

**SUPREME COURT OF NIGERIA**  
**8TH SEPTEMBER 1995. SC. 186/1991**  
**CORAM:- M. L. UWAIS, A. B. WALL, E. O. OGWUEGBU,**  
**Y. O. ADIO, A. I. IGUH, JJSC**

1. MOBIL OIL NIGERIA LTD.)  
 2. ROBERT C. PARKER) ..... DEFENDANTS/APPELLANTS  
 AND  
 S. T. ASSAN ..... PLAINTIFF/RESPONDENT

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**CONTEMPT OF COURT** - *Hearing - Discretion of court not to hear application of a contemnor - Whether exercised properly.*

**CONTEMPT OF COURT** - *Order of court - Failure to comply therewith - Is contempt of court - And such order diminished appellants' contractual rights.*

**CONTEMPT OF COURT** - *Injunction - Suspends and abrogates a party's contractual rights - Albeit temporarily.*

**FACT**

The plaintiff/respondent is a Group 17 officer with the first defendant/appellant, Mobil Oil, Nigeria Ltd. On 6th June, 1990, he was deployed to lower Group 15 post. The letter of deployment was written by the second defendant/appellant. The plaintiff challenged that action in court. The defendants, upon being served the writ of summons and statement of claim, reacted by terminating the plaintiff's appointment. The plaintiff then got a declaration from the trial court to the effect that the purported termination was illegal and contemptuous of the court. Thereafter, the plaintiff was asked to resume work. Later on, he received a letter from the defendants' lawyer directing him not to report for work during the pendency of the case, while assuring him that all his entitlements would be paid. In spite of this, he was not paid his entitlements as from August, 1990.

Meanwhile, the defendants brought an application for a stay of execution pending the outcome of their appeal against the trial court's order. The plaintiff objected to the hearing of this application as the defendants were in contempt of the court. The trial court granted the plaintiff's objection. The defendants appealed to the Court of Appeal, Lagos Division, which struck out their appeal. They have now appealed to the Supreme Court raising three issues.

**ISSUES FOR DETERMINATION**

(i) *Whether on the facts and circumstances of this case the inference or assumption that the defendants were in contempt was justified.*

(ii) *If (which is not conceded) the defendants were in contempt, what is the conduct or act or omission on their part which constituted the alleged contempt.*

(iii) *Whether, in the light of the answer to question (ii) the decision not to entertain the defendants motion on notice dated 29th April, 1991 was justified."*

**HELD** (Unanimously dismissing the appeal per lead judgment of **UWAIS JSC**)  
**Order of court - Failure to comply therewith**

1. I am satisfied that by asking the plaintiff/respondent not to report for; any more and failing to pay his salary for the months of August and September, 1990, the defendants/appellants were in further contempt of the High Court. It has been contended on behalf of the defendants/appellants that the Court of Appeal overlooked the fact that the failure of the 1st defendant/appellant to pay the plaintiff/respondent's emoluments might be a breach of contract and that it was certainly not contempt of court. With respect, this cannot be right, for the order by the High Court that the plaintiff/respondent should remain in the employment of the 1st defendant/appellant pending the determination of the action went beyond the contract between the parties. The court order, being superior, can and did diminish the rights and obligations of the defendants/appellants under the contract by overriding them. (p. 1697 G)

**2. Injunction - Suspends a party's contractual rights**

Now, where the defendants/appellants had gone wrong in the letter, and that led to the contempt of the High Court's order, is where the letter went to state thus: "*However, the order does not mean and cannot be constructed to mean that the rights and prerogatives of the employer have been impeded or abrogated.*" "It is because the defendants/appellants' "rights and prerogatives" under the contract of employment were, indeed, "suspended and abrogated," albeit temporarily, that they could not terminate the appointment of the plaintiff/respondent when the case he instituted against them remains pending in the High Court as provided by the injunction granted. (p. 1698 C)

***Discretion of court not to hear a contemnor's application***

3. Finally, in my opinion, the court has always the discretion whether or not to permit a party in contempt to be heard on some further application by him in the same suit, balancing the plain and unqualified obligation of every person against, or in respect of, whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged against the need to do justice between the parties in the particular circumstances of the case. Consequently, the Court of Appeal exercised its discretion properly in refusing to hear the application for stay of execution brought by the defendants/appellants. (p. 1701 E)

**NOTABLE POINTS OF INTEREST**

**UWAIS JSC**

***1. Essence of rules of contempt of court***

It is pertinent at this stage to state that the rules embodied in the law of contempt of court are intended to uphold and ensure the effective administration of justice. They are the means by which the law vindicates the public interest in due administration of justice. The law does not exist, as the phrase “contempt of court” might misleadingly suggest, to protect the personal dignity of the judiciary nor does it exist to protect the private rights of parties or litigants. (p. 1698 H)

***2. Rules of civil contempt***

Traditionally contempts are classified as being either criminal or civil. A civil contempt basically comprises the failure to comply with an order of court. The rules of civil contempt like those of criminal contempt are concerned with upholding effective administration of justice. A person who has committed a civil contempt by disobeying a court order may be subject to the rule that a party in contempt cannot be heard or take proceedings in the same cause until he has purged his contempt. (p. 1700 A)

**OGWUEGBUJSC**

***3. Obligation to obey order made by court***

It is a plain and unqualified obligation of every person against, or in respect of whom, an order is made by a court of competent jurisdiction, to obey it unless and until that order is discharged. This obligation extends even to cases where the person affected by an order believes it to be irregular or even void. One of the consequences of the obligation is that no application to the court by such a person will be entertained until he purges himself of his contempt. (p. 1705 C)

