

SUPREME COURT OF NIGERIA

2ND JULY, 1996. SC. 141/1993

**CORAM:- S. M. A. BELGORE, M. E. OGUNDARE,
U. MOHAMMED, S. U. ONU, Y. O. ADIO, JJSC**

MRS. O. O. LAYANDE APPELLANT
 AND
 PANALPINA WORLD TRANSPORT
 NIG. LTD RESPONDENT

EVIDENCE - Document - Need to read evidence as a whole - To avoid disjointed interpretation
disjointed interpretation of document.

EVIDENCE - Extrinsic evidence - Contract of employment - Where clear and certain as to its terms - Trial court was wrong in admitting extrinsic evidence.

MASTER & SERVANT - Conditions of contract - Where clearly spelt out - Another document cannot be relied on - In denying the Managing Director's power to terminate the employment.

MASTER & SERVANT - Termination - Where executed in line with the parties' contract - Whether wrongful.

MASTER & SERVANT - Reasons for termination - May be good or bad - Subject to applicable remedies.

FACTS

The plaintiff/appellant, a chartered accountant, was employed by the defendant/respondent as Chief Internal Auditor in 1978. By a letter dated 2nd October signed by the Managing Director, the respondent terminated appellant's employment by giving her three months salary in lieu of notice and her other entitlements. This termination was in line with the terms of contract between the parties.

The appellant filed an action before the Lagos High Court contesting that her termination was null and void. She claimed the sum of N450,000.00 in the alternative as special and general damages for wrongful termination. Appellant relied on a resolution made by the respondent in its general meeting, Exhibit L7, in establishing her case. The trial court relied on the said Exhibit L7, an extrinsic document, in finding for the appellant. Respondent's appeal to the Court of Appeal was allowed. Being dissatisfied, appellant

has now appealed to the Supreme Court raising 4 issues.

ISSUES FOR DETERMINATION

“2.07 Whether having regard to the purport and interpretation of Exhibits “B” and “L7” it can be rightly said that the purported unilateral termination of the employment of the Appellant by the Respondent’s Managing Director was intra vires the said Managing Director and legally proper in the circumstances.

2.02 Whether (if 2.01 is answered in favour of the Appellant) the Court of Appeal was right in setting aside the judgment of the trial Court and the damages of N199,716.66 awarded in favour of the Appellant.

HELD (Unanimously dismissing the appeal per lead judgment of **BELGORE JSC**)

Conditions of contract

1. The contract governing the relationship of the appellant and respondent is Exhibit B which clearly states the conditions of the contract. At the time the appellant was employed there was in existence Exhibit L7 which all the documents in her possession - letter of employment and contract of employment never adverted to. Thus only Exhibit B is the contract between the parties. The powers of the Managing Director vis-a-vis the employment and dismissal of the company’s staff could not be fettered by Exhibit L7 as there is no ambiguity in Exhibit L7 as to its purport; the Management Council envisaged and set up in Exhibit L7 is an advisory body and it clearly states the Articles of Association of the Company could not be affected by it. This is the only obvious legal situation. (p. 1296 G)

Termination executed in line with parties contract

2. Going by these submissions on a proper construction of the contract between the parties the Managing Director is the person to terminate or employ on behalf of the company. In all contracts of employment the courts must be wary of looking outside their terms, for the terms govern the relationship between the employer and the employed and where the terms spell out unambiguously how and when to terminate the employment and the determination is carried out in the manner provided by the terms, that termination is not wrongful. Parties must be bound by their contract and to look outside the terms of the contract to avoid termination makes no meaning of the contract. The contract between the appellant and the respondent provided for three months notice of intention to terminate the employment or three months salary in lieu of notice. The appellant was terminated and given three months salary in lieu of failure of three months notice; she was

also paid for some entitlements. Certainly this meets the terms of contract in Exhibit B. (p. 1298 A)

Extrinsic evidence

3. The evidence before the trial Court is clear because both Exhibits B and N came after the introduction of the Management Council and none of die two documents advert to the Council. The contract, Exhibit B is clear and certain as to its terms that extrinsic evidence is not needed to interpret them. I cannot see why the learned trial judge should embark on looking for more evidence outside the contract in the light of die overwhelming evidence of what the appellant signed. The Court of Appeal was therefore right in setting aside die entire decision of the trial Court (p. 1298 E)

