

SUPREME COURT OF NIGERIA
28TH JUNE, 1999. SC. 41/1993
CORAM:- A. B. WALI, S. U. ONU, A. I. IGUH, S. O.
UWAIFO, E. O. AYOOLA, JJSC.

DR. TUNDE BAMGBOYE APPELLANT
AND
1. UNIVERSITY OF ILORIN
2. REGISTRAR, UNIVERSITY OF ILORIN RESPONDENTS

ADMINISTRATIVE LAW - *Delegation - Statutory disciplinary power of council - Under section 15 (i) of the University of Ilorin Act - Cannot be delegated.*

ADMINISTRATIVE LAW - *Delegation of duty - The person to whom an office or duty is delegated - Cannot lawfully devolve it upon another - Unless he is expressly authorized to do so.*

APPEALS - *Concurrent findings of fact - Of the two lower courts - Attitude of the Supreme Court - To such concurrent findings.*

APPEALS - *Grounds of appeal - Grounds of law - What may be classified as errors of law - Which when addressed to grounds of appeal are categorized as grounds of law.*

APPEALS - *Right of appeal - Under s. 213(2) (c) of the 1979 Constitution - Where the decision appealed against - Is on questions concerning chapter IV of the constitution - Leave is not required as a pre-condition for appeal.*

AGENCY - *Registrar of a university - Is an agent of the University - But not of its council - And when he acts for the council - He must act under the direct control of that body.*

COURTS - Hypothetical and academic questions - Attitude of the Courts
- Toward such questions.

EVIDENCE - Pleadings - Issues - Are joined in the pleadings - Not in the evidence - And evidence which is at variance with the pleadings - Goes to no issue.

FAIR HEARING - Standard of fair hearing - Requires the observance of the twin pillars of the rules of natural justice - Consequences of failure to so observe.

FAIR HEARING - Real likelihood of bias - University of Ilorin Act s. 15(1) - What is required under it - Was complied with in the instant case - And there was no real likelihood of bias.

INTERPRETATION OF STATUTES - Suspension - Of a University staff - University of Ilorin Act - Provisions of section 15 (4) thereof - Requirement that the council reach a final decision within six months - As a decision was reached within that time frame in the instant case - It was not ultra vires the Act.

JUDGMENTS - Obiter dictum - Opinion of the trial court - On an issue not pleaded - Is Obiter dictum - And where it does not occasion any miscarriage of justice - The judgment stands.

MASTER & SERVANT - Fair hearing - Statutory appointments - Termination of such appointments - Requirement of fair hearing under s. 15 (i) of the University of Ilorin Act - Gives the exercise of such disciplinary powers statutory flavour.

MASTER & SERVANT - Termination of employment - For gross misconduct - What the employer must prove.

FACTS

Before the High Court of Kwara State the plaintiff/appellant commenced an action against the defendants/respondents challenging the legality and validity of his dismissal from 1st respondent's establishment or in the alternative an order for reinstatement. The appellant was a reader in chemistry in the faculty of science in the 1st respondent's establishment. In 1988, professor Mesubi who was appointed a new reader during the appellant's sabbatical leave discovered, on the appellant's office two chemistry examination scripts belonging to two female students. The examination marks on the scripts have been altered from low marks to high marks while one of the scripts was apparently not written under examination condition. One of the female students in question had in her custody a key to the appellant's office. Following the said discovery, charges of examination malpractices were laid against the appellant. Three different panels were instituted to investigate various aspects of the charge. The appellant personally appeared before these panels and made representations and of all the three panels, two exonerated him on two charges but one found him blameworthy on the third charge. However, the three investigatory panels did not see the examination scripts of the two female candidates as they were not produced before them.

Upon receipt of the report of the third panel (Exhibit D), the 2nd respondent wrote the appellant Exhibit P1 inviting him to appear before the Senior Staff Disciplinary and Appeals Committee (SSD & AC) chaired by the vice-Chancellor to defend himself against three charges of examination malpractices. On the same date the second respondent wrote another letter (Exhibit p2) suspending the appellant from duty pending the determination of the charges against him. The appellant appeared before the SSD & AC and defended himself, following which the 2nd respondent wrote Exhibit P3 revoking the suspension in Exhibit p2 and re-instating him. However by another letter Exhibit P6 dated 18th November 1988 the appellant was requested to appear before 1st respondent's Governing Council to defend himself against the three charges of examination malpractices. He duly appeared before the council made representations and submitted a document in his defence. The appellant was

also confronted with the two examination scripts and after studying them he presented his defence. The council thereafter found the appellant guilty of examination malpractices and dismissed him from the services of the 1st respondent. Whereupon, the appellant invoked the purport of section 15 of the University of Ilorin Act to institute the action. The trial High Court in a well considered judgment dismissed the appellant's case. The appellant also appealed to the Court of Appeal, Kaduna Division where he also lost. He has further appealed to the Supreme Court raising thirteen issues while the respondent raised two issues incorporating preliminary objection based on ground of incompetence. The appeal was however determined on three issues reformulated by the Court.

ISSUES FOR DETERMINATION

"ISSUE NO. 1.

Whether the Learned Justices of the Court of Appeal were right in their view that the guilt of the Appellant on charges of Examination Malpractices was justifiable in the trial court and going further to affirm that guilt. And further, whether the Learned Justices of the Court of Appeal erred in holding that the issues of Criminal jurisdiction of the Governing Council did not arise in the High Court or Court of Appeal. (Grounds 1, 2, 4, 5 & 8).

