

**SUPREME COURT OF NIGERIA**

7TH MAY, 1999. SC. 177/1994

**CORAM:- S. M. A. BELGORE, A. B. WALI, A. I. IGUH,  
S. O. UWAIFO, E. O. AYoola, JJSC**

FRANCIS ADESEGUN KATTO ..... APPELLANT  
AND  
CENTRAL BANK OF NIGERIA ..... RESPONDENT/CROSS-  
APPELLANT

---

***APPEALS*** - Issues - Court of Appeal - Failure to consider issues properly raised before it - Is erroneous.

***APPEALS*** - Supreme Court - Power to remit an appeal back to the Court of Appeal - Where it failed to consider the issue raised before it - To do so in the circumstances of the present case - Would be a waste of time.

***DEFAMATION*** - Cause of action - Letter of termination - Where the words complained of when read together with other paragraphs in the letter - Are not capable of conveying defamatory meaning - There is no cause of action.

***JURISDICTION*** - Lack of jurisdiction - Striking out Order - By the Court of Appeal - On the ground of Lack of jurisdiction - Is erroneous - As the issue of jurisdiction had earlier in the same matter - Been resolved by the Supreme Court.

***MASTER AND SERVANT*** - Termination - Contract of service - Where it is written - The Court will not look outside the terms - In deciding the rights and obligations of the parties.

***MASTER AND SERVANT*** - Wrongful termination - Onus of proof - The employee who so alleges has the onus to place before the court - The terms of the contract of employment - And to prove in what manner the

*terms were breached.*

**MASTER AND SERVANT** - *Wrongful termination - Contract of service - Terms of - Where the termination Complies with the terms as in the present case - It is lawful.*

### **FACTS**

Before the Niger state High Court, holden at Minna, the plaintiff/Appellant claimed against the defendant/respondent/cross-appellant for wrongful termination of his employment and damages for the defamation suffered as a result of the wrongful termination. By a letter dated June 1st, 1984 (Exhibit 8) the defendant terminated the plaintiff's employment with it with immediate effect. However, by the said letter the plaintiff was advised to collect his one month's salary in lieu of notice from the Manager Accounts Officer, of the defendant; while his final entitlement or indebtedness would be communicated to him in due course. The plaintiff brought the present action to challenge the termination which he alleges was wrongful. The plaintiff in his pleading pleaded reliance on the Staff Manual (Exhibit "7") regulating his employment with the defendant.

At the close of hearing, the learned trial judge gave judgment for the plaintiff. Dissatisfied, the defendant appealed to the Court of Appeal, Kaduna Division. The Court of Appeal, relying on Decree No.17 of 1984, proceeded to hold upon the issue it raised suo motu that the Court lacked jurisdiction to entertain the claim relating to the wrongful termination of appointment of the plaintiff. It therefore concluded that the appeal was allowed in Part, and then struck out the entire suit. The plaintiff has now appealed to the Supreme Court against the striking out order while the defendant has also cross-appealed on two issues.

### **ISSUES FOR DETERMINATION**

- 1. Whether the lower court could strike out the suit for lack of jurisdiction and whether it was right in law that Decree No. 17 of 1984 was applicable to the case.*
- 2. Whether the lower court was right to have failed to consider issues properly raised before it.*

3. *Whether following its findings that the defendant complied with the contractual condition for terminating an employment simpliciter as contained in exhibit 7, it should not have dismissed the plaintiff's claim of wrongful dismissal.*

**HELD** (Unanimously allowing the appeal and cross-appeal per lead judgment of **UWAIFO JSC**)

***Jurisdiction - Lack of jurisdiction***

1. I have no doubt that jurisdiction was erroneously delivered by the lower court particularly as the issue of jurisdiction had earlier in the same matter been resolved by this court: see Katto v Central Bank of Nigeria (1990) 9 NWLR 9 (pt. 214) 126. I hold that the appeal has merit and accordingly I allow it with N10,000.00 costs to the appellant. (p.1056 G)

***Master and Servant - Wrongful Termination***

2. The appellant certainly took the proper steps to plead the document relevant to the terms of his employment. It is the law that when an employee complains that his employment has been wrongfully terminated he has the onus, first, to place before the court the terms of the contract of employment and, second, to prove in what manner the said terms were breached by the employer. It is not in principle for the employer who is a defendant to an action brought by the employee to prove any of these. The principle has been laid down by this court in many cases including specifically Amodu v. Amode (1990) 5 NWLR (pt. 150) 356, followed in Iwuchukwu v Nwizu (1994) 7 NWLR (Pt. 357) 379 at 412. (p. 1057 D)

***Master and Servant - Termination***

3. As the contract of service is the bedrock upon which an aggrieved employee must found his case, he succeeds or fails upon the terms thereof. Therefore, in a written or documented contract of service, the court will not look outside the terms stipulated or agreed therein in deciding the rights and obligations of the parties: see Western Nigeria Development Corporation v Abimbola (1966) 4 NSCC 172 88. (p. 1058 A)

***Wrongful termination - Contract of service***

4. It was these two relevant exhibits 7 and 8 the lower court considered to reach its finding that the appellant's employment could be properly terminated under chapter 3 of exhibit 7. I think that the court was right except that the cross-appellant would act under clause 2 which provides for one month's salary or notice in lieu, not clause 3 stated by Okunola JCA which applies only if an employee who had served up to 15 years intends to withdraw his service; in that case he alone has an obligation to give three months' notice or pay three months' salary in lieu thereof to the employer. In the situation of the appellant, he cannot be heard to say in the face of exhibits 7 and 8 that the cross-appellant failed to comply with the terms of his contract of service to bring his employment to an end. (p. 1058 G)