**REPRESENTATION**

Chief F.R.A. Williams, SAN with Chief T. A. Ezeobi and T.E. Williams  
for the Appellants

A.O. Demuren for the Respondents

**CASES REFERRED TO**

First African Trust Bank Ltd. v. Ezegbu (1992) 9 N.W.L.R. (Part 264) 132

Lawal-Osulav. Lawal-Osula (1995) 3 N.W.L.R. (Part 382) 128

A - G v. Time Newspapers Ltd. (1974) 273 at p. 315

Johnson v. Grant (1923) S.C. 789 at p. 790

Spokes v. Banbury of Board of Health (1865) LR 1 Eq. 42

Parry v. Perryman (M.R. July 1938)

Chuck v. Cremer (1846) 47 E.R. 820

**LEAD.JUDGMENT BY UWAIJSJC**

The plaintiff/respondent is an employee of the 1st defendant/appellant on salary Group 17. By a circular letter, issued by the 2nd defendant/appellant on behalf of the defendant/appellant, the plaintiff/respondent was transferred to another department. The plaintiff/respondent alleged inter alia that his status in the service of the 1st defendant/appellant was reduced by placing him under the supervision of an officer who was junior to him in rank. By reason of these the plaintiff/respondent took out a writ of summons on the 25th day of June, 1990 in the High Court of Lagos State against the 1st and 2nd defendants/appellants, claiming thus:-

1. *"A declaration that the Plaintiff being a Group 17 Officer within the 1st defendant's establishment and having been enjoying the benefits and requisites attached thereto is entitled to retain the salary status and fringe benefits of that grade.*

2. *A declaration that the circular issued by the 2nd Defendant on 6th June, 1990 in so far as it relates to the Plaintiff is penal in nature, is a violation of the plaintiff vested right and therefore illegal and unconstitutional.*

3. *An injunction restraining the Defendants from carrying out the instructions of the 2nd defendant contained in an INTEROFFICE CORRESPONDENCE (circular) dated 6th June, 1990 as it affects the Plaintiff in his present position in E.R. DEPARTMENT.*

4. *An ORDER directing the 1st and 2nd Defendants to reinstate the Plaintiff to his status of a Group 17 Officer with liberty to enjoy all the fringe benefits attached thereto"*

The 1st and 2nd defendants/appellants entered appearance to the

writ of summons on the 29th day of July, 1990. A letter dated the 1st day August, 1990 was written to the plaintiff/respondent terminating his appointment with the 1st defendant/appellant. The letter reads in full follows:-

B                   “Mr. S.T. Assan,  
Mobil Oil Nigeria Limited,  
50/52 Broad Street,  
Lagos.

C   TERMINATION OF APPOINTMENT

Dear Mr. Assan,

Please be advised that effective from August, 1, 1990, your services are terminated by this Company.

D                   By a copy of this letter, the Associate Accountants, Payroll, is being requested to pay your salary up to and including July, 31, 1990, three month's (SIC) salary in lieu of notice plus other entitlements, less any /1/ you may owe to the Company.

Arrangements will be made by the Company to pay you all your other entitlements in the Employee Savings Plan if applicable.

E                   Please return all Company properties including I.D Card in your possession to your Supervisor.

We wish you best of luck in your future endeavours.

very truly yours,

F   F (signed)  
G.B. Da-Silva,  
Manager, Employee Relations. “

The Plaintiff/respondent brought a motion on notice in the High Court seeking the following:-

G                   “1. An order of Interlocutory Injunction restraining Defendants/respondents, their servants and/or agents from doing anything that will  
(a) remove the substance of the subject-matter of the suit herein from the court.

(b) Usurp the function of the court and (c) Preempt or anticipate decision of the court.

H                   2. An order setting aside the letter of Termination of Appointment, August, 1990 served on the Plaintiff/Applicant during the pendency of this suit for being unconstitutional, illegal, null and void and contemptuous of this Honourable Court.

3. And for such further order or other orders as this Honourable

court may deem fit to make in the circumstances. “

In its ruling granting the application in its entirety, the High Court Adeniji J.)  
Remarked as follows:-

*The course of action here would only be either one deliberately designed to show utter contempt for the Court and due process of the law or at least, to foist upon the Court, as a fait accompli, a situation of complete helplessness in that whatever may be the result of the case pending in the Court the judgment will be nugatory because the Applicant cannot get back the job.*

*A court has a duty to show its resentment against an act which is designed to subvert the authority of a Court of trial. To refuse the present application would in my view tantamount to sanctioning the contemptuous conduct of the defendant or giving a warrant of propriety to an act intended to render nugatory a possible decision of the Court in the Substantive trial.*

“ On the date delivering the ruling namely 13th September, 1990, counsel for the plaintiff/respondent wrote a letter to the Managing Director of the 1st defendant/appellant notifying him of the nullification of the termination of the plaintiff/respondent’s employment and indicating that the plaintiff/respondent would present himself to the company for duty. In a reply written on the same day (13th September 1990) the 1st defendant/appellant invited the plaintiff/respondent to report for duty on the next day. The letter reads in part as follows

*“We refer to the above mentioned subject and acknowledge receipt of your letter informing us of the Orders made by Justice Adeniji of the High Court of Lagos, (SIC) IN the ruling he gave this morning on the Plaintiff’s Motion on Notice.*

*In compliance with orders of the court, you are requested to inform your client that he should report for duty in our offices at Bookshop House, 50/52 Broad Street, Lagos, tomorrow Friday September, 14, 1990 at 7.30 am and on arrival, he should report to the Finance Director, Mr. P. O. Akinyelure for due assignment to his place of work,*

*Please acknowledge receipt of this letter by endorsing the attached duplicate.*

Very truly yours

(signed)

Nwachukwu Okonkwo

General Manager Administration  
& General Counsel.”

