

SUPREME COURT OF NIGERIA
19TH DECEMBER, 1997. SC. 139/91
CORAM:- M.L. UWAIS CJN, I.L. KUTIGI, M.E. OGUNDARE,
E.O. OGWUEGBU, A.I. IGUH, JJSC

BASIL EGBUONU APPLICANT/APPELLANT

AND

BORNU RADIO TELEVISION CORPORATION RESPONDENT

JUDICIAL PRECEDENT - *Stare decisis - Tukur v. Gongola State - Though the facts are not the same with this case - The principle is the same.*

PRACTICE AND PROCEDURE - *Commencement of action - Claims partly for breach of fundamental right and partly for wrongful dismissal - Which should have been commenced by writ of summons but was not - Will be struck out as incompetent.*

FACTS

Before the Maiduguri High Court the applicant/appellant commenced proceedings under the fundamental Rights (Enforcement Procedure) Rules, 1979 inter alia challenging the termination of his appointment by the respondent. His ground is based on the fact that he was not granted a fair hearing before the purported termination. The Respondent Objected to the mode of commencement of the action as improper since it did not fall under chapter iv of the Constitution. They were over-ruled and the trial court subsequently found in favour of the applicant.

The respondent dissatisfied with the decision of the trial court appealed to the Court of Appeal, which allowed the appeal. The applicant being aggrieved has now appealed to the Supreme court. The appeal was decided on a lone issue.

ISSUE FOR DETERMINATION

(2) *Whether having regard to the facts of this case, the action is one that ought to have been commenced under the Fundamental Rights (Enforcement Procedure) Rules 1979."*

HELD (Unanimously dismissing the appeal per lead judgment of **KUTIGI JSC**)
Stare decisis - Tukur v. Gongola State

1. When the court drew attention of appellant's counsel to the recent decision of this Court in the case of TUKUR v. GONGOLA STATE (1997) 6 NWLR (pt. 510) 549, he said he was aware of the decision, but added that the facts are distinguishable and that in the instant appeal the main or principal claim was the appellant's enforcement of his fundamental right to fair hearing. The court was asked to allow the appeal. I think learned counsel is right when he said the facts of this case are quite distinguishable from the facts in TUKUR's case above. But I say straight away that there are similarities and that the principle involved is the same in both cases. (p. 2070 A)

Commencement of action by wrong procedure

2. In this appeal the claims are partly for wrongful dismissal or termination of appointment and partly for breach of fundamental right. But here as in TUKUR, the principal claim being wrongful termination of appointment which ought to have been commenced by a writ of summons, which was not, then all the claims, principal and subsidiary which flow directly from it, are incompetent and ought to be struck out. That was what the Court of Appeal did in this case. I believe they were right. The appeal therefore fails and it is hereby dismissed. (p. 2070 C)

NOTABLE POINTS OF INTEREST

UWAIS CJN

1. Action for wrongful dismissal - Cannot be by Fundamental Rights Enforcement

The procedure for instituting an action based on the infringement of a fundamental right under the Constitution is prescribed by fundamental rights (Enforcement Procedure) Rules, Cap. 62 of the Laws of the Federation, 1990. An action for wrongful dismissal from employment cannot be brought under the rules since it belongs to a different class of action from actions on contravention or threatened contravention of a fundamental right. The Bornu State High Court (Civil Procedure) Rules, 1979 provides, in Order 2 thereof, that such action must be commenced by a writ of summons. In this case the appellant's main claim, which is based on wrongful dismissal from employment, is founded on contract. For him to enforce the claim he was bound to take out a writ of summons against the Respondent. This he failed to do. (p. 2070 G)

IGUHJSC

When the Court cannot adjudicate over incidental claims

2. The law is now settled that where ancillary or incidental claim or claims are so inextricably tied to or bound up with the main claims before the court in a suit, a court of law cannot adjudicate over them where it has no jurisdiction to entertain the main claims if such incidental or ancillary claims cannot be determined without a determination at the same time of the main claims or where the determination of such incidental or ancillary claims must necessarily involve a consideration or determination of the main claims. (p. 2075 E)

