise agreement” by the appellant.

The court below did not re-evaluate the evidence of D.W.2  
In an attempt to discover whether the termination of the appellant was arbitrary or in accordance with the principle of “last in” “first out” (LIFO) which is also provided in section 20(1)(b) of the Labour Act Cap. 198 Laws of the Federation of Nigeria, 1990 the court below reproduced the evidence of D.W.2 and the findings of the learned trial Judge on L.I.F.O.

B

The Court of Appeal said:

*“Now, the question then is whether there is any basis for believing the evidence of the respondent as against that of the appellant with regard to how the appellant arrived at the decision taken concerning who has to be retrenched. There is clearly no evidence from the respondent that the criteria used by the appellant for retrenching the respondent was not in accordance with the appellant’s conditions of service as stipulated in Exhibit “H”.*

C

*On whether the appellant observed the provisions of section 20(1)(b) of the Labour Law .....*

D

*In my view while that section seems to preserve the rights of an employee to remain in his employment, it would appear that he can only escape being retrenched if she has shown that he is relatively better in merit, skill, ability than the other workers who are in the same category with him. (Sic)”*

E

In coming to the above conclusion, the court below applied the proviso to section 20(1)(b) of the Labour Act and reversed the findings of the learned trial Judge who did not apply the provision of the said Act in disobeying the evidence of the respondent. Section 20(1)(b) of the Labour Act provides:-

F

*“the principle of “last in. first out”” shall be adopted in the discharge of the particular category of workers affected. Subject to all factors or relative merit including skill ability and reliability.....” (Italics supplied)*

D.W.2 in his evidence narrated the procedure he adopted in retrenching the appellant. He stated:

G

*“We had five Staff Nurses and we put their performances into consideration for the past 3 years 1981 - 1983 and there were basis for screening in Guinness and this was used to determine who should go. Namely the amount of As, Bs and Cs scored. The plaintiff and two others were at par in scoring 3 Cs for three years and so, the company picked the one who had spent more years and dealt away with the plaintiff and one other. One Mrs. Agetua was last to be employed in the clinic, and she scored one B and “2*

H

From the above, the respondent company complied with the provision of section 20(1)(b) of the Act. The court below did not see any basis for the trial court believing the evidence of the appellant herein against that of the respondent with regard to how the respondent arrived at the decision as to who was to be retrenched. There was no evidence from the appellant as to the criteria used by the respondent in deciding who to retrench. The court below came to the conclusion that the evidence of the respondent on the criteria through D.W.2 stood unchallenged and uncontradicted. There was no basis for the learned trial Judge to disbelieve the D.W.2 on that issue. The condition under which a Court of Appeal can interfere with a trial court’s assessment of evidence and finding of fact was present in the matter. The court below was therefore right in reversing that finding which was not supported by evidence and which ignored the proviso to section 20(1)(b) by the Labour Act. See *Omorie v. Idugiemwanye* (1985) 2 NWLR (Pt.5) 41, *Ebba v. Ogoto* supra, *Commissioner for works & Housing v. Lababedi & Ors’* (1977) 1112 S.C.15 *Elike v. Nwankwoala & Ors.* (1984) 12 S.C. 301 at 325, and *Nwabuoku v. Otthi* (1961) All NLR 507 (Reprint) (1961) 2 SCNLR 232. Even if the court below was wrong in reversing the finding of fact made by the learned trial Judge, I am satisfied that it did not occasion any miscarriage of Justice.

On the issue of the alleged promise to recall the appellant in exchange for the promise to forbear to sue, I am unable to come to the conclusion that there was any such promise because Exhibit “G” which was served on the appellant on the 14th July, 1984 is plain. The respondent in Exhibit “G” stated that he was reluctantly compelled to terminate her employment.

The appellant was in Exhibit “G” asked to collect her entitlements which included two months’ salary in lieu of notice. The appellant testified that she collected all her entitlements listed in Exhibit “G”. The question is whether the appellant can now maintain this action after collecting her terminal benefits? It is the law that she cannot. She had put paid to any contract, real or imagined which she thought or imagined that she had with the respondent. The contract was completely and validly determined when she accepted her terminal benefits which included her two months’ salary in lieu of notice. See *Morohunfola v. Kwara State College of Technology* supra and *Ajolare v. Kwara State College of Technology* supra

It was an illusion or an afterthought for the appellant to argue that there was a promise to recall her before Exhibit “G” was served on her. If she was honest in this claim, her letter to the respondent Exhibit “D” dated 10th October, 1986 or that of her solicitor Exhibit “E” dated 23rd October, 1986

