

SUPREME COURT OF NIGERIA

17TH JULY, 1998. SC.36/1992

**CORAM:- M. L. UWAISS CJN, S. M. A. BELGORE, A. B. WALL,
M. E. OGUNDARE, E. O. OGWUEGBU JJSC.**

ANSELIM IRECHUKWU OSAKWE APPELLANT
AND
NIGERIAN PAPER MILL LIMITED RESPONDENT

MASTER & SERVANT - Dismissal - Right to fair hearing - Allegation of breach - The Board was not obliged to act quasi-judicially - But rather purely administratively.

MASTER & SERVANT - Dismissal - Misappropriation of company's funds - Is not a criminal offence.

MASTER & SERVANT - Order for reinstatement - In a contract of personal service - Will rarely be made - The remedy against party in breach lies in damages.

MASTER & SERVANT - Summary dismissal - For gross misconduct - Is justified.

FACTS

The plaintiff/appellant sued the defendant/respondent in the High Court of Kwara claiming for a declaration that his purported dismissal from the defendants employment vide letter of 15th September, 1983 is null and void being against the rule of natural justice, and that he is still in the employment of the defendant and entitled to his remunerations and allowances to date. The plaintiff was employed by the defendant and by 1983, he had risen to the post of Assistant Chief Accountant. The contract of employment was governed by conditions of service contained in Exhibit 3 tendered in evidence at the trial. Exhibit 3 contains a provision for summary dismissal for misconduct. The defendant maintained a scheme

for its staff - cheque cashing facility , by which a qualified staff was allowed to issue his cheque in replacement for cash drawn by him. Under this scheme, the plaintiff took out a cash amount of N1,200.00 but did not give to the cashier his cheque for an equivalent amount. An internal audit discovered this fact among other irregularities.

The report of the internal auditor was placed before the Board of the defendant company. The chairman of the Board invited the plaintiff and other staff adversely affected by the report of the internal auditor, to a meeting of the Board held on 22/7/83. The chairman questioned the plaintiff in particular about the withdrawal by him of the sum of N1,200.00 in cash without giving his cheque for that amount. The plaintiff admitted the allegation against him . On 23/7/83, the plaintiff was issued a letter signed by the Chairman suspending him from duty. He was subsequently on 15/9/83 dismissed from the service of the defendant. Hence he instituted the action.

At the close of hearing, the learned trial judge, in a reserved judgment found plaintiff's case not proved and dismissed same. The plaintiff's appeal against this judgment to the Court of Appeal, (Kaduna Division) was dismissed. Being dissatisfied with the judgment of the Court of Appeal, the plaintiff with leave of that court has now further appealed to the Supreme Court raising two issues but the court prefers the lone issue raised by the defendant in the Respondent's brief.

ISSUE FOR DETERMINATION

"Whether upon the evidence and Statement of Claim put before the Court the Appellant established that the Respondent was in breach of it's conditions of service and the Appellant's right to fair hearing as guaranteed by the Constitution of the Federal Republic of Nigeria and the rules of natural justice to warrant the award of damages or nullification of the letter of dismissal thereby reinstating the Appellant."

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

Dismissal - Right to fair hearing

1. What determines the wrongfulness or otherwise of the Plaintiff's dismissal is the contract of service and not any notion of fair hearing.⁶ In my respectful view, the Board was not obliged to, and did not, act quasi-judicially but, rather purely administratively. An allegation of misconduct against the plaintiff was brought to the notice of the Board of Directors. The Board questioned the plaintiff on the allegation. The Plaintiff admitted the facts. The Board decided on the appropriate punishment. I think the Board acted fairly throughout. I agree entirely with the concurrent findings of the two Courts below to this effect. (p. 1948 D)

Misappropriation of company funds

2. The Plaintiff was found by the Board of Directors to have abused the cash for cheque exchange facility approved for staff. This is not a criminal offence. The Plaintiff was aware of what he was accused of and for which he was suspended and subsequently dismissed. In his evidence, he testified thus:

"I was suspended for taking loans without permission. I was told so orally on 22/7/83. On the following day 23/7/83 I received a letter from the Chairman suspending me from duty for misappropriation of the company's funds."