ISSUE NO. 2:

Whether the 1st Respondent and its agencies/agents gave the Appellant fair hearing; to what extent did it delegate its powers to those agencies/agents and how binding were the perverse/ *ultra vires* decision against the Appellant arrived at? (Grounds 3, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 & 22). "

ISSUE NO. 3:

Whether the consideration and determination on issues 4, 5, 6, 7, and 8 in the Appellant's Brief in the Court of Appeal would have determined the appeal in his (appellant's) favour. (Grounds 4, 5, 7, 19, 20, 21 & 22). "

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

Appeals - Grounds of appeal

1. What may be classified and recognized as errors of law which when addressed to grounds of appeal are categorized as Grounds of Law, may be gleaned from decisions of this Court such as in Comex Limited v. N.A.B. Limited (1997) 3 NWLR (Part 496) 643 at 656, affirming the dictum of Nnaemeka-Agu, JSC in Nwadike v. Ibekwe (1987) 4 NWLR (Part 67) 718 at 744-745. Also the dictum of Eso, JSC in Ogbechie v. Onochie (1986) 2 NWLR (Part 26) 484 at 491 to the effect that:-

(i) *"It is error in law if the adjudicating tribunal took into account some wrong criteria in reaching its conclusion or applied some wrong standard of proof or, if although applying the correct criteria, it gave wrong weight to one or more relevant factors"*

(ii) *Several issues that can be raised on legal interpretation of deeds and documents, terms of art, words or phrases and inferences drawn therefrom are grounds of law. See Ogbechie v. Onochie No. 1 at 491-492. See also Metal Construction W.A. Ltd. v. Migliore (1990) 1 NWLR (Part 126) 129 - 149 at 548 and Obatoyinbo v. Oshatoba (1996) 5 NWLR (Part 450) 507 at 531.*

(iii) *Where a ground deals merely with a matter of inference even if it be an inference of fact, provided it is limited to admitted or proved and accepted facts.*

(iv) *Where a tribunal states the law on a point wrongly.*

(v) *Lastly, I should mention one class of grounds of law which have the deceptive appearance of grounds of fact, id est where the complaint is that there was no evidence or admissible evidence upon which a finding or decision was based"*

(vi) *A misunderstanding of the lower tribunal of the law or a misapplication of the law to facts already proved or admitted." (p.2019E)*

Appeals - Right of appeal

2. In any event, whether the grounds of Appeal are grounds of law or not is irrelevant because the appellant also has a right of appeal vide Section

213(2)(b) (C) of the 1979 Constitution which states:-

"(2) *An appeal shall lie from decisions of the Court of Appeal to the Supreme Court as of right in the following cases:-*

(c) *decisions in any civil or criminal proceedings on questions as to whether any of the provisions of Chapter IV of this Constitution has been, is being or is likely to be, contravened in relation to any person ..."*

Clearly, the decision appealed against herein is on questions whether or not the appellant was given a fair hearing vide Section 33 in Chapter IV of the Constitution (ibid). To that extent, leave is not required as a pre-condition for appeal even on grounds of mixed law and fact or fact alone. In that wise, grounds 13, 14 and 16 being grounds if fact do not require particulars. Cf Order 8 Rule 2(2) Supreme Court Rules, enjoining the use of particulars only for misdirections or errors in law. Since as regards Ground 10 it is clear that the particulars therein relate to the substantive complaint, setting out the particulars of the alleged misdirection would not arise. See Chidiak v. Laguda (1964) NMLR 123. (p. 2021 D)

E Master & Servant - Termination of employment

3. The proposition of law is that in order to justify the appellant's termination of employment, the employer (respondents herein) must prove to the trial court's satisfaction that the Council believed the appellant committed acts of gross misconduct after hearing the case. This was exactly what the learned trial Chief Judge was saying in the instant case where the Council was said to have believed that the appellant committed the acts of gross misconduct alleged. The onus was on the appellant to prove that the termination of his appointment was wrongful. See College of Lagos University v. Dr. Adegbite (1973) 5 SC. 149 at 162 and the similar Court of Appeal decision in Abomeli v. N.R.C. (1995) 1 NWLR (Part 372) 451. (p. 2025 E)

H Evidence - Pleadings

4. I take the firm view that the issue of criminal jurisdiction of the Governing Council of the 1st Respondent did not arise in the pleadings of the parties in the trial High Court. Hence, the court below was correct to

have so held. This view is premised on the fact that no where in the Statement of Claim is the criminal jurisdiction of the Council asserted. Issues, it must be emphasized, are joined in the pleadings, not in the evidence. See Ehimare v. Emhonyon (supra); Adeosun v. Adisa (1986) 5 NWLR (Part 40) 225 at 235 and Akintola v Solano (1986) 2 NWLR (Part B 24) 598 at 623 SC. Evidence which is at variance with the pleadings goes to no issue and should be rejected and if admitted should be expunged from the record. See Emegokwue v. Okadigbo (1973) 4 SC.113 at 117; Dike v. Nzeka (1986) 4 NWLR (Part 34) 144, 156 and Lana v. University of Ibadan (1987) 4 NWLR (Part 64) 245, 248-259, 262. (p. 2026 D)

