

**SUPREME COURT OF NIGERIA**  
8TH JANUARY, 1998. SC. 141/1991  
**CORAM:- M. L. UWAI S CJN, S. M. A. BELGORE, E. O.**  
**OGWUEGBU, U. MOHAMMED, A. I. IGUH, JJSC.**

THE COUNCIL OF FED. POLYTECHNIC MUBI ..... APPELLANT  
AND  
T. L. M. YUSUF & ANOR. .... RESPONDENT

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***MASTER AND SERVANT** - Fair hearing - Employee who was not found guilty of the complaint against him - But was removed for an allegation he was not confronted with - Was not availed of the opportunity of being heard.*

***MASTER AND SERVANT** - Statutory provision - Termination of appointment - In contravention of statutory provision - Is null and void ab initio.*

***NATURAL JUSTICE** - Audi alteram Partem principle - A person against whom a complaint is laid - Must be heard in all trials whether judicial or administrative.*

**FACTS**

The Respondent, a senior employee was terminated from the appellant's employment vide a letter dated 9th January, 1987. The appellant is a creation of statute, that is vide the Federal Polytechnics Act. The respondent and one other senior employee were suspected of master minding the circulation of an anonymous letter that was regarded as offensive. The appellant by virtue of its governing statute set up an investigative committee before which the respondent appeared. The committee was unable to find him guilty of the complaint laid against him but found him guilty of his attitude and contempt for constituted authority as manifested in the foul language used in his representations. Based on this finding the appellant terminated the respondent's appointment.

The respondent instituted an action claiming inter alia that his purported termination is unlawful, null and void being in contravention of the rules of natural justice. The trial court granted the prayers of the respondent which was upheld by the Court of Appeal. The appellant has further appealed to the Supreme Court and raised four issues.

**ISSUES FOR DETERMINATION**

*"(1) Whether in the circumstances of the matter and having regard to the Record of Proceedings of the court below, the Court of Appeal could be said to have given full and dispassionate consideration to all the issues raised in the Appellant's Brief of Argument and whether this has resulted in a miscarriage of justice.*

*(2) Whether the Court of Appeal was right when it held that the onus of proving the conditions of service of the Plaintiffs/Defendants lay on the Defendant/Appellant.*

*(3) Whether in the circumstances of this case, the Court of Appeal was right when it held that the right of the respondents' to continue in their service was not extinguished by the acceptance of one month's salary in lieu of notice.*

*(4) Whether the Court of Appeal was right when it held that The Federal Polytechnics Decree 1979 (Decree No. 33 of 1979) was the applicable law to the cause of action."*

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

***Natural justice - Audi alteram partem***

1. In all the trials whether judicial or administrative, the person against whom a complaint is laid must be heard in compliance with the principle of audi alteram partem. This is the crux of S. 33 of the Constitution of the Federal Republic of Nigeria, 1979 and always reflected in statutes where persons could be put on trial or investigated with possible consequence of reprimand and or punishment. For every accusation there must be a right to be heard. (p. 9 B)

***Statutory provision - Termination of appointment***

2. Section 12(1) of the Act (supra) is very clear and any procedure for removal of an employee outside its scope will be illegal null and void. In all the institutions set up by statute it is incumbent that the statutory provisions be adhered to when it comes to removal of its officers from office because the institution owe their existence to their statutes and must abide by the statutory provisions governing them. Removal from office is not impossible once the statutory provisions are adhered to in carrying out the exercise. But it seems some of these institutions overlook the clear and unambiguous provisions of their statutes. See Olaniyani & Ors. vs University of Lagos (1985) 2 NWLR (Pt. 9) 599; It is clear from the foregoing that the Council of the Federal Polytechnic, Mubi acted in contravention of the statute in terminating the appointment of the respondent. The termination is therefore null and void ab initio. The decision of the trial High Court, affirmed by the Court of Appeal is hereby upheld in dismissing this appeal. (p. 9 C & 10 B)

***Fair hearing - Employee who was not found guilty***

3. This matter is far outside the permissible in the enabling law the appellant had to follow. The appellant did not find the respondent guilty of the complaint against him; rather the comment of the Committee set up to investigate the allegations against the respondent complained of foul language and rudeness while before them and this the Council found as excuse to remove the respondent. The respondent was not availed the opportunity of being heard on these new allegations by the Committee. Thus he was found guilty of what he was not confronted with. This is against the letters of the Federal Polytechnics Act, S. 12(1) (supra). The allegations of the Committee have not been put to trial. (p. 9 G)