REPRESENTATION

M. A. O. Okulaja for the Appellant

Respondent not represented

CASES REFERRED TO

Tukur v. Gongola State (1989) 4 NWLR (pt. 117) 517

Madukolu v. Nkemdilim (1962) 1 ALL NLR 587

Tukur v. The Government of Taraba State (1997) 6 N.W.L.R. (Part 510) 549

Izenkwe v. Nnadozie 14 W.A.C.A. 361 at 363

Adeyemi v. Opeyori (1976) 9-10 S.C. 31 at 51

THE FEDERAL MINISTER OR INTERNAL AFFAIRS & ORS. v. SHUGABA ABDULRAHMAN DARMAN (1982) 3 N.C.L.R. 915,

TUKUR v. GONGOLA STATE (1989) 4 NWLR (pt. 117) 517

STATUTES & RULES REFERRED TO

Borno state High Court (Civil Procedure) Rules 1979 O. 2

Constitution of Nigeria 1979 ss. 42, 230, 33 (1)

Fundamental Rights (Enforcement Procedure) Rules 1979 O. 1 r. 2

Constitution (Suspension and Modification) Decree No. 107 of 1993.

LEAD JUDGMENT BY KUTIGIJSC

Proceedings in this case were commenced in the Maiduguri High Court by the applicant/appellant when he filed in that court a motion ex parte for leave to apply for an order enforcing or securing his fundamental rights alleged to have been infringed pursuant to the fundamental Rights (Enforcement procedure) Rules, 1979. Upon the grant of leave to apply, the appellant filed his motion on notice which sets out in full a statement of the orders prayed for as well as the grounds for the application as follows:-

"(1) A declaration that both the suspension letters and termination of appointment letters references BRTV/PER/170/S/Vol.1/99 of 12th December, 1985 and BRTV/PER/170/S/Vol.1/102 of 20th January, 1986 respectively are illegal, unconstitutional, and thereby repugnant to rules of natural justice.

B *(2) Declaration that the purported termination of the Applicant's appointment by the respondent from the Borno radio Television Corporation Maiduguri is mala fide, void and unconstitutional.*

(3) A declaration that by reason of the Respondent's failure to call upon the Applicant to defend himself before the issuance of letters of suspension and termination of appointment constitutes a violation of the applicant's fundamental right to fair hearing and therefore unconstitutional.

C *(4) A declaration that by failure of the Respondent to call upon the Applicant to defend himself, the Respondent dealt with the Applicant's case with bias.*

D *(5) A declaration that the Applicant be reinstated to his job under the respondent with payment of all his salaries and entitlements since the purported termination of the Applicant's appointment.*

GROUND

E *(1) The Applicant is a Nigerian Citizen, resident in Maiduguri, Borno State.*

(2) The Applicant is a Senior Staff on Grade 09 and a pensionable appointment under the respondent at all material times to this action.

F *(3) The Applicant cannot be deprived of his fundamental right without due process of law by a tribunal or body of competent authority before such body can terminate the appointment of the Applicant.*

G *(4) The purported termination of appointment of the Applicant from the services of the Respondent by the Respondent on 20th January, 1986 without calling upon the Applicant to make his representations against the allegations levied (sic) against the Applicant is a gross violation of the Applicant's right to fair hearing guaranteed to him under section 33 of the Constitution of the Federal Republic of Nigeria 1979 as modified.*

(5) And take notice that on the hearing of this motion the said Applicant will use the affidavit of leave for motion Ex parte and the exhibits therein referred."