Judgments - Obiter dictum

5. Indeed, from the foregoing, criminal jurisdiction of the Council did not arise and the mere adoption of 6 issues proposed by counsel as arising for determination did not mean that such adoption is not a finding of act which requires a cross-appeal before the court below. Such that when a trial court expresses an opinion on an issue not pleaded, such opinion is obiter dictum which if it does not occasion any miscarriage of justice, the judgment stands. See Mora v. Nwalusi & Ors. (1962) 1 All NLR 681, 687 and Ayoola v. Adebayo & Ors. (1969) 1 All NLR 159 at 164. Any issue that does not arise from the pleadings in the court below cannot be raised in any of the grounds of Appeal and argued without leave of the court below as decided in a host of cases in support of that proposition. See Adio v. The State (1986) 2 NWLR (Part 24) 581 at 588; Fadiora v. Gbadebo (1978) 3 SC. 219 at 247; Akpene v.. Barclays Bank (1977) 1 SC.219 at 247 and Ejiofodomi v. Okonkwo (1982) 11 SC.74, 116 and 117, to mention but a few. I am therefore of the firm view that the court below was right to hold that the issue of criminal jurisdiction of the Governing Council did not arise in the trial court. (p. 2026 H)

Delegation - Statutory disciplinary power

6. Undoubtedly, the power of Council under Section 15(1) of the University of Ilorin Act, Cap.455, Laws of the Federation of Nigeria 1990, is a

statutory disciplinary power to remove and discipline an erring academic, administrative and professional staff of the University. In this regard, it is trite law that a statutory disciplinary power cannot be delegated. See Vine v. National Dock Labour Board (1956) 3 All E.R. 939. (p. 2029 D)

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Delegation of duty

7. An agent, in my view, means more or less the same thing as a delegate. Similarly, I hold that SSD & AC is a Committee of Council and an agent or delegate of Council of the University. The principle of law is that the person to whom an office or duty is delegated cannot lawfully devolve the duty upon another, unless he be expressly authorized so to do. See Huth v. Clarke (1890) 25 QBD 391 and Barnard v. National Dock Labour Board (1983) 1 All E.R. 1113. In the instant case, the power of Council to discipline administrative, academic and professional staff of the University under Section 15(1) of University of Ilorin Act (ibid) was delegated to it by the University of Ilorin. The Council cannot therefore delegate this power to the SSD & AC which is itself a delegate of the Council. (p. 2030 C)

Courts - Hypothetical and academic questions

8. It not having been established as contended by the appellant that the Council had delegated its power under Section 15(1) of the Act to SSD & AC in excess of the provision of Section 15(1) - (a)(i) of the Act, the question the appellant raised in paragraphs 7.20 to 7.24 of his Brief as to whether or not the Council is bound by the decision of the delegate, can at best be regarded as hypothetical, academic and theoretical. See Eperokun v. University of Lagos (1986) 4 NWLR (Part 34) 164 at page 179, where this Court opined that:-

"It is not part of the function of the Court to entertain and decide hypothetical and academic questions, i.e. questions not arising from the facts of the case." (p. 2031 B)

Agency - Registrar of University

9. As to whether the 2nd respondent is not the agent of the 1st respon-

dent and therefore does not bind it (1st respondent), it needs to be stressed that Section 2(2) of the University of Ilorin Act (ibid) in the First Schedule thereto identifies the Registrar (2nd respondent) as one of the principal officers of 1st respondent while Section 5(1) thereof names him as the Chief Administrative Officer of the University responsible to the Vice-Chancellor for the day to day administrative work of the University (1st respondent). Further, that by virtue of sub-section (2) of Section 5 thereof, he is the secretary to the Council, the Senate, Congregation and Convocation which are some body of persons established by Section 2(3) of the Act. I am in full agreement with the appellant that by reason of the 1st leg of the argument proffered above 2nd respondent is a servant or an agent of the 1st respondent for which see Carlen (Nigeria) Ltd. v. UNIJOS (supra). However, with due respect he (2nd respondent) is not the agent of the Council of the 1st respondent. Such that whenever the 2nd respondent acts for the Council or any other body for which he is a secretary, he must act under the direct control and/or supervision of such body (Council). In which case, if the 2nd respondent purports to issue an instrument removing or re-instating an officer under Section 15(1) of the Act as happened in the instant case, he must do so on the directions of the Council. Consequently, any instrument issued by the Registrar (2nd respondent) under Section 15(1) of the Act (ibid) without the directions of the Council is invalid and not binding on it. (pp. 2031G/2033 C)

Appeals - Concurrent findings of fact

10. With the acceptance of the findings of fact of the trial court by the Justices of the court below, there is in existence two concurrent findings of fact of the two lower courts which, in the absence of a substantial error shown, this court will not make it a policy to disturb them unless there is a substantial error apparent on the record of proceedings or where there is some miscarriage of justice or a violation of some principles of law or procedure or the findings are shown to be perverse. See Ezeudu v. Obiagwu (1986) 2 NWLR (Part 21) 208, 216, 219; Ibodo v. Enarofia (1980) 5-7 SC.42, 55; Lokoyi v. Olojo (1983) 8 SC.61, 68; Ojomu v.