In Exhibit “D” the appellant ended her letter thus:

*“If I may say so, I believe that I, as your former staff, deserve prior consideration and better claim than fresh applicants.”*

In Exhibit “E”, the appellant’s solicitor made two points for the respondent to consider:

*“Firstly, when they were to be laid off the LIFO rule was not ob- B  
served as in other departments.*

*Secondly, now that consideration is being given to the recall of  
laid off staff, it is only in their case that the idea of bringing in fresh entrants  
is being vigorously pursued.”*

The letter ended by appealing to the respondent to bend over back- C  
wards to reemploy the appellant. If there was any such promise, both exhibits  
should have referred to it. In addition, the appellant claimed no relief based on  
the alleged promise to recall her and her forbearance to sue. The trial court and  
the court below should not have allowed her to advance any argument on it in  
the absence of any relief based on it. Any evidence or argument on the prom- D  
ise to recall her went to no issue.

On the whole, I see no merit in the appeal. The appeal fails and is  
therefore dismissed with N1,000.00 costs to the respondent.

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E

### UWAIS JSC

I have had the opportunity of reading in draft the judgment read by  
my learned brother Ogwuegbu, J.S.C. I entirely agree with the judgment. As I F  
have nothing to add, I too dismiss the appeal with N1,000.00 costs to the  
respondent.

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F

### WALI JSC

G

I am privileged to have read before now the lead judgment of my  
learned brother Ogwuegbu, J.S.C. and I agree with the reasons he gave for  
dismissing the appeal.

For those same reasons given by my learned brother, which I hereby H  
adopt, I also come to the same conclusion that the appeal has no merit. It is  
accordingly dismissed with N1,000.00 costs to the respondent.

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**MOHAMMED JSC**

I agree that this appeal fails. I have had the advantage of reading the judgment of my learned brother, Ogwuegbu, J.S.C. in draft, and I too would dismiss the appeal. It is plain from the facts of the case that the respondent did not offer to re-engage the appellant. Exhibit (B) did not amount to any offer  
B which the appellant could accept.

In order to establish a contract, whether it be an express contract or a contract implied by law, there has to be shown a meeting of the minds of the parties, with a definition of the contractual terms reasonably clearly made out, with an intention to affect the legal relationship. An offer is a proposition put  
C by one person to another coupled with an intimation that he is willing to be bound to that proposition. In Exhibit (B) the respondents published in an information sheet and addressed to all employees of their company that they would recruit 1,000 employees, mostly from employees who were laid off. The appellant who was laid off four months before the publication applied and was  
D not re-engaged. There was no offer to her because even if Exhibit (B) amounted to an offer, it was only addressed to the employees of the respondent and she ceased to be one on 7th July, 1984, when she collected her entitlements following the company's termination of her employment.

Consequently, I find no merit in this appeal. For these reasons and  
E the fuller reasons in the lead judgment, the appeal is dismissed. I also award N1,000.00 costs in favour of the respondent.

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**ONU JSC**

Having had the advantage of a preview of the lead judgment of my  
F learned brother Ogwuegbu, J.S.c. just delivered, I am in entire agreement with his reasoning and conclusions that the appeal lacks merit and it fails.

I wish to add a word or two of mine in relation to all three issues i.e., (i), (ii) and (iii) together, in expatiation as follows:-

The issues are: (i) Whether Exhibit B is not an offer (a representation,  
G a proposal) by the defendant company to any member of a class (to wit: the class of the retrenched) which proposal any member of that class (to wit: plaintiff) may by word or act accept and that in so accepting a valid contract is created between the plaintiff and the defendant:

(ii) Whether there were any special circumstances in the judgment of  
H the trial court that gave the appellate court below any competence to interfere in the trial court's findings of fact: and

(iii) Whether before Exhibit 'G' was delivered, there was a compromise agreement between the parties effective in law to create contractual relationship between them.

The appellant as plaintiff (for purposes of hindsight) had sued the respondent company which was the defendant, claiming from the latter in the high Court of the former Bendel (now Edo) State, declarations emanating from redundancy and founded on promissory estoppel, injunction, re-instatement and damages. She succeeded and was ordered to be restored to the services of the respondent in a judgment dated 8th December, 1989 by Akpomudjere, J. predicated on the custom of the respondent as in most industries during staff re-organisation induced by economic recession - the principle being "*Last in First Out*," ("*LIFO for short*"). On appeal to the Court of Appeal sitting in Benin by the respondent, the decision of the trial court was set aside on 20th March, 1992. Hence, the appeal by the appellant to this court.