***Appeals - Supreme Court***

5. As regards the claim for defamation for which the sum of N70,000.00 was awarded, the lower court inadvertently, I believe, failed to say anything about it even though the question of lack of jurisdiction did not arise in respect of it. Since the Court of Appeal did not consider the appeal against the judgment on that claim, this court would have, in a proper case, remitted the appeal back to it to do so. This is on the principle that the Supreme Court derives its jurisdiction as an appellate court from section 213 of the 1979 constitution. The implication is that it can only hear and resolve a matter on appeal from an appeal from that Court on an issue over which it has reached a decision: see Kalu v Odili (1992) 5 NWLR (pt. 240) 130 at 164. In the present circumstance, however, I find no cause to remit the appeal back to the Court of Appeal. If there was no cause of action, to send the appeal back to the Court of Appeal to decide it on the issues raised before it previously which it failed to consider, would be like flogging a dead horse to be up on the move. It obviously would be a waste of time. It would be best to bury it. (p. 1060 E/1061 B)

***Appeals - Issues***

6. At the trial court, there was a duty on the learned judge to rule in the first instance as a matter of law whether the words in question were capable of conveying a defamatory meaning at all: see Morgan v Odhams Press (1971) 1 WLR 1239 (H.L.); Okolo v Midwest Newspapers Corporation (1977) 11 NSCC 11 at 14-15; Awoniyi v The Registered Trustee of AMORC (1990) 6 NWLR (pt.154) 42 at 70. If the words complained of are not so capable of a defamatory meaning, the judge will rule accordingly and end the proceedings at that stage. This needs no evidence but it is a question of interpretation of the said words. That same function is also open to the Court of Appeal under section 16 of the Court of Appeal Act. In other words, since the trial court failed in that function, the Court of Appeal should have exercise its power to do so and determine whether those words were capable of conveying a defamatory meaning. If not, there is no cause of action. The cross-appellant has now before this Court asked whether it was proper for the Court of Appeal to have failed or neglected to consider the said issue properly raised before it. The Court of Appeal was in error to have failed to resolve the issue properly raised before it in this regard. (p. 1061 E)

***Defamation - Cause of action***

7. I have considered the words complained of. They were written by the cross-appellant to the appellant on the basis and in terms of the contract between them, simply to bring the contract to an end. It is unrealistic to expert a party to a lawful contract to abstain from exercising his rights under it just because it is imagined that third parties may read a wrong meaning to the effect of such exercise. Whether in their ordinary and natural meaning or they are supported by a far-fetched type of innuendo like the one pleaded in this case, these words as are not remotely capable of conveying a defamatory meaning particularly when read together with the paragraphs that follow in that letter, which indicated that the appellant was to have a month's salary in lieu of notice as well as his other entitlements, since published words complained of must be read as a whole: see Okolo v Midwest Newspapers Corporation (supra) at p. 15. There-

fore, the words in question disclose no cause of action. (p. 1062 E)

## NOTABLE POINTS OF INTEREST

### IGUH JSC

#### B 1. *Raising a point suo motu by the court*

Worse still is the fact that the Court of Appeal not only erroneously raised the issue of jurisdiction suo motu, it proceeded to decide the appeal upon that point without inviting counsel to address court thereupon. This, again, is a serious error in law for on no account should a court of law raise a point suo motu, no matter how clear it may appear to be, and proceed to resolve the case between the parties thereon without inviting them or counsel on their behalf to address court on the point. If it does so, it will be in breach of a party's fundamental right to fair hearing. See D Okafor v. Nnaife (1972) 3 E.C.S.L.R. 261, Ugo v. Obiekwe (1989) 1 N.W.L.R (part 99) 566 at 581. (p. 1067 F)

#### 2. *Court of Appeal must consider all issues before it*

E In this regard, it ought to be stressed that an intermediate appellate court, such as the court below, is duty bound to consider all the issues that are properly raised before it. It does not matter that its decision on a point will, in its view, be adequate to dispose of the appeal one way or the other. This is because in the event of the decision on that point being F reversed on a further appeal, its decision on the rest of the other points may then be considered by the higher court for a final determination of the appeal. See Katto v. Central Bank of Nigeria (1991) 12 S.C.N.J. 1 at 20. (p. 1068 D)

G

### AYOOLA JSC

#### 3. *Termination of employment - When it is wrongful*

H The law is now clear beyond peradventure that in a purely master and servant relationship devoid of any statutory flavour and in which the relationship is purely contractual, termination of an employment by the employer cannot be wrongful, unless it is in breach of contract. Notwithstanding that the employer gave a totally untenable reason for the

termination, once he had complied with the terms of the contract, there would be no breach of the contract of employment. (p. 1071 F)

#### *4. The essence of tort of defamation*

It is now common - place that the essence of the tort of defamation is the publication of words which tend to bring the plaintiff into hatred, contempt or ridicule. Where employment is terminated in circumstances which may bring the employee into hatred, contempt or ridicule but the employer had not used and published any defamatory words against the employee in terminating his employment, the employer cannot be held liable in defamation. Defamation lies in publication of defamatory words and not in doing a lawful, or even a wrongful, thing in circumstances that may occasion mere embarrassment to the plaintiff or even bring him into hatred, contempt or ridicule. (p. 1072 D)

### **REPRESENTATION**

T. B. Akinyeye Esq. for the appellant.

Chief B. Aluko-Olokun, with him A.H. Sulu-Gambari Esq. for the cross-appellant.

### **CASES REFERRED TO**

Katto v. Central Bank of Nigeria (1990) 9 NWLR 9 (pt. 214) 126

Amodu v. Amode (1990) 5 NWLR (pt. 150) 356

Iwuchukwu v. Nwizu (1994) 7 NWLR (pt. 357) 379 at 412

Western Nigeria Development Corporation v. Abimbola (1966) 4 NSCC 172 88

Kalu v. Odili (1992) 5 NWLR (pt. 240) 130 at 164

Morgan v. Odhams Press (1971) 1 WLR 1239 (H.L.)