Ajao (1983) 8 SC.22, 53 and Salami v. Oke (1987) 4 NWLR (Part 63)

10. The answer to this question is that the findings of the court below as to what transpired at the meeting of the Governing Council are not perverse. (p. 2034 H)

B ***Master & servant - Fair hearing***

11. I entirely share the respondents' view that in Nigeria fair hearing is not only a common law right but also a constitutional right. Thus, by virtue of Section 33(1) of the 1979 Constitution (now Cap.62, Laws of

C the Federation, 1990) it is provided that in the determination of his civil rights and obligations a person is entitled to a fair hearing within a reasonable time by a court or other tribunal established by law. Section 15(1) of the University of Ilorin Act, Cap.455 (ibid) makes similar provision for D fair hearing before the appointment of an administrative, academic and professional staff is terminated thus giving the exercise of such disciplinary powers, statutory flavour. See the cases of University of Nigeria Teaching Hospital Management Board & Anor. v. Nnoli (1994) 8 NWLR E (Part 363) 376 at page 404 paragraphs A-B; 419, paragraphs D-E; Adeniyi v. Governing Council of Yaba Tech. (1993) 6 NWLR (Part 300) 426. (p. 2035 D)

Standard of fair hearing

F 12. Be it noted also that the standard of fair hearing requires the observance of the twin pillars of the rules of natural justice, namely:

(i) Audi alteram partem - hear the other side,

(ii) Nemo iudex in causa sua - no one should be a judge in his G own cause - this is the rule against bias. See Akinfe v. The State (1988) 3 NWLR (Part 85) 729 at 753.

Failure of any tribunal like the Council of the 1st respondent which has a duty to take decisions to observe any of these two rules H renders the proceedings and decision a nullity. (p. 2036 A)

Fair hearing - Real likelihood of bias

13. By virtue of Section 15(1) of the University of Ilorin Act (ibid) all that

is necessary is :-

(i) that the complaints must be brought to the notice of the person and

(ii) he must be given an opportunity of making representation in person to Council on the matter.

In the instant case, the learned Chief Judge considered all the evidence before him, considered the allegations of the appellant on the incidents of fair hearing and the relevant laws of fair hearing and came to the inexorable conclusion, rightly in my view, that the appellant was given a fair hearing. The court below in their judgment reviewed the relevant laws of fair hearing and applied these laws to the facts of the case and accepted the learned Chief Judge's findings that the appellant was indeed given a fair hearing. Cf. the Medical Disciplinary Committee v. Mobolaji Alakija 4 FSC.38; Mora v. Nwalusi (1962) 1 All NLR 68 and Yesufu Dele v. Adelabu (1966) NMLR 105. In this regard Professor Bamgboye, Adeniyi, Abiri and Alhaji Kigo could not be said to have prior knowledge of the facts of the case simply because of the part they played in the investigating panels previously. By virtue of Section 15(1)(i) of the University of Ilorin Act (ibid), some members of Council must necessarily be members of the Committee to investigate the matter. This does not vitiate the proceedings. In fact, Professor Mesubi was only called by Council to produce the two examination scripts in respect of which charges were laid against the appellant and he was neither shown to be a member of the Council nor that he took part in its deliberations. His presence thereat, in my view, did not constitute a real likelihood of bias; nor was any shown. See Ikehi Olue & Ors. v. Obi Ezenwali & Ors. (1976) 2 SC.23 and Obadara & Ors. v. The President, Ibadan West District Grade B. Court (1965) NMLR 336. (p. 2036 C)

Interpretation of statutes - Suspension

14. Under Section 15(4) of the Act where the suspension is continued under Section 15(4)(a), the Council had 6 months within which to reach a final decision. By a letter dated 22/9/88 vide Exhibit P5, Council informed the appellant that his case had been listed at the next meeting of

Council, thus extending his suspension period. As it took less than 5 months for Council to have written to him on 21st November, 1988 Exhibit P7, there could not have been a glaring violation of the mandatory provisions of the Act vide Section 15(4) (ibid). As Council took less than 5 months within which a decision was reached and Exhibit P7 was written to the appellant within that time frame it was therefore not ultra vires the University of Ilorin Act (ibid) in my opinion. (p. 2038 D)

NOTABLE POINTS OF INTEREST

IGUHJSC

1. Need to check acts of gross misconduct in higher institutions

I therefore accept that the gross acts of misconduct found against the appellant by both courts below are entirely disgusting and I entertain no doubt whatever that the appellant was properly and appropriately dismissed summarily by the respondents in the present case. I cannot end this judgment without condemning in the strongest possible term the unbelievable acts of gross misconduct established against the appellant in this case. Without doubt, they point at the extreme and abysmal decline in the conduct, I hope, of a microscopic percentage of the academic staff of our institutions of higher learning. It is a situation so disgusting, deplorable and unthinkable that if not seriously checked must necessarily destroy all academic standards and values in our institutions of higher learning. I think our Universities must leave no stone unturned in checking such appalling acts of gross misconduct in our various institutions if our academic standards must remain stable and credible. (p. 2054 B)