H The application was supported by an affidavit and a further affidavit. On being served with the motion on notice, the respondent filed a Notice of preliminary Objection contending that the action was not properly commenced before the court. That being an action for wrongful dismissal, the applicant/appellant should have complied with the provisions of Order 2 of the Borno

State High Court (Civil Procedure) Rules, 1979. That the action did not fall within the provisions of Chapter IV of the constitution as it was not a fundamental right for any person to be employed or to retain his employment. Also that the reliefs sought were declaratory and not for the enforcement or securing the enforcement of any fundamental right enshrined in the Constitution. The preliminary objection was argued and in a reserved ruling the learned trial judge overruled the objection when he concluded his ruling thus:

"In the light of the foregoing, it is hereby concluded that the objections raised in the notice filed, lack any substance, therefore it is struck-out with costs assessed at N200.00."

Thereafter the respondent filed a 12 paragraph counter affidavit with six annexures opposing the applicant/appellant's application for the enforcement of his Fundamental Rights above. At the hearing counsel on both sides addressed the court relying solely on affidavit evidence and some decided cases. In a reserved judgment/ruling, the learned trial judge granted the application. The letters of suspension and termination of appointment of the applicant/appellant by the respondent were declared illegal, unconstitutional, null and void. The applicant/appellant was ordered to be reinstated to his job by the respondent/corporation with full payment of his salaries and other entitlements from the time of his suspension from work.

The respondent/corporation was dissatisfied with the decision of the trial High Court and it appealed to the Court appeal. Three issues were submitted for resolution in that Court as follows:

"1. Whether from the nature of the respondent's claim and considering the provisions of section 42 of the Constitution of the Federal Republic of Nigeria, 1979, the learned trial Judge was right in entertaining the action initiated under the fundamental Rights (Enforcement Procedure) Rules, 1979.

2. Whether from the circumstance of the action considering the contents of the affidavits and counter-affidavit, the learned trial Judge was right in resolving the issues joined without calling for oral testimony.

(3) Whether the question, whether as some of the allegations against the respondent being in the nature of a crime they should have been reported to the law enforcement agencies for necessary action, was part of the case for the respondent to warrant the learned trial Judge's pronouncement on it in his ruling ."

Clearly it appears to me that the most important issue before the Court of Appeal was issue (1) above, because once that issue succeeded there was no need to have gone into the other two issues. I will therefore concentrate on the said issue in my treatment of the appeal.

The matter came before the Court of Appeal holden in Jos (coram Mukhtar, Adio and Okezie, JJ.C.A. In the lead judgment delivered by Adio, JCA. (of blessed memory) and concurred by other Justices, the learned Justices of the Court of appeal said of Issue (1) amongst others as follows:-

"When an application is brought under the Fundamental Rights B (Enforcement Procedure) rules, 1979, a condition precedent to the exercise of the Court's jurisdiction is that the enforcement of fundamental right or the securing of the enforcement thereof should be the main and not and accessory claim. Enforcement of fundamental right or securing the enforcement thereof should, from the applicant's claim as presented, be the principal or C fundamental claim, and not an accessory claim. See THE FEDERAL MINISTER OR INTERNAL AFFAIRS & ORS. v. SHUGABA ABDULRAHMAN DARMAN (1982) 3 N.C.L.R. 915,

In this case, the alleged breach of fundamental right of fair hearing under section 33 of the Constitution of the Federal Republic of Nigeria, D 1979, flows from the alleged suspension and termination of the appointment of the respondent. The termination of the appointment of the respondent was, having regard to all the circumstances in this case, including the reliefs claimed, the grounds for claiming the reliefs, the facts deposed to in the affidavit and further affidavit of the respondent, and most of the findings E made by the learned trial judge, the main claim or the fundamental issue is this case. It was the cause of action."