Okolo v. Midwest Newspapers Corporation (1977) 11 NSCC 11 at 14-15

Awoniyi v. The Registered Trustee of AMORC (1990) 6 NWLR (pt.154) 42 at 70

Okafor v. Nnaife (1972) 3 E.C.S.L.R. 261

Ugo v. Obiekwe (1989) 1 N.W.L.R (part 99) 566 at 581

**STATUTES REFERRED TO**

Public Officers (Special Provisions) Decree, No.17 of 1984

Constitution of the Federal Republic of Nigeria, 1979; s.213

Court of Appeal Act; s.16

B

**LEAD JUDGEMENT BY UWAIFO JSC**

The Court of Appeal, Kaduna Division, on 7 June, 1993, gave judgement on an appeal from a rather simple suit decided by Agora J. on 4 September, 1987, sitting at the High Court, Minna. A number of issues were raised on that appeal: three were in respect of an alleged wrongful termination of employment and five in respect of defamation said to emanate from the letter which conveyed the termination. It thus meant that the suit was based on two causes of action whereof in the amended statement of claim the plaintiff finally claimed the following reliefs:

"(a) Declaration that the defendant's purported termination of plaintiff's appointment on 1st June, 1984 by virtue of defendant's letter of that date was wrong in law, null and void and of no effect.

(b) Order on the defendant to re-instate the plaintiff to the former position in the defendant's employment before the wrong (sic) termination with all necessary entitlements that would have accrued to him had he not be (sic) so wrongly (sic) terminated.

**OR**

A declaration that plaintiff is entitle to gratuity and pension according to the defendant (sic) Staff Manual AND an Order to the defendant to pay him his gratuities immediately and his pension to start to run at his 45th year anniversary.

( c ) N200,000.00 (Two hundred thousand naira) special and general damages for the wrongful termination of the plaintiff's appointment which claim include (sic) plaintiff's salary up to voluntary retirement age if plaintiff is not re-instated.

**AND**

(d) N100,000.00 (One hundred thousand naira ) general (aggravated) damages for the defamation suffered by the plaintiff as a result of the defendant's wrongful termination."



The learned trial judge gave judgment for the plaintiff. As for the claim based on wrongful termination of appointment, he ordered that the plaintiff be reinstated to his employment (as Senior Manager grade level 13) and given all the entitlements due to him, including promotion prospects. In the alternative, the following orders were made: (a) The defendant should immediately pay the plaintiff his "gratuity to an amount equal to his annual salary when he was 15 years in the defendant's service, and this amount should progress by 10% per annum for each completed year of his service after the first 15 years." (b) The plaintiff should be paid his pension when he would be 45 years of age. In regard to damages for defamation, the learned trial judge awarded the plaintiff N70,000.00.

In the appeal against the judgment, the defendant, as already indicated, raised eight issues for determination. The two most relevant for the purposes of the present appeals before this Court were: (a) whether the statement of claim disclosed a cause of action in respect of the claim for wrongful termination of employment and the effect on the award of damages, and (b) whether there is a cause of action known as defamation as a result of wrongful termination or whether wrongful termination per se can constitute defamation.

The Court of Appeal appeared to have answered issued (a) above-stated but did not answer issue (b). As regards the said issue (a), it observed inter alia, per Okunola JCA who read the leading judgment:

"..... I have examined exhibit 7 and I am satisfied that there are two modes of termination created in exhibit 7 (Chapters 3 & 5) dealing with the two situations. Clause 3 of chapters 5 of exhibit 7 deals with the first situation where either party just wants to sever the relationship in which case there is no requirement of the employer or employee having committed any or some misbehaviour listed in Clause 2 of Chapter 5 of exhibit 7. It will appear on the face of exhibit. 8 that the appellant as reiterated by the counsel has adopted the latter option by payment in lieu notice ..... In consequence, I hold that on the face of exhibit 8, the respondent could be lawfully terminated by the appellant under clause 3 of Chapters 5 of exhibit 7 by payment of one month (sic) salary in lieu of

I think the learned justice mixed up which clause of exhibit 7 supports the letter of termination, exhibit 8, somehow in that passage. However, the lower court at the same time later in the judgment, relying on Decree No 17 of 1984, proceeded to hold upon the issue it raised suo  
B motu that the court lacked jurisdiction to entertain the claim relating to the wrongful termination of appointment of the plaintiff. It therefore concluded that the appeal was "allowed in part", and then struck out "suit No. NSHC/35/86 before the Niger State High Court Minna for lack of  
C jurisdiction" in substitution for the judgment of that court. Although the entire suit was struck out, in effect that striking out would appear, in the circumstance, to relate to the claim for wrongful termination. Nothing absolutely was said about issue (b) above concerning whether there was  
D a cause of action in defamation disclosed.

The plaintiff appealed against the striking out order based by the lower court on what it considered amounted to lack of jurisdiction. A number of issues (5 in all) were raised as to whether the lower court  
E could do that and whether it was right in law that Decree No. 17 of 1984 was applicable to the case. The defendant also appealed questioning whether the lower court was right to have failed to consider issues properly raised before it which include issue (b) I identified above and whether  
F following its findings that the defendant complied with the contractual condition for terminating an employment simpliciter as contained in exhibit 7, it should not have dismissed the plaintiff's claim of wrongful dismissal.