UWAIFOJSC

2. Employment with a statutory flavour - How to discipline erring staff

It is now a well-established principle of law that when an office or employment has a statutory flavour in the sense that its conditions of service are provided for and protected by statute or regulations made thereunder, any person holding that office or is in that employment enjoys a special status over and above the ordinary master and servant relationship. In the matter of discipline of such a person, the procedure laid

down by the applicable statute or regulations must be fully complied with. If materially contravened, any decision affecting the right or reputation or tenure of office of that person may be declared null and void in an appropriate proceeding: see Shitta-Bey v Federal Civil Service Commission (1981) 1 S.C. 40 at 56 -57; Olaniyan v University of Lagos B (N0.2) (1985) 2 NWLR (pt.9) 599 at 612-613; 622-623. (p. 2055 C)

3. *The supervisory jurisdiction of the High Court over a domestic tribunal*

There is no doubt in my mind that from the steps taken to discipline the appellant, there was compliance with s.15 of the Act. The Council acted as a domestic tribunal. The High Court is merely to act in its supervisory jurisdiction or judicial control to ensure that the procedure laid down by law was observed by it. It is not to act as if it was sitting on appeal against the decision of that tribunal: see West African Examination Council v Mbamalu (1992) 3 NWLR (pt.230) 481 at p.496; U.N.T.H.M.B. v Nnoli (1994) 8 NWLR (pt 363) 376 at p.401. The allegations made against the appellant were amply supported by evidence. It is true they have some connotation of criminality. But what the council would be concerned about is whether the appellant acted in abuse of his office. This is provided for in s. 15(3)(c) permitting the suspension from duty of an employee of the academic or administrative or professional staff of the University or his termination of appointment for good cause which includes "conduct of a scandalous or other disgraceful nature which the council considers to be such as to render the person concerned unfit to continue to hold his office." This is similar to what some professional bodies adopt in the discipline of their members which is regarded as 'conduct deserving of the strongest reprobation': see Felix v General Dental Council (1960) 2 All ER 391 at 399-400 P.C., and, as said by Lord Jenkins in that case at p.400, to make such a charge good, there must be "some element of moral turpitude or fraud or dishonesty in the conduct complained of." Looked at in that way, the Council was quite entitled to proceed to discipline the appellant of the scandalous or disgraceful way he compromised the academic standards of the University through his

association with the female students concerned. (p. 2057 D)

4. *How to determine whether a provision is mandatory or directory*

In a situation like this, one has to look at the provisions of the Act to
 B decide whether the period prescribed for concluding the disciplinary pro-
 ceedings is really intended to be mandatory or directory. If it is manda-
 tory, the failure to keep within the prescribed period may lead to a nullifi-
 cation of the proceedings; but if directory, it will not. There are some
 authorities which suggest how to determine which way to go. In Liverpool
 C Borough Bank v Turner (1861) 30 L.J. Ch. 379 at p.380, Lord Campbell
 observed:

"No universal rule can be laid down as to whether mandatory
enactments shall be considered directory only or obligatory with an im-
 D *plied nullification for disobedience. It is the duty of courts of justice to*
try to get at the real intention of the legislature by carefully attending to
the whole scope of the statute to be construed. "

In a later case of Howard v Bodington (1877) 2 P.D.203 at p.211, Lord
 E Penzance put it this way:

"I believe, as far as any rule is concerned, you cannot safely go
further than that in each case you must look to the subject-matter, con-
sider the importance of the provision and the relation of the provision to
 F *the general object intended to be secured by the Act, and upon a review*
of the case in that aspect decide whether the enactment is what is called
imperative or only directory. "

See also O'Reilly v Mackman (1983) 2 AC 237 at 275-276 per Lord
 Diplock. I have already said that the whole purpose of stating some time
 G limit in s.15(4) of the Act is so that a person suspended and placed on
 half-pay may not be put on a long ordeal or half-pay, only to be removed
 from his employment, in some cases, and then made to forfeit the other
 half-pay. That is why everything possible ought to be done to keep
 H within the time limit. It is not, in my view, meant that non-observance
 will be fatal to the disciplinary proceedings itself to the extent that the
 decision arrived thereat will be null and void. It is in essence a directory
 provision notwithstanding the use of the word 'shall'. I can however

conceive a situation where failure to comply has become so indefensible that it may provide the affected employee an actionable wrong which may make it possible to have the proceedings terminated or aborted before a final decision is reached. That has not been an issue raised before us. (p. 2058 F)

B

AYOOLA JSC

5. The presumption under s. 148 of the Evidence Act has no relevance to a question of law

It is evident that the presumption which the court is empowered to draw having regard to the common course of natural events, human conduct and public business in their relation to the facts of the particular case is, by virtue of section 148 of the evidence Act, of the existence of any fact which it thinks likely to have happened. Section 148 has no relevance where the particular question in issue is one of law and not of fact. Hence, where the question was, as in this case, whether, as a matter of law, the Council could delegate its disciplinary powers to the Committee, section 148 of the Evidence Act has no relevance to the resolution of that question. Even if the Council had purported to delegate its disciplinary powers to the Committee, the fact of delegation will not by itself confer validity on the act of delegation if it is not valid by virtue of the relevant law. (p. 2062 H)

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6. Statutory disciplinary power cannot be delegated - Exception thereto

While, surprising as it may be, Counsel for the appellant glossed over the opinion of the High Court and the Court of Appeal that if the Council had purported to delegate its disciplinary power, such would be invalid, counsel for the respondent argued trenchantly in support of these views held by the two courts. He described it as trite law that a statutory disciplinary power cannot be delegated and I agree with that view. The only modification that it is expedient to add to the proposition of law is that such power cannot be delegated unless there is an express statutory authority to delegate. Sovereign law makers who grant statutory disciplinary power to a body or authority can also authorize such body or authority to del-