After citing TUKUR v. GONGOLA STATE (1989) 4 NWLR (pt. 117) 517 and MADUKOLU & ORS. v. NKEMDILIM (1962) 1 All NLR. 587, the learned Justice continued:-

"It is not in doubt that a High Court in a State has jurisdiction under section 42 of the Constitution of the federal Republic of Nigeria, 1979, to entertain an application for enforcement of fundamental rights. However, where the main or principal claim is not the enforcement or securing the enforcement of a fundamental right, the jurisdiction of the court G cannot, as has been pointed out above, be properly exercised as it will be incompetent by reason of the foregoing feature of the case.....
The respondent's application was not properly before the court. The answer to the question raised under the first issue is in the negative.....

The High court has jurisdiction to entertain an action challenging H the suspension or termination of the appointment of an employee by his employer. The present appeal has succeeded because a wrong or inappropriate procedure was used in initiating the proceedings. After the disposal of this appeal it is up to the respondent on the advice of his legal advisers to pursue whatever remedy, if any, that is available to him. The proper order

that the lower court should have made in the present circumstances was one striking out the respondent's application. The appeal is allowed. The ruling of the learned trial judge and the order awarding salary and entitlements to the respondent from the time of his suspension, and the order reinstating the respondent to his job in the appellant's establishment are hereby set aside. In their place, an order striking out the respondent's aforesaid B application is substituted.

There is no order as to costs."

The applicant/appellant was dissatisfied with the above decision and filed his Notice of appeal to this Court.

At the hearing of the appeal, the appellant who had filed a brief was represented by counsel. The respondent neither filed a brief nor was it represented by anyone. Appellant's counsel adopted his brief and made oral submissions in addition. C

In the appellant's brief, two issues were submitted for determination in the appeal. They read:- D

"(1) Whether the Court of Appeal was right in holding that it was not part of the Appellant's case that as some of the allegations made by the respondent against the appellant being in the nature of crime the ought to have been reported to the law enforcement agencies for necessary action.

(2) Whether having regard to the facts of this case, the action is one that ought to have been commenced under the Fundamental rights (Enforcement Procedure) Rules 1979." E

There is no doubt that issue (1) above arose out of the consideration of respondent's (then appellant) issue (3) above by the Court of Appeal. I have stated earlier on that the Court of appeal needed not to have considered F issue (3) just like issue (2) which it rightly in my view did not also consider. Issue (1) which was the principal issue having succeeded, and having regard to the nature of the order which that Court finally made - striking out the suit before the trial High court, there was no need to consider both issues (2) and (3). In the same vein I do not intend to entertain issue (1). I will go straight to G issue (2) which to me is the main and decisive issue in the appeal as it was in the Court below.

Summarily stated, the applicant/appellant contended that being an established and pensionable staff of borno radio and Television Corporation, a statutory corporation, and since the letter of termination of his appointment with the respondent/corporation accused him of insubordination, disloyalty and gross misconduct, he (the appellant) was entitled to be heard before his appointment could have been lawfully terminated, and that such failure on the part of the respondent constituted a breach of hi/appellant's fundamental H

right to fair hearing. **When the court drew attention of appellant's counsel to the recent decision of this Court in the case of Tukur v. GONGOLA STATE (1997) 6 NWLR (pt. 510) 549, he said he was aware of the decision, but added that the facts are distinguishable and that in the instant appeal the main or principal claim was the appellant's enforcement of his fundamental right to**
B **fair hearing. The court was asked to allow the appeal.**

I think learned counsel is right when he said the facts of this case are quite distinguishable from the facts in TUKUR's case above. But I say straight away that there are similarities and that the principle involved is the same in both cases. In TUKUR, the claims were partly chieftaincy and partly
C **fundamental right. And this Court held that the main or principal claim, being a chieftaincy claim which ought to have been initiated by a writ of summons and heard on pleadings and not on affidavit evidence, all the claims, principal and accessory or subsidiary, which flowed from it ought to have been struck out as incompetent. The claims were therefore struck out. In this appeal the**
D **claims are partly for wrongful dismissal or termination of appointment and partly for breach of fundamental right. But here as in TUKUR, the principal claim being wrongful termination of appointment which ought to have been commenced by a writ of summons, which was not, then all the claims, principal and subsidiary which flow directly from it, are incompetent and ought to**
E **be struck out. That was what the Court of Appeal did in this case. I believe they were right.**

The appeal therefore fails and it is hereby dismissed. The decision of the Court of Appeal striking out the applicant/appellant's application before the Maiduguri High Court is hereby confirmed. There will be no order as
F to costs, the respondent having played no part in the appeal proceedings whatsoever.

