

SUPREME COURT OF NIGERIA

11TH JULY, 1995. SC. 91/1991

**CORAM:- S.M.A. BELGORE, LL.KUTIGI, E.O.OGWUEGBU,
S.U. ONU, A.I. IGUH, JJSC**

EMMANUEL N. NWOBOSIAPPELLANT
AND	
AFRICAN CONTINENTALRESPONDENT
BANK LTD.	

APPEALS - Findings of facts - Conclusions thereon - Where wrongful - What is the attitude of an appellate court.

APPEALS - Issue - When answered in addressing other issues in same appeal - Proffering another answer amounts to academic exercise.

DAMAGES - Proof- Need to specifically prove special and general damages - Claimed by a party.

EVIDENCE - Burden of proof - When not discharged - Effect.

MASTER & SERVANT - Conduct of Servant - Amounting to willful disobedience of lawful order - Consequence thereof.

MASTER & SERVANT - Misconduct - Where established - Whether appellant can successfully challenge his summary dismissal.

MASTER & SERVANT - Relationship of master & servant - Whether regulated by parties agreement alone - Or the general law also.

FACTS

The defendant/respondent by a letter of June 1, 1981, summarily terminated the appointment of the plaintiff/appellant as its Branch Manager at Mushin. This followed prior suspension on 26th August, 1980 and setting in motion the arrest and detention of the plaintiff by officers of the Nigerian Police Force. For these chain of events, the appellant instituted the action leading to this appeal, by the issuance of a writ of summons against the respondent claiming N300,000.00 as special and general damages.

The panics filed and exchanged pleadings, the case proceeded to trial, at the end of which, the trial judge delivered judgment in favour of the

appellant, awarding N17,815.50 as damages to him, less his (appellant's) indebtedness of N7,779.79 to the respondent. Aggrieved by this decision, the respondent appealed to the Court of Appeal Lagos Division. The appellant cross-appealed on the damages. The court of Appeal upheld the respondent's appeal and dismissed the cross-appeal. The present appeal is against that decision. From the appellant's grounds of appeal, four questions were submitted to the Supreme Court as arising for determination out of which the apex court has distilled only two issues for consideration.

ISSUES FOR DETERMINATION

“(1) Whether the court below was right in holding that the appellant was properly dismissed.

(2) What are the damages allowable where there is a wrongful dismissal of an employee whose written contract of service is for a definite or ascertainable duration which can only be determined by acts specified in the contract of service.

HELD (Unanimously dismissing the appeal per lead judgment of **ONU JSC**)
Relationship of master & servant

1. It is glaring that one of the consequences that flows from the establishment of a master and servant relationship through the agreement - Exhibit ‘p’ - various other acts contained in circulars, directives and guidelines, which the law looks upon as gross misconduct on the part of the employee and under the common law, may and do coexist. Thus, it is not exhibit ‘p’ alone that regulates the relationship between the Appellant and the Respondent in the instant case. The position was made clear in the Respondent's statement of defence in the instant case that the relationship between the parties was also regulated by the general law and that the Appellant was dismissed, and rightly so, for gross misconduct. (p. 1425 E)

Conduct amounting to wilful disobedience

2. When the Appellant's attention was drawn in cross-examination to a section of the Respondent's directives to the effect that advances of up to N100,000.00 could only be made with the approval of the Board of directors, the Appellant scornfully answered: *“The limit of N100,000.00 loan for Board's approval was merely on paper. There are other methods of going outside the guide lines.”* The Appellant's conduct was not only a case of wilful disobedience of a lawful and reasonable order but arrogant and contemptuous disobedience of standing directives and guidelines so vital to survival in the Respondent's sensitive banking business. (p. 1428 C)

Findings of facts

3. A Similar course of conduct in the instant case has led the court below to apply the well settled principle of law, that where the facts found by the Court of trial are wrongly applied to the circumstances of the case or where the inference drawn from those facts are erroneous or further still where the findings of facts are not reasonably justified or supported by evidence given in the case, the Court of Appeal (court below in the instant case), is in as much a good position as the trial Court to deal with the facts and to make proper findings. Thus, the justification of its arrival at the conclusion that Appellant's serious misconduct warranted his summary dismissal. (p.1429B)

Burden of proof

4. In the instant case, the burden that lay on the Appellant to prove his case not having been discharged and in the face of the unchallenged and uncontradicted testimony of D.W.1, the conclusion arrived at by the court below on the point being impeccable and not having been faulted, therefore stands. (p. 1431 A)

Misconduct - Where established

5. Finally, since the Appellant is not contesting and cannot successfully contest the conclusion arrived at by the court below on his cumulative acts of disobedience of the lawful orders of his employers (the Respondent), it cannot now lie in his mouth to contest his summary dismissal. (p. 1431B)

Need to specifically prove damages

6. As the Appellant neither proved the special and general damages he had pleaded in paragraph 19 of his Statement of Claim but the learned trial Judge albeit on humanitarian considerations awarded them to him, the court below, rightly in my view, set aside or disallowed same since he is not entitled to either or any. (p. 1432 D)

When proffering answer amounts to academic exercise

7. Thus, the question posed in Issue 2 as to what are the damages allowable where there is a wrongful dismissal of an employee whose written contract of service is for a definite or ascertainable duration which can only be determined by acts specified in the contract of service, in the light of all I have said under Issue 1 above, is no more than engaging in an academic exercise for which I decline to proffer an answer. (p. 1432 E)

NOTABLE POINTS OF INTEREST

ONU.JSC***1. Effect of key officers statement on a company***

It is pertinent to point out here that in dealings between a company or corporation and either its staff or its customers, it can only conduct its affairs through its officers, particularly those like the managing director, directors and others in similar positions - it being itself a legal abstraction and therefore what these people say at one time or the other can become relevant or material if any dispute should arise at any time touching them. (p. 1430 D)

2. When hearsay evidence may be allowed

It has been held by this Court that although what one man tells another is not generally admissible in evidence because of the “hearsay” rule, such evidence may be allowed by the court if the purpose of giving it is not to prove the truth of what was alleged to be said by that person but to prove the truth of his saying so. (p. 1430 G)

3. Altitude of appellate court to award of damages

It is pertinent to stress that it has long before now been established through decided cases by this Court that an Appeal court will not disturb the award of damages of a Court of trial unless it is convinced that the trial court acted on a wrong principle of law or if the amount awarded is so high or low that there was an entirely erroneous estimate of damages. (p. 1431 C)

OGWUEGBU.JSC***4. Employer’s right to dismiss any employee***

An employer has a common law right to dismiss any employee without notice on the grounds of the employee’s gross misconduct. A contract of service is but an example of contracts in general and the general law of contract applies. Article 5(d) of Exhibit “p” in no way excluded the application of the principles of the general law. In addition to incorporating the same, the word “include” as in” an enactment must be construed as comprehending, not only such thing as they signify according to their natural import but also those things which the interpretation clause declares that they shall include. Article 5(d) of Exhibit “p” is not therefore exhaustive. (p. 1435 C)

5. Gross misconduct justifying summary dismissal

There is no fixed rule of law defining the degree of misconduct which will justify dismissal but having regard to the facts and circumstances of this case, the acts of disobedience to lawful and reasonable instructions by the appel

lant were of serious nature and amounted to gross misconduct which justified his summary dismissal. In the circumstances, the conclusion I have reached is that the appellant was rightly and justifiably dismissed by appellant and the court below was right in setting aside the judgment of the learned trial judge. (p. 1435 H)

B

IGUHJSC

6. Effect of wilful disobedience

The principle of law is well settled that wilful disobedience of a lawful, reasonable order of an employer by an employee is a definite act misconduct which, at common law, attracts the penalty of summary dismissal since such wilful disobedience of a lawful order is a reflection of a disregard of an essential condition of a contract of service, namely, that the servant must obey a proper, reasonable and lawful order of the master default of which their contractual relationship cannot be expected to continue. I must, with very great respect, fully endorse the above view. On the accepted general legal principles, an employee may be summarily dismissed without notice and without wages if he is guilty of gross misconduct. (p. 1438 F)