**REPRESENTATION**

Appellant unrepresented

M. Y. Nuhu, for the Respondent

**CASES REFERRED TO**

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

Eperokun v. University of Lagos (1986) 4 NWLR (Pt 34) 162

Shitta-Bay v. Federal Public Service Commission (1981) 1 SC 40

B Aiyetan v. N.I.F.O.R. (1988) 3 NWLR (Pt 80) 25

Federal Civil Service Commission v. Laoye (1989) 2 NWLR (Pt. 106) 652

**STATUTES REFERRED TO**

C Federal Polytechnics Act (Decree No. 33 of 1979) as amended by Decree No 28 of 1987 s. 12 (1)

Constitution of the Federal Republic of Nigeria, 1979 s. 33

D

**LEAD JUDGMENT BY BELGORE JSC**

The respondent, a senior employee of the appellant, was by a letter dated 9th January, 1987, terminated from the appellant's employment. The appellant is a creation of statute, that is to say the Federal Polytechnic Act (Decree No. 33 of 1979) as amended by Decree No. 28 of 1987. The respondent and one other senior employee were suspected of masterminding the circulation of an anonymous letter that was regarded as offensive. The letter is Exhibit IV. The gist of Exhibit IV is an attack on the administrative style of the then acting Rector of the Federal Polytechnic, Yola. Exhibit IV is headed "Phenomenon called Udeagwu." By virtue of S. 12(1) of the Act, a joint committee made up of the Academic Staff and Council members could investigate any act of misconduct or inability to perform the function of the office for possible removal of any academic staff provided the academic staff concerned or any three members of the Council so requested (see S. 12(1)(c) of the Act). Otherwise the council should:-

(a) give reasons for his impending removal to the staff (whether academic or senior technical staff);

(b) afford him the opportunity of making representations in person to the Council.

The Council, after considering the report of the investigating committee,

if satisfied that the person in question should be removed from office, may then remove him by an instrument in writing signed on the direction of the Council. The Council met on the report of the joint committee before which the respondent appeared and decided to terminate his appointment by Exhibit III, the letter of 9th January, 1987 alluded to earlier in this judgment. The respondent had earlier been suspended when the investigation commenced by virtue of S. 12(2) of the Act. Exhibit III is hereunder quoted so as to appreciate its full purport:

"THE FEDERAL POLYTECHNIC MUBI

P.M.B 35, MUBI

GONGOLA STATE-NIGERIA

RIA

Rector: ALHAJI A. M. GIREI

Registrar: T. I. OBANEWO

Date: 9th January, 1987

Our Ref. FPM/S/P/223/81

Mr. T.L.M. Yesufu,

Lecturer 1,

Department of Mathematics & Computer Science,

Federal Polytechnic Mubi,

Yola Campus.

Dear Sir,

TERMINATION OF APPOINTMENT

On the 24th November, 1986 you appeared before the joint Committee of Council and the Academic Board which investigated the circumstances surrounding your suspension from duty since on the 11th July, 1986.

On 8th January, 1987 the Governing Council considered the Report of the Committee. Whereas the Council was of the view that you may or may not be responsible for the production and circulation of an anonymous letter, what was more of concern to Council was your attitude and contempt for constituted authority as manifested in the foul language which you and Mr. Ngozi Ejiofor used in your joint letters to the Polytechnic Management and, verbally, when you appeared before the Committees which investigated the matter.

These, the Council noted, amount to a serious act of misconduct. Conse-

*quently, the Council resolved that your appointment be hereby terminated with effect from 8th January, 1987 in the interest of service.*

*The Council further resolved that:*

- (a) *you be paid one month salary in lieu of notice and any other entitlement as may be due to you in accordance with the regulations. However, such payments will be withheld pending the settlement of your outstanding Car Loan of N1,950.00 (Principal only) as at 31st December, 1986.*
- (b) *that you surrender all Polytechnic property in your care. You are also to vacate your official quarters immediately and will be checked out accordingly by the Stores and Security Officers of the Polytechnic.*