G **UWAIS CJN**

I have had the advantage of reading in draft the judgment read by my learned brother Kutigi, J.S.C. I entirely agree with it.

The procedure for instituting an action based on the infringement of a fundamental right under the Constitution is prescribed by fundamental rights
H (Enforcement Procedure) Rules, Cap. 62 of the Laws of the Federation, 1990. An action for wrongful dismissal from employment cannot be brought under the rules since it belongs to a different class of action from actions on contravention or threatened contravention of a fundamental right. The Bornu State High Court (Civil Procedure) Rules, 1979 provides, in Order 2 thereof, that

such action must be commenced by a writ of summons.

In this case the appellant's main claim, which is based on wrongful dismissal from employment, is founded on contract. For him to enforce the claim he was bound to take out a writ of summons against the Respondent. This he failed to do. The Court of Appeal was, therefore, right to strike out the case on the authority of the decisions of this Court in Alhaji Umaru Abba Batur v. Government of Gongola State, (1989) N.W.L.R. (part 117) 517 at p. 548 and Alhaji Umaru Abba Batur v. Government of Taraba State, & Ors. (1997) 6 N.W.L.R. (part 512) 549.

It would appear that where a set of facts or cause of action give rise to multiple causes of action including a breach or threatened contravention of a fundamental right under the Constitution, the party so affected, as plaintiff, would have to bring two different actions at the same time. One of such actions by a writ of summons according to the provisions of the High court (Civil Procedure) Rules and the other by a motion ex-parte in accordance with the provisions of the Fundamental Rights (Enforcement Procedure) rules, Cap. D 62. If this is done in the same High Court it would perhaps be possible to have the cases consolidated. However, it seems that this may not be possible if the case based on fundamental rights is instituted in the Federal High Court since that Court lacks the jurisdiction to hear some categories of the cases that could be initiated by a writ of summons - See Section 230 of the 1979 Constitution, Cap. 62, as amended by the second Schedule to the Constitution (suspension and modification) Decree No. 107 of 1993.

Section 230 subsection (q), (r) and (s) of the Constitution, as amended, provides as follows:-

"230. (1) *Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly or a Decree, the federal High Court shall have and exercise jurisdiction to the exclusion to (sic of) any other court in civil causes and matters arising from -*

(q) *the administration or the management and control of the Federal Government or any of its agencies;*

(r) *subject to the provisions of this Constitution, the operation and interpretation of this Constitution in so far as it affects the Federal Government or any of its agencies; and*

(s) *any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies.*

Provided that nothing in the provisions of paragraphs (q), (r) and (s) of this section shall prevent a person from seeking redress against the

Federal Government or any of its agencies in an action for damages, injunction or specific performance where the action is based on any enactment, law or equity."

It is for the foregoing reasons and the fuller reasons contained in the leading judgment of my learned brother Kutigi, J.S.C. that I too hereby dismiss this appeal with no order as to costs. I uphold the decision of the Court of Appeal which confirmed the decision of the High Court striking out the case.

OGUNDARE JSC

I agree entirely with the judgment just delivered by my learned brother, Kutigi JSC.

Having regard to the claims of the Appellant set out in the judgment of my learned brother and the affidavit evidence adduced at the trial, there can be no doubt that his main complaint was against the termination of his appointment with the Respondent (which he regarded as wrongful) and his sole relief was his reinstatement. All these are not matters for the procedure provided for in section 42 of the 1979 Constitution. Appellant's action should have been commenced by a writ of summons as provided for in the High court rules of Borno State. The action having been thus commenced wrongly, it was rightly struck out by the Court below - see: Tukur v. Gongola State (1997) 6 NWLR 549. I affirm that decision and dismiss this appeal.