The plaintiff reported accordingly for duty and he was assigned the work to do. About five days later a letter was received by him from the counsel

of the 1st and 2nd defendants/appellants. The letter reads in part thus:

“18 September, 1990.

Messr Segun Demurin & Co, Investment House (3rd Floor),

B 21125 Broad Street, Lagos.

B Gentlemen,

Re: Suit No. W11344190

Stephen Tunde Assan v. Mobil Oil Nig. Ltd. & Anor.

We act for Mobil Oil Nigeria Limited in reference to the above matter. We

C may also mention that we are acting together with Messrs Ezeobi & Co.

We refer to ruling made by the Hon. Mr. Justice Adeniji on the plain-  
tiffs motion dated 22nd August, 1990. You may be aware that we have b an  
appeal against the order of the learned judge. Simultaneously, we have filed

D an application for stay pending the determination of the appeal, this situa-  
tion we have advised our client regarding the effect of till’ ““ the court which  
is, that the letter of termination served on him by his employers dated 1st  
August, 1990 cannot, whilst the injunction remains effective, be treated as  
having terminated his employment. This means that your client the Plaintiff  
E must continue to be treated as if he is still in our client’s employment and as  
if he is entitled to all the remunerations, perquisites and benefits of his office.  
However, the order does not mean and cannot be construed to mean that the  
rights and prerogatives of the employer have been suspended or abrogated.

F We are fortified in the view we have taken by the following passage  
from the judgment of LORD DENNING in HILL v. PARSON (1972) CH.D. 305  
at 314 around line H. where he said:

In short we take the view that whilst the interlocutory injunction  
remains in effect, your client should be allowed to remain in the house (if  
G any) allocated to him, to earn his emoluments and to enjoy all the benefits  
and perquisites attaching to his office. But the Company is at liberty not to  
come to work until further notice.

Our instructions are to inform your client through you 111", time as  
they consider it appropriate he should for the time from reporting for work.

H Further instructions to him will be transmitted to him through your good  
selves in due course. “

In the meanwhile, the 1st and 2nd defendants/appellants brought a  
motion on notice on 17th September, 1990 seeking for an order from the High  
Court for a stay of execution of its ruling of 13<sup>th</sup> September, 1990 and of further

proceedings in the case pending the determination of the appeal they lodged against the ruling. The plaintiff/respondent filed a notice of preliminary objection indicating:-

*“The plaintiff will object to the entertainment of any of the said applications while the Defendants remain in contempt of this Honourable Court for refusing and/or neglecting to pay the Plaintiff his salary and other emoluments notwithstanding that the letter of termination serve on the Plaintiff by the defendant during the pendency of this suit has been set aside the order of thus honourable Court. “*

In his ruling which was delivered on the 11th day of October, 1990 the learned trial judge (Adeniji J.) referred to an affidavit filed in support of the notice of preliminary objection. He held that the failure to pay salary to the plaintiff/respondent for the months of August and September, 1990 amounted to disobedience of his order. He said that the counter-affidavit filed by the defendant/respondents did not satisfy him that they did not disobey the interlocutory order he made or that they were prepare to purge themselves of the contempt of his order. He upheld the preliminary objection and refused to hear the application for stay of execution and further proceedings until the 1st and 2nd defendants/appellants purged themselves of their contempt.

The 1st and 2nd defendants/appellants then decided to repeat their application in the court of Appeal in similar terms. The plaintiff/respondent file again a notice of preliminary objection similar in terms to that which succeeded in the High Court, In its ruling, the Court of Appeal (Babalakin, J.C.A., as he then was, Awogu and Kalgo JJ.C.A) held, as per Awogu, J.C.A., thus:-

*“the situation on hand, and as stated earlier, no good reason has been shown as to why the Applicants should not purge themselves of their contempt before they can be heard by the Court. .... Accordingly and until the applicants are willing to obey the order of the lower court this application is hereby stayed.”*

The defendants/appellants felt aggrieved. They therefore brought this appeal, seeking that we set aside the ruling of the court of Appeal and direct it to proceed with the application and appeal before it.

The following 3 issues for determination have been formulated in the brief of the 1st and 2nd defendants/appellants:-

“(i). Whether on the facts and circumstance of this case the inference or assumption that the defendants were in contempt was justified.

(ii). If which is not conceded) the defendants were in contempt, what is the conduct or act or omission on their part which constituted the alleged

contempt.

(iii). Whether, in the light of the answer to question (ii) the decision not to entertain the defendants motion on notice dated 29th April, 1991 was justified.”

B For his part the plaintiff/respondent identified 2 issued for determination in his brief of argument. They are:-

“(i). Whether the Defendants on the facts and circumstances of this case obeyed the orders of the Lagos High Court (SIC) as contained in the rulings of Adeniji J. dated 13th September, 1990 and 11th October, 1990 respectively.

C (ii). *Whether the Defendants while still in disobedience of the orders of the trial court are entitled to a hearing and discretion of the Court Appeal.*”

D In both the defendants/appellants’ brief of argument and his oral argument, Chief Williams, learned Senior Advocate, contends that the Court of Appeal was in error when it inferred or assumed that the defendants/appellants were in contempt of the order of the Court which granted the application of the plaintiff/respondent for interim injunction and also set aside the letter of termination of the plaintiff/respondent’s appointment. He stated that the essence of the injunction granted by the High Court was to restrain the defendants/appellants from doing anything:-

E a. That would remove the substance of the subject matter of the suit from the court.

b That would usurp the function of the court and

F c. That would preempt or anticipate the decision of the court.