*Yours faithfully,*

*(Sgd.)*

*(T. I. OBANEWO)*

**D DEPUTY REGISTRAR."**

Thus it is clear that the respondent was put on trial for either authorizing and or distributing the anonymous letter, Exhibit IV, the Council was in doubt if he was responsible. It however, went ahead to find him guilty of his "attitude and contempt for constituted authority as manifested in the foul language ..... Used in your letter to the Polytechnic Management and verbally when you appeared before the Committees which investigated the matter." The conduct of the respondent and his fellow accused member of the staff in reaction to the committee was the reason the Council regarded, as "serious act of misconduct." The Learned trial judge admirably reviewed the evidence before him and inter alia observed as follows:

*"It is not in doubt that the issue of anonymous letter allegedly authored and circulated by the plaintiffs was investigated by Council at which the plaintiffs were invited. The Fed. Polytechnic Mubi produced "a Report of the Joint Committee of Council and The Academic Board meeting held on 24th November, 1986 to consider the suspension from Duty of Messrs T. L. M. Yesufu and Ngozi Ejiofor presented to the Governing Council in December 1986.*

*On the 8th of January, 1987 the governing Council considered the report of the Committee. In paragraph 2 of Exhibit III the Council*

found as follows:-

*"Whereas the council was of the view that you may or may not be responsible for the production and circulation of an anonymous letter what was more of concern to the council was your foul language which you and Mr. Ngozi Ejiofor used in your joint letters to the Polytechnic Management and verbally when you appeared before the Committee which investigated the matter."*

*The Council then proceeded to terminate the appointment of the plaintiffs by paying them their monthly salary in lieu of notice.*

*Exhibits III and 8 which are letters of termination of appointment of the plaintiffs are similarly couched or identical, mutatis mutandis.*

*From these letters it is evident that the plaintiffs were acquitted by council of the charge investigated against them to wit: responsibility for production and circulation of an anonymous letter and I so hold. I am strengthened in this belief by the failure of the defendant in its statement of defence to sufficiently and conducively deny and traverse paragraphs 7-11 of the statement of claim setting out these facts on which the plaintiffs relied heavily. This in my view is tantamount to admission of those averments contained in the said paragraphs of the statements of claim of the plaintiffs and there was no need to embark on proving the allegations by plaintiffs. See Adimora v. Ajufu & Ors. (1988) 6 S.C.N.J. 18, 19.*

*It seems to me that the Council by Exhibits 3 and 8 has changed boat midstream and had decided to rely on another ground for the termination of the appointment of the plaintiffs to wit: "your attitude and contempt for constituted authority as manifested in the foul language which you and Mr. Ngozi Ejiofor used in your joint letters to the Polytechnic Management and verbally, when you appeared before the Committee which investigated the matter."*

The learned trial judge concluded that the termination now in question was against the law in that it violated S. 12(1) of the Act (supra), a section of the Act which is in consonance with Section 33 of 1979 Constitution. As the respondents were not afforded fair-hearing on the allegation on which they were found guilt, the termination of appointment

was illegal. The Court of Appeal had no reason to interfere with this decision.

The prayers before the trial Court were thus granted and upheld by the Court of Appeal as set out in the Statement of Claim as follows:

B        *"(a) That the purported termination of the Plaintiff's appointment is unlawful, null and void as it contravenes the rules of natural justice as the Plaintiff was not allowed to defend himself with regards to the said allegations of misconduct.*

C        *(b) A declaration that the purported termination of the plaintiff's appointment is illegal null and void in that it was not done in accordance with the relevant statute establishing the defendant and in particular Section 12 of the Federal Polytechnic Decree 1979.*

D        *(c) A declaration that since the said termination is unlawful, the Plaintiff is still a Senior staff of the defendant and for that reason entitled to all claims and benefits arising from his contract of employment from the date of the purported termination to the date of judgment in this suit.*

E        *(d) An order reinstating the plaintiff to the defendant's employment. (See pages II-IV of the Record of Appeal)."*

In this Court the appellant in its brief of argument formulated four issues as follows:

F        *"(1) Whether in the circumstances of the matter and having regard to the Record of Proceedings of the court below, the Court of Appeal could be said to have given full and dispassionate consideration to all the issues raised in the Appellant's Brief of Argument and whether this has resulted in a miscarriage of justice.*

G        *(2) Whether the Court of Appeal was right when it held that the onus of proving the conditions of service of the Plaintiffs/Defendants lay on the Defendant/Appellant.*

H        *(3) Whether in the circumstances of this case, the Court of Appeal was right when it held that the right of the respondents' to continue in their service was not extinguished by the acceptance of one month's salary in lieu of notice.*

*(4) Whether the Court of Appeal was right when it held that The*



*Federal Polytechnics Decree 1979 (Decree No. 33 of 1979) was the applicable law to the cause of action."*

The respondent filed no brief of argument and, though represented, was not heard in accordance with the Rules of this Court.