Reasons for termination

4. Apart from those employments governed by statutory provision e.g. employment in civil service of statutory bodies where termination must follow the provisions of relevant statutes the master in other cases can terminate for good or bad reasons subject to remedies of compensation where applicable for wrongful dismissal. In the instant case the terms of die contract of employment for termination of the contract have been clearly adhered to. (p. 1298 G)

Disjointed interpretation of document

5. The dissenting judgment of the Court of Appeal, with greatest respect, viewed Exhibit L7 rather disjointed by interpreting the clause thereof in isolation of other clauses. Such documents must be read as a whole so as to grasp their import. However in the instant case, I hold that Exhibit L7 is immaterial, irrelevant and should not have been construed as forming part of Exhibit B. (p. 1299 A)

NOTABLE POINTS OF INTEREST
MOHAMMED JSC

1. Proper authority to terminate appellant's employment

On the facts of this case and die evidence adduced before the trial court the Management Council is not the proper authority to terminate the contract of employment of the appellant. The proper authority to do so is the Managing Director acting for and on behalf of the Company. The Council was not set up to usurp the powers of the Managing Director. The termination of the appellant's employment which was communicated to die appellant through a letter signed by the Managing Director of the Company was therefore quite proper. (p 1300 D)

ADIO JSC***2. Contract - When extrinsic evidence is not admissible***

The general rule is that where the parties have embodied the terms of their agreement or contract in a written document, as it was done in this case, extrinsic evidence is not admissible to add to, vary, subtract from or contradict the terms of the written instrument. So, where the parties enter into a contract they are bound by the terms of that contract and it is unfair to read a contract the terms on which there was no agreement. (p. 1302 B)

REPRESENTATION

F.O. Fagbohunge Esq. with Ayo Ajayi Esq. for the Appellant.
Dr. Arthur Nylander, SAN with L. Nylander and T. Oyekunle Esq. for the respondent

CASES REFERRED TO

Ajayi v. Texaco (Nig) Ltd. (1987) 3 NWLR (Pt 62) 577
Alraine - v. Eshiett (1977) 1 SC. 89, 96-97
Kusamotu v Wemabod Estate Ltd (1976) 11 SC 79, 293
Ekpeyong v. Nyong (1975) 2 SC 71
Chukwumah v. Shell Petroleum Developments Company of Nigeria Ltd, (IW'M) S KLR 93
Union Bank of Nigeria Ltd. v. Ozigi (1994) 5 KLR 1
Abdullahi Baba v. Nigerian Civil Aviation Centre (1991) 15 N.W.L.R. (pt. 192) 388
Ogunsanwo v. C.F. Furniture (W. A.) Co. Ltd. (1961) W.N.L.R. 327 at p. 329
Obot v. Central Bank of Nigeria (1993) 12 KLR 45

LEAD JUDGMENT BY BELGORE JSC

The appellant is a chartered accountant and was employed with effect from 3rd May, 1978 by the respondent as Chief Internal Auditor as evidenced by respondent's letter of 28th April, 1978, Exhibit B, which reads:

*"Mrs O.O. Layade,
10, Glover Road
Ikoyi,
Lagos.*

Dear Mrs. Layade,

RE: YOUR EMPLOYMENT AS CHIEF INTERNAL AUDITOR

We take pleasure in confirming to you that your application for the job of Chief Internal Auditor for Panalpina World Transport Nigeria Limited has been accepted.

Below stated please find the remunerations which will be paid to you:

- B (1) Salary: N13,800.00 per annum.
 (2) Housing allowance: N6,000.00 per annum, payable in advance on the 1st of January of every year as a lump sum.
 (3) Overtime allowance: N40.00 per month
 (4) Car allowance: N156.00 per month.

- C *Enclosed please find our contract agreement, which kindly go through and sign same on the appropriate portion, accepting the conditions of service.*

We understand that one month's notice will have to be given by you to your former employer and therefore, we take it that you may start work with Panalpina on the 1st of June, 1978, or in accordance with negotiations that may take place in the meantime.

- D *We would like to welcome you in our Company and hope that you will be a great asset to us.*

Kindly sign a copy of this letter and return same as soon as possible. Your signature on the copy serves as an agreement to take up this position and accepting the terms.