It is, therefore, not correct to say that the Board, rather than the regular Court, tried the Plaintiff for a criminal offence. (p. 1948 F)

Order for reinstatement

3. Even if I had found that the Plaintiff's right to fair hearing was breached I would still not have granted the declaration sought by him. The effect of that declaration would be to order his reinstatement. The Plaintiff's

⁶ The question of fair hearing before termination of employment was also in focus in the following cases: Unical v. Essien (1996) 12 KLR (pt. 46) 2184 and Yusuf v. Union Bank (1996) 6 KLR (pt 42) 1249

contract of employment with the Defendant was not one with a statutory flavour in that it was not governed by any statutory provision as in Olaniyan v. University of Lagos (1985) 2 NWLR 599; Garba v. University of Maiduguri (1986) 1 NWLR 550 and did not, therefore, enjoy any statutory protection. It was simply a contract of personal service, that is, of master and servant. It is settled law that a servant will rarely be forced on a master and vice versa. The remedy against any party in breach lies in damages - see Bankole v. N.B.C (1968) 2 All NLR 371; Francis v. Municipal Council of Kuala Lumpur (1962) 3 All ER 633; Imoloame v. WAEC (1992) 9 NWLR 303 at p. 318 E-H. Moreover, as the reason given for Plaintiff's dismissal was dishonesty and having regard to the position he held in the Defendant Company, it would amount to a wrongful exercise of judicial discretion to order that he be reinstated in his employment - see: Imoloame v. WAEC (supra) at p. 319. (p.1949 A)

Summary dismissal

4. I subscribe to the views expressed by the two Courts below that Plaintiff's conduct in taking the sum of N1,200.00 in cash from the Defendant's cashier without giving his cheque for a similar amount constituted gross misconduct justifying summary dismissal as meted to the Plaintiff in this case.⁷ As his summary dismissal was authorized by Exhibit 3, that dismissal was clearly not wrongful and Plaintiff's claim for damages for breach of contract must fail and was rightly dismissed by the Courts below. (p. 1950 C)

REPRESENTATION

Chief A. S. Awomolo, SAN with Mrs. F. Awomolo for the plaintiff/appellant

E. O. Obeya Esq. for the defendant/respondent

H _____

⁷ The issue of dismissal on ground of misconduct also fell for decision in Underwater Eng. Co. Ltd v. Dubefon (1995) 6 KLR 1295 and Nwobosi v. ACB Ltd. (1995) 7 KLR 1410

CASES REFERRED TO

Olaniyan v. University of Lagos (1985) 2 NWLR 599;
Garba v. University of Maiduguri (1986) 1 NWLR 550
Bankole v. N.B.C (1968) 2 all NLR 371;
Francis v. Municipal Council of Kuala Lumpur (1962) 3 ALL ER 633; B
Imoloame v. WAEC (1992) 9 NWLR 303 at p. 318 E-H.
Imoloame v. WAEC (SUPRA) AT P. 319.

STATUTE REFERRED TO

Constitution of the Federal Republic of Nigeria, 1979. Section 33. C

LEAD JUDGMENT BY OGUNDARE JSC

This is an appeal against the judgment of the Court of Appeal (Kaduna Division) which had dismissed the Appellant's appeal to it. The Appellant, as Plaintiff, had sued the Respondent, as Defendant, in the High Court of Kwara State claiming: D

"a 'Declaration' that the Plaintiff's purported dismissal from the defendant's employment vide letter 15th September, 1983 is null and void being against the rule of natural justice, and that the Plaintiff is still in the employment of the defendant and entitled to his remunerations and allowances to date." E

Pleadings were ordered, filed and exchanged. By paragraphs 8 and 9 of his statement of claim the Plaintiff claimed: F

