

SUPREME COURT OF NIGERIA
FRIDAY 24TH FEBRUARY, 1995. SC. 3/1991
CORAM:- S. M. A. BELGORE, I. L. KUTIGI, M. E. OGUNDARE,
Y. O. ADIO, A. I. IGUH, JJSC

UNION BANK OF NIGERIA LTD APPELLANT

AND

CHUKWUELO CHARLES OGBOH RESPONDENT

CLAIMS - *Relief not claimed - Or that has been abandoned as a claim - Whether to be awarded by the court.*

MASTER & SERVANT - *Employment - Where not governed by statute - It is governed by the parties' terms*

MASTER & SERVANT - *Wrongful termination - Where the employment is governed only by agreement of parties - The only remedy is a claim for damages.*

PLEADINGS - *Decision of Court of Appeal - That granted reliefs - Not in the pleadings and not remotely in evidence - Whether proper.*

PLEADINGS - *Case of a party - Is to be as contained in his pleadings - Which is binding on the party.*

FACTS

The plaintiff/respondent was employed by the defendant/appellant in 1957 as a clerk. He rose to become an assistant manager. Sometime in 1984, plaintiff was dismissed vide a letter. He got judgment against the defendant in default of appearance. The judgment was set aside by the Court of Appeal which ordered a retrial by another judge. During the retrial, plaintiff amended his claim which was originally founded in damages for wrongful termination. He rather sought for various declarations including his re-instatement and abandoned all the elements of his previous claim. Plaintiff relied heavily on the collective agreement between the defendant and its employees.

The trial court found for the plaintiff and ordered that he be immediately reinstated. The defendant appealed to the Court of Appeal which by varying the trial court's judgment awarded reliefs not claimed by the plaintiff. The defendant/appellant has now appealed to the Supreme Court to determine inter alia, whether the Court of Appeal was right in granting reliefs that were neither claimed nor pleaded by the plaintiff.

HELD (Unanimously allowing the appeal per **BELGORE JSC**)

Employment - Where not governed by statute

1. Except in employment governed by statute wherein the procedures for employment and discipline (including dismissal) of an employee are clearly spelt out, any other employment outside the statute is governed by the terms under which the parties agreed to be master and servant. Employment with statutory backing must be terminated in the way and manner prescribed by that statute and any other manner of termination inconsistent with the relevant statute is null and void and of no effect. (P. 474 F)

Wrongful termination - Employment governed only by parties' agreement

2. In other cases governed only by agreement of parties and not by statute removal by way of termination of appointment or dismissal will be in the form agreed to; any other form connotes only wrongful termination or dismissal but not to declare such dismissal null and void; the only remedy is a claim for damages for that wrongful dismissal. This is based on the notion that no servant can be imposed by the Court on an unwilling master even where the master's behaviour is wrong. For his wrongful act he is only liable in damages and nothing more. (P. 475 A)

Case of a party

3. Both the trial court and Court of Appeal erred in ignoring time honoured principle of pleading. A party is only bound by what he pleads; and that pleading is his case, nothing more, nothing less. (P. 475 D)

Relief not claimed - Whether to be awarded

4. A party should be given only the relief he claims and what must be reasonably antecedent to it. A situation whereby the court goes out on its own to award what is not claimed especially to award what has been abandoned as a claim is wrong in law. (P. 475 D)

Grant of reliefs not in the pleadings

5 Court of Appeal decreed "*compulsorily retirement and pension and*

gratuity” not in the pleadings and not remotely in evidence. Unfortunately this decision of the Court of Appeal runs contrary to *raison d’etre* of pleadings as explained earlier in this judgment. If the trial court erred, Court of Appeal drastically departed from all known notions of the use of pleadings. (P.476 A)

NOTABLE POINTS OF INTEREST

BELGORE JSC

1. Aim of pleadings

The aim of pleadings is to set out clearly the facts upon which parties rely for the case. Pleadings thus must contain only facts upon which the parties rely. The facts in the pleadings must be concise, unambiguous and placed in numbered paragraphs and where necessary sub-paragraphs so that the opponent will know clearly the case he has to meet. Sometimes, to obviate ambiguity or to aver some more facts, a party may amend his pleadings under certain principles before the end of hearing or judgment and sometime on appeal. Thus the aim of pleadings is to place parties on alert as to the facts they are to meet at the hearing. (P. 473 D)

2. Why court is always lenient in granting amendment of pleadings

It is for the sake of doing justice to the parties that the court is always lenient and favourably disposed to an amendment of pleadings at any stage of hearing and before judgment so as to bring to focus the trend of substantial evidence of the dispute between the parties. The appellate Court can even make such amendment if asked for insofar as it will not be to the disadvantage of the other side or occasion a miscarriage of justice. (P. 473 F)

OGUNDARE JSC

3. Giving plaintiff reliefs not claimed by him

None of the reliefs granted by the court below falls within the claims made by the plaintiff. It follows, therefore, that the court below, with profound respect to it, gave the plaintiff the reliefs he did not claim. For that reason alone those reliefs should be set aside. I do not know what authority the court below had to compulsorily retire a servant from the employment of his master when such a claim was never made and the relief for payment of gratuity and pension had been abandoned by the plaintiff in his amended statement of claim even though that, in effect, was his original claim. (P. 478 F)

IGUHJSC

4. Abandoning original claims by amendment - Effects

What ought to be noted at this stage is that the plaintiffs original claims in respect of damages for wrongful dismissal were at the retrial abandoned by the amendment to his original statement of claim. It is trite law that once ordered, what stood before amendment is no longer material before the court and no longer defines the issues to be tried between the parties. (P. 481 A)

5. Unlawfulness of plaintiff's Dismissal

On the issue of wrongful dismissal, it seems to me beyond dispute that the plaintiff's dismissal by the appellant was clearly unlawful. This is the finding of both the trial High Court and the court below. Although serious allegation of gross misconduct was made against the plaintiff by the defendant, there was no attempt whatsoever to establish this averment. I am therefore in full agreement with both the trial court and the court below on the basic issue of the unlawfulness of the plaintiff's dismissal. (P. 483 B)

6. Unlawful termination of employment that has no statutory flavor

On the issue of the contract of employment between the parties, it is plain to me that the same has no statutory flavor. Where, as in the present case, there has been an unlawful termination of the plaintiff's contract of service, a declaration that the contract of service still subsists will rarely be made. This is in consequence of the general principles of law that the courts will not ordinarily grant specific performance of a contract of service unless special circumstances are established. (P. 483 C)

REPRESENTATION

Bayo Aluko - Olokun with Akin Osewa for the Appellant.