- E *Yours sincerely,*

PANALPINA WORLD TRANSPORT NIGERIA LIMITED

*K. SOBOTTA,
MANAGING DIRECTOR."*

- F On 1st June, 1978 the appellant and defendant/respondent signed the formal contract of employment. It is pertinent to quote paragraphs 1 and 5 of this contract reading as follows:

Clause 1

- G *"The Company will employ the employee in any of its offices in Nigeria at duties as detailed to him by the Company and the employee will serve the Company faithfully from the date of his employment until the aforesaid contract is determined by either party as embodied in this agreement."*

Clause 5

- H *"Notwithstanding anything to the contrary herein-before contained, the Company may at any time determine the employment of the employee hereunder, on giving to the employee not less than three months' notice in writing of its intention to terminate it or in lieu of such notice on payment of three months salary to the employee. The employee also reserves the right to resign his appointment on giving to the Company not less than three*

months notice in writing of his intention to resign, or in lieu of such notice on payment of three months salary to the Company. If however, the employee resigns, he will forfeit his service benefits."

By a letter dated 2nd October, 1980, signed by the Managing Director, the respondent company terminated the employment of the appellant by giving her three months salary in lieu of notice and all her other entitlements. B
Against this, the appellant as plaintiff claimed before Lagos High Court inter alia as follows:

(i) *"A declaration that the purported termination of the appointment of the plaintiff from the services of the defendant company as contained in the letter of 2nd October, 1980 to the plaintiff is null and void and of no effect whatsoever on grounds of irregularity, bad faith, breach of the rules of natural justice, public policy and infringement of her constitutional rights.* C

(ii) *A declaration that the purported termination of the plaintiff from her employment as a member of the Senior Management of the defendant company is ultra vires the Managing Director of the defendant and therefore null and void of no effect.* D

(iii) *A declaration that the purported termination of the plaintiff and virtually the entire African Members in the upper segment of the Management Staff on grounds of alleged personality conflict with expatriate Managing Director is void and illegal and against public policy, and a derogation from the plaintiff's constitutional rights.* E

(iv) *A declaration that the plaintiff is still a member of Senior Management Staff of the defendant company and that the plaintiff is entitled to continue in the service of the defendant company and to receive her monthly salary, emoluments, allowances and other entitlements attached to her position till her retiring age of 55.* F

(v) *N10,000.00 aggravated and/or exemplary damages for assault for letting loose a dog with known vicious propensity on the plaintiff.*

(vi) *Perpetual injunction restraining the defendant, its servants and/or agents from preventing and/or in any way obstructing the plaintiff from carrying on her normal duties as a member of the Senior Management Staff of the defendant company OR IN THE ALTERNATIVE N450,000.00 special, aggravated, exemplary and general damages for wrongful termination of the plaintiff's employment.* G

PARTICULARS OF DAMAGES:

(1) *Loss of earnings till retiring age of 55 as per Contract of service for 153 months at N1,474 per month - N225,522.00* H

(2) *Gratuity:*

(a) *80% of monthly salary for each of first 10 years - N11,792.00*

(b) 90% of monthly salary for each of last 5 years 6,633.00 - N18,425.00

(3) Contributory Pension:

(a) 2 years at 10% - 3,537.00

B (b) 13 years at 5% 11,497.00 - N15,034.00

(4) Housing allowance at N500.00 per month - N76,500.00

(5) Personal allowance at N100.00 per month - N15,500.00

(6) Car allowance at N156.00 per month - N23,868.00

(7) Leave allowance at 6% of annual salary - N15,919.00

C (8) Medical expense - N6,000.00

(9) General, Aggravated and exemplary damages - N52,832.00"

During the trial of the case the appellant claimed that her employment was wrongfully terminated and that the letter of termination by the Managing Director was ultra vires, null and void, as was in her statement of claim. She also contended that prior to her employment at the Company's
D General meeting, a body known as Management Council was established for the defendant company vested with specific duties including management and administration of the company and recruitment, termination, dismissal of and regulation of conditions of service of both senior and junior personnel in so far as it did not relate to themselves. The said resolution
E at the General Meeting, not affecting the Articles and memorandum of Association of the respondent was admitted as Exhibit L7. The appellant claimed her employment was terminated without recourse to Exhibit L7. Exhibit L7 the resolution of 28th January, 1978, was supposed to come into effect on 1st February, 1978, some months before the employment of
F the appellant.