He said that there are different kinds of contempt of court and submitted that the contempt in this case, if any, is one relating to civil contempt arising from disobedience to an order of court. He cited the cases of Hackinson v. Hackinson, (1952) P. 285, Price v. Price (1962) N.S.W.R. N 829, First African Trust Bank v. Ezegbu & Anor, (1992) 9 N.W.L.R (PART 264) 132 at 46E and First African Trust Bank v. Ezegbu & Anor. Suit No. SC. 317/1991 (unreported) per Karibi-Whyte, J.S.C., ruling delivered on the 26th day of January, 1993, to show that where a contemnor is appealing against the order which puts him in contempt the court will hear him. In the present case they do not concede that the defendants/appellants were in fact in contempt, but if even they were, H they have appealed against the order of injunction and the setting aside the letter of termination of appointment made by the High Court against them, and therefore the Court of Appeal cannot refuse to hear their appeal. Their application for stay of execution is ancillary to their appeal and is similar to applica

tion for extension of time to appeal which is an exception to the rule that a party in contempt of a court's order cannot seek any relief from the court when he has not purged himself of the contempt. He cited Huang v. Bello, (1990) A N.W.L.R. (Part 159) 671 at P. 678E - G and Rastico (Nig.) Ltd. v. Societe Generale De Surveillance (1990) 6 N.W.L.R. (Part 158) 608 at P. 6166.

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Learned Senior Advocate emphasized that by the order of the High Court the defendants/appellants were bound not to act on their letter terminating the appointment of the plaintiff/respondent; that they must continue to pay salary to him and they must continue to let him occupy the company's house. He said that the defendants/appellants have no quarrel with all that although they are appealing against the order. He contended that it was a mistake for the Court of Appeal to hold that the defendants/appellants were in contempt for not paying salary to the plaintiff/respondent. The Court of Appeal, he submitted, also made a mistake when it concluded that the High Court made an order for the defendants/appellants to pay salary. He submitted that there was no such order as the defendants/appellants were obliged to pay contract between the parties. He said that had the defendants/appellants been allowed to move their application in the Court of appeal, they would have shown that they were willing to pay the salary. Whilst conceding that the letter of termination of appointment was issued after the injunction applied for by the plaintiff/respondent was granted by the High Court, Chief Williams submitted that the defendants/appellants had the power under the contract between the parties to terminate the plaintiff/respondent's appointment. He argued that there was no action in court which stopped the defendants/appellants from exercising their right to terminate the appointment. If there is a breach in that respect, he submitted, all that would be entitled to would be damages and issue is not before this Court.

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In reply, Mr. Demuren, learned counsel for plaintiff/respondent, argued that the defendants/appellants were in contempt of the orders made by the High Court on the 13th day of September, 1990 and the 11th day of October, 1990. He said that what the High Court of Appeal upheld. By the restoration of the status qua when it set aside the termination of the appointment of the plaintiff/respondent, and that was what the Court of Appeal upheld. By the restoration of the status qua the plaintiff/respondent was entitled to all the benefits accruing to him by his employment. He submitted that by the refusal of the defendants/appellants to honour the obligation including the payment of all the emoluments due to the plaintiff/respondent, they were contemptuous of the High Court order. He referred to the letter written by the defen

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dants/appellants on the 18th day of September, 1990, Exhibit G, (quoted above). Learned Counsel argued that the submission on behalf of the defendants/appellants that the failure to pay salary or emoluments to the plaintiff/respondent was simply a breach of contract is untenable because the conduct of the defendants/appellants was to foist upon the trial court as fait accompli, a situation of complete helplessness. He cited in support Odogwu v. Odogwu (1992) 2 N.W.L.R. (part 225) 539 at P. 558F-

Learned counsel canvassed further that the defendants/appellants are not entitled to a hearing at the discretion of the Court of Appeal while still in disobedience of the High Court order, since their disobedience does not fail under any of the exceptions to the general rule stated in First African Trust Bank Ltd. & Anor. v. Ezeogu & Anor. (1992) 9 N.W.L.R. (Part 264) 132 at PP. 135, 146E and 150G. In further support of his submission, he cited the case of Lawal-Osula & Ors. v. Lawal-Osula & Ors., (1995) 3 N.W. L.R. (part 382) 128 at PP.146G - H and 147A-C.

I think the first question to be determined in this case is whether defendants/appellants were in contempt of the order of the High Court. This is indeed a question of fact. In assessing the fact it is necessary to examine the circumstances surrounding the case from the time the trial court set aside the letter of termination of appointment written by the defendants/appellants. The view which the High Court took of the letter is that 1st defendants/appellants was in contempt of the court to have written it. For the learned trial judge stated in his ruling as follows:

*"I must say that the fact that while the above claims and application for interlocutory injunction were pending to the notice of the defendants, the company went ahead and dismissed, (sic) thereby forestalling the hearing of the suit, could be looked upon as an contemptuous of the court and a usurpation of its function..*

*The course of action here would only be either one deliberately designed to show utter contempt for the court and due process of the law at least, ...*

*A court has a duty to show its resentment against an act which is designed to subvert the authority of a court of trial. To refuse the present application would in my view tantamount to sanctioning the contemptuous conduct of the defendant ..."* (underlining mine).