RESPONDENT ABSENT

G

CASES REFERRED TO

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

F.S.S.C v. Laoye (1989) 2 NWLR (Pt. 106) 652, 681

Adedeji v. Police Service Commission (1967) 1 All NLR 67, 71, 73

H Hadley v. Baxendale (1854) 9 Exch. 341, 354

Obijuru v. Ozims (1985) 2 NWLR (Pt. 6) 167

Oguma v. International Bank for West Africa (1988) 1 NWLR (Pt. 73) 658

Salami v. Oke (1987) 4 NWLR (Pt. 63) -11

Ezewani v. Onwordi (1986) 4 NWLR (Pt. 33) 27

- Sodipo v. Lemminkainen OY (1985) 2 NWLR (Pt. 8) 347
 Kate Enterprises Ltd. v. Daewoo Nig. Ltd. (1985) 2 NWLR (Pt. 5) 116
 Owoade v. Omitola (1988) 2 NWLR (Pt. 77) 413
 Abaye v. Ofili (1986) 1 NWLR (Pt. 15) 134
 Ehimare v. Emhonyon (1985) 1 NWLR (Pt. 2) 177
 Oredoyin v. Arowolo (1989) 4 NWLR (Pt. 114) 172 B
 Ajide v. Kelani (1985) 3 NWLR (Pt. 12) 248
 Fawehinmi v. NBA (No. 1) (1989) 2 NWLR (Pt. 105) 494.
 Shita - Bey v. Fed. Public Service Commission (1981) 1 SC 40
 Baba v. civil Aviation Authority (1986) 5 NWLR (Pt. 42) 514
 Olatubosun v. NISER (1988) 3 NWLR (Pt. 80) 25 C
 Akintemi v. Onwumechili (1985) 1 NWLR (Pt. 1)
 Eperokun v. University of Lagos (1986) 4 NWLR (Pt. 34) 162
 Aiyetan v. NIFOR (1987) 3 NWLR (Pt. 59) 48
 Garba v. Fed. Civil Service Commission (1988) 1 NWLR (Pt. 71) 449
 Sapara v. University College Hospital Board (1988) 4 NWLR (Pt. 86) 581 D
 Union Beverages Ltd. v. Owolabi (1988) 1 NWLR (Pt. 68) 128
 Ajayi v. Texaco (1987) 3 NWLR (Pt. 62) 577
 NNB Ltd. v. Obevudiri (1986) 3 NWLR (Pt. 29) 387
 Ekpenyong v. Nyong (1975) 2 SC. 71, 81 & 82
 Nigerian Housing Development Society Ltd. v. Mumuni (1977) 2 SC 57, 81 E
 Bonny v. Yougha (1969) 1 All NLR 396, 402
 University of Lagos v. Dada (1971) 11 NLR (Pt. 111, 344, 349)

STATUTES REFERRED TO

- University of Lagos Act 1962 SS. 13(2), 18(e), 61 F
 University of Maiduguri Acts S. 17
 University of Ife Edict 1970 SS. 4, 6, 16

BOOK REFERRED TO

- Chitty on contract 23rd Ed. P. 340. G

LEAD JUDGMENT BY BELGORE JSC

The plaintiff/respondent was employed in 1957 as a clerk by the defendant/appellant. He rose after many courses organised by the bank to become an assistant manager. On 30th January 1984, he received a letter of dismissal with effect from 24th January, 1984. Respondent then sued and got judgment in default of appearance of the appellant, as defendant, whereby trial court took the evidence of the plaintiff only. An application to

set aside the judgment was refused by trial court. However on appeal the Court of Appeal set aside the judgment and ordered a retrial by another Judge of Kaduna High Court.

At the first trial, the respondent's claim (as plaintiff) was for special damages as follows:

- B (a) Plaintiff's gratuity for 26 years commencing from 1957 when he was employed by the defendant up to the date of dismissal..... N29 ,387 .00
 - (b) Plaintiff's gratuity for 9 years commencing from the date of dismissal up to the date of retirement N10,172.00
 - C (c) Plaintiff's basic salaries for 9 years, commencing from the date of dismissal up to the date of retirement at N11 ,303.00 per annum N10,727.00
- Total N141,287.70

D When the matter started de novo at the High Court the plaintiff changed his claim in an amended statement of claim. A party may amend his pleadings at any stage of trial before judgment. But the amendment of Statement of Claim in this matter was substantial. He abandoned all the claims in the original writ of statement of claim and made the following his ultimate claim:

E *"(a) A declaration that the dismissal of the plaintiff contained in a letter dated 30/1/84 from the services of the defendant Bank with effect from 24/1/84 is unlawful in that it is against the principles of natural justice, ultra vires, and of no effect.*

F *(b) A declaration that the plaintiff is still in the service of the defendant Bank and that he is entitled to his full remunerations and leave bonus since his dismissal.*

(c) A declaration that the plaintiff is also entitled to all his dues as an employee of the defendant Bank".

G *(d) A declaration that the plaintiff who is an employee of the defendant Bank be immediately re-instated by the Bank."*

H The new case before the High Court was therefore a complete departure from the previous one that the Court of Appeal ordered to be tried de novo. The trial court heard evidence and of most importance are three exhibits to wit. Exhibit 1 dismissing the respondent, Exhibit 3 being the collective agreement between the appellant's employees and the appellant as terms of employments and Exhibit 5 the letter appointing the respondent as a manager. The respondent as plaintiff in his evidence claimed his summary dismissal violated Exhibit 3, terms of employment also known as Procedural Agreement, earlier referred to. Article 5 of Exhibit 3 lists instances that will justify summary dismissal as in this case. Exhibit 1, the letter dismissing the

respondent merely stated as follows:

"We regret to advise that you have been dismissed from the Bank's services with effect from 24/1/84"

"We however wish you well in your future endeavours".

Thus no reason has been adduced for the dismissal in Exhibit 1. Trial court held that even though the plaintiff/respondent was employed as a clerk in 1957, his later promotion to that of a manager in 1983 was supposed by implication to be governed by Exhibit 3. Art 5(d) of Exhibit 3 states:

"(d) Summary Dismissal

The law provides that staff may be summarily dismissed for certain offences covered by the broad heading of gross misconduct.