The appeal by the plaintiff (to whom I shall now refer as the  
G appellant) was conceded, quite rightly, by the defendant (who, for convenience, I shall refer to as the cross-appellant). **I have no doubt that jurisdiction was erroneously delivered by the lower court particularly as the issue of jurisdiction had earlier in the same matter  
H been resolved by this court: see Katto v Central Bank of Nigeria (1990) 9 NWLR 9 (pt. 214) 126. I hold that the appeal has merit and accordingly I allow it with N10,000.00 costs to the appellant.**

The cross-appellant's appeal has two aspects to it, one is whether

the appellant from his own pleading and evidence has shown that he can maintain the claim for wrongful termination of appointment. The appellant pleaded reliance on the Staff Manual regulating his employment with the cross-appellant. In particular, he averred in paras. 11 and 12 of the statement of claim concerning the said Manual (which was admitted as exhibit 7) the following:

*"11. The defendant has a 'Staff Manual' containing the principal Rules and Regulations governing the staff's appointment and in this said Staff Manual the procedure and circumstances for termination of the Staff's appointment are stated and the position or post of the plaintiff on and before 1st June, 1984 was covered by the Staff Manual.*

*12. The plaintiff avers that the defendant did not follow any laid down rules and procedure in the purported termination of the plaintiff's appointment on 1st June, 1984."*

**The appellant certainly took the proper steps to plead the document relevant to the terms of his employment. It is the law that when an employee complains that his employment has been wrongfully terminated he has the onus, first, to place before the court the terms of the contract of employment and, second, to prove in what manner the said terms were breached by the employer. It is not in principle for the employer who is a defendant to an action brought by the employee to prove any of these. The principle has been laid down by this court in many cases including specifically Amodu v. Amodu (1990) 5 NWLR (pt. 150) 356, followed in Iwuchukwu v Nwizu (1994) 7 NWLR (Pt. 357) 379 at 412. In Amodu v. Amodu (supra), Agbaje JSC who read the leading judgment observed at page 370:**

*"..... it appears clear to me that since it is the plaintiff's case that his dismissal by the defendant is not in accordance with the terms and conditions of the contract of service between them it is for the plaintiff to plead and prove the conditions of service regulating the contract of service in question."*

To this Wali JSC added at p. 373: "The term of the contract of service is the bedrock of the appellant's case."

As the contract of service is the bedrock upon which an aggrieved employee must found his case, he succeeds or fails upon the terms thereof. Therefore, in a written or documented contract of service, the court will not look outside the terms stipulated or agreed therein in deciding the rights and obligations of the parties: see Western Nigeria Development Corporation v Abimbola (1966) 4 NSCC 172 88. In the latter case this court observed at p. 94 that the provisions of a written contract of service bind the parties thereto and that it was "outside the province of the learned trial judge to look anywhere for terms of termination of the contract other than in the Agreement, exhibit A."

In the present case, the Staff Manual (exhibit 7) under chapter 3 which deals with Confirmation and Determination of Appointment, clause 2 thereof, provides quite simply:

*"2 Appointments of permanent staff members can be terminated either by the staff member or by the Bank on the giving of a month's notice or payment of a month's salary in lieu thereof."*

The letter of termination of appointment dated June 1, 1984 addressed to the appellant by the cross-appellant reads in part:

*"I am directed to inform you that your service are no longer required by the Bank. In the circumstance, your appointment with the Bank is hereby terminated with immediate effect."*

*You are advised to contact the manager Accounts Office, Central Bank of Nigeria Kaduna for the payment to you of one month's salary in lieu of notice of termination of your appointment.*

*Your final entitlement for indebtedness to the Bank is being determined and will be communicated to you in due cause."*

It was these two relevant exhibits 7 and 8 the lower court considered to reach its finding that the appellant's employment could be properly terminated under chapter 3 of exhibit 7. I think that the court was right except that the cross-appellant would act under clause 2 which provides for one month's salary or notice in lieu, not clause 3 stated by Okunola JCA which applies only if an em-

**ployee who had served up to 15 years intends to withdraw his service; in that case he alone has an obligation to give three months' notice or pay three months' salary in lieu thereof to the employer. In the situation of the appellant, he cannot be heard to say in the face of exhibits 7 and 8 that the cross-appellant failed to comply with the terms of his contract of service to bring his employment to an end.**

It is, I think, irrelevant that the cross-appellant misguidedly pleaded some extraneous facts and circumstances in its statement of defence and led some evidence which appeared to be in contradiction of the purport of exhibit 8 and the appropriate provision of exhibit 7. It is for the appellant (as plaintiff) to prove his case which he rightly founded on paras. 11 and 12 of his statement of claim. Therefore, exhibits 7 and 8 must be taken into proper consideration, and what then follows is their legal consequences. The lower court made findings which should have led to unmistakable conclusion in regard to the legal consequence but for the error of declining jurisdiction. This court can draw the legal consequence and apply it to decide the appeal on the issue of wrongful termination.

The case of Western Nigeria Development Corporation v Abimbola (supra) is relevant here. The plaintiff there sued for wrongful dismissal, claiming for special and general damages. There had been some allegation of fraud against him. The trial judge awarded him a month's salary and also general damages on the basis of loss of prospects of continued employment for a dismissed employee etc. It is true that the dismissal was wrongful. On appeal to this court, it was observed per Ajegbo JSC at page 174:

*"The plaintiff was given a letter of appointment (Exhibit H) and paragraph 5 of the letter reads as follows:*

*'Your employment may be terminated by the Board or yourself by giving one month's notice in writing or by giving month's salary in lieu of such notice excepting in the case of dismissal for an offence prejudicial to the interest of the Board.'*

*The plaintiff's appointment was governed by the contract into*

*which he entered at the time of his appointment. If he had been given one month's notice before the termination of his appointment he would have had no claim whatsoever on the Corporation. But he was not given notice and he is entitled to one month's salary in the absence of notice.*

B *That is all he can get as damages; other matters that the judge considered are irrelevant."*

It was in Nigeria Produce Marketing Board v Adewunmi (1972) 7 NSCC 662 that it was further explained by this court that in such a situation. Apart from the salary in lieu of notice, the plaintiff would be paid other  
C legitimate entitlements due to him at the time employment was brought to an end.

I think there is merit in the cross-appeal on the claim for wrongful termination of employment. The appeal is accordingly allowed. The  
D judgment of Agora J. delivered on 4 September, 1987 and that of the Court of Appeal on 7 June, 1993 in respect of that claim which the Court of Appeal should have set aside are hereby accordingly set aside and the claim dismissed.