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egate such power. A concise statement of the legal position with which I agree is put thus in de Smith's Judicial Review of Administrative Action (2nd Ed: 1968) at page 207 thus:

B *"As a general rule, where a function vested in another administrative body incorporates a judicial element, the decision must be made by that body and not by one of its committees or officials unless there is express statutory authority to delegate power to decide."*

C Barnard v National Dock Labour Board (1953) 2 Q B 18, and Vine v. National Dock Labour Board (1957) AC 488, (1956) 3 ALL E.R 939 (p. 2063 G)

7. *What the court must take into consideration in applying s. 148 of the Evidence Act*

D Even if this aspect of the appeal had turned on evidential presumptions pursuant to section 148 of the Evidence Act, it would still have been difficult to accept appellant's counsel's argument on this aspect of the appeal. In applying section 148 of the Evidence Act the court cannot
E ignore, but must take with consideration, the totality of the facts of the case. It will be wrong and out of tune with section 148 of the Evidence Act to presume the existence of any fact which it thinks likely to have happened, regard being had to the "common course of material events,
F human conduct and public and private business" without relating those factors to all of the facts of the case that are relevant to the fact the existence of which was in question. (p. 2065 G)

G 8. *When the court cannot reasonably invoke the presumption under s. 148 Evidence Act*

Where the facts of a particular case are such that the court cannot reasonably presume the existence of a particular fact as likely to have happened, the matter should fall to be determined not on the basis of pre-
H sumption but on the basis of the evidence adduced and the burden of proof. In this case, the trial court was right not to have invoked the presumption permitted by section 148 of the Evidence Act. The burden remained on the appellant to show that exorbitant disciplinary powers as

have been asserted by him had been delegated to the Committee. That burden he did not discharge. (p. 2066 E)

9. The test of real likelihood of bias

Fairness of proceedings requires among other things, that a person who is tainted by likelihood of or actual bias should not take part in the decision making process where the adjudication is under a duty to act fairly. Furthermore, the person whose conduct is the subject of inquiry should have an opportunity of knowing what evidence has been given against him and to challenge hostile evidence. However, when, an allegation of infraction of these principles of fairness is made before a tribunal exercising supervisory jurisdiction, the proceedings will not be vitiated unless that tribunal is able to come to the conclusion, upon an objective view of the circumstances, that there is a real likelihood of bias; and in regard to the second requirement, that a miscarriage of justice has been occasioned. The test of real likelihood of bias has been stated in several English cases and the principle to these cases have been received into our law. In Olue & Ors v. Enenwali & Ors (1976) NSCC 63 at pp 63 -67 the principles and approach stated in Regina v Camnorne Justice Ex parte Pearce (1955) 1 Q B 41 and in Metropolitan Properties Co. (F.G.C.) Ltd v. Lannon (1969) 1 Q B 577 were received into our law. The test, put succinctly, is that:

"There must be circumstances from which a reasonable man would think it likely or probable that the (decision maker) as the case may be, would or did, in fact, favour one side unfairly." (p. 2068 C)

10. Suspicion of bias may not be raised where a decision is based on documentary evidence

Where a decision is based on documentary evidence the authenticity of which is not challenged and whose cogency is not dependent on interpretation, no room is left for any suspicion of bias in the decision maker. Where the document speaks unhesitatingly of innocence and the decision maker pronounces guilt his verdict would more easily and readily be vitiated by irrationality than by a suspicion of bias. For the same reason

that the decision was based on documentary evidence, the issue made on Professor Mesubi's evidence is inconsequential and did not affect the fairness of the proceedings. (p. 2069 G)

B *11. The Principle of fairness is not a technical doctrine*

The principles of fairness applicable to cases such as this where the decision maker has a duty of fairness, must not be regarded as a technical doctrine. What is of paramount importance is that the court after having regard to the totality of relevant circumstances should be able to come to the conclusion that the proceedings have been substantially fair. In this case, the conclusion of the court below and the High Court that the proceedings were not vitiated by unfairness cannot be disturbed; notwithstanding that, technically, certain aspects of the proceedings should have been avoided. (p. 2070 A)

12. Gross misconduct not amounting to a criminal offence

On the question of the jurisdiction of the council, the submission that the proceedings related to charges of a criminal nature must be rejected. In my view where gross misconduct can be proved without the need to find the member of staff guilty of acts amounting to a criminal offence, a tribunal conducting disciplinary proceedings cannot rightly be held to be trying a criminal charge. A breach of examiners ethics in the conduct of an examination or a falling below the standard of behaviour expected of a University teacher may, depending on the depravity of the act, amount to gross misconduct. It does not necessarily need to amount to a crime for it to be visited by disciplinary measures. My view of the charges levelled against the appellant is that they are, in substance, not of a criminal nature. (p. 2073 A)