Such offences include:

- (i) Proven cases of theft, fraud, dishonestly defalcation and irregular practices in respect of cash, vouchers records return, or customer's account and foreign exchange transaction.*
- (ii) Drunkenness or taking drugs other than for medical reason rendering the employee unfit to carry out his duties.*
- (iii) Divulging confidential information.*
- (iv) Conviction for a criminal offence.*
- (v) Absence from work without authorised leave or reasonable cause(s)*
- (vi) Fighting and assault or engaging in disorderly behaviour during working hours, or on the office premises or within its immediate surroundings.*
- (vii) Deriving any benefit in the course of his official duties which place him in such a position that his personal interest and his duty to the employer or to any customer of the Employer are in conflict.*
- (viii) Failure to report promptly any irregularity on the part of any other member(s) of staff after having knowledge of such irregularity.*
- (ix) Abusive or insulting language or behaviour to any client which is prejudicial to the business interest of the Employer.*
- (x) Any other offences which may be agreed upon between the Employer and/or Association and the Union from time to time".*

The trial court found that Exhibit 1 dismissing the respondent was wrongful relying on such cases, Olaniyan v. University of Lagos (1985) 2 NWLR (Pt.9)599; F.C.S.C. v. Laoye (1989) 2 NWLR (Pt. 106) 652, Imana v. Robinson (1979) 3 & 4 S.C.1, 6-10. The learned trial Judge found inter alia as follows:

"In this matter, the plaintiffs prayers are for declaration as per paragraph 12 of the amended statement of claim. He had not asked for damages. In a situation where I have found that gross injustice was meted out to the

plaintiff by summarily dismissing him after twenty-five years of meritorious and unblemished service, a violation of all things fair and just, for he was never informed before or at the time of dismissal what he had done wrong, nor given an opportunity to defend himself, special circumstances exist to warrant the declaration to be made."

B Trial Judge therefrom ended by making the following orders after considering s.33 of the Constitution of 1979 as to fair hearing:

"(a) the plaintiff is still in the service of the defendant bank, and that he is entitled to his full remunerations and leave bonus since the purported dismissal;

C *(b) the plaintiff is also entitled to all his dues as an employee of the defendant bank, and*

(c) that the plaintiff who is an employee of the defendant bank be immediately reinstated by the defendant bank with effect from 24/1/84".

Against this judgment the defendant appealed to Court of Appeal, Kaduna Branch, Among the grounds of appeal., it is pertinent to set out grounds 1,2, 3, 4, 5, 6, and 7 which are of great importance.

Grounds of Appeal:-

"1. The trial Judge erred in granting the plaintiff the declaration that his employment was still subsisting and the other declarations when
 E *(a) there were no special circumstances justifying the grant and there was no pleading in this regard.*
(b) there was no pleading or proof and I no finding that the personal confidence between the parties continued and in fact the letter of dismissal,
 F *Exhibit 1, proves the contrary and there was the admission of the plaintiff under cross-examination that there was a suppression of cheques in the branch in which he was the Manager, that he was queried in relation thereto and although he answered the query by denying that he did the act the result was his dismissal which amounted to a non-acceptance of his*
 G *defence by the defendant.*
(c) It was not pleaded or proved and there was no finding that the plaintiff cannot be adequately compensated by an award of damages and
(d) the order reinstating the plaintiff defeats the Expressed right conferred by Exhibit 5 on the defendant.

H *(2) The trial Judge erred in applying the provisions of section 33 of the 1979 Constitution when"-*

(a) the employment of the plaintiff has no statutory flavour.

(b) the right of the plaintiff to the employment if is not granted to him under

a law

(c) the defendant is a limited liability company and the power to bring into force Exhibit 3 does not derive from the constitution or any other law and
(d) the case of Olaniyan, Aiyetan and Laoye upon which the trial Judge relied have to do with employments which have statutory flavour.

B

3. The trial Judge erred in applying the provision of the collective agreement, Exhibit 3, which in effect nullifies a clear written term contained in the contract of employment of the plaintiff, Exhibit 5; which provides that the employment of the plaintiff may be determined by the defendant by giving the plaintiff one month's salary or one month's notice C and without having to comply with any procedure leading to giving a hearing or a fair hearing while the right to determine the employment in exhibit 3 is exercisable only after complying with the prescribed procedure which in essence requires fair hearing. The power of defendant by Exhibit 5 is expressed to be exercised without giving any reason.

D

4. The trial Judge erred in granting orders to back up the declarations sought by the plaintiff when he did not ask for such orders and counsel to the plaintiff conceded at the hearing that he was not entitled to what his client did not ask for an none of the authorities cited by the Judge support, even remotely, his position.

E

5. The Judge erred in granting the declarations sought by the plaintiff and making an order that he be reinstated when the plaintiff had accepted his dismissal since 1984 and was merely asking for damages which he was awarded although the award was set aside by the Court of Appeal which Ordered a retrial before another Judge and the claim for damages F was abandoned and the claims for declarations were substituted only through the application for amendment in August, 1988.

6. The trial Judge erred in holding that the dismissal was wrongful and contrary to principles of natural Justice because there was no fair hearing given to the plaintiff when on his own admission he was required by the defendant to explain his involvement in the suppression of cheques and his representation in the regard was received before a decision to dismiss him was made. The denial of the knowledge of the act by the plaintiff is immaterial to the issue of whether or not there was fair hearing after the opportunity to explain his position was granted to him, there being no other H basis upon which breach of requirement of natural justice by the defendant was based.

7. The trial Judge erred in asserting in essence that the defendant did not challenge the evidence of the plaintiff when giving contrary evi-

dence through other witnesses is not the only acceptable means of challenging the evidence of a party or witness and by law it is open to the defendant to challenge the evidence of the plaintiff by cross-examining him which the counsel for the defendant ably did by getting the plaintiff to admit that the substance of what was alleged against him was brought to his notice and his defence was requested before a decision was made to dismiss him.

8. The judgment is erroneous in that the correct principles for consideration in deciding whether or not to grant an order and/or declaration of reinstatement were not applied and what is required as special circumstance in regard to a breach of contract of employment case was not considered or properly considered and in considering irrelevant matters.

Then the appellant went on to file further grounds of appeal in addition to the original grounds. But the most one can make of most of the grounds are amply covered in grounds 1-7 quoted above. Just like the trial court, Court of Appeal relied heavily on the workers Collective Agreement with the appellant on conditions for dismissal, that is Exhibit 3. paragraph 5 (a) of Exhibit 3 reads:

“(i) Proven cases of theft, fraud, dishonesty, defalsifications and irregular practices in respect of cash, vouchers, records, returns or customers account and foreign exchange transactions.