E **As regards the claim for defamation for which the sum of N70,000.00 was awarded, the lower court inadvertently, I believe, failed to say anything about it even though the question of lack of jurisdiction did not arise in respect of it.** That claim was based on  
F para. 1 of the letter of termination of appointment, earlier reproduced in this judgment which the trial court held defamed the appellants. I shall reproduce it again for effect. It reads:

*"I am directed to inform you that your service are no longer required by the Bank. In the circumstance, your appointment with the  
G Bank is hereby terminated with immediate effect."*

To this end, innuendo of a sort was pleaded as follows: "This conveys the innuendo (sic) that the plaintiff was summarily dismissed and that such words (of) termination of plaintiff's level in the Central Bank or any fi-  
H nancial institution in Nigeria shows (sic) that the plaintiff was found guilty of financial misdeeds which is scandalous and portrays the plaintiff as a dishonest person." What looks like a curious combination of ordinary meaning and innuendo was added thus: "The plaintiff will also rely on

the natural and ordinary meaning of the words used and quoted above with regard to the prevailing circumstances of the purge or corrupt officials then, and urge the court to take Judicial Notice thereof." (Emphasis mine).

Since the Court of Appeal did not consider the appeal against the judgment on that claim, this court would have, in a proper case, remitted the appeal back to it to do so. This is on the principle that the Supreme Court derives its jurisdiction as an appellate court from section 213 of the 1979 constitution. The implication is that it can only hear and resolve a matter on appeal from an appeal from that Court on an issue over which it has reached a decision: see Kalu v Odili (1992) 5 NWLR (pt. 240) 130 at 164.

In the present circumstance, however, I find no cause to remit the appeal back to the Court of Appeal. If there was no cause of action, to send the appeal back to the Court of Appeal to decide it on the issues raised before it previously which it failed to consider, would be like flogging a dead horse to be up on the move. It obviously would be a waste of time. It would be best to bury it. At the trial court, there was a duty on the learned judge to rule in the first instance as a matter of law whether the words in question were capable of conveying a defamatory meaning at all: see Morgan v Odhams Press (1971) 1 WLR 1239 (H.L.); Okolo v Midwest Newspapers Corporation (1977) 11 NSCC 11 at 14-15; Awoniyi v The Registered Trustee of AMORC (1990) 6 NWLR (pt.154) 42 at 70. If the words complained of are not so capable of a defamatory meaning, the judge will rule accordingly and end the proceedings at that stage. This needs no evidence but it is a question of interpretation of the said words. That same function is also open to the Court of Appeal under section 16 of the Court of Appeal Act. In other words, since the trial court failed in that function, the Court of Appeal should have exercise its power to do so and determine whether those words were capable of conveying a defamatory meaning. If not, there is no cause of action. In one of the issues set down for determination in the Court of Appeal (issue 3), it was asked:

*"Whether there is a cause of action known as defamation as a result of wrongful termination or whether wrongful termination per se can constitute defamation."*

**The cross-appellant has now before this Court asked whether it was proper for the Court of Appeal to have failed or neglected to consider the said issue properly raised before it.** The same general power available to the Court of Appeal under section 16 of the Court of Appeal Act is available to this court under section 22 of the Supreme Court Act, the relevant aspect of which provides that the Supreme Court in any matter on appeal before it.

*".....generally shall have full jurisdiction over the whole proceedings as if the proceedings had been instituted and prosecuted in the Supreme Court as a court of first instance and may rehear the case in whole or in part...."*

**The Court of Appeal was in error to have failed to resolve the issue properly raised before it in this regard.** I think this is an appropriate situation for this court to act under the said provision to decide as a matter of law whether there was a cause of action to be tried at all. In this regard, **I have considered the words complained of. They were written by the cross-appellant to the appellant on the basis and in terms of the contract between them, simply to bring the contract to an end. It is unrealistic to expect a party to a lawful contract to abstain from exercising his rights under it just because it is imagined that third parties may read a wrong meaning to the effect of such exercise. Whether in their ordinary and natural meaning or they are supported by a far-fetched type of innuendo like the one pleaded in this case, these words as are not remotely capable of conveying a defamatory meaning particularly when read together with the paragraphs that follow in that letter, which indicated that the appellant was to have a month's salary in lieu of notice as well as his other entitlements, since published words complained of must be read as a whole: see Okolo v Midwest Newspapers Corporation (supra) at p. 15. Therefore, the words in question disclose no cause of action.**



In consequence, I also allow the appeal of the cross-appellant on the claim of defamation and set aside the judgment of the trial court which awarded N70,000.00 general damages to the appellant. Accordingly, the claim is dismissed. In effect, the suit as a whole (No.NSHC/35/86) is dismissed. I award the sum of N10,000.00 as costs in favour of the cross-appellant against the appellant. B

---

### **BELGORE JSC**

The letter of termination of the respondent's appointment simply stated that his services were no longer needed and he was advised to collect his one month's salary in lieu of notice as provided for in Clause 2 of Exhibit 7 (Staff Manual). The Staff Manual (Exhibit 7) is the document regulating the contract of employment of the plaintiff with the defendant and Clause 2 thereof is the binding clause. The letter of termination never adverted to any fraud, misconduct or dishonesty and the respondent cannot read into his termination letter what is not contained therein. There is nothing on the face of the letter of termination of appointment or in the evidence in court to remotely cannot defamation or take it out of its ordinary meaning. I also dismiss the appeal and enter a verdict of dismissal of plaintiff's suit. I allow the cross-appeal concerning defamation. I make the same consequential orders as in the judgment of my learned brother, Uwaifo, JSC. C D E F

---

### **WALI JSC**

I have been privileged to read in advance, a copy of the lead judgment of my learned brother Uwaifo, JSC and I agree with his reasoning and conclusion for allowing both the main appeal and the cross-appeal. G

The facts of the case as portrayed in the pleadings and the evidence adduced in support thereof, show clearly that it is a simple case of contract of service of master and servant between the appellant and the respondent/cross appellant governed by Exhibit 7 to wit - the staff manual. H