It was as a result of this that the High Court set aside the letter of termination of appointment and ordered as prayed the motion on notice by the plaintiff/respondent for:-

*"An order of interlocutory injunction restraining the defendants/respondents, their servants and/or agents from doing anything that will:*

a. Remove the substance of the subject matter of the suit herein from the court

b. usurp the jurisdiction of the court and

c. preempt or anticipate the decision of the court. “

In other words, the status quo ante the filling of the action in the High Court should be maintained. This implies that the plaintiff/respondent would continue to enjoy all his conditions of service including the prompt payment of his salary at the end of every month as had been the practice before the action was instituted. Not only that, the plaintiff/respondent would continue to be an employee of the 1st defendant/appellant in the normal course of event, with the former reporting for work and the latter assigning to the work to be undertaken within the former’s capability. But what happened on the ground?

The counsel for the plaintiff/respondent intimated by letter (quoted above) to the appellants the order of the High Court. The latter accepted the order and invited the former to resume his employment, which he did. Five days later the defendants appellants decided to change their minds. They asked the plaintiff/respondent not to report for work any more until further notice. It also transpired that the salary for the months of August and September, 1990 were not paid to the plaintiff/respondent. Clearly the action of the defendants/respondents in these respects were intended to evade the order of the High Court that the status quo in the contractual relationship of employer and employee between the parties should be maintained. It is the light of this that the Court of Appeal observed as follows:-

*“The plaintiff was by Exhibit F (letter from the defendants/appellants) invited to resume duty, implies, as demanded in Exhibit E (letter from hut his outstanding salary for August would be paid. Even when Exhibit G (letter from defendants/appellants) was written as of 18.9.90, there was no suggestion that any outstanding salary will not be paid. .... If the defendants/appellants/applicants were willing to let him remain in his house, if any, allocated to him, why are they unwilling to meet the obligation in respect of emoluments’? (Parenthesis mine).*

I am satisfied that by asking the plaintiff/respondent not to report for work any more and failing to pay his salary for the months of August and September, 1990, the defendants/appellants were in further contempt of the further contempt of the High Court. It has been contended on behalf of the defendants/appellants that the Court of Appeal overlooked the fact that the failure of the 1<sup>st</sup> defendant/appellant to pay the plaintiff/respondent’s emoluments might be a breach of contract and it was certainly not contempt of court.

With respect, this cannot be right, for the order by the High Court that the plaintiff/respondent should remain in the employment of the 1st defendant/appellant pending the determination of the action went beyond the contract between the parties. The court order, being superior, can and did diminish the rights and obligations of the defendants/appellants under the contract by overriding them. It is in recognition of this that the defendants/appellants wrote in their letter of 18th September, 1990 (quoted above) as follows

*“ regarding the effect of the order of the court which is that the letter of termination served on him by his employers dated 1st August, 1990 cannot, whilst the injunction remains effective, be treated as having terminated his employment. This means that your client the plaintiff must continue to be treated as if he is still in our client employment and as if entitled to all the remunerations, perquisites and benefits of his office.”*

Now, where the defendants/appellants had gone wrong in the letter, and that led to the contempt of the High Court’s order, is where the letter went on to state thus:

*“However, the order does not mean and cannot be construed to mean that the rights and prerogatives of the employer have been suspended or abrogated.”*

It is because the defendants/appellants “rights and prerogative under the contract of employment were, indeed, “suspended and abrogated,” albeit temporarily, that they could not terminate the appointment of the plaintiff/respondent when the case he instituted against them remains pending in the High Court as provided by the injunction granted. As Romer LJ put it in Hadkinson’s case (supra) at P.288:-

*“It is the plain and unqualified obligation of every person against, or in respect of whom, an order is made by a court of a competent jurisdiction, to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void.*

*“A party who knows of an order, whether null and void regular or irregular, cannot be permitted to disobey it ..... It would be most dangerous to hold that the suitors, or their solicitors could themselves judge whether an order was null and void - whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question: that the course of a party knowing of order which was null and void and irregular and who might be affected by it was plain. He should apply to the court that it might be discharged. As long as it existed it must not be disobeyed. “*

It is pertinent at this stage to state that the rules embodied in the law

of contempt of court are intended to uphold and ensure the effective administration of justice. (As Lord Simon said in A-G v. Times Newspapers Ltd. (1974) 273 at P: 315), they are the means by which the law vindicates the public interest in due administration of justice. The law does not exist, as the phrase “contempt of court” might misleadingly suggest, to protect the personal dignity of the judiciary nor does it exist to protect the private rights of parties or litigants. In the case of Johnson v. Grant, (1923) S.C789 at P. 790 Lord President Clyde remarked thus:-

*“The phrase ‘contempt of court’ does not in the least describe the true nature of the class of offence with which we are here concerned... The offence consists in interfering with the administration of law; in impeding and perverting the course of justice.... It is not the dignity of the court which is offered a petty and misleading view of the issues involved- it is the fundamental supremacy of the law which is challenged. “*

The general rule is that it is the duty of those so enjoined to strictly observe the terms of an injunction. In Spokes v. Banbury Board of Health, (1865) LR 1 Eq. 42 wood V-C stated as follows at P. 48 thereof:-

*“..... that the simple and only view is, that an order must be obeyed, and that those who wish to get rid of that order must do so by the proper course, an appeal. So long as it exists; the order must be obeyed and obeyed to the letter and any one who does not obey it to the letter is guilty of committing willful breach of it .....”*

In A-G v. Times Newspapers Ltd., (supra) Diplock LJ observed as follows, on p. 307 thereof:-

*“Contempt of court” is a generic term descriptive of conduct in relation to particular proceedings in a court of law which tends to underline that system or to inhibit citizens from available themselves of it for the settlement of their disputes. Contempt of court may thus take many forms”* underlining mine).