Now, Exhibit 'B', constituting Policy directives dated 29th Oct., 1984 which went by the name Information Sheet No. 10 and issuing forth at the instance of the respondent's Managing Director, stated inter alia thus:

*"The Personnel Department has been instructed to liaise with all the breweries and heads of departments in Headquarters to recruit at least 1,000 employees - managers and workers. Most of those to be recruited will be employees who were laid off a few months ago when we reduced production and there were no jobs for them. In the case of such employees, we have decided that the period they were out of employment will be regarded as leave without pay. The entitlements already collected by them will be treated as advance against future entitlements. In this way, there will be no break in their service with the company."*

In the first place, Exhibit B being policy directives, were never addressed to the appellant. The contractual relationship between the respondent and the appellant therefore came to an end when on 7th July, 1984, the latter received Exhibit G - a letter of re-organisation of the business of the former in which her (appellants) post was declared redundant with effect from 14th July, 1984 and after which she collected her entitlements and the contract of employment was regarded as at an end. For purposes of clarity the main body of Exhibit G, bereft of appellant's entitlements which were also therein fully set out, states inter alia.

*"Dear Madam,*

*Re-organisation*

*We regret to inform you that due to circumstances beyond our control, it has become inevitable that we must re-organise our business. Consequently, the post which you now hold in your department has been declared redundant with effect from 14th July, 1984. Therefore, we are reluctantly*  
 B *compelled to terminate your employment with effect from that date."*

(the italics above is mine)

Appellant's pleading, particularly in paragraphs 5 and 6 of her further Amended Statement of Claim, and in her evidence -in-chief indicated the  
 C temporary nature of the state of affairs relating to redundancy in the respondent Company. The underlined portion of Exhibit G, set out above, however, clearly belies the temporary nature of her retirement. Indeed, the concluding portion of Exhibit G. set out above, made it patent that her termination was  
 D permanent. Besides, the principle of LIFO relates to re-engagement and not redundancy of a worker. The crux of the matter therefore is whether the appellant had an enforceable contract after she collected all her entitlements from the respondent following the receipt by her of her letter of termination?

The appellant in her testimony had relied on an alleged promise.  
 E Such a promise if it existed was neither adverted to in either Exhibit D, a letter the appellant wrote to the Personnel Manager of the respondent dated 10th October, 1986 or in Exhibit E, another letter written by counsel for the appellant on her behalf and another to the same personnel Manager of respondent and dated 23rd October, 1986 before she commenced the action giving rise to the  
 F appeal herein which hinges on Exhibit B dated 29th October, 1984 in relation to a cause of action that took root on 7th July, 1984. In Exhibit 'D' headed: Re advert for Staff Nurses in the Nigerian Observer of 9/10/86, the appellant wrote as follows:

*"You will recall that you invited me for an interview in May this*  
 G *year. We had discussions which gave indications that you may soon recall me to duty. Indeed this is the general hope in all industries in the country where the nation's economic recession has meant a forced closure or cut-down on production.*

*The purpose of this letter is to serve as reminder of my interview,*  
 H *particularly in view of your advertisement appearing in the Nigerian Observer issue of 9th October, 1986. I think I should not wait while some administrative or filing hitch inadvertently closes the position for which you intended for me. If I may say so, I believe that I, as your former staff, deserve*

*prior consideration and better claim than fresh applicants.*" (The Italics above is mine for emphasis).

No promise, in my opinion can be deciphered from Exhibit E 'wherein the learned counsel for appellant and another wrote, inter alia, under the heading:

*"In the matter of Mrs. Agoma, & Mrs. Omagbemi:*

*We write on the instructions of our clients, Mrs. Agoma and Mrs. Omagbemi, your retrenched staff. Our instruction is that we should take up with you the matter of their reinstatement. They inform us that they have already written to you on the point. You will recollect that the undersigned visited your office to discuss this matter in the light of the advertisement you caused to issue in the Nigerian Observer of 9th October, 1986.*

*From further discussions with your client, the pattern of things seems to establish an unfortunate impression that whenever decisions affect the two ladies your normal rules of procedure are broken:*

*Firstly, when they were to be laid off the L.I.F.O. rule was not observed in other departments.*

*Secondly, now that consideration is being given to the recall of laid off staff, it is only their case that the idea of bringing in fresh entrants is being vigorously pursued.*