This was pleaded by the appellant in paragraphs 11 and 12 of his Statement of Claim wherein he averred thus:-

B *"11. The defendant has a staff Manual containing the Principal Rules and Regulations governing the staff's appointment and in this said staff Manual the procedure and circumstances for termination of the staff's appointment are stated and the position or post of the plaintiff on and before 1st June, 1984 was covered by the Staff Manual.*

C *12. The plaintiff avers that the defendant did not follow any laid down rules and procedure in the purported termination of the plaintiff's appointment on 1st June, 1984."*

Clause 2 of chapter 3 of Exhibit 7 under the heading - Confirmation and Determination of Appointment provides as follows:-

D *"2. Appointment of permanent staff members can be terminated either by the staff member or by the Bank on giving of or month's notice or payment of a month's salary in lieu thereof."*

E Exhibit 8 is the letter by the Respondent/Cross appellant to the appellant signifying the termination of his appointment. The most relevant part of Exhibit 8 reads:-

*"I am directed to inform you that your services are no longer required by the Bank. In the circumstance, your appointment with the Bank is hereby terminated with immediate effect.*

F *You are advised to contact the Manager Account Office, Central Bank of Nigeria, Kaduna for the payment to you of the month's salary in lieu of notice of termination of your appointment."*

G The Court of Appeal, after considering the appellant's case, based on his pleading and the evidence adduced in support, came to the unavoidable and correct conclusion, as per the lead judgment of Okunola JCA, that:-

H *"..... there are two modes of termination created in exhibit 7 [chapter 3 and 5] dealing with the two situations..... It will appear on the face of Exhibit 8 that the appellant as reiterated by the counsel has adopted the latter option by payment in lieu of notice ..... I hold that on the face of exhibit 8 the respondent could be lawfully terminated by the appellant under clause 3 of chapter 5 of exhibit 7 by payment of one*

*month salary in lieu of notice."*

The Court of Appeal after the conclusion [supra], instead of allowing the appeal and dismissing it, went off the track and suo motu, introduced the issue of lack of the trial court's jurisdiction to entertain the case. Without hearing counsel on both sides, it came to the conclusion B that there was no jurisdiction in the trial court to hear the case, allowed the appeal and struck out the case by virtue of Decree No. 17 of 1984.

Learned counsel for the Respondent/Cross-appellant conceded that the Court of Appeal was wrong in raising suo motu and canvassing C the issue of the trial court's jurisdiction without hearing counsel on both sides. I find this point well taken by the appellant and having agreed with the conclusion of the Court of Appeal that the appellant's appointment was validly terminated under paragraph 2 of chapter 3 of Exhibit 7 and not clause 3 of chapter 5 inadvertently quoted by Okunola JCA, in his D lead judgment. I allow the appellant's appeal on the issue of jurisdiction of the trial court, but dismiss it as regards his appeal against the termination of his appointment and substitute the order of "striking out" with that of dismissal of the case. See order 8 rule 12(2) of the Supreme Court E Rules, 1985 [as amended].

The Court of Appeal, as rightly complained of by the Respondent/Appellant in the cross-appeal, said nothing on the issue of the defa- F mation and the award of damages by the trial court in relation thereto, despite the fact that it was raised and canvassed before it.

The words complained of and alleged to be defamatory of the appellant are contained in Exhibit 8. I think it is pertinent to reproduce them again. They read thus:

*"I am directed to inform you that your services are no longer D required by the Bank. In the circumstance, your appointment with the Bank is hereby terminated with immediate effect."*

The particulars of how these words are defamatory of the ap- H pellant by way of innuendo were not supplied. Looking at the words complained of in their natural or ordinary meaning, I cannot see how these words can convey any defamatory insinuations of and concerning the appellant. I cannot think also of any other better and simple straight

forward method of conveying the termination of the appellant's appointment with the Respondent/Cross-appellant vis-a-vis paragraph 2 of chapter 3 of Exhibit 7. Even if the appellant had succeeded on the issue of wrongful termination, what he would have been entitled to is only such damages, as would compensate him for loss suffered through the breach to the extent that such loss was reasonably foreseeable as liable to result. His claim for damages that the words complained of are capable of showing that he "was found guilty of financial misdeeds which is scandalous and portrays the plaintiff as a dishonest person" cannot succeed. See British Guiana Credit Corporation v. Clement Hugh Da Silva (1965) 1 WLR 248 - a case involving breach of contract of service on appeal to the Judicial Committee of the Privy Council wherein it was held on page 259 that -

*"As to damages, the plaintiff in his writ claimed the sum of \$100,000 made up by adding to his alleged special damages, namely the loss of benefits under the contract, a sum by way of general damages totalling \$42,010, apparently as compensation for the "humiliation, embarrassment and loss of reputation" of which he complained in his statement of claim. Such general damages find no proper place in this claim. The plaintiff is entitled only to such damages as will compensate him for the loss suffered through the breach to the extent that such loss was reasonably foreseeable as liable to result."*

I cannot agree more with the view expressed above. It shows that there is nothing like tort of defamation that can possibly result from a breach of contract or a simple straight forward notice of termination of contract of appointment like Exhibit 8 in this case. There is no cause of action established by the appellant.

In the circumstance, I agree with my learned brother Uwaifo JSC, that this court, exercising its powers under section 22 of the Supreme Court Act, 1960, can deal with the matter. I therefore allow the Cross-appeal on the claim for defamation and set aside the award of N70,000 damages to the appellant by the trial court and the claim is dismissed. In the result, the whole case as instituted by the appellant fails.

It is for this and the more elaborate reasons contained in the lead judgment of my learned brother Uwaifo, JSC that I also hereby dismiss the whole appellant's case as instituted in the trial court. I adopt the consequential orders in the lead judgment, that of costs inclusive.