The Respondent being absent at the hearing and not having filed a brief, I too, make no order as to costs.

OGWUEGBU JSC

I had the advantage of a preview of the judgment just delivered by my learned brother Kutigi, J.S.C. and I entirely agree with it.

This appeal is against the judgment of the Court of Appeal, Jos Division which reversed an order of the High Court of Borno State re-instating the appellant to his job. The appellant who was an employee of the respondent was terminated by the latter. He challenged his termination in the proceedings he instituted in the High Court of Borno State, Maiduguri Judicial Division pursuant to Order 1, rule 2 of the Fundamental Rights (Enforcement Procedure) rules, 1979. He filed an application ex-parte in the said High court seeking leave for an order enforcing his fundamental rights which he alleged, was infringed by the respondent. He claimed the following reliefs:

"1. A declaration that both the suspension letter and termination of appointment letters respectively are illegal, unconstitutional, and thereby repugnant to rules of natural justice.

2. Declaration that the purported termination of the Applicant's appointment by the Respondent from the Borno Radio Television Corporation Maiduguri is mala fide, void and unconstitutional. B

3. A declaration that by failure to call upon the Applicant to defend himself before the issuance of letters of suspension and termination of appointment constitutes a violation of the Applicant's fundamental rights of fair hearing and therefore unconstitutional.

4. C

5. "

The learned trial judge in his ruling on the application stated as follows:

"Borno Radio Television Corporation is established by law, that makes it clear, that the Management Committee or what-ever body which considered the report made against the Applicant had in fact, been established, for this reason, it is incumbent on such body constitutionally before determining the civil rights of the Applicant should have been accorded with fair hearing, for their failure to do so, their decision could not be allowed to stand in law. Their decision is unconstitutional and therefore void. Their decision apart from being repugnant to rules of Natural justice, it is also unconstitutional and there (sic) void. as so declared above it is hereby finally ordered that the Applicant be re-instated to his job under the respondent corporation with payments of all his salaries and entitlements since 20th January, 1986 " D E F

The court below reversed the above orders of the learned trial judge.

The import of the special jurisdiction conferred on the High Court by section 42 of the Constitution of the Federal Republic, 1979 was misunderstood by the learned appellant's counsel when he brought the application in the High court believing that the third relief would invest the court with the jurisdiction conferred by the said section. Section 42 of the Constitution of the Federal Republic of Nigeria, 1979 provides: G

"42(1) Any person who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any State in relation to him may apply to the High Court in the State for redress. H

(2)

(3)

(4) "

This special jurisdiction is made subject to the Constitution. The

enforcement of the fundamental right under the section must be a substantive claim in the application and in respect of the matters covered by Chapter 4 of the Constitution. In this case, the substantive relief sought by the appellant is a declaration that the termination of his contract of employment with the respondent was contrary to the provisions of the Staff Regulations. The cause of action was the breach of his contract of employment. It is not the enforcement of his fundamental right under section 33(1) of the Constitution which provides for the right of a fair hearing. By bringing his application under section 42 of the Constitution, the appellant is directly complaining that by his suspension and termination, his fundamental right under section 33 (1) of the Constitution was breached.

It is pertinent to emphasize that it is the claim before the court that has to be looked at or examined to ascertain whether it comes within the jurisdiction conferred on the court. See Izenkwe v. Nnadozie 14 W.A.C.A. 361 at 363, Adeyemi & Ors. v. Opeyori (1976) 9-10 S.C. 31 at 51 and Tukur v. Government of Gongola State (1989) All N.L.R. 575 at 599. In this case the learned trial judge did not look at the principal claim of the appellant before he assumed jurisdiction under section 42 of the constitution which covered the third relief. The court below was right when it held as follow:

"The combined effect of the second and third conditions mentioned above is that when the main or principal claim in an application is not the enforcement of a fundamental right or the securing the enforcement of a fundamental right, the court has no jurisdiction to entertain it under the Fundamental Rights (Enforcement Procedure) Rules, 1979. That is the position in the case of the present application of the respondent. The respondent's application is not properly before the court."