"8. The Plaintiff therefore prays that the said dismissal be declared null and void being against the rule of natural justice, contrary to Nigerian 1979 Constitution, and that the plaintiff is still in the defendant employment." G

9. The plaintiff claims in the alternative such damages as the Court may find appropriate in the circumstances of the case having regard to the provisions of the conditions of service binding between the plaintiff and the defendant." H

The action proceeded to trial at which Plaintiff testified in his own behalf and closed his case. One witness testified for the defence. Learned counsel for the parties submitted written addresses. The learned

trial Judge, in a reserved judgment, found Plaintiff's case not proved and dismissed same. The learned Judge found the following facts not in dispute and, therefore, proved, that is to say:

B *"1. That the Plaintiff who was appointed as Finance Clerk rose to the rank of Assistant Chief Accountant.*

2. That the Company had and still has cheque exchange for cash by its staff procedure.

3. That the Company also has a loan scheme for its staff.

C *4. That in the course of his employment as Assistant Chief Accountant, the Plaintiff indulged, over the years, in objectionable cheque exchange transactions the type which he alleged were practised by 17 others and an expatriate Senior Officer whose fates we know nothing about but none of who testified before this court.*

D *5. That the cheque exchange transactions were detected to be irregular through Internal auditing.*

E *6. That the Board of Directors consequently interviewed the Plaintiff on the questionable financial transactions before he was suspended as per a letter dated 22nd July, 1983 (Exhibit 1) which goes thus in the relevant part:*

'It has been revealed after careful investigation that you have been involved in misappropriation of the Company's money.

F *After the exclusive interview with you in the presence of the Cashier and other Accounting Officers by the Board of Directors and your admission to the above, the Board of Directors have no alternative but to suspend you forthwith pending further investigations. You are advised to hand over all the keys and records of all your offices, safes and other Company's*
G *properties in your possession to the Internal Auditor and Company Secretary immediately.*

(Sgd.)

(Alhaji M. Kaloma Ali),

H *Chairman'*

7. That although the Plaintiff had every opportunity in the world to react to the content of exhibit 'I', he never denied the fact that he was given an exclusive interview by the Board of Directors and the fact of his

admission in the presence of the Cashier and other accounting officers.

8. That consequently the Plaintiff's exhibit '2' Written to summarily dismiss him went thus in the relevant part:

'It has been found after detailed and careful investigation that you have been involved in the misappropriation of Company money and other irregularities. You had admitted the above in the presence of Board of Directors.'

He identified the issues remaining for determination. These were:

"1. Whether or not the Plaintiff was summarily dismissed for a misconduct covered by the Condition of Service and in accordance with the Condition of Service.

2. Whether or not the alleged or proven misconduct is of Criminal nature and if of criminal nature, whether or not any disciplinary tribunal not being a court of law could deal with it and thus proceed on it to dismiss the Plaintiff; and

3. Whether or not the Plaintiff has been given a fair hearing by his employer before his suspension and dismissal."

The learned Judge resolved these issues thus:

"Quite rightly, it has not been suggested that the granting of loans without permission or the taking of irregular cheque exchange does not endanger the safety of the property of the employer as to amount to a 'misappropriation of such money. Therefore, the conclusion is that the power to punish by summary dismissal for serious misconduct is known to be binding condition of service (exhibit 3) which governs the situation at hand."

"As I have said earlier, admitted misappropriation of fund per se and contravening the laid down rules amount to serious misconduct which come squarely within the rule in SINCLAIR V. NEIGHBOUR (1967) 2 W.L.R. 1 where it was held that a servant can be summarily dismissed by his employer if his conduct 'is of great and weighty character that it undermines the relationship of confidence which should exist between master and servant."

"The Plaintiff wants adequate compensation in the alternative to reinstatement.

Restitution would only have been possible if there has been a liability for breach of contract. The master cannot be held liable for a breach of contract or fettered from terminating the employment of his servant at any time and for any reason as long as he keeps strictly within the applicable terms and conditions of the contract."