B

### IGUH JSC

I have had the privilege of reading in draft the judgment just delivered by my learned brother, Uwaifo, J.S.C. and I agree that there is merit in both this appeal and the cross-appeal. C

With regard to the main appeal, the respondent, quite rightly, conceded that the Court of Appeal was in error by considering the issue of jurisdiction when the appellant neither raised any such question nor was the issue itself derived from any of the grounds of appeal filed before the court below. In this regard, it cannot be over-emphasized that an appellate court can only hear and decide on issues raised on the grounds of appeal filed before it and an issue not covered by ground of appeal filed before it and an issue not covered by any ground of appeal is competent and will be struck out. See Management Enterprises v. Otusanya (1987) 2 N.W.L.R. (Part 55) 179, Attorney-General Anambra State v. Onuselogu Enterprises Ltd. (1987) 4 N.W.L.R. (Part 66) 547, Adelaja v. Fanoiki and Another (1990) 2 N.W.L.R. (Part 131) 137 at 148 etc. It is also trite that when an issue is not placed before an appellate court, such a court has no business whatsoever to deal with it. See Florence Olusanya v. Olufemi Olusanya (1983) 3 S.C. 41 at 56-57. Worse still is the fact that the Court of Appeal not only erroneously raised the issue of jurisdiction suomotu, it proceeded to decide the appeal upon that point without inviting counsel to address court thereupon. This, again, is a serious error in law for on no account should a court of law raise a point suomotu, no matter how clear it may appear to be, and proceed to resolve the case between the parties thereon without inviting them or counsel on their behalf to address court on the point. If it does so, it will be in breach of a party's fundamental right to fair hearing. See Okafor v. Nnaife (1972) 3 E.C.S.L.R. 261, Ugo v. Obiekwe (1989) 1 N.W.L.R D E F G H

(part 99) 566 at 581, Oje v. Babalola (1991) 4 N.W.L.R. (Part 185) 267 at 280, Rex v. Hendon Justices, ex parte Gorchein (1973) 1 W.L.R 1502 etc. Respondent's learned counsel was therefore right when he conceded the error of the court below in respect of the main appeal

B With regard to the cross-appeal, the respondent/cross-appellant has, like the appellant, complained in its first issue against the determination, by the court below, of the appeal before it on a point it raised  suo motu without affording the parties an opportunity to be heard. This issue, I have already considered in the main appeal and resolved in favour of the  
C appellant. See too Union Bank of Nigeria Ltd. v. Ozigi (1994) 3 S.C.N.J. 42.

Issue 2 poses the question whether it was proper for the Court of Appeal to have failed to consider all or any of the seven issues which  
D were properly raised before it. In this regard, it ought to be stressed that an intermediate appellate court, such as the court below, is duty bound to consider all the issues that are properly raised before it. It does not matter that its decision on a point will, in its view, be adequate to dispose  
E of the appeal one way or the other. This is because in the event of the decision on that point being reversed on a further appeal, its decision on the rest of the other points may then be considered by the higher court for a final determination of the appeal. See Katto v. Central Bank of  
F Nigeria (1991) 12 S. C. N.J.1 at 20, Rev. Moses Abiegbe v. Ugbodume (1991) 11 S.C.N.J. 1, John Anyaduba v. Nigeria Penowned Trading Co. Ltd. (1992) 6 S.C.N.J. 204.

The Court of Appeal in the present case considered only issue 1 before it but failed or neglected to consider the remaining six issues  
G formulated by the cross-appellant. It is clear to me that the Court of Appeal was in error in this regard. See too Onifade v. Alhaji Olayiwola (1990) 11 S.C.N.J. 10.

Issue 3 is concerned with whether the cross-appellant obtained  
H the leave of the Court of Appeal to raise as its defence the application of Exhibit 7, namely, the staff manual containing the terms governing the conditions of service of the appellant in the cross-appellant Bank. Before us, however, learned counsel for the cross-appellant applied for and

was granted leave for the amendment of its Statement of Defence whereof the said Exhibit 7 was additionally relied on as a defence to the appellant's claims.

It is trite that once ordered, what stood before amendment would no longer be material before the court and no longer defines the issues to be tried in the suit. See Grace Amanambu v. Alexander Okafor and Another (1966) 1 All N.L.R. 205, Col. Rotimi v. Mc Gregor (1074) 11 S.C. 133 at 152 etc. The cross-appellant in the present action, apart from founding its defence on the provisions of Decree No. 17 of 1984, relied additionally on compliance with the terms of Exhibit 7 whereof the appellant could be validity terminated by the cross-appellant under Clause 3 of Chapter 5 of Exhibit 7 by payment of one month's salary in lieu of notice.

Dealing with Exhibit 7, the court below held as follows -

*As I said, I have examined Exhibit 7 and I am satisfied that there are two modes of termination created in Exhibit 7 (Chapters 3 & 5) dealing with the two situations.*

*(1) Clause 3 of Chapter 5 of Exhibit 7 deals with the first situation where either party just wants to serve the relationship in which case there is no requirement of the employer or employee having committed any type of act which injures the other. The application of this provision is not made subject to Clause 2 of Chapter 5 or any other provision in Exhibit 7.*

*(2) The second situation is where the employee commits any or some misbehaviours listed in Clause 2 of Chapter 5 or Exhibit 7. It will appear on the face or Exh. 8 that the Appellant as reiterated by the counsel has adopted the former option by payment in lieu of Notice since there is a similarity between this procedure and termination under the provisions of Decree no. 17 of 1984 which forms the basis of Issue No. 2 which we shall now examine. In consequence, I hold that on the face of Exhibit 8, the Respondent could be lawfully terminated by the Appellant under Clause 3 of Chapter 5 of Exhibit 7 by payment of one month salary in lieu of notice."*

The Court of Appeal was of the clear view, therefore, that the cross-

appellant complied with the terms of Exhibit 7 in terminating the employment of the appellant. Accordingly, it pronounced the termination of the appellant's employment as valid and in compliance with the terms in Exhibit 7. There is no appeal against this decision of the court below. I myself, have carefully considered this position of the Court of Appeal and must confess that I can find no reason to interfere with the same.