(ii) Drunkenness or taking of drugs other than for medical reasons rendering the employee unfit to carry out his duties.

(iii) Divulging confidential information.

(iv) Conviction for a criminal offence.

(v) Absence from work without authorised leave or reasonable cause(s)

(vi) Fighting and assault or engaging in disorderly behaviour during working hours, or on the office premises or within its immediate surroundings.

(vii) Deriving any benefit in the course of his official duties which places him in such a position that his personal interest and his duty to the employer are in conflict.

(viii) Failure to report promptly any irregularity on the part of any other member(s) of staff after having knowledge of such irregularity.

(ix) Abusive or insulting language or behaviour to any client which is prejudicial to the business interest of the employer.

(x) Any other offences which may be agreed upon between the employer and/or Association and the Union from time to time.”

It was held that the conditions of service of the respondent was governed by Exhibit 3 and he could only be dismissed only if there was proof of any of the offences in para. 5(a) (supra). Court of Appeal affirmed

that none of the offences had been proved and that trial court was right in so holding. Thus, according to the court below, Exhibit 5 by which the respondent was first employed in 1957 was found to have been superseded by Exhibit 3, Collective Agreement. Each Court cited with approval Chitty on Contract, 23rd Ed. p. 340 about collective agreement wherein it is stated:

"When the employee knows of the term of Collective Agreement it is legitimate to infer that it was the presumed common intention of both parties to the contract that these terms should apply when the contract was silent on any issue."

The letter of dismissal Exhibit 1, was silent on the reasons for dismissing the respondent from appellant's service. Thus the two lower courts' held the inference is that Exhibit 3 governed their contractual relation. The Court of Appeal quoted in extenso the reasons advanced by the trial court whereby it arrived at the conclusion that the rule of natural justice had been violated by the dismissal of the respondent; that because no reasons had been advanced in Exhibit I for his dismissal, therefore there had been a breach of s. 33(1) of the Constitution of Nigeria 1979. It is of importance to find Ogundere J.C.A. observing the issues raised by the appellant thus:

"In the appellant's brief, the issues for determination numbered ten. Issues 1, 2 and 7 posed the question whether compliance with rules of natural justice were required before an employer dismisses the employee from his employment; whether the rule was breached and the consequence as the plaintiff did not plead its breach. Issues 3 and 4 query the power of the Court to annul the dismissal of the plaintiff by the defendant and substitute reinstatement. Issues 5, 6 and 10 put the question whether the Collective Agreement, which was not pleaded and which varied from the Contract of Employment Exhibit 1 was applicable to the case. Issue 8 criticised the learned trial Judge for awarding salary and allowances to the plaintiff for the period he did not work. Issue 9 criticised Yahaya J for making orders not asked for."

"The issues raised in the respondent's brief were two concise points; first, whether from the pleadings and evidence, the learned trial Judge was right to hold that the plaintiff's dismissal was wrongful and in violation of the rules of natural justice. Secondly, whether the consequential orders that the plaintiff is entitled to reinstatement and payment to him of all his accrued emoluments were right."

Appellant thereupon submitted that a difference must be made between contract of employment governed by statute, whereby there must be strict adherence to the law as to dismissal and other disciplinary measures; and a contract not governed by any statute but by terms the parties

agreed upon. In the latter case submitted by learned counsel for appellant, Aluko-Olokun, Esqr, the only remedy open to an employee wrongfully dismissed is in damages if he so claims but not re-instatement. The former is illustrated by the cases of Olaniyan v. University of Lagos (1985) 2 NWLR (Pt.9) 599, 683; Morohunfolu v. Kwara College of Technology (1990); Adedeji B v. Police Service Commission (1967) 1 All NLR 67, 71, 73. It was further submitted that the contract of employment of an employee by a bank as in this case must be based on strict confidence, Uberrima fides as in the absence of any statute regulating such employment, the only remedy open to a wrongfully dismissed employee is in damages, if claimed, and not in C re-instatement. Lead judgment of Ogundere J.C.A. adverted extensively to modes of contract of employment which he classified into three types. According to him these are under the Common Law, by which a party could terminate it by one week's notice or payment of wages for a week or a month or whatever agreement was as to period for payment; the second D is a written contract between the parties in which the terms are well spelt out, whereby determination will be based on the terms. Finally there is the third one where government employee or an employee of a statutory body is employed in accordance with the appropriate statute.

Learned Justice of appeal however never adverted to one clear E fact that his first two modes of contract could be determined against any agreement, such a dismissal will only be wrongful and could only be compensated in damages. Adverting to the case of Hadley v. Baxendale (1954) 9 Exh .. 341, 354, to my mind is stretching too far the principles involved in this case. There is nothing in this case remotely on all fours with the case F quoted as "locus classicus" by the learned Justice. Having found that there exists a third type of contract governed by statute which must be adhered to otherwise a dismissal might be rendered null and void he concluded curiously as follows!

"There is no doubt that the respondent's employment is based on G Statute. It is even much weaker than the case of Okafor, where the Progress Bank established under the Companies Act was 100% owned by Imo State. There is no doubt however that the plaintiff/respondent claimed re-instatement and all his remunerations since his dismissal on 24 January, 1984. "

In the circumstances, I hereby uphold the submission of Aluko-H Olokun Esq. that the contract in question has no statutory flavour. In consequence whereof, I hereby set aside the Order of reinstatement of Yahaya J. in paragraph (c) above.