It follows, therefore, that contempt of court can be committed in a subtle manner, as in the present case. Consequently, in my opinion, question on.

(i) for determination in the defendants/appellants’ brief of argument should be and is hereby answered in the affirmative. Question (ii) which asks which conduct or act or omission on the part of the defendants/appellants constituted the contempt has also been answered in the foregoing.

It now remains to deal with the question whether in the light of the answer to question no. (ii) the decision of the court of Appeal not to entertain the defendants/appellants’ application for stay of execution was justified.

Traditionally contempts are classified as being either criminal or civil. A civil contempt basically compromises the failure to comply with an order of court. The rules of civil contempt like those of criminal contempt are concerned to uphold effective administration of justice A person who has committed a civil contempt by disobeying a court order may be subject to the rule B that a party in contempt cannot be heard or take proceedings in the same cause until he has purged his contempt- see The Military Government of Lagos State v. Chief Emeka Odumegwu Ojukwu (1986) 1 N.W.L.R. (PART 18) 621, Obeya Memorial Hospital v. A-G of the Federation (1987) 3 N.W.L.R. (part 60) 325; Odogwu v. Odogwu, (1992) 2 N.W.L.R. (part 225) 539; F.A.T.B. v. C Ezegbu, (1992) 9 N.W.L.R. (part 264) 132 and Lawal-Osula v. Lawal-Osula (1995) 3 N.W.L.R. (part 382) 128

Chief Williams, Learned Senior Advocate, has cited the following cases to show that there are exceptions to the rule which debar a contemn D from being heard by the court whose order has been disobeyed- Hadkinson v. Hadkinson. (supra) Price v. Price, (1962) N.S.W.R. 819; First African Trust Bank & Anor v. Ezegbu & Anor., S.C 317/1993 (unreported) (supra) per Karibi-Whyte, J.S.C.; Rastico (Nigeria) Ltd. v. S.G.S. (1990) 6 N.W.L.R. (part 159) 671.

E Now, in Hadkinson’s case (supra) Denning LJ 9as he then was) explains the rule, on p. 298 thereof, as follows:-

“..... I am of the opinion that the fact that a party to a cause has disobeyed an order of the court is not of itself a bar to his being heard, but if his disobedience is such that so long as it continues, it impedes the course F of justice in the cause, by making it more difficult for the court to ascertain the truth or to enforce the orders which it may make, then the court may in its discretion refuse to hear him until the impediment is removed or good reason is shown why it should not be removed.”

G Chief Williams has referred to page 289 of the case where Romer JJ alluded to the exceptions to the rule by saying:-

*“One of such exceptions is that a person can apply for purpose of purging his contempt and another is that he can appeal with a view to setting aside the order upon which his alleged contempt is found.”*

H The Learned Lord went further to say on the same page:-  
*“..... A person against whom contempt is alleged will also, of course, be heard in support of a submission that having regard to the true meaning and intendment of the order which he is said to have disobeyed, his actions did*

*not constitute a breach of it: or that, having regard to all the circumstance, he ought not to be treated as being in contempt. The only other exception which could in any way be regarded as material is the qualified exception which, in some cases, entitled a person who is in contempt to defend himself when some application is made against him. (See eg. Parry v. Perryman (M.R, July, 1938) referred to in the notes to Chuk v. Cremer, Comp. Temp. Cott 206)."* B

Happily this court had considered these exceptions also in F.A.T.B. V. Ezegbu, (1992) 9 N.W.L.R. (part 264) 132 at p. 146E and 150G thereof, per Wali and Karibi- Whyte, JJ.S.C. respectively. I am afraid none of the exceptions mentioned in the cases is applicable to the present case. The application for stay of execution of the injunction ordered by the High Court but collateral to it, as can be seen in the same application for stay made earlier in the High Court. Hearing of the appeal cannot be impeded by the absence of the order for stay of execution, as it would for instance be by the absence of leave to appeal or extension of time to do something that is necessary to facilitate the hearing. C D

Finally, in my opinion, the court has always the discretion whether or not permitted a party in contempt to be heard on some further application by him in the same suit, balancing the plain and unqualified obligation of every person against, or in respect of, whom an order is made by a court of competent jurisdiction to obey it unless and until that order is made by a court of competent jurisdiction to obey it unless and until that order is discharged against the need to do justice between the parties in the particular circumstances of the case (see J(HD v. J(AM), (1980) 1 ALL E.R 156 at p. 161). Consequently, the Court of Appeal exercises its discretion properly in refusing to hear the application for stay of execution brought by the defendants/appellants. This does not and should not of course affect the hearing of the appeal pending before the Court of Appeal since the defendants/appellants have the constitutional right to appeal against the order and at least one of the exceptions to the rule aforementioned applied to the appeal Bettison v. Bettison, (1965) Ch. 465; 1 ALL E.R 102. E F G

In the result the appeal fails and it is hereby dismiss with N1, 000.00 costs to the Respondent. H

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### WALI JSC

I have a preview of the lead judgment of my learned brother Uwais JSC and I entirely agree with his reasoning and conclusions.

For those same reasons which I hereby adopt as mine, I also find no merit in this appeal. I dismiss it with N1, 000 costs to the respondent.

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### OGWUEGBUJSC

B I agree with the judgment delivered by my learned brother Uwais, J.S.C., and for the reasons given that this appeal should be dismissed.

The appeal concerns the refusal of the court below to entertain the application of the appellants for a stay of execution and further proceeding in the substantive suit pending the determination of their appeal against the ruling of the learned trial judge dated 13:9:90.