Clause 1 of Exhibit L7 states its purport as:

"A Management Council be established to advise, counsel, and assist the Managing Director in the formation of policies for the management and administration of the affairs of the company with effect from 1st
G February, 1978"

The Management Council was to consist of five members, to wit, Managing Director as Chairman, the Finance Director, the Executive Director, the General Manager, and the Director of Air Freight. In clause 5, Exhibit L7 states inter alia:

H (ii) "recruitment, termination, dismissal, and regulation of the conditions of service of both senior and junior personnel in so far as it does not relate to themselves" i.e. the five members (Italics mine for emphasis) shall be among the functions of the Managing Council to "advise and counsel" about. Clause 7, I believe for the avoidance of doubt as to its function states in relation to the Management Council;

7. *"The Management Council meeting cannot be construed to substitute or replace a Board meeting of the Company Directors which could be convened in the manner prescribed by the Articles of Association."*

After reviewing the evidence before him, Adeniji J, who tried the case upon all the evidence which he thoroughly adverted to came to a conclusion that the appellant's contract of employment was wrongfully terminated as the provisions of Exhibit L7 was not complied with and as the contract was not governed by Exhibit B alone. He therefore awarded her arrears of salary from 2nd October, 1980 to 3rd of August, 1990 (date of judgment) at the rate of N1,474.00 per month and general damages totalling N34,973.00 plus other damages all making a total of N199,716.00 plus costs. Against the judgment of the High Court the respondent company appealed to the Court of Appeal.

The Court of Appeal in a split decision, [Ubaezonu, J.C.A. dissenting], allowed the appeal and held that the person who signed Exhibit B, letter of employment also signed the letter of termination and that the management Council evidenced by Exhibit L7 was in existence before both documents the appellant cannot say her termination was void much as she could not say that Exhibit B was void. Against the decision of the Court of Appeal this appeal was lodged.

The learned counsel for the appellant raised and formulated the following issues for determination:

2.01 *"Whether having regard to the purport and interpretation of Exhibits "B" and "L7" it can be rightly said that the purported unilateral termination of the employment of the appellant by the respondent's Managing Director was intra vires the said Managing Director and legally proper in the circumstances."*

2.02 *Whether (if 2.01 is answered in favour of the appellant) the Court of Appeal was right in setting aside the judgment of the trial court and the damages of N199, 716.66 awarded in favour of the appellant."*

2.03 *Whether the Court of Appeal was right in refusing the appellant's Cross-Appeal seeking an upward review of the damages awarded by the trial court*

2.04 *Whether or not the appellant is entitled to an award of aggravated and exemplary damages for the purported termination of her employment by the respondent's Managing Director due to racial prejudice."*

As against these four issues, the respondent contended there were only two issues for determination to wit:

2.2 *"The first issue for determination is:*

Whether the appellant's appointment was terminated by the proper

authority of the respondent and in accordance with the terms and conditions of her employment. Under this issue, the following questions need to be considered:

B (a) *can the Managing Director exercise the powers of the “Company” in Clause 5 of the appellant’s contract of employment in terminating the contract?*

(b) *did the establishment of the Management Council by the Shareholders limit and/or deprive the Managing Director of his authority to terminate the contract of employment of the appellant?*

C (c) *was it the Managing Director or the Management Council that could terminate the appointment of the appellant and sign the letter of termination?* and

(d) *was the issuance of the letter of termination signed by the Managing Director of the respondent a valid exercise of the authority of the respondent to terminate the appellant’s contract of employment?*

D 2.3 *The second issue for determination is:*

Whether the principles relating to the award of damages, having regard to the pleadings, the evidence and all the relevant circumstances of this case, were rightly spelt out in the lead judgment of the Court of Appeal and applied accordingly.”

E The Court of Appeal in the lead judgment pointed out four documents most essential to the just determination of the case as follows:

(i) *“The resolution establishing the Management Council which took effect on 1st February, 1978; Exhibit L7, (pp. 91-93 of the record);*

F (ii) *The letter of appointment of the respondent signed by the Managing Director of the appellant ‘F’ at p. III of record;*

(iii) *The contract of Employment dated 1st June, 1978 Exhibit ‘B’ (pp. 112-117) and Exhibit ‘M’ (pp. 156-161) of record; and*

(iv) *The letter or Dismissal of the respondent signed by the Managing Director of the appellant, Exhibit ‘N’ pp. 95 and 162-163 of the record.”*