REPRESENTATION

H Titilola Kehinde (Mrs.) for the Appellant
Respondents absent. Not represented

CASES REFERRED TO

- Nwadike v. Ibekwe (1987) 4 NWLR (Part 67) 718 at 744-745
- Chidiak v. Laguda (1964) NMLR 123
- College of Lagos University v. Dr. Adegbite (1973) 5 SC. 149 at 162
- Abomeli v. N.R.C. (1995) 1 NWLR (Part 372) 451 B
- Emegokwue v. Okadigbo (1973) 4 SC.113 at 117
- Adio v. The State (1986) 2 NWLR (Part 24) 581 at 588
- Fadiora v. Gbadebo (1978) 3 SC. 219 at 247
- Akpene v. Barclays Bank (1977) 1 SC.219 at 247 C
- Ejiofodomi v. Okonkwo (1982) 11 SC.74, 116 and 117
- Huth v. Clarke (1890) 25 QBD 391
- Barnard v. National Dock Labour Board (1983) 1 All E.R. 1113
- Medical Disciplinary Committee v. Alakija 4 FSC.38
- Mora v. Nwalusi (1962) 1 All NLR 68 D
- Dele v. Adelabu (1966) NMLR 105
- Olaniyan v University of Lagos (N0.2) (1985) 2 NWLR (pt.9) 599 at 612-613; 622-623.
- Olue v. Enenwali (1976) NSCC 63 at pp 63 -67 E
- Regina v Camnorne Justice Ex parte Pearce (1955) 1 Q B 41

STATUTES & RULES REFERRED TO

- University of Ilorin Act, 1979 (now cap. 455 Laws of the Federation of Nigeria 1990); s. 15 F
- Constitution of the Federal Republic of Nigeria, 1979; s. 213 (2) (1)
- Supreme Court Rules 0.8 r 2(2)

LEAD JUDGMENT BY ONU JSC

G

This appeal which emanates from the Court of Appeal, Kaduna Division (Coram: Aikawa, Ogundere and Okunola, JJ.C.A.) revolves, in the main, around the interpretation of Section 15 of the University of Ilorin Act, 1979 (now Cap.455, Laws of the Federation of Nigeria, 1990). H

The plaintiff, now appellant, who was a Reader in the 1st defendant/respondent's Department of Chemistry, had by a Writ of Summons on January 27, 1989 commenced an action against both defendants/ re-

spondents in the High Court of Kwara State (Coram: Oyeyipo, C.J.), challenging the legality and validity of his dismissal from 1st respondent's establishment. The appellant sought in the alternative an order for re-instatement.

B Pleadings were ordered, delivered and exchanged and the learned
trial Chief Judge, after considering the evidence and appraising the facts,
found for the respondents and dismissed the appellant's case. Being
dissatisfied with the said decision the appellant appealed to the Court of
C Appeal, holden in Kaduna. The Court of Appeal (hereinafter referred to
as the court below) after considering all the issues raised in the parties'
Briefs and in the oral arguments before the Court, also dismissed the
appellant's appeal by affirming the decision of the trial court. The appel-
D pant being further aggrieved with the said decision, has now further ap-
pealed to this Court upon a Notice of Appeal containing twenty-three
grounds dated 20th June, 1991 and from which thirteen prolix issues
were proffered as arising for determination.

The facts of the case, as made out on appellant's behalf are
E briefly as follows:-

The appellant had entered the employment of the 1st respondent
in 1976 as a Lecturer Grade 11 and his appointment was confirmed with
effect from May, 1981. In February, 1987, whilst the appellant was on
F Sabbatical Leave in the United Kingdom, the 1st Semester examination of
the 1st respondent was conducted in his absence. In March, 1987, the
appellant whilst enjoying a brief Easter Vacation in Nigeria, was invited to
appear before a three-man Departmental Investigation Panel headed by
Professor M. Adeniran Mesubi to probe irregularities observed in the
G 1987 February examination. At the conclusion of its investigation, the
Mesubi Panel submitted its Report to the Dean of the Faculty of Science,
the latter who proceeded to set up a Faculty Panel to investigate the
alleged examination malpractices. This Panel which was headed by Pro-
H fessor D.K Bamgboye, which for its part took evidence from students
and Staff alike at a time the appellant was away in the United Kingdom.
The Bamgboye Panel was later re-constituted under the Chairmanship of
Professor S.O. Oyewole to which the appellant, on invitation, made a

written submission. As a result of the Report of the Investigation Panels, by a letter dated June 22, 1988, the appellant was invited by a letter - Exhibit P1 to appear before the Senior Staff Disciplinary and Appeals Committee (referred to shortly as SSD & AC) to defend himself against specific charges of examination malpractices. By another letter of the B same date vide Exhibit P2, the appellant was suspended from duty pending the disposal of the charges against him. Although the appellant alleged he was denied the services of a counsel, he nevertheless asserted that he appeared and defended himself before the SSD & AC chaired by C the Vice-Chancellor Professor Adeoye Adeniyi. Consequent upon the findings of the SSD & AC the 2nd respondent by a letter dated August 17, 1988 (vide Exhibit P3) informed the appellant that he had been found not guilty on charges of examination malpractices and accordingly his suspension was revoked and his full emoluments were restored. D

Thereafter, on September 5, 1988 the appellant wrote a letter vide Exhibit P4, to the 1st respondent seeking a transfer of his services to Ondo State University, Ado Ekiti where he had been offered the post of Professor in the Department of Chemistry. However, on November 18, E 1998 by a letter of the same date, namely Exhibit P6, the 2nd respondent wrote to the appellant asking him to appear before the Governing Council of the 1st respondent to defend himself ostensibly over the same charges from which he had been exonerated by the SSD & AC and that this he F did on November 21, 1988.