C The plaintiff was the Manager, Manpower/Personnel Services Department of the 1st defendant. He was a Group 17 officer with a total emolument of about N80, 632.00 per annum plus a company house or N40, 000 in lieu. By a circular dated 6:6:90, he was deployed to the Finance Department to occupy a position of Group 15 officer which attracted a total emolument of N45, 762.00 per annum plus a rent subsidy of N5, 400.00 per annum.

D He challenged the action by filling a writ of summons against the defendants in the High Court of Lagos State. The defendants were duly served with the writ of summons and statement of claim. They entered appearance to the action and subsequently terminated the appointment of the plaintiff by a letter dated 1: 8: 90.

E The plaintiff filed an application at the High Court praying the court to set aside the letter of termination served on him during the pendency of the action as being unconstitutional, illegal, null, void and contemptuous of the trial court and for an order restraining the defendants from doing thing that will remove the substance of the subject matter of the suit or usurp the function of the court.

F The prayers were granted by the learned trial judge. There were exchanges of correspondence between the solicitors of both parties. The plaintiff I was written to resume work. He did so and a letter dated 18:9 written by Chief F.R.A. Williams, S.A.N. who came into the matter at that stages as leading counsel, advised the plaintiff through his counsel to refrain from reporting for work and assured him that his salary and all benefits attaching to the office would be paid. In spite of this assurance, the plaintiff was not paid his salary or any other emoluments from the month of August, 1990.

G H The defendants thereafter brought an application for stay of execution and further proceedings in the suit pending the determination of the appeal they filed against the ruling of 13:9:90. The plaintiff by a notice of

preliminary objection objected to the entertainment of any of the defendants' applications while they remain in contempt of the order of the trial court.

The preliminary objection was upheld by the learned trial judge. The defendants brought a similar application dated 12:10:90 in the Court of Appeal. The plaintiff again objected that the defendants' application should not be entertained:-

*"While the Defendants remain in contempt of this Honourable Court for refusing and/or neglecting to pay to the plaintiff his salary or other emoluments notwithstanding that the Letter of Termination served on the plaintiff by the defendants during the pending of this suit has been set aside .....*

On 24:4:91, the Court of Appeal upheld the objection of the plaintiff. The defendant being dissatisfied with the ruling of the court below, appealed to this court.

Brief of arguments were filed by both parties. The appellant submitted three questions for determination in the appeal. They are as follows:-

(i) Whether on the facts and the circumstances of this case the inference or that the defendants were in contempt was justified.

(ii) If (which is not conceded) the defendants were in contempt, what is the conduct or act or omission on their part which constituted the alleged contempt.

(iii) Whether, in the light of the answer to question (ii) the decision not to entertain the defendants' motion on notice dated 29:4:91 (sic) was justified."

When the appeal came for hearing on 12:6:95 both learned counsel adopted their respective briefs of argument. Chief F.R.A. Williams, S.A.N, submitted that the appeal which is pending in the Court of Appeal is one which is pending in the court of Appeal is one which the defendants are seeking to get rid of the order of injunction and that where a party is contending or appealing against an order which put him in contempt, the court should hear him. It was his contention that the appellants have appealed against the order of injunction and the other setting aside the letter of termination and that the court cannot say that the appellants who are fighting that order should not be heard. He cited the cases of Hadkinson v. Hadkinson (1952) p. 285, Price v. Price (1962) N.S.W.R. 819, First African Trust Bank & Or. v. Ezeogbu & Or (1992) 9 N.W.L.R. (Pt. 264) 132, an unreported decision of this court dated 26: I :93, between the same parties, Huang & Or. V. Bello & Or (1990) 6 N.W.L.R. (Pt. 159) 671 (C.A) and Rastico Nig. Ltd. v. Societe Generale De Surveillance S.A. (1990) 6 N.W.L.R. (Pt. 158) 608 (C.A).

As to the obligation in respect of emoluments, learned Senior Advocate submitted that it was erroneous for the Court of Appeal to have con-

cluded that the appellants were “unwilling” to pay the plaintiffs emoluments during the period whilst the order of injunction remained in force. He stated that the only inference is that the appellants were anxious to pay the emoluments but were waiting for the court below to determine the terms and conditions of payment in the application for stay so that their success in the appeal B against the order of the Lagos High Court is not rendered nugatory. The Learned Senior Advocate urged on us to allow the appeal and set aside the judgment of the court below on the ground that:-

1. The court below erred in coming to the conclusion or drawing inference from the facts and circumstances of this case that the defendants C were unwilling to pay the emoluments of the plaintiff whilst the injunction remain effective.

2. Even if there was unwillingness to pay emolument aforesaid, such unwillingness cannot, in the circumstances of this case or at all, amount to contempt of court.

D 3. The remedy against an employee who defaults in paying an employee remuneration is a civil action for damages or for the recovery of the monies earned and not contempt proceeding.

E 4. Even after the employee has obtained judgment against his employer for payment of emolument, yet he can only enforce such judgment by writ of execution against the judgment debtor and not by contempt proceedings.

5. The general rule that a contemnor cannot be heard by the court whose order he has disobeyed is subject to exceptions, including an exception the effect that he must be heard in objection to the regularity or legality of the order of which he is accused of being in contempt.

F Mr. Demuren, learned counsel for the respondent identified two issues for determination. These issues are covered by the three submitted appellant. He adopted the respondent’s brief filled on 14:9:93. He submitted that the trial court in its ruling of 13:9:90, set aside the letter of termination pending the determination of the substantive suit, having done that, the respondent was entitled to all the benefits of his office and the refusal of the G defendants to honour this obligation including the payment of all emoluments was contemptuous of the order of the trial court.