He concluded his judgment in these words:

"....., I think it is now a truism that a Plaintiff must succeed on the strength of his own case and not on the weakness of the defence. The Plaintiff's duty is to establish a good and probable case for him to succeed rather than pick holes in the defence. As I see this case, the Plaintiff who has been given a fair hearing by his employer in accordance with exhibit '3' has not established any violation of his civil right and he is not, therefore, entitled to succeed."

The Plaintiff's appeal against this judgment to the Court of Appeal was dismissed. That Court, per Okunola, JCA who read the lead judgment with which Mohammed JCA (as he then was) and Ogundere JCA concurred, observed:

"In the instant case, the evidence of the parties revealed that the Respondent authorized the Internal Audit Department to audit its account and upon the receipt of the investigation report, the Board of the Respondent company invited all concerned including the appellant and heard their own side of the case. It was at the end of the Board deliberation that those involved were dealt with including the appellant."

and found:

"From the foregoing, it is apparent that the Respondent in the circumstances of this case had operated within the rule of natural justice and satisfied the Basic criteria of fair hearing."

Okunola JCA specifically held:

"In the light of the foregoing I am satisfied that the appellant had been given a fair hearing by the Respondent before his dismissal."

He also held:

"There is no doubt that his (Plaintiff's) dismissal under the conditions of service was in order."

The learned Justice of Appeal found that the conduct of the Plaintiff was

"of great and weighty character that it undermines the relationship of confidence which should exist between master and servant."

Being dissatisfied with the judgment of the Court of Appeal the Plaintiff, with leave of that Court, has now further appealed to this Court upon six grounds of appeal. Pursuant to the rules of this Court, the parties filed and exchanged their respective briefs of argument. In his Appellant's brief, the Plaintiff raises two questions as calling for determination in this appeal, to wit:

"1. Whether having regard to all the circumstances, especially the fact that the appellant after being suspended was not accorded any form of hearing before his summary dismissal on allegations of financial misappropriation, got any hearing or fair hearing in accordance with the rules of Natural Justice and Section 33 of the Constitution of the Federal Republic of Nigeria 1979, especially when the Board of the respondent was the accuser, prosecutor and Judge in the whole matter. AND when the case of the respondent was manifestly unsupportable having regard to the numerous inconsistencies between the evidence of DWI and the Statement of Defence of the respondent?"

2. Whether having regard to the whole case, in particular the allegation of misappropriation of funds (which is a criminal offence) levelled against the appellant, which formed the fulcrum of his purported dismissal, it was not necessary and desirable that he ought to be tried and found guilty by a regular court of law before he could be validly dismissed on the allegations of misappropriation by the respondent as stated in the letter of dismissal Exhibit 2?"

I think these two questions can be taken together under the only question formulated by the Defendant in the Respondent's brief, that is,

"Whether upon the evidence and Statement of Claim put before the Court the Appellant established that the Respondent was in breach of it's conditions of service and the Appellant's right to fair hearing as guaranteed by the Constitution of the Federal Republic of Nigeria and the rules of natural justice to warrant the award of damages or nullification of the letter of dismissal thereby reinstating the Appellant."

At the oral hearing of the appeal both Chief Awomolo, SAN learned

leading counsel for the Plaintiff and Obeya Esqr., learned counsel for the Defendant addressed us.

The facts are simple enough and for the most part undisputed, as rightly found by the learned trial Judge. The Plaintiff was employed by the Defendant and by 1983, he had risen to the post of Assistant Chief Accountant. The contract of employment was governed by conditions of service contained in Exhibit 3 tendered in evidence at the trial. Exhibit 3 contains a provision for summary dismissal for misconduct.