It cannot be doubted that the treatment which the court below gave to the issue of Exhibit 7 is additional to the question of jurisdiction which I have already dealt with. Although the court of Appeal was in error on the issue of jurisdiction, decision on the termination of the appellant under the terms of Exhibit 7 is clearly without fault and cannot therefore be disturbed. In the circumstance, the first three arms of the appellant's claims are, in my view, liable to be dismissed.

On the issue of the appellant's claim in damages for defamation as a result of the appellant's termination, I have given close study to exhibits 8 and 12 and can find nothing defamatory of the appellant in them. I cannot see defamation established simply because the employment of a staff is terminated in writing by his employers in strict accordance with the terms of his employment with no untrue imputation against his reputation and such a termination notice is only communicated to the appropriate quarters who ought to be informed of the action taken. The appellant's claim in defamation must therefore fail.

It is for the above and the more detailed reasons contained in the judgment of my learned brother, Uwaifo, J.S.C. that I, too, allow both the appeal and the cross-appeal. I abide by the consequential orders, including those as to costs, made in the leading judgment.

---

### AYOOLA JCA

I have had the privilege of reading in draft the judgment delivered by my learned brother, Uwaifo, JSC I agree with him that the appeal of the appellants and the cross-appeal of the respondent, now referred to as the cross-appellant, should both be allowed.

The cross-appellant rightly conceded that the decision of the



court below striking out that part of the claim of the appellant on a jurisdiction point neither canvassed by the appellant nor by the cross-appellant before the court below, was unsupportable both for the reason that it was a point neither of the parties took nor argued and because the conclusion of the Court of Appeal which took the point suo motu was, in any event, erroneous. On the findings made by the trial judge, it was clear that the jurisdiction of the court was not ousted by the public officers (Special Provisions) Decree, No.17 of 1984.

It was evident that had Court of Appeal not held that the trial court had no jurisdiction, the view it held that the appellant's employment could be lawfully terminated by the cross-appellant in terms of clause 2 of Chapter 3 of the Staff Manual (Exhibit 7) would have been sufficient to dispose of the appeal in the court below in favour of the cross-appellant (then appellant). The trial judge was of the same opinion as the Court of Appeal, but did not give judgment for the cross-appellant because he was of the view that the Staff Manual having been described in the letter of appointment as the "Bank's regulations", was a statute. In so holding, he was obviously wrong. The mere description of a document as a regulation, even by a public corporation, does not make it a subordinate Legislation which is the sense in which the trial judge erroneously regarded the staff manual when he held that the appointment was governed by statute.

The law is now clear beyond peradventure that in a purely master and servant relationship devoid of any statutory flavour and in which the relationship is purely contractual, termination of an employment by the employer cannot be wrongful, unless it is in breach of contract. Notwithstanding that the employer gave a totally untenable reason for the termination, once he had complied with the terms of the contract, there would be no breach of the contract of employment. Clause 2 of Chapter 3 of the staff manual did not make the existence of reasons a condition precedent to termination of employment pursuant to that clause. In the present case, the termination of the employment was in accordance with the contract of employment contained in the staff Manual (Exhibit 7). Whatever other reason there might have been for the termination of the

employment, the termination cannot be said to be wrongfully. For these reasons, I hold that the trial judge should have dismissed that aspect of the claim based on wrongful termination of employment.

The trial judge entered judgment for the appellant for damages for defamation without consideration whether or not the pleadings of the appellant disclosed a reasonable cause of action in that regard and without considering the elements of the tort of defamation. The appellant in his statement of claim (para.29) pleaded that the "defendant's said wrongful termination was defamatory", and in paragraph 30 went on to refer to a passage in the letter of termination and pleaded an innuendo in relation thereto. Nowhere in the statement of claim was publication averred, nor were the words published of and concerning the appellant, which were alleged to be defamatory, pleaded expressly. What the appellant appeared to have regarded as defamation was the fact of the termination of his appointment in circumstances that had cause him embarrassment. It is now common - place that the essence of the tort of defamation is the publication of words which tend to bring the plaintiff into hatred, contempt or ridicule. Where employment is terminated in circumstances which may bring the employee into hatred, contempt or ridicule but the employer had not used and published any defamatory words against the employee in terminating his employment, the employer cannot be held liable in defamation. Defamation lies in publication of defamatory words and not in doing a lawful, or even a wrongful, thing in circumstances that may occasion mere embarrassment to the plaintiff or even bring him into hatred, contempt or ridicule.

To compound the obvious unsustainability of the appellant's claim in tort of defamation, the appellant failed even to aver that there was publication of any matter of and concerning him. Even if it can be said that the defamatory words he complied of were contained in the letter of termination, the only fact of publication pleaded were in paragraphs 34 and 35 of the statement of claim which, at best, were facts of self publication. In regard to the letter averred in paragraph 33 of the statement of claim said to have been sent to the manager, Bank of the North Limited, Minna to the effect that the cross-appellant's signing power had

been withdrawn there was no averment of the words allegedly published. The appellant having claimed both by his writ of summons and on his statement of claim "damages for the Defamation suffered by the plaintiff as a result of the Defendant's wrongful termination.", it is not surprising that he did not plead, as he should have done in order to sustain an action B in tort of defamation, that any words were published of and concerning him. In the circumstances, it was obvious that the appellant's claim for damages for defamation was obviously a non-starter. Had the court below considered the issues raised by the cross-appellant on the question C of the validity of the judgment entered for the appellant on the claim based on defamation, there is doubt that that was the conclusion it would have inexorably come to.

For these reasons, and the further reasons contained in the judgment of my learned brother Uwaifo, JSC, I too would allow the appeal D and the cross-appeal. I adopt the consequential orders made by him.

E

F

G

H