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7. Gross misconduct defined

Gross misconduct has been identified as a conduct that is of a grave and weighty character as to undermine the confidence which should exist between an employee and the employer. So, too, working against the deep interest of the employer amounts to gross misconduct entitling an employer to summary dismissal of the employee. To warrant a summary dismissal suffices that the conduct of the employee, as in the present case, is of such grave and weighty character as to undermine the relationship of confidence which should exist between the employer and an employee. (p. 1439 C)

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8. When summary dismissal of an employee without notice and wages is proper

In the present case, the appellant was in wilful disobedience of the lawful and reasonable order of his employers. It is a conduct of such grave and weighty character as to underline the relationship of confidence which should exist between an employer and the employee. He was therefore guilty of gross misconduct and was liable to dismissal without notice and without wages. In my view, the respondent, in the exercise of its lawful powers, properly dismissed the appellant summarily. I entertain no doubt, that the court below was right when it so held. (p. 1439 E)

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H

REPRESENTATION

Chief Nnaemeka Odibe for the Appellant

Chief T. A. Ezeobi for the Respondent

CASES REFERRED TO

- College of Medicine of University of Lagos v. Adegbite (1973) 1 All NLR (Part 1) 516 at pages 526-529 B
- Jupiter General Insurance Co. v. Shroff (Ardeshir Bomanji) (1937) All ER 67
- P.C. Laws v. London Chronicle (Indicator Newspapers) Ltd. (1959) 2 AER 285
- Boston Deep Sea Flushing & Ice Co. v. Ansell 1886/1890 All ER (Re-printed) 65 at pages 72/73 C
- Ehimare v. Emhonyon (1985) 1 NWLR 177
- Metalimpex v. A.G. Leventis (Nig.) Ltd. (1976) 2 S.C. 91 at 102
- Sule v. Nigerian Cotton Board (1985) 2 NWLR (Part 5) 17
- Bolton (Engineering Co. Ltd. v. Asiatic Petroleum Co. Ltd. (1915) A.C. 713 D
- Carlen v. Unijos (1994) 1 NWLR (Part 323) 631 at 669-670
- Sanusi v. The State (1984) 10 S.C. 166
- Kasa v. The State (1994) 6 N.W.L.R. (Part 350) 281 at pages 310-314
- Bosah v. British American Insurance Co. (Nigeria) Ltd (1972) 1 NMLR 298
- Overseas Construction Co. (Nig.) Ltd v. Creek Enterprises (Nig.) Ltd. (1985) 3 N.W.L.R (Part 13) 409 E
- Fawehinmi v. Akilu (1987) 12 S.C. 136 at 213
- Mandara v. Attorney-General of the Federation of Nigeria (1984) 1 S.C.N.L.R. 311
- Olatunbosun v. N.I.S.E.R. Council (1988) 3 N.W.L.R. (Pt. 80) 25 at 55 F
- Ridge v. Baldwin (1963) 2 All E.R 66 at 71

STATUTES REFERRED TO

Banking Act, 1969. s. 11

Banking (Amendment) Act. 1972. s. 1 1A G

BOOKS REFERRED TO

- Chitty On Contract, 14th Edition Para. 36622, 24th Edition vol. 2 Para. 3621 et seq-
- Halshury's Laws of England, 4th Edition vol. 16 Para. 640 et seq H
- Nigerian Commercial Law and Practice - Orojo, vol. 1 Para 2.01 at p.6
- Nigeria Labour law Akintunde Eniola
- Odgers On Construction of Deeds and statutes, 4th Edition p. 27
- World Book Dictionary. 1980 Edition p.333

LEAD JUDGMENT BY ONU JSC

On June 1, 1981 the appointment of the plaintiff, herein appellant, as the Mushin Branch Manager of the defendant/respondent bank, was summarily determined by the latter by a letter (Exhibit G) sequel to their (respondent's) earlier suspension of him on 26th August, 1980 and setting in motion his arrest and detention by a Chief Inspector of Police and two detectives at the Force C.I.D., Alagbon Close, Ikoyi, Lagos. These chains of events led the appellant to set the law in motion by the issuance of a writ of summons against the respondent on the 13th day of April, 1983 for the following reliefs:-

“..... the sum of N300,000.00 (three hundred thousand naira) being special and general damages caused to the plaintiff by the defendant's unlawful dismissal on 1st June, 1981 of the plaintiff's employment with the defendant company.”

D The particulars of damages (both special and general) set out in paragraph 19 of appellant's statement of claim are as follows:-

“Particulars of Special Damages

E (i) Half salary of N3,853, plus House Allowance of N 1,800 transport allowance of N 1,350 and lunch allowance of N 1,089 for 9 months (September, 1980 - May, 1981)..... N8,074.00

(ii) Salary of N 10,223 per annum plus N5,652.00 minimum allowances per annum making a total of N 15,875.00 for 15 years. i. e. N238,125.00

F (iii) Cash in lieu of leave for 5 months 4,255.00
(iv) House Allowance for 5 months 1,000.00
(v) Transport Allowance for 5 months 750.00
(vi) Leave allowance for 3 years N1,500.00
(vii) 2 years salary gratuity on retirement N20,446.00

G N274,150.00
General damages 25,850.00

Total N300,000.00

H The facts relevant to the case giving rise to this appeal which are largely clear and indisputable, may be summarised as follows:-

It is common ground that the respondent is a banker carrying on

banking business throughout Nigeria. The appellant joined the services of the respondent on 16th December, 1964 as Clerk Grade II. By a letter dated 30th January, 1978 (Exhibit A2) the appellant was promoted by the respondent to the post of Manager Grade III. By another letter dated 23rd May, 1980 vide Exhibit C, the appellant was promoted Relief Manager of the Respondent's Mushin Branch. In other words, appellant was to manage the Branch temporarily to enable the incumbent Manager have his annual leave and later to return to his desk. B

It is pertinent to point out that Exhibit C contained some guidelines for the strict observance of the appellant, to wit: that the embargo on loans and advances was yet to be lifted and as such the guideline on lending were to be strictly adhered to. Beside Exhibit C, Managers and other staff of the respondent are controlled and guided in their day to day operations by the respondent's Rules and Lending Regulations contained in its Manuals, Head Office Circulars, vide Exhibits L-L3 as well as Lending Guidelines issuing forth from the respondents' Head Office from time to time. C D

There was in addition to Exhibits L-L3 and the Guidelines, the Banking Act, 1969, Section II, amended by the Banking (Amendment) Act, 1972 which introduced a new section II A making it mandatory for Bank Managers to grant advances and overdraft facilities strictly in accordance with the relative Bank's Rules and Regulations and after adequate securities had been given by would-be borrowers. E

It however transpired that between 30th May, 1980 when the appellant took up his position as Relief Manager on 6th August, 1980 he in defiant disregard of the respondent's directives; rules and regulations aforesaid, gave out to about 32 customers of the respondent N1,653,476.09 as loans without any form, or approval and without security. This led to a query letter (Exhibit E) from the respondent to him on 13/8/80 and his reply thereto (Exhibit E1) dated 18/8/80. Not quite long thereafter, a letter of suspension issued forth from the respondent, vide Exhibit E2 to him and in support thereof, was the adverse Inspection Report on the unauthorised loans/drafts dated 14/8/80 (Exhibit F). F G

It is noteworthy here to illustrate how in Exhibit E1, the appellant's reply to the query (Exhibit E), his general response was confrontational, and his introduction, for the first time, of a purported explanation that he received oral approval from the appellant's General Manager, Mr. Olieh, specifically on 4/8/80 to liberalise credit and strengthen Mushin Branch, was not helped by his assertion that other Branch Managers had engaged in more culpable lendings to customers without a sanction. He later in evidence admitted that out of the N1,500,000.00 he granted as overdrafts and loans to customers, he H

was able to recover N 1,000,000.00 leaving an outstanding N500,000.00 unrecovered. What the respondent was able to show in evidence, however, was that appellant was given time to recover a total of N 1,653,476.09 of the loans and overdrafts he had granted without authority and that as at 30/10/80, N 1,202,822.66 was still outstanding.