I uphold the findings of Yahaya J. that the employment of the respondent was wrongfully terminated. In consequence I hereby vary orders

(a) and (b) of *Yahaya J* as follows:

(a) *The respondent shall be paid all his emoluments from the date of his dismissal 24/1/84 to the date of the judgment of Yahaya J. on 25/8/89.*

(b) *The respondent shall be deemed compulsorily retired from the services of the Bank with effect from 26/8/89. Consequentially, he shall be entitled to his gratuity and pension, if any, from 26/8/89 aforesaid.* B

The appeal is dismissed with N350.00 costs in favour of the respondent. The appeal in re-instatement succeeds.” This appeal is against this decision. The appeal was based inter alia on the premise that the terms of employment, Exhibit 3, was never pleaded and could not have been received in evidence; that the learned trial Judge and Justices of Appeal C [Ogundere J.C.A. Uthman Mohammed J.C.A. (as he then was) Aikawa J.C.A.) erred in placing too much burden of proof on the appellant as defendant to prove the terms of the contract of employment and failure to so prove amounted to admission and that evidence extensively relied upon. Exhibit 3, was never pleaded by the respondent. D

The aim of pleadings is to set out clearly the facts upon which parties rely for the case. *Obijuru v. Ozims* (1985) 2 NWLR (Pt.6) 167. Pleadings thus must contain only facts upon which the parties rely. The facts in the pleadings must be concise, unambiguous and placed in numbered paragraphs and where necessary subparagraphs so that the opponent will know E clearly the case he has to meet. Sometimes, to obviate ambiguity or to aver some more facts, a party may amend his pleadings under certain principles before the end of hearing or judgment and some times on appeal *Oguma v. international Bank for West Africa* (1986) 2 NWLR (Pt. 20) 114 C.A.; *Salami v. Oke* (1987) 4 NWLR (Pt.63) 11:. Thus the aim of plead- F ings is to place parties on alert as to the facts they are to meet at the hearing. *Ezewani v. Okwordi* (1986)4 NWLR (Pt.'33) 27; *Salami v. Oke* (1987)(supra) *Sodipo v; Lemminkainen OY* (1985) 2 NWLR (Pt.8) 547. It is for the sake of doing justice to the parties that the court is always lenient and favourably disposed to an amendment of pleadings at any stage of G hearing and before judgment so as to bring, to focus the trend of substantial evidence of the dispute between the parties. The appellate court can even make such amendment if asked for insofar as it will not be to the disadvantage of the other side or occasion a miscarriage of justice *Kate' Enterprises Ltd. v. Daewoo Nig. Ltd.* (1985) 2 NWLR (Pt.5), 116. It is H therefore necessary that all the facts pleaded are the ones to determine the outcome of a case in judgment; that is to say all matters unpleaded will go to no issue because judgment must be based on legally admissible evidence *Owoade v. Omitola* (1988) 2 NWLR (Pt.77) 413; *Abayev. Ofili*

(1986)1 NWLR (Pt.15) 134; *Ehimare v. Emhonyon* (1985)1 NWLR (Pt.2) 177; *Oredoyin v. Arowolo* (1989) 4 NWLR (Pt.114) 172; *Ajide v. Kelani* (1985) 3 NWLR (Pt.12) 248; *Fawehinmi v. Nigeria Bar Association* (No.1) (1989) 2 NWLR (Pt. 105) 494]

I have set out at the beginning of this judgment all that the plaintiff/respondent prayed for. He at the subsequent retrial leading to this appeal abandoned his original claim and decided to ask for declaration that he remained in the employment of the appellant, that Exhibit I purporting to dismiss him was ultra vires and of no effect, and that he be taken back to his office as manager. He initiated the proceedings four years after he was given Exhibit I (supra) dismissing him from the employment with the appellant and made the claim as a businessman. Unlike the previous case which the Court of Appeal ordered to be retried where he claimed damages for wrongful dismissal, he in the instant case was not claiming damages but re-instatement, for the court to hold that he was still in the appellant's service despite Exhibit 1. He virtually went back for retrial with a new case, abandoning his original claim. The trial court and the Court of Appeal placed reliance on *Shita-Bey v. Federal Public Service Commission* (1981) 1 S.C. 40, *Baba v. Civil Aviation Authority* (1986) 5 NWLR (Pt.42) 514; *Federal Civil Service Commission v. Laoye* (1989) 2 NWLR (Pt.106) 652; *Olaniyan v. University of Lagos* (1985) 2 NWLR (Pt.9) 599; *Olatubosun v. NISER* (1988) 3 NWLR (Pt.80) 25 and a host of others by analogy holding that Exhibit 3, Collective Agreement, has the force of law and that the notice of dismissal, Exhibit 1 was Ultra vires and that the respondent remained an employee of the appellant.

With greatest respect, this is not the law. Except in employment governed by statute wherein the procedures for employment and discipline (including dismissal) of an employee are clearly spelt out, any other employment outside the statute is governed by the terms under which the parties agreed to be master and servant. Employment with statutory backing must be terminated in the way and manner prescribed by that statute and any other manner of termination inconsistent with the relevant statute is null and void and of no effect. Examples are many especially with modern Constitutional and statutory trends. [University of Lagos Act 1962, sections 13(2), 18(e) and 61 under which this court decided *Olaniyan v. University of Lagos* (supra); *University of Maiduguri Act*, s.17 under which *Federal Civil Service Commission v. Laoye* (supra) was considered; *University of Ife Edict 1970*, ss. 4, 6 and 16, under which *Akintemi v. Onwumechili* (1985) 1 NWLR (Pt.1) 68 was decided; others are *Eperokun v. University of Lagos* (1986) 4 NWLR (Pt.34) 162; *Aiyetan v. NIFOR* (1987) 3 NWLR

(Pt.59) 48; Garha v. Federal Civil Service Commission (1988) 1 NWLR (Pt.71) 449 and Sapara v. University College Hospital Management Board (1988) 4 NWLR (Pt.86) 581. In other cases governed only by agreement of parties and not by statute removal by way of termination of appointment of dismissal will be in the form agreed to; any other form connotes only wrongful termination or dismissal but not to declare such dismissal null and void; the only remedy is a claim for damages for that wrongful dismissal. This is based on the notion that no servant can be imposed by the court on an unwilling master even where the master's behaviour is wrong. For his wrongful act he is only liable in damages and nothing more. [Union Beverages Ltd. v. Owolabi (1988) 1 NWLR (Pt.68) 128; Ajayi v. Texaco (1987) 3 NWLR (Pt.62) 577; NNB Ltd. v. Obevudiri (1986) 3 NWLR (Pt.29) 387]. In those cases where reliance is placed on statute, the Board created under that statute for the Corporation to employ, dismiss etc. does so on behalf of the statutory body which is a complete creature of the statute; this is why anything done outside what the statute provides and is directly in contradiction to the provisions of that enabling statute is ultra vires null and void. Both the trial court and Court of Appeal erred in ignoring time honoured principle of pleading. A party is only bound by what he pleads and that pleadings is his case, nothing more, nothing less. A party should be given only the relief he claims and what must be reasonably antecedent to it. A situation whereby the court goes out of its own to award what is not claimed especially to award what has been abandoned as a claim is wrong in law. [Ekpeyong v. Nyong (1975) 2 S.C. 71,81 and 82; Nigerian Housing Development Society Ltd. V. Mumuni (1977) 2 S.C. 57, 81; Bonny v Yougha (1969) 1 All NLR 396,402; University of Lagos v. Dada (1971) 11 NLR (Pt.111), 344, 349; Union Beverages Ltd 1'. M.A. Owolabi (1988) 1 NWLR (Pt.68) 128, 129]. All the respondent claimed is that his removal was "Unlawful in that it is against the principles of natural justice, ultra vires an of no effect", that the respondent was still in the service of the appellant, and a declaration that the respondent was entitled to his dues as an employee of the appellant bank and that he be re-instated by the bank. Learned trial Judge granted all the prayers. Court of Appeal in "dismissing the appeal and upholding the decision of trial court" concluded that the respondent must be paid all his dues from 24th January, 1984 to 25th August, 1989 but without saying so varied the order of trial court by concluding thus: H