The Defendant maintained a scheme for its staff - cheque cashing facility, by which a qualified staff was allowed to issue his cheque in replacement for cash drawn by him. A cheque was issued by the staff for the amount drawn by him in cash; the cheque would be paid to the cashier who would pay same into the Defendant's bank account for encashment from the staff's bank account. Under this scheme, the Plaintiff took out a cash amount of N1,200.00 but did not give to the cashier his cheque for an equivalent amount. An internal audit discovered this fact among other irregularities. The report of the internal auditor was placed before the Board of the Defendant Company. The Chairman of the Board invited the Plaintiff and other staff adversely affected by the report of the internal auditor, to a meeting of the Board held on 22/7/83. The Chairman questioned the Plaintiff, in particular about the withdrawal by him of the sum of N1,200.00 in cash without giving his cheque for that amount. The Plaintiff admitted the allegation against him. On 23/7/83, Plaintiff was issued a letter signed by the Chairman suspending him from duty. He was subsequently on 15/9/83 dismissed from the service of the Defendant. He sued claiming as heretofore mentioned.

The Plaintiff's contention in the two Courts below was that he was not given a fair hearing before his dismissal in that after his suspension the Board did not prefer any charges against him and he was not given an opportunity to defend himself before he was dismissed. He has added a new twist in this Court. He now accuses the Board of being the accuser, the prosecutor and the judge. It is also contended on his behalf by learned Senior Advocate, that as the allegation against the Plaintiff amounted to a crime, that could only be adjudicated upon first by a court, and not by

the Board of Directors of the Defendant Company.

I have given careful consideration to the arguments of learned Senior Advocate both in the written brief and in oral submissions. With respect to learned Senior Advocate, however, I find no substance in all the arguments advanced by him in support of this appeal. The allegation of lack of fair hearing rings hollow in the face of the evidence of the Plaintiff at the trial wherein he admitted as follows:

"On 22/7/83 I received a telephone call from the Expension (sic) Department of the defendant that the Chairman Board of Directors of the Company wanted to see me. I went there and I stood there for about 2 hours. I was ushered into the Boardroom by the Messenger. The Chairman beckoned at me that I should come closer to him. He brought out Nigerian Paper Mills 'Payment Voucher'. He asked me if I was the person who signed the voucher and I told him it was my signature and I authorized the payment voucher in the course of my duty as the Assistant Chief Accountant of the Company. Then he showed me another one that I issued a cheque for N1,200.00. I accepted that I did that too. I was suspended for taking loans without permission. I was told so orally on 22/7/83. On the following day 23/7/83 I received a letter from the Chairman suspending me from duty for misappropriation of the company's funds."

Cross-examined, he testified:

"I had an interview with the Board of Directors I told the Board that I issued a cheque for N1,200.00 in exchange of cash It was at the Board Meeting that I heard of the Internal Audit Investigation into the allegation against me. My reaction was that I explained myself to the Board. The Chairman of the Board of Directors showed me a payment Voucher for the sum of N1,200.00; and asked whether I was the one who received the money and I said that I received it in exchange of cash which is the procedure in company."

How could one, in the light of the above evidence, say that Plaintiff was not treated fairly before his suspension, and subsequent dismissal, by the Board?

It is contended by the Plaintiff, that as a panel was not set up after

his suspension to "try" him before he was dismissed, that dismissal amounted to a breach of the rule of fair hearing and a breach of Plaintiff's constitutional right under section 33(1) of the Constitution of the Federal Republic of Nigeria, 1979. This argument, with respect, is rather ludicrous. There was no evidence that the Board conducted further hearings behind the back of the Plaintiff before he was finally dismissed. The argument too, that there was a breach of the rule of fair hearing in that the Board was the accuser, the prosecutor and the judge is equally ludicrous. First, that was not his case in his pleadings. His care was as contained in paragraph 7 of his statement of claim which reads:

"7. The Plaintiff shall contend at the hearing that the defendant dismissed him out of malice and discriminated against him on account of his place of origin."