**In all the trials whether judicial or administrative, the person against whom a complaint is laid must be heard in compliance with the principle of audi alteram partem. This is the crux of S. 33 of the Constitution of the Federal Republic of Nigeria, 1979 and always reflected in statutes where persons could be put on trial or investigated with possible consequence of reprimand and or punishment. For every accusation there must be a right to be heard. Section 12(1) of the Act (supra) is very clear and any procedure for removal of an employee outside its scope will be illegal null and void. In all the institutions set up by statute it is incumbent that the statutory provisions be adhered to when it comes to removal of its officers from office because the institution owe their existence to their statutes and must abide by the statutory provisions governing them. Removal from office is not impossible once the statutory provisions are adhered to in carrying out the exercise. But it seems some of these institutions overlook the clear and unambiguous provisions of their statutes. See Olaniyan & Ors. vs University of Lagos (1985) 2 NWLR (Pt. 9) 599; Eperokun & Ors. vs University of Lagos (1986) 4 NWLR (Pt 34) 162; Shitta-Bay vs Federal Public Service Commission (1981) 1 SC. 40; Aiyetan vs N.I.F.O.R. (1987) 3 NWLR (Pt 59) 48; Olatunbosun vs N.I.S.E.R. (1988) 3 NWLR (Pt 80) 25; Federal Civil Service Commission vs Laoye (1989) 2 NWLR (Pt. 106) 652.**

**This matter is far outside the permissible in the enabling law the appellant had to follow. The appellant did not find the respondent guilty of the complaint against him; rather the comment of the Committee set up to investigate the allegations against the respondent complained of foul language and rudeness while before them and this the Council found as excuse to remove the respondent. The respondent was not availed the opportunity of being heard**

10     The Council of Fed. Poly Mubi v. Yusuf (1998) 1 KLR Belgore JSC

on these new allegations by the Committee. Thus he was found guilty of what he was not confronted with. This is against the letters of the Federal Polytechnics Act, S. 12(1) (*supra*). The allegations of the Committee have not been put to trial.

B             It is clear from the foregoing that the Council of the Federal Polytechnic, Mubi acted in contravention of the statute in terminating the appointment of the respondent. The termination is therefore null and void ab initio. The decision of the trial High Court, affirmed by the Court of Appeal is hereby upheld in dismissing this appeal.

C             The respondent never filed any brief of argument. I am of the view that award of costs will not be justified. I therefore award no costs in dismissing this appeal.

D             \_\_\_\_\_

**UWAIS CJN**

E             I have had the opportunity of reading in draft the judgment read by my learned brother Belgore, J.S.C. I agree that this appeal has no merit and that it should be dismissed.

Accordingly I hereby dismiss the appeal with no order as to costs.

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**OGWUEGBU JSC**

G             I have had the privilege of reading the judgment of my learned brother Belgore, J.S.C I agree entirely with his reasoning and conclusion dismissing this appeal.

H             The respondent was not terminated on the issue of the anonymous letter allegedly authored and circulated by him which issue was investigated by the Council of the Polytechnic. Instead, his appointment was terminated as a result of his "attitude and contempt for constituted authority as manifested in the foul language which you and Mr. Ngozi Ejiofor used in your joint letter to the Polytechnic Management and, verball, when you appeared before the Committee which investigated the

matter."

The termination of the respondent's appointment based on his alleged attitude and contempt for constituted authority was clearly in violation of section 12(1) of the Federal Polytechnics Act (Decree No. 33 of 1979) and section 33 of the Constitution of the Federal Republic of Nigeria, 1979. He was found guilty without a hearing let alone a fair hearing.

Accordingly, I hereby dismiss the appeal and uphold the decision of the learned trial judge which was affirmed by the Court of Appeal. I make no order as to costs.

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**MOHAMMED JSC**

I agree with my learned brother, Belgore, J.S.C. that this appeal has no merit; and for the reasons given in the lead judgment, I hereby dismiss the appeal. I make no order as to costs.

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**IGUH JSC**

I have had the advantage of reading in draft the leading judgment just delivered by my learned brother, Belgore, J.S.C. and I agree that this appeal is without substance and should be dismissed.

Accordingly, I, too, dismiss the same and abide by the order as to costs therein made.

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