"(b) The respondent shall be deemed compulsorily retired from the services of the Bank with effect from 26th August 1989. Consequently, he shall be entitled to gratuity and pension, if any, from 26th August, 1989 aforesaid". "The appeal is dismissed with N350.00 costs in favour of the

respondent. The appeal for reinstatement succeeds."

There is hardly anything more confusing. The entire conclusion for reasons alluded to earlier in this judgment is not the law. Secondly, Court of Appeal decreed "*compulsorily retirement and pension and gratuity*" not in the pleadings and not remotely in evidence. Unfortunately this decision of B the Court of Appeal runs contrary to *raison d'être* of pleadings as explained earlier in this judgment. If the trial court erred, Court of Appeal drastically departed from all known notions of the use of pleadings.

For the foregoing reasons, I see a lot of merit in the appeal and I allow it. I set aside the decision of the Court of Appeal which claims to C affirm the decision of the trial court, but in fact actually created further departure. In its stead, I enter a verdict of dismissal of plaintiff's claims. The respondent shall pay N1 ,000.00 costs of this appeal.

D

KUTIGI JSC

I agree with the judgment of my learned brother Belgore J.S.C. just delivered. For the reasons ably stated by him therein I will also allow E the appeal and dismiss plaintiff/respondent's claims. I also award N1 ,000.00 costs against the respondent.

OGUNDARE JSC

F I have had the preview of the judgment of my learned brother Belgore J.S.C. just delivered. I agree with him that this appeal has merit and should be allowed.

The facts have been clearly set out in the judgment of my learned brother, I need not go over them again. The appellant, both in his notice of G appeal and in its brief, set out in a rather prolix manner, several grounds of appeal and several issues for determination. The main issues to my mind having regard to the judgment of the court below and the grounds of appeal as well as the pleadings and the judgment of the trial court are two-fold, that is -

- H (1) whether the judgment of the court below was in consonance with the pleadings of the parties; and
 (2) whether on the findings of both the trial court and of the Court of Appeal, the court below gave a correct verdict. As the two issue dovetail into each other I shall take them together.

It is not correct, as submitted by learned counsel for the appellant, that Exhibit 3, the collective agreement was not pleaded. This agreement is a basis upon which the court below found, that the plaintiff's dismissal was wrongful. In paragraph 8 of the amended statement of claim the plaintiff pleaded as below:

"8. The plaintiff further avers, that virtue of his status and as a senior staff B in the defendant's company, his dismissal from its service violates and contravenes the provisions of the main collective agreement in force between the defendant (a member of the Nigeria Employers' Association of Banks, Insurance and Allied Institutions) and the plaintiff (a member of the Association). The Procedural Agreement and main Collective Agreement - C and shall found upon same at the hearing of this suit."

In the light of the above paragraph, Exhibit 3 was rightly admitted in evidence and rightly made use of by the two courts below. Without going into the correctness or otherwise of the findings of the courts below that the plaintiff's dismissal was unlawful, I only need to touch on the use made of D this finding by the two courts;

Having found that *"Exhibit 3 was not followed by the defendant bank before Exhibit '1' was issued, hence the breach of the contract,"* the learned trial Judge concluded his judgment as follows:

"In the circumstances all the claims succeed and I hereby order and declaration that

(a) the plaintiff is still in the service of the defendant bank, and that he is entitled to his falls, remunerations and leave bonus since the purported dismissal; .

(b) the plaintiff is also entitled to all his dues as an employee of the F defendant bank, and

(c) That the plaintiff who is an employee of the defendant bank be immediately re-instated by the defendant bank with effect from 24/1/84."

The purport of the judgment of the learned trial Judge is to grant specific performance of the plaintiff's contract of service with the defendant/appellant. The Court of Appeal in affirming the judgment of the learned trial Judge, however, held that the latter was wrong in making an order reinstating the plaintiff. Ogundere J.C.A. in his lead judgment with which Mohammed J.C.A. (as he then was) and Aikawa J.C.A. agreed, set out 3 H categories of contract of service. The first category according to the learned Justices of appeal is one under the Common Law where, in the absence of a written contract, each party could abrogate the contract on giving notice as agreed between them. The second category belongs to cases where there

is a written contract of employment between a master and servant. In this category such contract is only determinable as provided in the contract. The third category according to the learned Justice of Appeal is one with a statutory flavour. Without stating the category into which the case on hand fails, the learned Justice found that it was not one with statutory flavour.

- B With this findings, he set Aside the order of reinstatement made by the learned trial Judge and varied the trial court's orders (a) and (b) as follows:
- "(a) The respondent shall be paid all his emoluments from the date of his dismissal 24/1/84 to the date of the judgment of Yahaya J. on .25/8/89*
- C *(b) The respondent shall be deemed compulsorily retired from the services of the Bank with effect from 26.8.89. Consequentially, he shall be entitled to his gratuity and pension, if any, from 26.8.89 aforesaid."*

Now the plaintiff by paragraph 12 of his amended statement of claim, claimed as hereunder:

- D *"(a) A declaration that the dismissal of the plaintiff contained in a letter dated 30/1/84 from the services of the defendant Bank with effect from 24/1/84 is unlawful in that it is against the principles of natural justice, ultra vires, and of no effect.*
- (b) A declaration that the plaintiff is still in the service of the defendant bank, and that he is entitled to his full remunerations and leave bonus since*
- E *his dismissal.*
- (c) A declaration that the plaintiff is also entitled to all his dues as an employee of the defendant bank.*
- (d) A declaration that the plaintiff who is an employee of the defendant be immediately re-instated by the defendant bank."*