In considering the appellant's third relief, namely, whether he was given a fair hearing before his appointment was terminated by the respondent, the main issue of breach of his contract of employment is bound to be raised. The third relief was clearly a subsidiary issue. A substantive claim for a breach of contract could have been founded on the denial of the right to a fair hearing as provided in Exhibit "BEI" - (Staff Regulations) and section 33 (1) of the Constitution. I have therefore no hesitation in concluding that a wrong procedure was adopted in initiating the proceedings giving rise to this appeal and the second issue for determination is answered in the negative.

In the circumstance, I will also dismiss the appeal and make no order as to costs.

IGUHJSC

I have had the privilege of reading in draft the leading judgment just delivered by my learned brother, Kutigi, J.S.C. and I agree entirely with the reasoning and conclusion therein reached.

The claims before the trial court together with the relevant facts of the case have been adequately set out in the leading judgment and no useful purpose will be served by my recounting them all over again. It suffices to state that the main claims before the trial court were those of wrongful termination of appointment and payment to the appellant of all his salaries and entitlements since the purported termination of his appointment. These are clearly indicated in reliefs 1, 2, 3 and 5 of the appellant's claims.

These claims, which were founded in breach of contract of employment and mainly declaratory in nature, did not concern the enforcement of any fundamental right within the provisions of chapter iv of the constitution of the Federal Republic of Nigeria, 1979. It is only relief number 4 which, without doubt, is again declaratory and merely alleged bias against the respondent, that may remotely be suggested as concerning the appellant's right to fair hearing. It is however not a claim that directly concerned the enforcement, by the appellant, of his fundamental right to fair hearing. It is only a claim that was merely ancillary or incidental to the main claim of unlawful termination of employment before the trial court.

The law is now settled that where ancillary or incidental claim or claims are so inextricably tied to or bound up with the main claims before the court in a suit, a court of law cannot adjudicate over them where it has no jurisdiction to entertain the main claims if such incidental or ancillary claims cannot be determined without a determination at the same time of the main claims or where the determination of such incidental or ancillary claims must necessarily involve a consideration or determination of the main claims. See Alhaji Umaru Abba Tukur v. Government of Gongola State (1989) 4 N.W.L.R. (Part 117) 517 at 548, Alhaji Umaru Abba Tukur v. Government of Taraba State and others (1997) 6 N.W.L.R. (Part 510) at 549. In the present case, the appellant commenced his action by application ex parte under Order 1 Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 1979. It is equally clear that the trial court had no jurisdiction to entertain the appellant's suit under the Fundamental Rights (Enforcement Procedure) Rules 1979 as the main claims essentially concerned breach of contract of employment and damages for unlawful termination of employment. The suit ought to have been commenced by a writ of summons under Order 2 of the Borno State High Court (Civil Procedure) Rules 1979 and not under the Fundamental Rights (Enforce-

ment Procedure) Rules, 1979. This is because the trial court had no jurisdiction to determine a suit essentially on breach of contract of employment under the said Fundamental Rights (Enforcement Procedure) Rules, 1979 where, as in the present case, relief 4 which was only incidental as ancillary to the main claims could not be determined by the trial court without a consideration or
B determination of the main claims. The court below was therefore right when it struck out the appellant's application under the Fundamental Rights (Enforcement Procedure) Rules, 1979 for want of jurisdiction.

It is mainly for the above and the more elaborate reasons contained in the leading judgment of my learned brother that I, too, dismiss this appeal
C as lacking in substance. I abide by the order for costs therein made.

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