G It could be clearly seen that Exhibit B provides in its clause 1 that the “Company will employ” and in clause 5 thereof that the “Company will determine the employment”. What then is the effect of the letter of termination Exhibit N, in view of Exhibit B? The contract governing the relationship of the appellant and respondent is Exhibit B which clearly states the conditions of the contract. At the time the appellant was employed there was in existence Exhibit L7 which all the documents in her possession - letter of employment and contract of employment never adverted to. Thus H only Exhibit B is the contract between the parties. The powers of the Man

aging Director vis-a-vis the employment and dismissal of the company's staff could not be fettered by Exhibit L7 as there is no ambiguity in Exhibit L7 as to its purport; the Management Council envisaged and set up in Exhibit L7 is an advisory body and it clearly states the Articles of Association of the Company could not be affected by it. This is the only obvious legal situation. B

It is clear that both the majority and dissenting judgment, Kalgo J.C.A. in the lead judgment clearly stated the situation between the parties as follows:

"....it would appear to me that under normal circumstances, the contents of Exhibit N are on the face of it in complete compliance with clause 5 of the respondent's contract agreement, Exhibit B. I say so because the holder of the office of Managing Director of the appellant who signed the letter of appointment (employment) and the agreement was the same office holder who signed the termination letter, Exhibit N." C

and concluded that the Management Council envisaged in Exhibit L7 was: D

"(i) set up as an advisory body to assist Managing Director in the management of the company and there is nothing to the contrary on the face of the document;

(ii) not clothed with executive powers as such and the duties set out in its clause 5 (supra) are only meant to be matters in which the Council can give their advice to the Managing Director, who is the Chairman; E

(iii) not given executory powers to carry out or implement its advice and only the Managing Director can look at the advice and implement if feasible.

(iv) clearly given no more power than it had and clause 7 thereof shows that the Management Council was not to substitute or replace the meeting of the company's Board of Directors; F

(v) not meant that the appellant could not be dismissed or her appointment terminated only under the aegis of Exhibit L7 and not Exhibit B alone;

(vi) not mentioned in Exhibit B or any contract signed by the appellant, even the Council was in existence and both the letter of employment and contract of employment never alluded to Exhibit L7." G

He finally found that Exhibit L7 had no relevance to the appellants contract with the respondent which were clearly spelt out in Exhibit B which itself is not ambiguous. H

Mr. Nylander, SAN for the respondent submitted that the proper authority to sign the letter of employment or termination is the Managing Director and that that is the case now before us. If the appellant could

challenge the validity of Exhibit N, there was no reason advanced why she did not contend that her letter of employment and contract signed in respect thereof both coming after the setting up of the Management Council are not equally invalid.

Going by these submissions, on a proper construction of the contract between the parties the Managing Director is the person to terminate or employ on behalf of the company (See: *Ajayi v. Texaco (Nig.) Ltd.* (1987) 3 NWLR (Pt. 62) 577. In all contracts of employment, the courts must be wary of looking outside their terms, for the terms govern the relationship between the employer and the employee and where the terms spell out unambiguously how and when to terminate the employment and the termination is carried out in the manner provided by the terms, that termination is not wrongful. Parties must be bound by their contract and to look outside the terms of the contract to avoid termination makes no meaning of the contract. The contract between the appellant and the respondent provided for three months notice of intention to terminate the employment or three months salary in lieu of notice. The appellant was terminated and given three months salary in lieu of failure of three months notice; she was also paid for some entitlements.

Certainly this meets the terms of contract in Exhibit B. It is only when time period is not prescribed for notice or payment in lieu of notice in the contract of employment that there are problems (See: *Daniels v. Shell-BP.* (1962) 1 All NLR 19; (1962) 1 SCNLR 19; *Almine (Nig.) Ltd. v. Eshiett* (1977) 1 SC 89, 96-97; *Kusamotu v. Wemahod Estate Ltd* (1976) 11 SC. 270, 293. The evidence before the trial Court is clear because both Exhibits B and N came after the introduction of the Management Council and none of the two documents advert to the Council. The contract, Exhibit B is clear and certain as to its terms that extrinsic evidence is not needed to interpret them. I cannot see why the learned trial Judge should embark on looking for more evidence outside the contract in the light of the overwhelming evidence of what the appellant signed. The Court of Appeal was therefore right in setting aside the entire decision of the trial Court (*Etum Ekpeyong and ors v. Inyang Effiong Nyong & ors* (1975) 2 SC 71,80; *Oridola v. M & K Ltd.* (1972) SC 51.