B The short issue for decision in the two court's below and before this court as I can see it is whether the appellant's appointment was rightly (properly) or wrongly determined on 1st June, 1981 culminating in the writing of the letter of termination (Exhibit G) to him by the respondent. It is pertinent to point out that at the trial, as I shall seek to show elsewhere in this judgment, C the appellant appointment was amongst other documents instruments, rules and regulations as well as statute law, conditioned in the main, by the "main collective agreement" (Exhibit P) dated 6th June, 1980, which spelt out in clear and unambiguous terms, the conditions of service and the procedure for determination of the services of staff including appellant's: the damages claimed D as due to him, should his contention be upheld, only calling for consideration as ancillary thereto.

Pleadings having been ordered and duly exchanged by the parties, the case proceeded to trial. The learned trial Judge, Agoro. J. (as he then was) of blessed memory, in his judgment delivered on the 30th day of June, 1985 E found in favour of the appellant. The order he in fact proceeded to make was damages totaling N17,815.50 to the appellant, less his indebtedness to the respondent amounting, to N7,779.79, leaving a balance of N10,035.71 in favour of the appellant. The respondent appealed against the whole decision while the appellant cross-appealed on the damages to the Court of Appeal, Lagos F Division (hereinafter in this judgment referred to simply as the court below). The court below for its part, in a well-considered judgment, upheld the respondent's appeal while dismissing the appellant's cross-appeal. The appeal herein is against that decision. Four questions, purportedly distilled from eight original and two additional grounds of appeal, the latter for which leave G of this court was sought and obtained on 26th October, 1992 were submitted for our determination at the instance of the appellant in his brief. They are:-

"(1) Whether the court below was right in holding that the appellant was properly dismissed.

H *(2) What are the damages allowable where there is a wrongful dismissal of an employee whose written contract of service is for a definite or ascertainable duration which can only be determined by acts specified in the contract of service.*

(3) Whether the trial court has correctly applied the principles of

award to the appellant's various claims.

(4) *Whether the trial court was correct in allowing the respondent a set-off which was not asked for or claimed by the respondent.*"

The sole issue formulated by the respondent as arising for determination in his own brief on the other hand, postulates thus:

"Whether the court below was right in holding that the appellant's refusal to obey the respondent's directives, rules and regulations on lending by granting unauthorised overdrafts/loans to 32 customers of the respondent was an act of misconduct for which the appellant was justifiably dismissed from his employment with the respondent."

After the exchange of briefs of argument by learned counsel for the parties in which appellants counsel also filed a reply brief, the appeal eventually came up for hearing on May 2, 1995 following the grant of a motion for accelerated hearing. Learned counsel at the hearing, both adopted their briefs and reply brief dated 30th May 1991, 12th September, 1991 and 31st December, 1991 respectively and expatiated thereon orally.

It may be pertinent to observe at this point in time that when this court brought to the notice of learned counsel for the appellant, Mr. Odibe, whether issues 3 and 4 at page 2 of his brief were not incompetent by reason of the fact that they focused on the trial court's judgment rather than on the judgment of the court below, learned counsel after initially arguing to the contrary, soon thereafter capitulated by conceding the point. In consequence thereof, I struck out issues 3 and 4 as being incompetent and unarguable. Learned counsel for the appellant in his written brief after pointing out that the interpretation of Exhibit P, particularly in its Article 5(d) dealing with summary dismissal, is of utmost importance in determining whether the appellant was properly or wrongly dismissed. Submitted that that document contained details of all the entitlements, rights and prospects of employees one of whom the appellant was. The document, it is maintained, provided when an employee could be summarily dismissed, adding that where it anticipated issues not stated therein, it provided for agreement on such issues in comprehensive, clear and unambiguous language to whom the weapon of summary dismissal can be applied. It is further argued that by the court below holding that the common law is not superceded by Exhibit P, it therefore implied that common law is incorporated into that document. In like manner, it is contended the court below held that the fact that the act of granting unauthorised overdrafts and loans to customers by the appellant not being one of these acts specified in Article 5 (d) of Exh. P, is a subsidiary issue, thereby raising common law above the agreement of the parties. Exh. P it is further contended, did not abrogate the common law but merely widened the categories of acts other

than the generally accepted ones known under the common law and that it did not restrict the right of the respondent to dismiss an employee under the common law.

It was next submitted that these are erroneous conclusions as Exhibit P, Art 5(d) does not permit of any offences except those enumerated in Art. 5(d)(i)-(ix) or subsequently agreed upon under Art 5(d)(x). Since Exh. P as a negotiated agreement is exhaustive as to the terms of the contract, references to what is to be incorporated into it and the contemplation of the parties, it is further contended, would necessitate no going outside it in order to adjudicate on the rights of the parties. After elaborating on the ramifications of Art 5(d)(i)-(ix) and (x) in Exh. P and what the words “*gross misconduct*” “*certain offences*” and “*common law*” in place of “*the law*” connoted, it is argued that Art. 5(d)(x) cannot be read in isolation or separated from the rest of the provisions of Art 5 (d) including its opening sentence, founded on the guiding principle of interpretation of ‘*ut res magis valet quam pereat*’ (it is better for a thing to have effect than to be made void). Even if at common law in the opening sentence, it is ‘*certain offences*’ therein that the parties contemplated, it is maintained the whole body of common law rules of misconduct cannot be imported into the agreement. Art 5(d)(x), it was next contended, has a purpose, not having been stated for nothing, adding that certain offences “enumerated in Art. 5(d)(i) - (ix) and the rest are covered under (x).” “*Willful disobedience*” it is maintained, is an act of gross misconduct grounding summary dismissal under the common law: yet it is not included in the enumerated offences in Art. S(d)(i) - (ix), thus depicting that the common law is wider than the provisions of Exh. P in Art. 5(d). Again, it is further argued, all the enumerated offences are covered by the common law notion of misconduct. The cases of Nicol v. E.C.N. (1965) L.L.R 261 at page 283 and Oladipo Maja v. Lendro Stocco (1968) 1 All NLR 141 at 151 were called in aid. Also Chitty on Contracts, 14th Ed. paragraph 3622, p. 614 and Nigerian Labour Law by Akintunde Eniola, were cited in support thereof. The rule of interpretation has it that words are to be taken in their literal meaning vide odgers - The Construction of Deeds and Statutes, 4th Ed. page 27 as well as World Book Dictionary 1980 Ed. p. 333, adding that the parties to Exh. P did not want to leave the offences amounting to misconduct to the wide notions and gates of the common law while spelling out those they wanted to apply to their case as well as the method of getting in others. It is further contended that on the clear words of Exh. P. Art 5(d). Part II therein, the question of summary dismissal has to be decided in such a matter that the rights of the parties inter se must be based thereon. The case of College of Medicine of University of Lagos &

Nwobosi v. ACB Ltd. (1995) 7 KLR Onu JSC 1421
Anon. v. S. A. Adegbite (1973) 1 All NLR (Pt. 1) 516 at pages 526-529 was cited to buttress the argument.

It is also argued that the view held by the Court below that the appellant had the onus of calling the respondent's General Manager as a witness was in error. The General Manager of the respondent's bank, it is contended being its principal officer at its headquarters and the embodiment of those headquarters which can only act through human beings, the appellant's evidence about oral authorization by that General Manager, Mr. Olieh, was as much as saying that the respondent authorised the variation of the written general instructions on overdrafts and loans in view of the circumstances at the respondent's Mushin Branch. It is then argued that once the appellant was emphatic on this issue both in his pleadings and in evidence in court, he thereby shifted the burden to the respondent to clear the issue. While not attempting therefore to explain or correct the steps in the date when the oral variation was given since the error had long occurred in the trial court's record. It would suffice to say that 4th June, 1980 was the date proffered, it is maintained. Also, the immediate re-action of the appellant to the query and the enquiry of respondent's only witness, it is stressed, cannot be otherwise in view of the high status of the General Manager, adding that on the whole, the burden of proof had shifted to the respondent and the trial court's opinion on the issue is reasonable and supportable.