*Our clients are insistent on the point that their record of service with you is good. Indeed, we have no answer for them when they said that of the quality of their report already in your file, it was pointless your calling them for what, in effect, was a pre-call interview."*

Discussions based on a chat vide Exhibit C between the appellant and D.W.3, a staff of the respondent, with a view to her being recalled to duty, cannot, in my view, be equated as a promise. Nor can such an alleged promise ground a cause of action, it being settled law that such a promise, if any, can only be a ground for a defence. Be it noted that a promise is defined by Osborn: The Concise Law Dictionary, Fifth Edition (1964) as

*"The expression of an intention to do or forbear from some act. To have legal effect, a promise must either be under seal, when it forms a covenant, or must form part of a contract; that is, be made in consideration of something done or to be done."*

In the instant case, the alleged promise not having been embodied in Exhibit' B', the latter which came into being some four months after the appellant's retrenchment, the argument proffered on the need to accord the appellant preference in being recalled, is non-sequitur. Moreover, in her testimony in court, the appellant did not allude to the promise of recall by D.W.3.

written at the instance of the respondent, in my view, was quite unfair quite apart from the fact that a promise cannot be inferred therefrom. In addition, the evidence of D.W.1 as to the directives for the recruitment of at least 1,000 employees - an offer accepted by 400 of the 700 earlier retrenched and the recruitment of 200 new workers evidence of which remained unchallenged and uncontradicted in as much as it buttressed Exhibit 'B'. and whose purport was *"to recruit at least 1000 employees.....most of those to be recruited will be those laid off a few months ago Exhibit 'B', significantly, did not say "all of those to be recruited "* and therein lies the inability of the appellant to bring herself within the purview of any member of the class of retrenched workers, between whom and the respondent, a valid contract was alleged to have been created.

Finally, in as much as there has not been shown any promise to have moved from the purported promisee (in this case the appellant), to the promisor, to wit: the respondent no consideration as between the parties has been shown to have passed. See *price v Easton* (1833), 4B & Ad. 433, and *Tweddle v. Atkinson* (1861) 1B & S 393.

If, as stated by D.W.2 in his evidence-in-chief, the method he adopted in his screening of the appellant and two others who were at par in scoring ‘C for three years, the respondent retained the one who had spent lesser number of years though with a higher score and dealt away with the appellant and another who were there longer in the respondent Company, there is in my view, justification in the conclusion arrived at by the court below wherein the writer of the lead judgment.

Ejiwunmi, J.C.A. held in respect of L.I.F.O:

*“Bearing in mind the above principles, it is my respectful opinion that the learned trial Judge was in error not to have accepted and on the evidence of D.W.2, as the evidence of that witness concerning the procedure adopted by the appellant for retrenching its staff including the respondent, remained unchallenged and uncontradicted.”*

The learned Justice having come to the conclusion that the evidence given by D. W.2 on the criteria stood unchallenged and uncontradicted, there was no basis for the learned trial Judge to disbelieve D.W.2 on that issue. The learned Justice was therefore justified in reversing that finding and quite rightly, in my view, went on to conclude thus:

*“Be that as it may, the central question here is whether the respondent had an enforceable contract after she had collected all her entitlements from the appellant following the receipt by her of the letter of termination.*

*Having received all her just entitlements from the appellant following her retrenchment, it seems to me that she had put to rest any contract real*

*or imagined which she had thought that she had with the appellant. The position of the appellant in Morohunfola v. Kwara State College of Technology (1990) 4 NWLR (Pt.145) 506..... “*

In conclusion, as none of Exhibits ‘D’ and ‘E’ made reference to the alleged promise and as Exhibit ‘G’ was written on 7th July, 1984 and did not stipulate anything about the appellant’s recall to duty while Exhibit ‘B’ was written on 29th October, 1984 - the latter when appellant was no longer an employee of the respondent - no contractual relation can be inferred between the appellant and the respondent thereon.

The court below was therefore fully justified, in my view, to interfere in the trial Court’s findings of fact the conclusion arrived at by it having been shown, for reasons hereinbefore demonstrated to be palpably wrong. See Onwubiko v. Okoroafor (1974) 4 ECSLR 233; Asani Balogun v. Alimi Agboola (1974) 10 SC 111; Egonu v. Egonu (1978) 11-12S.C.1 at 129 and Obodo v. Ogba (1987) 2 NWLR (Pt. 54) 11.

For the reasons given and the fuller ones set out in the judgment of my learned brother, Ogwuegbu, J.S.C. I too will dismiss this appeal. I make the same consequential orders inclusive of those relating to costs as contained in the lead judgment.

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