Apart from those employments governed by statutory provision e.g. employment in civil service of statutory bodies where termination must follow the provisions of the relevant statutes. (*Olaniyan v. University of Lagos* (1985) 2 NWLR (Pt. 9) 599; *Eperokun v. University of Lagos* (1986) 4 NWLR (Pt. 34) 162 193/194, the master in other cases can terminate for good or bad reasons subject to remedies of compensation where applicable for wrongful dismissal. In the instant case the terms of the contract of

employment for termination of the contract have been clearly adhered to.

The dissenting judgment of the Court of Appeal, with greatest respect, viewed Exhibit L7 rather disjointed by interpreting the clause thereof in isolation of other clauses. Such documents must be read as a whole so as to grasp their import. However in the instant case, I hold that Exhibit L7 is immaterial, irrelevant and should not have been construed as forming part of Exhibit B. (Chukwumah v. Shell Petroleum Development Company of Nigeria Ltd. (1993) 4 NWLR (Pt. 289) 512. B

Having held that the contract of employment in question was properly terminated, the question of quantum of damages is otiose and, needless to say, no more relevant in this judgment. C

In the end I find no merit in this appeal and I dismiss it with N1,000.00 costs to respondent.

OGUNDARE JSC

I have had the benefit of a preview of the judgment of my learned brother Belgore, J.S.C. just read. I agree with him that this appeal is completely devoid of any merit. The Management Council set up by a resolution of the Shareholders of the respondent Company (see Exhibit L7) was only an advisory body to the Managing Director. It had no executive authority to employ, dismiss or discipline staff. The authority of the Managing Director to employ, dismiss or discipline staff was in no way curtailed by that resolution. The appellant's employment was determined by the Managing Director of the respondent Company in accordance with Clause 5 of the appellant's letter of employment (Exhibit B). That the Managing Director acted for and on behalf of the company is not in dispute. In the face of the evidence adduced at the trial and in the light of the findings of the court below I cannot see how the appellant could have succeeded in her claims. Those claims were in my respectful view, rightly dismissed by the court below. D E F

Consequently I too dismiss this appeal and abide by the order for costs made by my learned brother Belgore J.S.C. G

MOHAMMED JSC

I have had a preview of the opinion of my learned brother, Belgore, J.S.C., in the judgment just read, and I agree with him that the contract by which the appellant was employed as Chief internal auditor of the respondent had been properly terminated. H

The main issue in my view, is the question raised by the learned counsel for the respondent in which he asked whether it was the Managing Director or the Management Council that could terminate the appointment of the appellant and sign the letter of termination.

B It is not difficult to point to the role of the Management Council. It all happened on the 25th January, 1978, prior to the appointment of the appellant, when the shareholders of the respondent met and passed a resolution establishing a Management Council. In clause 1 of the resolution it was agreed that the Management Council is to advise, counsel and assist the Managing Director of the Company in the formulation of policies for the management and administration of the affairs of the company with effect from 1st February, 1978. I therefore agree with the learned counsel for the respondent, Mr. Nylander, SAN that by the conditions of service and the terms of the appellant's contract of employment, the Managing Director of the respondent is still the authority to sign both letters of employment and termination.

On the facts of this case and the evidence adduced before the trial court the Management Council is not the proper authority to terminate the contract of employment of the appellant. The proper authority to do so is the Managing Director acting for and on behalf of the Company. The Council was not set up to usurp the powers of the Managing Director. The termination of the appellant's employment which was communicated to the appellant through a letter signed by the Managing Director of the Company was therefore quite proper. See: *Ajayi v. Texaco (Nigeria) Ltd. and Ors.* (1987) 2 NSCC 114; (1987) 3 NWLR (Pt.62) 577.

F I will also dismiss this appeal and affirm the majority judgment of the lower court. I abide by the order made on costs in the lead judgment.

ONU JSC

G I have been privileged to read before now the judgment of my learned brother Belgore, J.S.C. and with it I am in entire agreement that this appeal lacks merit and must perforce fail.