It is contended in addition that in the banking trade, grants of loans and overdrafts constitute the main business of the banking institutions and their main income earner. Thus, such act as displayed by the appellant per se can never amount to misconduct under the common law. It is pertinently argued that the appellant gave evidence of oral authorisation by the respondent's General Manager for variations of the written instructions, adding that other managers were shown to have given such facilities in spite of the embargo. The appellant's acts at worst. It is argued, therefore amounted to improper exercise of discretion and not even negligence or willful disobedience.

On the totality of the evidence, it is contended in conclusion, the appellant in explaining off his position, his evidence is clearly weightier and preponderates over that of the respondent and ought to carry the judgment as in the court of first instance.

The oral submission of learned counsel for the appellant being an exact reproduction of all he said in his written brief and reviewed above, I see no reason to repeat or elaborate thereon here.

Learned Counsel for the respondent, for his part, also relied on his brief of argument and expatiated thereon. He submitted that issue 1 at paragraph 2(1) of their brief on page 1 was the lone issue they conceived was

applicable to dispose of the appeal whose answer should be in the affirmative. He also contended that no other issue is validly to be seen to be tied to grounds 9 and 10 of the grounds of appeal. He concluded his oral submission by urging that should this court find there is some evidence on what award to make by way of damages to the appellant, it should be at liberty to use its discretion to do so.

Before proceeding to consider Issue 1 first, I deem it pertinent at the outset to observe that even though one of the appellant's grounds of appeal (Ground 8) is that the judgment is against the weight of evidence, as he visibly never appealed against the specific findings of fact of the court below, or the inferences it ought to draw or failed to draw from the conclusions arrived at by the trial court, it is unarguable and incompetent. I accordingly strike it out. Second, as I had hereinbefore pointed out that this appeal in the main turns on whether the appellant was properly or wrongly dismissed, that of course presupposes the fact as I will shortly in this judgment show, that the point for decision herein is within a narrow compass against the background of which four issues originally formulated at the instance of the appellant would clearly have amounted to a proliferation. And since in the Rules of Court the purpose of issues of determination is, among others, to enable the parties narrow issues in the grounds of appeal filed in the interest of accuracy, clarity and brevity, such a proliferation ought to be discouraged in the Supreme Court. See *Ogbuanyinya v. Okudo* (No.2) (1990) 4 NWLR (Pt. 146) 551 at 567 -8. It is for this reason and above all for the other reason earlier given by me, that issues 3 and 4 were struck out, leaving Issues 1 and 2. I do not agree with learned counsel for the respondent that either their lone issue would dispose of this appeal which he asserts, ought to be answered in the affirmative, or that no other issue can validly be seen to be tied to grounds 9 and 10. Rather. I am of the firm view that the only issue suggested by the respondent as being enough to dispose of the appeal herein is much too narrow to effectively dispose of it.

Issue 1 which would appear to be tied to grounds 1, 2, 3, 4, 5, 6 and 7 of the grounds of appeal (Ground 8 having been struck out) having to do with whether it was proper or wrongful for respondent to have determined appellant's employment, with issue 2 which is concomitant with grounds 9 and 10 relating to damages, their assessment and award, etc, are to me more in accord with the factual situation.

It is for the above reasons, that I will stick to the argument of what remains and indeed what should be the only two issues available to the appellant in the consideration of the appeal herein. '

Issue I:

I fully subscribe to the view held by the appellant among others, to the effect that the interpretation of Exhibit P., particularly its Art 5(d) dealing with summary dismissal is of utmost importance in determining whether the appellant was properly or wrongly dismissed. I however do not agree with him when in paragraph 4.3 of his brief he contended that as Exhibit “P” constitutes a written contract of service which provides for summary dismissal in its Articles 5(d). The respondent and afortiori the court, cannot go outside the said Article 5(d) to find justification for the dismissal of the appellant. Nor do I accept his further contention that the common law notion of gross misconduct as a ground of summary dismissal of a servant by his master has no relevance, having, according to him, been completely superceded by Article 5(d) of Exhibit ‘P’. That the court below in the instant case fully appraised the issues before it, by reviewing the basic conclusions of the trial court which it restated, can be gathered from its judgment thus:-

“Put shortly, the learned Judge seem to have taken the point of view that the act of granting unauthorised overdraft and loans to customers of the appellant’s bank, notwithstanding the clear instructions of the appellant of which respondent is aware through directives and circulars contained in Exhibit ‘C and (sic) Exhibits L-1 to L-3 is not an act which will justify summary dismissal. That the respondent was authorised verbally to do so by the General Manager of the appellant’s bank: that the appellant did not bring evidence which was within his powers so to do to refute the contention of the respondent: that the acts complained of granting overdraft without authorisation “could not” to use the words of the learned Judge by any stretch of imagination constitute an offence covered by the broad heading of gross misconduct under Article 5(d) of Exhibit ‘P’.”

After a close scrutiny of the related issues of fact and law, the court below rightly in my view, held inter alia:

(i) That the learned trial Judge seriously misdirected himself to the effect that it was for the respondent herein to call its General Manager as witness to help the appellant to prove whether or not the General Manager gave oral approvals to the appellant to grant loans without approval of the Headquarters contrary to written directives and respondent’s guidelines on lending which to the knowledge of the appellant inter alia, placed total embargo on new lending.

(ii) That the learned trial Judge was wrong to hold that the act of the appellant in granting unauthorized loans cannot by any stretch of imagination come under the broad definition of misconduct.

(iii) That various acts are regarded in law as gross misconduct on the part of an employee which could warrant dismissal.

(iv) That the right of an employer to discharge an employee for gross misconduct is a common law right which in the instant case the respondent had not lost simply because it had set down in Exhibit ‘P’ other acts on the part of an employee which will constitute misconduct.

(v) That in the instant case, the continual disregard of the respondent’s instructions by the appellant which injured the business of the respondent in that even on the evidence of the appellant. The respondent had, inter alia, lost N400,000.00 was an act of misconduct under the common law.

(vi) That the act of the appellant herein in granting unauthorised loans to 32 customers of the respondent bank was misconduct under the common law which was not superseded or restricted by the agreement Exhibit ‘P’ but rather incorporated therein and the respondent was entitled to dismiss the appellant summarily the way it did.

Article 5 (d) of Exhibit ‘P’ referred to above provides, inter alia, as follows:

D **“(d) Summary Dismissal**

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

The paragraph then enumerates nine offences and ends with the tenth thus:

E *“(x) Any other offences which may be agreed upon between the employer and/or association and the union from time to time.”*

See the case of E.O. Amodu v Dr.J.O. Amode & Anor (1990) 5 NWLR (Pt. 150) 356, a case of unlawful termination of appointment wherein the appellant as plaintiff sued the two defendants/respondent for declaration and a perpetual injunction in the trial High Court of Kwara State sitting in Ilorin. The appellant’s statement of claim contained only 4 paragraphs in which he averred that he was a Bursar in the service of the 2nd defendant/respondent; that by a letter dated 17/4/80 the 1st defendant/respondent purportedly terminated his services with the 2nd defendant/respondent and that as at the date of that letter, there was no Governing Council and no Sole Administrator for the 2nd defendant/respondent and consequently no legitimate authority that could terminate his services with the 2nd defendant as at that date. Both defendants specifically denied jointly all 4 paragraphs of the statement of claim in their statement of defence.

H At the trial, the appellant gave evidence and put in the letter dated 17/4/80 in which he was notified of the termination of his appointment. No further evidence was adduced on behalf of the appellant. The respondent’s counsel called no evidence and rested his case on the appellant’s.

The trial Judge granted the appellant’s first two claims but refused

his claim for perpetual injunction. The respondents appealed to the Court of Appeal which allowed the appeal and dismissed the appellant's claim, on the ground, inter alia, that the failure of the appellant to plead in the statement of claim his letter of appointment or contract of service stipulating the terms and/or conditions of appointment, was detrimental to the reliefs sought by him.