He led no scintilla of evidence in support of the above averment. Secondly, we must not lose sight of the fact that the relationship between the parties was one of master and servant. And **what determines the wrongfulness or otherwise of the Plaintiff's dismissal is the contract of service and not any notion of fair hearing. In my respectful view, the Board was not obliged to, and did not, act quasi-judicially but, rather purely administratively. An allegation of misconduct against the plaintiff was brought to the notice of the Board of Directors. The Board questioned the plaintiff on the allegation. The Plaintiff admitted the facts. The Board decided on the appropriate punishment. I think the Board acted fairly throughout. I agree entirely with the concurrent findings of the two Courts below to this effect. The Plaintiff was found by the Board of Directors to have abused the cash for cheque exchange facility approved for staff. This is not a criminal offence. The Plaintiff was aware of what he was accused of and for which he was suspended and subsequently dismissed. In his evidence, he testified thus:**

"I was suspended for taking loans without permission. I was told so orally on 22/7/83. On the following day 23/7/83 I received a letter from the Chairman suspending me from duty for misappropriation of the company's funds."

It is, therefore, not correct to say that the Board, rather than the regular Court, tried the Plaintiff for a criminal offence.

Even if I had found that the Plaintiff's right to fair hearing was breached I would still not have granted the declaration sought by him. The effect of that declaration would be to order his reinstatement. The Plaintiff's contract of employment with the Defendant was not one with a statutory flavour in that it was not governed by any statutory provision as in Olaniyan v. University of Lagos (1985) 2 NWLR 599; Garba v. University of Maiduguri (1986) 1 NWLR 550 and did not, therefore, enjoy any statutory protection. It was simply a contract of personal service, that is, of master and servant. It is settled law that a servant will rarely be forced on a master and vice versa. The remedy against any party in breach lies in damages - see Bankole v. N.B.C (1968) 2 all NLR 371; Francis v. Municipal Council of Kuala Lumpur (1962) 3 ALL ER 633; Imoloame v. WAEC (1992) 9 NWLR 303 at p. 318 E-H. Moreover, as the reason given for Plaintiff's dismissal was dishonesty and having regard to the position he held in the Defendant Company, it would amount to a wrongful exercise of judicial discretion to order that he be reinstated in his employment - see: Imoloame v. WAEC (Supra) at P. 319.

Was there a breach in this case, by the Defendant, of Plaintiff's contract of employment? That is, was Plaintiff's dismissal wrongful? To answer this question, one must fall back on Plaintiff's conditions of service, Exhibit 3. Paragraph 6.3 of Exhibit 3 provides for summary dismissal of an employee of the Defendant. It reads:

"Management may summarily dismiss any employee found guilty of serious misconduct. Examples of serious misconduct are:

- (a) *Sleeping on duty;*
- (b) *Drunkenness;*
- (c) *Dereliction of duty;*
- (d) *Indulgence in Violence;*
- (e) *Smoking in a prohibited area;*
- (f) *Corruption;*

(g) *Refusal to obey a reasonable order;*

(h) *Cross insubordination;*

(i) *Disregard of the Rules and Regulations at the time being in force;*

B (j) *Absence for more than six days without permission.*

(k) *Conviction for 'Criminal Offence'.*

These examples are not to be regarded as exhaustive and any conduct likely to endanger the lives and safety of other people, or the property of the Company or which affects the progress of the Work can
C *invoke summary dismissal."*

I subscribe to the views expressed by the two Courts below that Plaintiff's conduct in taking the sum of N1,200.00 in cash from the Defendant's cashier without giving his cheque for a similar amount
D **constituted gross misconduct justifying summary dismissal as meted to the Plaintiff in this case. As his summary dismissal was authorized by Exhibit 3, that dismissal was clearly not wrongful and Plaintiff's claim for damages for breach of contract must fail and**
E **was rightly dismissed by the Courts below.**

My conclusion is that this appeal is completely devoid of any merit. It is accordingly dismissed by me with N10,000.00 (Ten thousand naira) costs of the appeal to the Defendant/Respondent against the Plaintiff/Appellant.
F

UWAIS CJN

G I have had the privilege of reading in draft the judgment read by my learned brother Ogundare, J.S.C. I entirely agree that this appeal lacks merit.