- F None of the reliefs granted by the court below falls within the claims made by the plaintiff. It follows, therefore, that the court below, with profound respect to it, gave the plaintiff the reliefs he did not claim. For that reason alone those reliefs should be set aside. I do not know what
- G authority the court below had to compulsorily retire a servant from the employment of his master when such a claim was never made and the relief for payment of gratuity and pension had been abandoned by the plaintiff in his amended statement of claim even though that in effect was his original claim. The court below rightly found in my view that the plaintiff from the facts of the case, was not entitled to an order of reinstatement
- H but went wrong in granting him the reliefs that he did not seek from the court. It is interesting to observe that Mohammed J.C.A. in his concurring judgment said:

"It is trite that a contract of master and servant may be subject to either statutory or common law rules or both. By and large the master can

terminate the contract with his servant at any time and for any reason or for no reason at all. But if he does so in a manner which is contrary to the terms of the agreement between the parties, he must pay damages for his breach. See Olaniyan & Ors. v. University of Lagos & Anall. (1985) 2 NWLR, (Pt.6) 599. It is for these reasons and the fuller opinion of my learned brother, in the lead judgment, that I agree that the respondent is entitled to damages instead of reinstatement which the learned trial Judge ordered."

The above passage, of course, is the correct statement of law except that in this case the plaintiff did not in his amended pleadings claim damages. If the learned Justice of Appeal had adverted his mind to this fact, he would not have concurred in the orders made in the lead judgment.

The conclusion I reach, therefore, is that I allow this appeal, set aside the judgment of the court below and, on the finding which has not been challenged before us on appeal by the plaintiff that the plaintiff was not entitled to reinstatement, I dismiss plaintiff's claims. I abide by the order for costs made in the lead judgment of my learned brother Belgore J.S.C.

ADIO JSC

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

IGUH JSC

I had a preview of the lead judgment of my learned brother, Belgore, J.S.C just delivered and I agree entirely with his reasoning and conclusion that this appeal be allowed and the plaintiff's claims dismissed. The plaintiff had in the High Court of Justice, Kaduna State instituted an action against the defendant claiming as follows:-

"1. A declaration that the dismissal of the plaintiff by the defendant, as conveyed in its letter dated 30th day of January, 1984, issued within the jurisdiction of this Honourable Court, is wrongful, unlawful and of no effect whatsoever and an Order that the plaintiff is still in the employment of the defendant and is so entitled to his normal salaries and benefits until judgment is delivered in this suit and thereafter OR IN THE ALTERNATIVE

2. *The sum of N141, 287.50 (One hundred and forty-one thousand, two hundred and eighty seven naira, fifty kobo) being special damages for wrongful dismissal in that on or about the 30th day of January, 1984, at Kaduna, within the jurisdiction of this Honourable Court, the defendant, without any reason (s) wrongfully dismissed the plaintiff from its service, after over B 26 (twenty six) years of meritorious service and with nine (9) more years for the plaintiff to retire from the services of the defendant accordingly.*

Particulars of Damages

Special Damages

- C (a) *Plaintiff's gratuity for 26 years, commencing from 1957 when he was employed by the defendant up to the date of dismissal*
N29,387.80
- (b) *Plaintiff's gratuity for 9 years commencing from the date of dismissal up to the date of retirement... :* *N10, 172. 70*
- D (c) *Plaintiff's basic salaries for 9 years commencing from the date of dismissal up to date of retirement at N11,303.00 (Eleven thousand three hundred and three naira) per annum N101, 727.00*
Total N141, 287.50

E *(One hundred and forty one thousand, two hundred and eighty seven naira, fifty kobo)"*

Judgment was entered for the plaintiff as claimed whereupon the defendant being dissatisfied therewith lodged an appeal to the Court of Appeal, Kaduna Division which allowed the appeal and ordered a retrial of the suit.

- F At the subsequent trial before Yahaya, J., both parties, as they were entitled to do, amended their pleadings. In particular, the plaintiff's claims as amended were as follow:-

G *"(a) A declaration that the dismissal of the plaintiff contained in a letter dated 30/1/84 from the services of the defendant Bank with effect from 24/1/84 is unlawful in that it is against the principles of natural justice, ultra vires, and of no effect.*

(b) A declaration that the plaintiff is still in the service of the defendant bank, and that he is entitled to his full remunerations and leave bonus since his dismissal.

H *(c) A declaration that the plaintiff is also entitled to all his dues as an employee of the defendant bank.*

(d) A declaration that the plaintiff who is an employee of the defendant be immediately re-instated by the defendant bank."

What ought to be noted at this stage is that the plaintiff's original claims in respect of damages for wrongful dismissal were at the retrial abandoned by the amendment to his original statement of claim. It is trite law that once ordered, what stood before amendment is no longer material before the court and no longer defines the issue to be tried between the parties. See *Grace Amanambu v. Alexander Okafor & Another* (1966) 1 All NLR 205 and *Col. Rotimi v. McGregor* (1974) 11 S.C. 133 at 152. Accordingly all that the plaintiff sought from the trial court at the retrial were simply the declarations already set out above. He made no claims whatever by way of special or general damages or payment of any emoluments for his alleged wrongful dismissal and it is clear that this category of claims for payment of money does not now define the issues to be tried between the parties.

Only the plaintiff testified before the court at the retrial, the defendant having rested its defence on the evidence adduced on behalf of the plaintiff. Under such circumstance where evidence given by a party to any proceedings was not challenged by the opposite party who had the opportunity to do so, it is always open to the court seised of the matter to act on such unchallenged evidence before it. See *Isaac Omoregbe v. Daniel Lawani* (1980) 3-4 S.C. 108 at 117, *Odulaja v. Haddad* (1973) 11 S.C. 35, *Nigerian Maritime Services Ltd. v. Alhaji Bello Afolabi* (1978) 2 S.C. 79 at 81 and *Adel Boshali v. Allied Commercial Exporters Ltd.* (1961) 2 SCNLR 322 (1961) All NLR 917.