The appellant, being dissatisfied with the judgment of the Court of Appeal, appealed to this Court which held inter alia as follows:-

"(i) Once it is established that a relationship of master and servant exists, then it carries with it all its attendant consequences, one of which is the right or a master to terminate the service of his servant according to the terms of the Contract between them." (Italics is mine for emphasis)

See also NISER v. Olatunbosun (1988) 3 NWLR (Pt. 80) 25 at 37. As Uwais, J.S.C. succinctly put it at page 373 of the report:

"The term of the contract of service is the bedrock of the appellant's case. The appellant is bound by his pleadings, and as it contained no averment as to the terms of the contract of service, he could not complain that he was wrongfully terminated. He cannot raise or adduce evidence in support of what he had woefully failed to plead.

Domingo Paul v. George (1959) SCNLR 510; (1959) 4 FSC 198; The National Investment Properties Co. Ltd. V. The Thompson Organization Ltd. & Ors. (1969) 1 NMLR 99:

From my italics above, it is glaring that one of the consequences that flows from the establishment of a master and servant relationship through the agreement - Exhibit 'P' - various other acts contained in circulars, directives and guidelines, which the law looks upon as gross misconduct on the part of the employee and under the common law, may and do co-exist. Thus, it is not Exhibit 'P' alone that regulates the relationship between the appellant and the respondent in the instant case. The position was made clear in the respondent's statement of defence in the instant case that the relationship between the parties was also regulated by the general law and that the appellant was dismissed, and rightly so, for gross misconduct. To exemplify this, not only in paragraphs 12 and 13 of the respondent's statement of defence is the appellant's gross misconduct pleaded, but evidence thereon was led. The two paragraphs aver as follows for purposes of clarity:

"12. In answer to paragraph 7 of the statement of claim, the defendant aver that at all material times the plaintiff's employment was governed by his conditions of service as embodied in his service agreement with the defendant, the agreement between the Nigerian Employers' Association of Banks Insurance and Allied Institutions and the Association of Senior Staff

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of Banks, Insurance and Financial Institutions (the Main Collective Agree-
ment) and General Law.

13. *In answer to paragraph 8 of the Statement of Claim, the defendant avers that the plaintiff was dismissed for gross misconduct and that the procedure adopted by the defendant was appropriate for such a measure."*

B In confirmation of the above averments, the lone witness called by the respondent at the trial. D.W. 1 (Bernard Ikechukwu Peters), gave inter alia the following testimony in chief unchallenged and uncontradicted in cross-examination, on how and why the appellant was discharged from the respondent's employment thus:

C *"I know the plaintiff in this case. I know the plaintiff as a Staff of the Bank until he was dismissed. The plaintiff was dismissed by the Bank because he (the plaintiff) flouted the Bank's Rules and Regulations for lending to customers of the bank. The witness has identified Exhibits L-L3 as the said Rules and Regulations on lending to customers of the bank."*

D From the foregoing, it is incontestable that the relationship between the respondent and the appellant was certainly that of master and servant which is only a section of and regulated by the law of contract generally. As to what constitutes the law of contract, J.O. Orojo explained in his book, Nigerian Commercial Law and Practice Vol. 1 para. 2.01 page 6 thus:

E *"The Law of contract with which we are concerned in this chapter is, therefore the modern Nigeria Law of Contract. This, as explained in Chapter 1, consists of received English Common Law and the doctrines of equity, applicable English statutes, and Nigerian Legislation and court decisions. Infact, apart from a few relevant statutes, by far the greater part of the law in this area is English Common law and the English doctrine of equity as*
F *expounded by the English Courts and sometimes as adopted by our courts."*

And more specifically as to the law governing the master and servant relationship, the learned author then went on to elaborate in paragraph 8.01 at page 441 of the same book as follows:-

G *"The law that governs employment that is, the relationship between the employer and the employee, or master and servant is basically the received English Law and, in particular, the law of contract."*

It would appear clear to me, therefore, that the court below was right when it held inter alia:-

H *"I said earlier on of Exhibit 'P' the section relating to the discipline in it, is not an abrogation of the common law right of an employer to dismiss an employee summarily. What Exhibit 'P', section (sic) 5(d) of it is trying to do is to widen the categories of acts other than the generally accepted ones*

known under the common law. It is by no means under the common law. It is by no means intended to restrict the right of an employer to dismiss an employee under the common law."

See Halsbury's Laws of England, 4th Edition Vol. 16 para. 640 at page 435, wherein it is stated by the learned authors, that an employer has a common law right to dismiss his employee without notice on grounds of the employee's serious misconduct or willful disobedience. See also Chitty on Contracts, 24th Edition Vol. 2, para. 3621 at page 613. This much the learned trial Judge would seem to have conceded, albeit that in argument before us the appellant contends that common law is excluded by Article 5(d) of Exhibit 'P', and given some support by the trial Judge when he held inter alia:- .

"While it is conceded, as the learned counsel for the defendant rightly observed in his closing address, that the defendant bank had a right under Article 5 in Part II of Exhibit 'P' to discipline its staff in the manner therein prescribed, yet it must be realised that summary dismissal is a strong measure, to be justified only in the most exceptional circumstances."

He supported his stance in the concluding portion of the above sentence by citing the case of Jupiter General Insurance Co. v. Schroff (Ardeshir Bomanji) (1937) All ER 67 PC to buttress his argument. However, the court below rightly, in my view, disagreed with that view when in its judgment it said:

"I differ from the learned trial Judge's view. I hold that the act of the respondent in granting unauthorised loans to 32 customers of the appellant's bank is a misconduct under the common law which is not superceded by the agreement and the appellant's bank is entitled to relieve the respondent of his appointment as he did."

In order to justify the dismissal of the appellant by the respondent for misconduct including disobedience, Ademola, J.C.A. in his lead judgment in the court below held:

"While he was acting as Manager of the bank, he was forbidden by various circulars and directives from the Headquarters in writing not to grant overdraft to customers or loans. In August, 1980 the bank was visited by a Chief Inspector of the bank who asked for certain ledger cards, and after inspecting same, noted that the respondent in contravention of the instructions of the bank was granting short term loans to certain customers in disobedience to clear directives of the Headquarters It was discovered that the respondent had granted loans to various customers numbering 32 up to the tune of N1,500,000.00 and by the time he was dismissed on the 1st of June, 1981 he had had a sum of N400,000.00 outstanding from customers and was unable to recover same."

Akpata, J.C.A. (as he then was) in his contribution thereto said among

other things:

“By a letter dated May 23, 1980 Exhibit C, the respondent was directed to proceed to Mushin Branch on relief duty as Manager. He was specifically instructed to bear in mind amongst other things, that embargo on loans and advances has not yet been lifted, and the guidelines on lending B must be observed.

He was expected to complete taking over the branch by Friday 6th June, 1980. Between that date and 13th August, 1980, not quite two months and two weeks from the time he took over, he had granted overdrafts without securities to a number of customers. In respect of two accounts only he had C advanced N644,539.50 without regard to the specific instruction not to grant loans and advances.”

When the appellant’s attention was drawn in cross-examination to a section of the respondent’s directives to the effect that advances of up to N100,000.00 could only be made with the approval of the Board of Directors, D the appellant scornfully answered:

“The limit of N100,000.00 loan for Board’s approval was merely on paper. There are other methods of going outside the guidelines.”

The appellant’s conduct was not only a case of willful disobedience of a lawful and reasonable order but arrogant and contemptuous disobedience of standing directives and guidelines so vital to survival in the E respondent’s sensitive banking business. See *Laws v. London Chronicle (Indicator Newspapers) Ltd.* (1959) 2 All ER 285, a case in which the issue was whether disobedience of lawful orders, in that case, of the Managing Director to his recently employed staff not to walk out from a conference, justified F summary dismissal. Lord Evershed, Master of the Rolls restated the law at page 287 of the report thus:

“The law to be applied is stated for example in 25 Halsbury’s *Laws of England* (3rd Edition) p. 485, 486 to which counsel for the defendants referred us in reply, and I will cite a sentence or two as a foundation to what G follows. In para. 933 at p. 485 it is stated:

“Willful disobedience to the lawful and reasonable order of the master justified summary dismissal” then in paragraph 934 at page 485:

“Misconduct inconsistent with the due and faithful discharge by the servant of the duties for which he was engaged, is good cause for his dismissal, but there is no fixed rule of law defining the degree of misconduct which will justify dismissal. “

Further, in paragraph 935 at page 486:

“There is good ground for the dismissal of a servant if he is habitually neglectful in respect of the duties for which he was engaged .