I only wish to add by pointing out that once Issue 2.01 which complains that -

H Whether having regard to the purport and interpretation of Exhibits 'B' and 'L7' it can be rightly said that the purported unilateral termination of the employment of the appellant by the respondent's Managing Director was intra vires the said Managing Director and legally proper in the circumstances-

is answered in the positive as I do answer it, the fact that the management Council, established on the shareholders' resolution (Exhibit L7) is a mere advisory body, would not in my view, derogate from the powers of the Managing Director of the respondent to terminate the appellant's appointment.

This of course presupposes the fact that the appellant was given the requisite three months salary in lieu of notice thereof as had indeed happened in this case. In fact since Exhibit 'B' - the appellant's contract of employment dated 1st June, 1978 governed her employment she cannot be heard to successfully contest the termination of her employment by the letter Exhibit 'N' dated 2/10/80. The establishment of the Management Council primarily to 'advise, counsel and assist the Managing Director in the formation of policies for the management and administration of the affairs of the company with effect from 1st February, 1978 does not, in my opinion vitiate Exhibit' B' whose clause 5 provides a complete answer to appellant's complaint of wrongful termination of her appointment. See: WNDC v. Abimbola (1966) NMLR 381. With issue 2.01 having been answered in the positive the remaining three issues wherein the appellant asks

"2.02 Whether (if 2.01 is answered in favour of the appellant) the Court of Appeal was right in setting aside the judgment of the trial Court and the damages of N199,716.66 awarded in favour of the appellant.

2.03 Whether the Court of Appeal was right in refusing the appellant's cross Appeal seeking an upward review of the damages awarded by the trial Court.

2.04 Whether or not the appellant is entitled to an award of aggravated and exemplary damages for the purported termination of her employment by the respondent's Managing Director due to racial prejudice." all crumble as they do no longer arise. They become otiose.

For these and the fuller reasons set out in the lead judgment, I too, dismiss the appeal and affirm the decision of the court below which set aside the judgment of the trial court, I make similar consequential orders including those relating to costs as contained therein.

ADIO JSC

I have had the advantage of reading in draft, the judgment just delivered by my learned brother, Belgore, J.S.C. and I entirely agree with him that there is no merit in this appeal. Accordingly, I too dismiss it.

My learned brother has given a comprehensive summary of the facts. The contract of employment of the appellant was set out in a written

agreement. The main issue was whether the provisions of Exhibit "L7", which were applicable in the case of some other employees of the respondent, were also applicable to the employment of the appellant. The provisions in the agreement containing the terms of the appellant's employment were clear, and unambiguous and there was nothing in the said agreement which incorporated, in the said agreement, the provisions or the terms set out in Exhibit "L7". In the circumstance, the answer to the main question mentioned above is in the negative; the provisions in Exhibit "L7" did not apply to the employment of the appellant. The general rule is that where the parties have embodied the terms of their agreement or contract in a written document as it was done in this case, extrinsic evidence is not admissible to add to, vary, subtract from or contradict the terms of the written instrument. See *Glaloye v. Balogun* (1990) 5 NWLR (Pt. 148) and *Union Bank of Nigeria Ltd. v. Gzigi* (1994) 3 NWLR (Pt. 333) 385. So, where the parties enter into a contract, they are bound by the terms of that contract and it is unfair to read into such a contract the terms on which there was no agreement. See *Abdullahi Baba v. Nigerian Civil Aviation Training Centre, Zaria & Anor* (1991) 5 NWLR (Pt. 192) 388.

In this case, the relevant provision in the agreement was that either of the parties could terminate the appointment or employment by giving the other party three months' notice or paying three months' salary in lieu thereof. In the circumstance, the onus on an employer, like the respondent is to prove that the specified period of notice has been given or salary in lieu thereof was paid to the employee. See: *Ogunsanmi v. C.F. Furniture (W.A.) Co Ltd.*, (1961) WNLR 327 at p. 329. The giving of the agreed or specified period of notice or paying of salary in lieu thereof prevents the termination from being wrongful and actionable. See: *Ajayi v. Texaco (Nig.) Ltd.* (1987) 3 NWLR (Pt. 62) 577 and *Obot v. Central Bank of Nigeria* (1993) 8 NWLR (Pt. 310) 140. As the respondent offered the appellant three months' salary in lieu of notice, there was no legal justification on the basis of which it could be said that the termination of the employment of the appellant was wrongful and actionable. It is for the foregoing reasons and the fuller reasons given in the lead judgment of my learned brother, Belgore, J.S.C. that I agree that this appeal has no merit. I accordingly dismiss it and abide by the order for costs.

H