The defendant in its amended Statement of Defence had denied that the plaintiff was not dismissed without cause. It averred that the plaintiff was dismissed for "*gross misconduct*" in connection with the suppression of certain cheques totalling N433,327.41

No doubt, where an employee is guilty of gross misconduct, and this has been defined as conduct of a grave and weighty character as to undermine the confidence which should exist between the employee and his employers or working against the deep interest of the employer, he could be lawfully dismissed summarily without notice and without wages. See *Boston Deep Sea Fishing Co. v. Ansell* (1988) 39 ch.D. 339, *Babatunde Ajayi v. Texaco Nigeria Ltd. and others* (1987) 3 NWLR (Pt.62) 577, *Ridge v. Baldwin* (1963) 2 All E.R. 66 at 71 and *Olaniyan v. University of Lagos* (1985) 2 NWLR (Pt.9) 599. The defendant however led no evidence whatever in proof of this all important averment that the plaintiff was dismissed on ground of gross misconduct and therefore failed to establish the crux of its defence.

In this regard, the learned trial Judge observed as follows:- "As

clearly seem from above, only the plaintiff gave evidence in his favour and maintained his story to the effect that he was not involved in any unsavoury deals during the tenure of his employment nor given any query or warning, while he was being cross-examined. The defendant, in its amended statement of defence had denied the allegation in the amended statement of claim and had averred that the plaintiff was dismissed for gross misconduct in connection with suppression of cheques totalling N433,327.41k. They failed to give any evidence in support of their averment or in a challenge to the plaintiff's evidence. The defendant must therefore be assumed to have accepted the totality of the evidence adduced by the plaintiff. In the *Imanal* case supra relied on by Mr. Ataguba (1979) 3-4 S.C. at pages 9 - 10 Aniagolu, J.S.C., as he then was, stated

"It is clear to us that once pleadings have been settled, and issues joined, the duty of the court is to proceed to the trial of the issues and if one party fails or refuses to submit the issues he has raised in his pleadings for trial by giving or calling evidence in their support the trial Judge must unless there are other legal reasons dictating to the contrary resolve the case against the defaulting party."

I have not been shown any legal reason to the contrary and I therefore accept as true, the totality of the evidence adduced by the plaintiff before this court."

After a careful consideration of the evidence led before him together with all the Exhibits tendered, it was his view that the dismissal of the plaintiff by the defendant with effect from the 24th January, 1984 was contained in Exhibit I was wrongful and unlawful. He concluded as follows-

"..... In the circumstances all the claims succeed and I hereby order and declare that

(a) the plaintiff is still in the service of the defendant bank, and that he is entitled to his full remunerations and leave bonus since the purported dismissal;

(b) the plaintiff is also entitled to all his dues as an employee of the defendant bank, and

(c) that the plaintiff who is an employee of the defendant bank be immediately reinstated by the defendant bank with effect from 24/1/84."

Dissatisfied with the judgment of the learned trial Judge, the defendant appealed again to the Court of Appeal, Kaduna Division which on the 14th day of November, 1990 affirmed that the dismissal of the plaintiff was unlawful but proceeded to vary orders (a) and (b) of the judgment of the learned trial Judge to read as follows-

"(a) The respondent shall be paid all his emoluments from the date of his dismissal 24/1/84 to the date of the judgment of Yahaya J. on 25.8.89.

(b) The respondent shall be deemed compulsorily retired from the services of the Bank with effect from 26.8.89. Consequentially, he shall be entitled to his gratuity and pension, if any, from 26/8/89 aforesaid. “

The appeal in so far as it related to the re-instatement of the plaintiff was allowed and order (c) as contained in the judgment of the trial court was accordingly set aside. The defendant, still dissatisfied with this decision of the Court of Appeal, has appealed to this court. B

On the issue of wrongful dismissal, it seems to me beyond dispute that the plaintiffs dismissal by the appellant was clearly unlawful. This is the finding of both the trial High Court and the court below. Although serious allegation of gross misconduct was made against the plaintiff by the defendant, there was no attempt whatsoever to establish this averment. I am therefore in full agreement with both the trial court and the court below on the basic issue of the unlawfulness of the plaintiffs dismissal. C

On the issue of the contract of employment between the parties, it is plain to me that the same has no statutory flavour. Where, as in the present case, there has been an unlawful termination of the plaintiff's contract of service, a declaration that the contract of service still subsists will rarely be made. This is in consequence of the general principles of law that the courts will not ordinarily grant specific performance of a contract of service unless special circumstances are established. See *Francis v. Municipal Councillors of Kuala Lumpur P.c.* (1962) 3 All E.R 633. The plaintiff in appropriate cases of such unlawful and wrongful termination of employment is left to his remedy in damages as no servant may generally be imposed by the court on an unwilling master even where the master's behaviour is wrongful. See *Davis v. D Foreman* (1894) 3 ch. 654 and *Kirchner & Co. v. Gruban* (1909) 1 ch 413. In my view, therefore, the court below rightly found from the particular facts of this case that the plaintiff was not entitled to an order of reinstatement he claimed but was in grave error when it proceeded to make awards for payment of emoluments to the plaintiff and converted his dismissal in issue to compulsory retirement, claims G which the plaintiff did not ask for.

It cannot be over-emphasized that a court of law ought not to award to a plaintiff a substantive relief he has not specifically claimed and may infact not desire. See *Ekpenyong v. Nyong* (1975) 2 S.C. 71 at 81 - 82, *Nigerian Housing Development Society Ltd. v. Mumuni* (1977) 2 S.C. H 57 at 81, *University of Lagos v. Dada* (1971) 1 NLR (Pt. 1111) 344 at 349, *Bonny v. Yougha* (1969) 1 All NLR 396 at 402, *Union Beverages v. Owolabi* (1988) 1 NWLR (Pt.68) 128 at 136, *Makanjuola v. Balogun* (1989) 3 NWLR (Pt. 108) 192 at 206, *Olurotimi v. Ige* (1993) 8 NWLR (Pt.311) 257 at 271

e.t.c. Just as parties are bound by their pleadings, trial courts and appellate courts may only advert to those matters which are in issue between the parties. The plaintiff's case in the present proceedings ought to have been founded in damages for wrongful dismissal as he could not lawfully foist himself on his employers. This he failed to do and it seems to me plain that B on the state of the law, this appeal is bound to succeed.

It is for the above and the fuller reasons contained in the lead judgment of my learned brother, Belgore, J.S.C. that I, too, allow this appeal and set aside the judgment and orders of the Court of Appeal. The finding of the court below to the effect that the plaintiff was not entitled to C reinstatement was not appealed against in this court. In the circumstance the plaintiffs claims are hereby dismissed. I endorse the order as to costs contained in the lead judgment.

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