Finally, the Master of the Rolls said:

“a disregard of a complete disregard of a condition essential to the contract of service, namely, the condition that the servant must obey the proper orders of the master and that, unless he does so. The relationship is, so to speak, struck at fundamentally.”

See also *Boston Deep Sea Fishing & Ice Co. v. Anseli* 1886/1890 All ER (reprint) 65 at pages 72/73: (1888) 39 339. A similar course of conduct in the instant case has led the court below to apply the well settled principle of law, that where the facts found by the court of trial are wrongly applied to the circumstances of the case or whether the inference drawn from those facts are erroneous or further still the findings of facts are not reasonably justified or supported by evidence given in the case, the Court of Appeal (court below in the instant case), is in as much a good position as the trial court to deal with the facts and to make proper findings vide *Ehimare & Anor; Okaka Emhonyon* (1985) 1 NWLR (Pt.2) 177 following *Metalimpex v. A.G. Leventis (Nig.) Ltd.* (1976) 2 SC 91 at 102. Thus, the justification of its arrival at the conclusion that appellant’s serious misconduct warranted his summary dismissal when it held as follows:-

*“If an employee were to continually disregard instructions of an employer which has been found to be so in this case and such disregard of instructions of the employer which injures the business of the employer, as it has done in this case, wherein the appellant bank has lost N400,000.00 if the evidence of the respondent is to be believed, such conduct on the part of the employee is in my humble opinion, a misconduct under the common law: See *Oladipo Maja v. Stocco* (1968) v. NLR 141.....”*

In *Maja’s* case (*supra*), this court in reversing the findings of the learned trial Chief Judge of the then Lagos High Court, held that the respondent therein disobeyed the directives given him by the appellant inconsistent with his contract of employment (Exhibit C) and carried on private practice. In holding that those circumstances justified respondent’s summary dismissal. Ademola. C.J. N. said on the applicable law at page 151 of the report thus:-

“Various acts may give rise to a dismissal. For example, wilful disobedience to lawful and reasonable orders. misconduct of the master’s business, neglect, incompetence and other conduct incompatible with or prejudicial to the master’s business. From the evidence before the court it cannot be disputed that the conduct of the respondent justified his dismissal..... A servant whose conduct is incompatible with the faithful discharge of his duty to his master, may be dismissed, as for instance, if unknown to his employer, he enters into transactions whereby his personal

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interests conflict with his duty as a servant in his particular capacity.”

In *Sule v. Nigerian Cotton Board* (1985) 2 NWLR (Pt. 5) 17 this court had occasion to consider once more the legal effect of disobedience in a master and servant relationship. Obaseki, J.S.C. held (though obiter) thus:

“When a servant grows too big to obey his master, the honourable cause open to him is to resign in order to avoid unpleasant consequences
B should an occasion which calls for obedience be serviced with disobedience. Both common law and statute law brook no disobedience of lawful order from any servant, high or low, big or small. Such conduct normally and usually attracts the penalty of summary dismissal. Disobedience ranks as one of the worst form of misconduct in any establishment.”

C One more last word on the question of oral approval that featured in this appeal as a matter of more than a passing reference. The appellant contended at the trial that the General Manager of the respondent, Mr. Olieh, gave him oral approval to give loans and advances to customers much against the grain of the defence. It is pertinent to point out here that in dealings between
D a company or corporation and either its staff or its customers, it can only conduct its affairs through its officers particularly those like the Managing Director, Directors and others in similar positions - it being itself a legal abstraction and therefore what these people say at one time or the other can become relevant or material if any dispute should arise at any time touching
E them. See *Bolton Engineering Co. Ltd. v. Graham* (1957) 1 QB 159; *Lennards Carrying Co. Ltd. v. Asiatic Petroleum Co. Ltd.* (1915) AC 705 and *Carlen v. Unijos* (1994) 1 NWLR (Pt. 323) 631 at 669-670.

In the instant case, the statement alleged to have been made to the appellant and of which D.W. 1 said he (appellant) had told him was oral, it was
F not customary to give such verbal approvals for overdrafts to Managers. As in his evidence-in chief as well as under cross-examination. D.W. 1 asserted unchallenged and uncontradicted, that appellant never told him at the time he visited his (appellant's) branch and queried him about the oral unauthorised advances, the raising of the issue later when the case had commenced without
G the appellant calling the General Manager as a witness, leaves one with the option to regard such oral approval at best as either hearsay or at worst, an afterthought. This is notwithstanding the fact that it has been held by this court in *Sanusi v. State* (1984) 10 SC 166; *Hausa v State* (1994) 6 NWLR (Pt. 350) 281 at pages 310-314, following the Privy Council decision in *Subramainiam*
H *v. Public Prosecutor* (1956) 1 WLR 965, 970. that although what one man tells another is not generally admissible in evidence because of the hearsay” rule, such evidence may be allowed by the court if the purpose of giving it is not to prove the truth of what was alleged to be said by that person but to prove the truth of his saying so. See also *Cyril Bossah v. British American Insurance Co.*

(Nigeria) Ltd. (1972) 1NMLR 298. In the instant case, the burden that lay on the appellant to prove his case not having been discharged and in the face of the unchallenged and uncontradicted testimony of D.W. I, the conclusion arrived at by the court below on the point being impeccable and not having been faulted, therefore stands. See Omoregbe v. Lawani (1980) 3 SC 108 at 117-119.

Finally, since the appellant is not contesting and cannot successfully contest the conclusion arrived at by the court below on his cumulative acts of disobedience of the lawful orders of his employers (the respondent) it cannot now lie in his mouth to contest his summary dismissal.

It is for the above reasons that my answer to Issue 1 is proffered in the affirmative. Coming to Issue 2, before I profer an answer, it is pertinent to stress that it has long before now been established through decided cases by this court that an Appeal court will not disturb the award of damages of a court of trial unless it is convinced that the trial court acted on a wrong principle of law or if the amount awarded is so high or low that there was an entirely erroneous estimate of damages. See Ziks Press Limited v. Ikoku (1951) 13 WACA 188 at 189; Balogun v. Labiran (1988) 1 NSCC 1050; (1988) 3 NWLR (Pt. 80) 66; Dume v. Ogboli (1972) 1 All NLR (Pt. I) 241 at 253. Indeed, as Viscount Dunedin said in The Susquehanna (1926) AC 655 at 661 (1926) All ER (Reprint) 124 at 127:

“(ii) If there be any special damage which is attributable to the wrongful act that special damage must be averred and if proved will be awarded.

“(iii) if the damage be general, then it must be averred that such damage has been suffered, but the quantification of such damage is a jury question.....”

See also Oshinjin v. Elias (1970) 1 All NLR 153 at 156-157. Also Lord Donovan said in Perestrella v. United Paint Co. (1969) 1 WLR 570 (Court of Appeal England) the obligation to particularise arises:

“not because the nature of the loss is necessarily unusual but because a plaintiff who has the advantage of being able to base his claim upon a precise calculation must give the defendant access to the facts which make such calculation possible.”

See also A.G. Anambra v. Onuselogu (1987) 4 (Pt. 66) NWLR 547. Indeed, this court in Obere v. Board of Management, Eku Baptist Hospital (1978) 6-7 S.C. 15 at page 24 which was later cited with approval in its decision in Uwa Printers (Nig) Ltd. v. Investment Trust Co. Ltd. (1988) 5 NWLR (Pt. 92) 110, has set out the guiding principles where an appellate court can or will perforce interfere with an award of damages by a trial court thus:

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“The principles upon which an appellate court will act in reviewing an award of damages are now well settled and can be summarised as follows:

B An appellate court is not justified in substituting a figure of its own for that awarded by the lower court simply because it would have awarded a different figure if it had tried the case at first instance. Before the appellate court can properly interfere, it must be satisfied either that the judge in assessing the damages applied a wrong principle of law such as taking into account some irrelevant factor or leaving out of account some relevant factor or that the amount awarded is either so ridiculously low or so ridiculously high that it must have been a wholly erroneous estimate of the damage.”