It was further submitted that once the court makes orders which are clear and unambiguous, parties are bound by them and have a duty to implement them notwithstanding that the orders are improper or illegal. He stated H that a party who refuses to implement such subsisting orders will not be given a hearing in any subsequent application by him as long as the orders are not obeyed. Learned counsel referred us to the case of First Trust Bank Ltd & Or. v. Ezeogbu & Or. (1992) 9 N.W.L.R. (Pt. 264) 132 at 146

Mr. Demuren contended that the appellants should not go outside the grounds of appeal and the issues for determination to look for exceptions to the rule that a contemnor cannot be heard that the appellants' argument on their refusal to pay the appellant's emoluments is an afterthought as it was not canvassed both in the trial court and in the court below and that the plaintiff had entered into an undertaking as to damages as ordered by the by the trial court. B

He finally submitted that the appellants did not bring their application under any of the recognized exceptions to the common law principle which precludes persons in disobedience of court orders from being heard in respect of matters in which they stand in disobedience. We are urged to dismiss the appeal. C

It is a plain and unqualified obligation of every person against, or in respect of whom, an order is made by a court of competent jurisdiction, to obey it unless and until that order is discharged. This obligation extends even the person affected by an order believes it to be irregular or even void. One of the consequences of the obligation is that no application to the court by such a person will be entertained until he purges himself of his contempt. See Hadkinson v. Hadkinson supra and First African Trust Bank Ltd. & Or v. Ezegebu & Or. supra, Garstin v. Gastin W. & Tr. 73 and Gordon v. Gordon (1904) p. 163. D E

In this appeal, Chief F.R.A. Williams, S.A.N., is contending that the appellants are against the order which put them in contempt and that the court should hear them because they are within the exceptions to the common law rule that a contemnor cannot be heard by the court whose order he has disobeyed. F

I am afraid that the appellants herein have failed to bring their case within one of the four recognized exceptions.

This court set out four exceptions in the case of First African Bank Ltd. & Or. V. Ezegebu & Or. supra at pages 146 and 150, namely: G

1. to the court for purpose of purging his contempt.
2. Where he is seeking to leave to appeal against the order of which he is held in contempt.

3. He can be heard in support of a submission that, having regard to the true meaning and intendment of the order which he is said to have disobeyed, his actions did not constitute a breach of it or having regard to all the circumstances, he ought to be treated as being in contempt and, H

4. Where the contemour is seeking to defend himself when some application is made against him.

See also Hadkinson v. Hadkinson supra at 290, Party v. Perryman (M. R., July, 1938) and Chuck v. Cremer (1846) 47 E.R. 820.

The application of the appellants is for stay of execution of the very order they appealed against. They have not complained that the order was irregular or that it was made without jurisdiction.

B In Hadkinson v. Hadkinson supra referred to by the learned Senior Advocate who appeared for the appellants, a wife who successfully petitioned for divorce, was given custody of the only child of the marriage, a boy, until further order of the court. She was directed not to remove the child out of the jurisdiction of the court without sanction. Having remarried after the decree absolute, she later caused the child to be removed to Australia, where she  
C was living with her new husband.

On a summons issued by the father of the child, Wallington, J. ordered the mother to return the child within jurisdiction on or before 31:8:52. She appealed against the order.

D Counsel for the father took the preliminary objection that the appeal should not be heard because the mother had been at all times, and still was in contempt. The Court of Appeal (England) Probate Division upheld the preliminary objection, holding that the mother being in continuing contempt by retaining the infant out of the jurisdiction of the court, could not be heard until  
E she took the first and essential step in purging her contempt by returning the child within jurisdiction and that she did not bring herself within any of the exceptions to the general rule.

In Price v. Price 91962) N.S.W.R. 819, the respondent husband was ordered by the registrar to pay certain sums of money to his petitioning wife.  
F The wife appealed by the way of reference to a judge of matrimonial causes jurisdiction. From the decision of the judge, the husband filed a notice of appeal to the Full Court of New South Wales. He had not paid the money he had been ordered to pay to the wife and no security was given for the due prosecution of the appeal at the time he made an application for an extension of time for filing appeal books and for an order dispensing with the reproduction in the appeal books of the exhibits. (Underlining is mine)  
G

This application was resisted by the petitioner in the suit on the ground that he was in contempt of the order of the registrar. The court overruled the objection and granted the application. The court held at page 821:

H "Here the appellant is appealing against disallowance of his application to reduce the order in respect of which the alleged contempt arises. It seems to me that the ground of opposition to the appellant's application must fail. This is an application incidental to an appeal which is entitled to



dent which is an indirect compliance with the express order of the court, constituted, in my view, a willful disobedience to that order and therefore contemptuous. Until the order is complied with, the court below must decline to hear the application.

B     For the above reasons ably stated in the judgment of my learned brother, Uwais, J.S.C., I too dismiss the appeal and affirm the decision of the Court of Appeal. I agree to the order for costs made in the lead judgment.

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**ADIO JSC**

C     I have had the privilege of reading, in draft, the judgment just read by my learned brother, Uwais, JSC., and I agree that the appeal does not succeed. I dismiss it and abide by the order for costs.

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**IGUHJSC**

D     I have had the advantage of reading in draft the judgment just delivered by my learned brother, Uwais, JSC. I agree that this appeal has no merit and that it should be dismissed.

E     The appeal accordingly fails and it is hereby dismissed. The decision of the trial court as confirmed by the Court of Appeal is hereby further affirmed with costs as assessed in the lead judgment.

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