I accordingly hereby dismiss it with N10,000.00 costs to the Respondent.
H

BELGORE JSC

In the case of master and servant the relationship is generally governed by the terms of the contract. By all means the servant is expected always to be of good conduct by diligently serving the employer and protecting the employer's property and to be in good harmony with the other employees. That is why nowadays the employers give, and in many cases the employers and employees in joint negotiation agree to, written conditions of service like Exhibit 3 in this matter. Gross misconduct like appropriating to personal use the employer's property and without the consent of the employer must attract summary dismissal. The appellant, by taking the money of the respondent, which he was supposed to keep and protect from pilferage, certainly was guilty of gross misconduct and deserved summary dismissal. I find no merit in this appeal and I dismiss it with N10,000.00 costs to the respondent.

WALI JSC

I have read before now, the lead judgment of my learned brother Ogundare, JSC and I agree that the appeal has no merit for the reasons stated.

For the same reasons, I dismiss the appeal with N10,000.00 costs to the Respondent.

OGWUEGBU JSC

The draft of the judgment just read by my learned brother, Ogundare, J.S.C, was made available to me before now and I agree with his reasoning and conclusion.

The appellant's contention that he had no fair hearing in accordance with the rules of natural justice and section 33 of the Constitution of the Federal Republic of Nigeria, 1979 is misconceived. The appellant was invited to the meeting of the Board of Directors of the respondent company. At the Board Meeting, the Chairman showed the appellant two Nigerian Paper Mill's Payment Vouchers. One of them was in respect of

the sum of N1,200.00 which led to his dismissal from the respondent company. The appellant admitted at the Board Meeting that he issued a cheque for N1,200.00 in exchange of cash. Part of his evidence-in-chief reads:

B *" I was ushered into the Board-room by the Messenger. The Chairman beckoned at me that I should come closer to him. He brought out Nigerian Paper Mill's "Payment Voucher. He asked me if I was the person who signed the voucher and I told him that it was my signature. Then he showed me another one that I issued a cheque for N1,200.00. I accepted that I did that."*

In his cross-examination, the appellant stated in part:

D *"I had an interview with the Board of Directors. I told the Board that I issued a cheque for N1,200.00 in exchange of cash. I remember that the company did/does give loans to staff. I did not apply for a loan of N1,200.00 from the defendant company. It was at the Board Meeting that I heard of the Internal Audi Investigation into the allegation against me. My reaction was that I explained my self to the Board."*

E (Underlining is for emphasis).

The Personnel Manager of the respondent company (Abdul-Karim Bakare) testified as D.W.1. In his evidence-in-chief he stated thus:

F *"We authorize cheque by our staff. The cheque must be paid to the Bank. The plaintiff on the other hand did not pay the cheque to the Bank but used his position as the Assistant Chief Accountant to withhold the cheque and its encashment."*

In answer to cross examination he said:

G *"In a regular cheque exchange transaction the staff should hand over to the Cashier his cheque to collect cash. This was not the case in the plaintiff's case. He was dismissed for not following the properly laid down rules of the company for cheque exchange leading to misappropriation of the company's fund."*

H From the above excerpts, I have no hesitation in agreeing with the court below that the appellant was given fair hearing as enshrined in section 33 of the Constitution. The climax of it was that he admitted the misconduct alleged against him and testified that he explained himself at

the meeting of the Board of Directors. He could not have explained himself if not given ample opportunity to do so. He was rightly and justifiably dismissed and the dismissal was in accordance with the Conditions of Service (Exhibit 3) which governed his employment.

The appeal has no merit whatsoever. For these reasons and for the fuller reasons stated in the judgment of my learned brother, Ogundare, J.S.C., I too dismiss the appeal with costs as assessed in the lead judgment.

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