C See also Ejowhomu v. Edok-Eter Mandilas Ltd. (1986) 5 NWLR (Pt. 39)1; Mutual Aids Society v. Akinrele (1965) 1 All NLR 336 at 342; Ehoh v. Akpotu (1968) 1 All NLR 220 and Nwachukwu v. Eghuchu (1990) 3 NWLR (Pt. 139)435.

D In the case in hand, as the appellant neither proved the special and general damages he had pleaded in paragraph 19 of his statement of claim but the learned trial Judge albeit on humanitarian considerations awarded them to him, the court below, rightly in my view, set aside or disallowed same since he is not entitled to either or any. See WAEC v. Koroye (1977) 2 SC 45.

E Thus, the question posed in Issue 2 as to what are the damages allowable where there is a wrongful dismissal of an employee whose written contract of service is for a definite or ascertainable duration which can only be determined by acts specified in the contract of service, in the light of all I have said under Issue 1 above, is no more than engaging in an academic exercise for which I decline to proffer an answer. See Oyeneye v. Odugbesan (1972) 4 SC 244; Bakare v. ACB Ltd. (1986) 3 NWLR (Pt. 26) 47; Overseas Construction Co. (Nig.) Ltd. v. Creek Enterprises (Nig.) Ltd. & Anor (1985) 3 NWLR (Pt. 13) 407 and Fawehinmi v. Akilu (1987) 12 SC 136 at 213; (1987) 4 NWLR (Pt. 67) 799.

G The end result of all I have said is that this appeal lacks merit and it fails. It is accordingly dismissed and the decision of the court below is hereby affirmed, The appellant shall pay costs assessed at N1,000.00 to the respondent.

BELGORE JSC

H I agree with the judgment of my learned brother, Onu, J.S.C. which I was privileged to read in advance. I adopt his reasons and conclusions, as mine in also dismissing this appeal.

KUTIGI JSC

The vital issue here is whether the act of granting unauthorized overdrafts and loans totaling about N1,653,476.00 to about 32 customers of the respondent bank by the appellant notwithstanding the clear and unambiguous instructions and directives as contained in the circular and guidelines Exhibits C, L, L1, L.2 and L3 is not an act which justified summary dismissal of the appellant by the respondent. B

Article 5(d) of Recognition and Procedural Agreement and Main Collective Agreement (tendered as Exhibit P in the proceedings) provides for summary dismissal. It has ten paragraphs marked (i) - (x). Paragraph (d)(i) reads:- C

“(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, dishonesty, defalcations and irregular practices in respect of cash, vouchers, records, returns of Customers’ account and foreign transaction.” D

(i)-(x) omitted.

It seems quite clear to me that the list of offences contained in Article 5(d)(1) - (x) cannot be regarded as exhaustive. It is equally clear to me that the act granting unauthorised overdrafts and loans to customers by the appellant contrary to specific instructions as contained in Exhs. C. and L-L3, amounted to an irregular practice in respect of cash. It was unauthorised and therefore irregular. The act also in my view equally amounted to a gross misconduct for which the appellant was liable for summary dismissal under the common law whether or not it was covered by any of the provisions of Exhibit P. It was for the above reason and for the fuller reasons contained in the lead judgment of my learned brother Onu, J.S.C. which I have read before now. that I dismiss the appeal and award costs of N1,000.00 to the respondent. E F

G

OGWUEGBU JSC

I agree with the views expressed-in the lead judgment of my learned brother, Onu, J.S.C: which I have read in advance. I will also dismiss the appeal. H

The contention of the learned appellant’s counsel is that the Cort of Appeal was wrong in holding that the appellant was properly dismissed. He submitted that Exhibit “P” (Recognition And Procedural Agreement and Main

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Collective Agreement Between the Nigeria Employers' Association of Senior Staff of Banks, Insurances And Financial Institutions) should alone be considered in determining whether the summary dismissal of the appellant was proper.

B He stated that Exhibit "P" made detailed provisions for all the entitlements, rights and prospects of employees of the category of the appellant including his summary dismissal which is provided in Article 5(d) of Exhibit "P" and that the Court of Appeal was wrong to have gone outside the offences set out in the said Article 5(d) and imported common law rules above the express agreement of the parties.

C Article 5(d) of Exhibit "P" reads:
"The law provides that staff may be summarily dismissed for certain offences covered by the broad headings of gross misconduct.

Such offences include:
D (i) Proven cases of theft, fraud, dishonesty, defalcations and irregular practices in respect of cash, vouchers, records, returns or customer's account and foreign exchange transaction.....

(ii).....
(x) Any other offences which may be agreed upon between the employer and/or Association and the Union from time to time."
E (The italics are for emphasis only)

The appellant was dismissed for flouting the respondent's head office written circulars and directives on the grant of loans or overdrafts to customers.

F By a letter dated 23/5/80 (Exhibit "C"), the respondent bank directed the appellant to proceed to its Mushin Branch to relieve the Manager of that branch who was proceeding on leave. The taking over was to be completed by 6th June, 1980.

Paragraph three of Exhibit "C" reads:
G "The Management trust that you will be equal to the task of branch administration but wishes to advise that you should revise the Bank's Manual of Instructions and Conditions of Service and also always bear in mind the following:-

(i) The embargo on loans and advances has not yet been lifted, and the guidelines on lending must be observed.

H (ii).....

(vii) Whenever you feel uncertain about any matter you should consult your Area Manager or the Head Office whichever is quicker."

Between 30/5/80 when the appellant took over the administration of

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Mushin Branch and 13/8/80, he had granted unauthorised overdraft facilities to about thirty two customers of the branch totalling N1,653,476.09.

The appellant's counsel contended that the above offence did not fall within those provided in Article 5(d) of Exhibit "p" as a result, the dismissal was wrongful and the court below was in error when it imported the common law rules into Article 5(d) of Exhibit "P".

Article 5(d) of Exhibit "P" on summary dismissal proceeded to state that "the law provides that staff may be summarily dismissed for certain offences covered by the broad headings of gross misconduct" and that "*such offences include*" nine offences set out in the said Article. The law referred to in this Article is certainly the common law and it is incorporated into Article 5(d) by reference.

An employer has a common law right to dismiss any employee without notice on the grounds of the employee's gross misconduct. A contract of service is but an example of contracts in general and the general law of contract applies. Article 5(d) of Exhibit "P" in no way excluded the application of the principles of the general law. In addition to incorporating the same, the word "*include*" as in an enactment must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. See *Nafiu Rahiu v. The State* (1980) 8-11 S.C. 130 and *Mandara v. A.-G. of the Federation of Nigeria* (1984) 1 SCNLR 311. Article 5(d) of Exhibit "P" is not therefore exhaustive.

The next question is whether the conduct complained of is such as to show the appellant to have disregarded the essential conditions of his contract of service. It is generally true that the willful disobedience of an order will justify summary dismissal, since willful disobedience of a lawful order shows a disregard or complete disregard of a condition essential to the contract of service, namely, that the servant must obey the proper orders of the master and unless he does so, the relationship is struck at fundamentally. See *Laws v. London Chronicle Ltd.* (1959) 2 All ER 285.

In the present case the appellant was in willful disobedience of the lawful and reasonable instructions of the respondent contained in Exhibit "L" - "L3". Indeed, the appellant ridiculed the Circulars and Directives and treated them scornfully and with contempt. For example, in answer to cross-examination by the respondent's counsel, the appellant replied:

"The limit of N100,000.00 loan for Board's approval was merely on paper. There are other methods of going outside the guidelines."

There is no fixed rule of law defining the degree of misconduct which will justify dismissal but having regard to the facts and circumstances of this

case, the acts of disobedience to lawful and reasonable instructions by the appellant were of serious nature and amounted to gross misconduct which justified his summary dismissal. See *Clouston & Co. Ltd. v. Corry* (3) (1906) AC 122; *Olatunbosun v. NISER Council* (1988) 3 NWLR (Pt. 80) 25 at 55; *Sule v. Nigerian Cotton Board* (1985) 2 NWLR (Pt. 5) 17 at 19; *Maja v. Stocco* (1968) All NLR 141 (Reprint) and Halsbury's Laws of England, 4th Edition Page 436, para. 642.

In the circumstances, the conclusion I have reached is that the appellant was rightly and justifiably dismissed by the respondent and the court below was right in setting aside the judgment of the learned trial Judge.

In view of the conclusion I have reached in respect of issue one, the second issue for determination on damages allowable where there is a wrongful dismissal of an employee becomes academic.

In the result, the appeal fails and it is hereby dismissed by me. I abide by the order for costs as contained in the lead judgment of my learned brother, Onu, J.S.C.

IGUHJSC

I have had the privilege of reading, in draft, the lead judgment just delivered by my learned brother, Onu, J.S.C., and I am in full agreement with him that this appeal is without substance and should be dismissed.

The main issue in this appeal is whether the court below was right in holding that the appellant's failure or refusal to obey the respondent's directives or instructions was an act of misconduct under the common law for which the appellant was justifiably dismissed from his employment with the respondent. The corollary to this issue is whether the appellant was rightly dismissed under the terms of his written contract with the respondent.

The appellant was by a letter of the 23rd May, 1980, Exhibit C, directed to proceed to the Mushin Branch of the respondent bank on duty as a Manager. He was to relieve the respondent's Manager at the said Mushin Branch who was proceeding on leave on the 2nd June, 1980. He was specifically instructed to revise the Bank's Manual of Instructions and Conditions of Service and bear in mind, among other things, that the embargo on loans and advances had not yet been lifted and the guideline on lending must be observed. He was expected to complete taking over the branch by 6th June, 1980.

Between the 6th June, 1980 and the 13th August, 1980, just over two months from the date the appellant took over the said branch, he had, in complete disregard or disobedience of the respondent's express instructions,

rules and regulations granted overdrafts to the tune of N1,653,476.09 to about 32 customers of the bank without any form of approval or securities. This was discovered when a Chief Inspector of the Bank visited the Mushin Branch on a routine inspection tour. The appellant was advised to recover these unauthorised and irregular loans or cash advances. He was issued the query, Exhibit E for this misconduct which he replied to per Exhibit E2. On the 26th August, 1980, he was served with a letter of suspension and was subsequently arrested by the Police. He was finally dismissed on the 1st June, 1981. It is to be noted that the appellant at the time of his dismissal was unable to recover a total of N400,000.00 from the customers he advanced the money to.

Dealing, firstly, with the side issue, Article 5(a) of Part II (section 1) of the appellant's terms and conditions of service, Exhibit P, makes provision for some conduct or offences which come under the broad heading of "gross misconduct" on the part of a senior staff of the bank, such as the appellant. The offences therein itemised are ten in number. It must however be pointed out that the named offences are therein mentioned only by way of Inclusion. Exhibit P so expressly indicates. The named offences are therefore not exhaustive on the issue of what amounts to "*gross misconduct*" upon which a senior staff of the respondent bank may be summarily dismissed under Exhibit P. I think I should add that both the trial court and the court below are ad idem that this list of offences itemised in Exhibit P could not be regarded as exhaustive. I agree entirely with them on the point.

Article 5(d), Part II (section 1) sub-paragraph (i) of the said conditions of service provides as follows:-

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

(1) Proven cases of theft, fraud, dishonesty, defalcations and irregular practices in respect of cash, vouchers, records, returns for customer's account and foreign exchange transaction."

(Italics supplied for emphasis)

It is not in dispute that the appellant while he was acting as Manager of the Mushin Branch of the respondent bank was expressly forbidden by various circulars and directives from the Headquarters in writing not to grant overdrafts or loans to customers. It is also not controverted that in just about two months of his acting appointment, the appellant had in complete defiance, disregard or disobedience of the respondent's express instructions granted overdrafts and loans to the tune of N 1,653, 476.09 to 32 customers for reasons best known to him. This conduct on his part amounted not only to irregular and unauthorised cash advances or overdrafts, they were also definite acts of gross misconduct for which he was rightly dismissed under the terms of Ar

article 5(d), Part II (section 1) sub-paragraph (i) of the appellant's conditions of service, Exhibit P.

B In the second place, it seems to me plain that the word “law” referred to in Article 5(d)(i) of Exhibit P undoubtedly refers to the “*common law*”. It is therefore not Exhibit P alone that regulates the relationship between the parties. Besides, the relationship between the parties, being simply that of master and servant, the general law of contract is also applicable unless, of course, there is any clause in Exhibit P to the contrary. There is no such clause in Exhibit P. Indeed the case of the respondent as pleaded in paragraphs 12 and C 13 of its Statement of Defence is that the appellant's employment was at all material times covered by both Exhibit P and the general-Law of contract. I entertain no doubt that the court below was perfectly right in its application of the common law right of the respondent to allow the respondent's appeal before it.

D In the present case, I can find no reason to fault the finding of the court below that the appellant is guilty of gross misconduct by his wilful disobedience of the respondent's lawful orders. Indeed, on a close examination of the evidence, I entirely agree that the unjustifiable defiance by the appellant of the respondent's lawful orders is, to say the least, reckless and E grave and clearly undermined the relationship of confidence which should exist between an employer and an employee. It is a wilful disobedience of very significant standing directives and guidelines, so vital to the survival of the respondent in the banking industry. Such a conduct is in my view a gross misconduct as known to law.

F The principle of law is well settled that wilful disobedience of a lawful and reasonable order of an employer by an employee is of definite act of misconduct which, at common law, attracts the penalty of summary dismissal since such willful disobedience of a lawful order is a reflection of a total disregard of an essential condition of a contract of service, namely, that the G servant must obey a proper, reasonable and lawful order of the master in default of which their contractual relationship cannot be expected to continue. See *Laws v. London Chronicle (Indicator Newspapers) Ltd.* (1959) 2 All ER 285; *Oladipo Maja v. Stocco* (1968) 1 All NLR 141 at p. 151. Indeed, in *Teliat Sule v. Nigerian Cotton Board* (1985) 2 NWLR (Pt. 5) 17, the legal effect of H disobedience in a master and servant relationship was considered by this court and Obaseki, J.S.C., put the matter as follows:-

“When a servant grows too big to obey his master, the honourable cause open to him is to resign in order to avoid unpleasant consequences

should an occasion which calls for obedience be serviced with disobedience. Both common law and statute law brook no disobedience of lawful order from any servant, high or low, big or small. Such conduct normally and usually attracts the penalty of summary dismissal. Disobedience ranks as one of the worst form of conduct in any establishment."

I must, with very great respect, fully endorse the above view. B

On the accepted general legal principles, an employee may be summarily dismissed without notice and without wages if he is guilty of gross misconduct. See *Boston Deep Sea Fishing Co. v. Ansell* (1888) 39 Ch. D 339; *Babatunde Ajayi v. Texaco Nigeria Ltd. & Ors* (1987) 3 NWLR (Pt. 62) 577. And gross misconduct has been identified as a conduct that is of a grave and weighty character as to undermine the confidence which should exist between an employee and the employer. So, too, working against the deep interest of the employer amounts to gross misconduct entitling an employer to summary dismissal of the employee. See *Ridge v. Baldwin* (1963) 2 All ER 66 at 71 and *Olaniyan v. University of Lagos* (1985) 2 NWLR (Pt. 9) 599. To warrant a summary dismissal, it suffices that the conduct of the employee, as in the present case, is of such grave and weighty character as to undermine the relationship of confidence which should exist between the employer and an employee. See *Teliat Sule v. Nigerian Cotton Board* supra. C
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In the present case, the appellant was in wilful disobedience of the lawful and reasonable order of his employers. It is a conduct of such grave and weighty character as to undermine the relationship of confidence which should exist between an employer and the employee. He was therefore guilty of gross misconduct and was liable to dismissal without notice and without wages. In my view, the respondent, in the exercise of its lawful powers properly dismissed the appellant summarily. I entertain no doubt, that the court below was right when it so held. E
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It is for the above and the more detailed reasons contained in the lead judgment of my learned brother that I, too, hereby dismiss this appeal. I abide by the order as to costs therein contained. G

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