The Governing Council according to the appellant, consisted of :-

1. Prof. Adeoye Adeniyi - Vice Chancellor and Chairman of the SSD & AC. G
2. Prof. Mesubi - Chairman of the Mesubi Panel
3. Prof. Bamgboye - Chairman of Bamgboye Panel
4. Prof. Abiri - Member of the SSD & AC
5. Alhaji Bukar - Member of the SSD & AC H
6. Alhaji Kigo - Member of the SSD & AC.

The presence of Prof. Mesubi and Alhaji Bukar was denied by the respondents. So also was the allegation that the appellant made that he was

made to face a hostile Governing Council with his appearance lasting between 20 to 25 minutes. The appellant further alleged that he was shouted down when he objected to the presence of Professors Mesubi and Bamgboye at the Governing Council proceedings. A few hours later
B on November 22, 1988, the appellant alleged that he was dismissed by a letter of the same date i.e. Exhibit P7, from the services of the 1st respondent and signed by the 2nd respondent.

For the respondents, the facts of the case were stated as follows:-
C

The appellant was a Reader in Chemistry in the Faculty of Science in 1st respondent's establishment. He had a close friend, one Professor Yolloye, then the Dean of the Faculty prior to his going away on the one year sabbatical leave. In 1988, Professor Mesubi who was appointed a new Reader during the appellant's sabbatical leave, was looking for the Chemistry examination scripts of two female students, Miss Maduneme and Miss Kuye and he had to break open the door of the office of the appellant as the key to the office was not found. In the
D
E appellant's office, two Chemistry examination scripts belonging to Miss Maduneme were found, one written under examination conditions and the other written at leisure. While on the first script several markings from low to high marks appeared, on the second script high marks appeared. The script of Miss Kuye was also discovered in appellant's office with alteration of examination marks from low to high marks. Miss
F Kuye had in her custody a key to the appellant's office.

Following the discovery of the said examination scripts from the appellant's office, charges of examination malpractices hereinbefore
G aluded to, were laid against the appellant first before the Departmental Investigation Panel and second, before the Faculty Investigating Panel, which issued the Reports tendered as Exhibit D1 and D2 respectively. On receipt of Exhibit D2, a third Panel was instituted to investigate an
H aspect requiring further investigation, and Exhibit D3 is its Report. The appellant personally appeared before these three Panels and made representations and of all three Panels two exonerated him on two charges, one found him blamable on the third charge. It is worthy of note, how-

ever, that these three Investigation Panels did not see the examination scripts Nos. 81/2731 and 84/7595 of the two female candidates mentioned above as they were not produced before them.

Upon receipt of Exhibit D3, the 2nd respondent wrote the appellant Exhibit P1 inviting him to appear before the SSD & AC chaired by B the Vice-Chancellor, Professor Adeoye Adeniyi, to defend himself against the three charges of examination malpractices. On the same date, the 2nd respondent wrote another letter (Exhibit P2), suspending the appellant from duty pending the determination of the charges against him. C The appellant appeared before the SSD & AC and defended himself, following which the 2nd respondent wrote Exhibit P3 revoking the suspension in Exhibit P2 and re-instating him.

By Exhibit P6 dated 18th November, 1988 the appellant was requested to appear before 1st respondent's Governing Council to defend D himself against the three charges of examination malpractices. He appeared before the Council on 21st November, 1988, made representation and submitted a document in his defence. The Council had a short adjournment and asked the Dean to make the two examination scripts available to the appellant. The two scripts were made available to the appellant and after studying them he defended himself on them i.e. over the other charges when the Council resumed sitting. Exhibit D4 represents E the minutes of the Council which in its deliberation shortly thereafter F found the appellant guilty of examination malpractices. On the directive of the Council, the 2nd respondent wrote Exhibit P7 dismissing the appellant from the services of the 1st respondent. Whereupon, the appellant invoked the purport of Section 15 of the University of Ilorin Act (ibid) to G institute the action in the High Court of Kwara State against the 1st and 2nd respondents that has led to the appeal herein. It is pertinent to point out from the onset that the section confers on the University staff a "special status" over and above the normal contractual relationship of H master and servant. Consequently, the only way to terminate such a contract of service with 'statutory flavour' is to adhere strictly to the procedure laid down in the statute i.e. in the case in hand, the University of Ilorin Act (ibid). See Olaniyan v. University of Lagos (1985) 2 NWLR

2016 Bamgboye v. University Ilorin (1999) 6 KLR Onu JSC
599; Shitta-Bey v. Federal Republic Service Commission (1981) 1 SC.
41 at 56 and Olatunbosun v. NISER (1988) 3 NWLR (Part 80) 25.

The trial High Court (per Oyeyipo, C.J.) in a well-considered judgment in which he resolved all six issues formulated on behalf of the appellant against him, dismissed his case. The appellant appealed to the Court of Appeal, Kaduna Division where he also lost.

He has further appealed to this Court where he has filed 23 grounds in all contained in a Notice of Appeal from which emerged thirteen issues attacking the decision of the Court of Appeal. The parties subsequently exchanged Briefs of Argument. The thirteen appellant's prolix issues to which the Respondents responded by filing two issues incorporating a preliminary objection to all the 23 grounds of appeal, may be considered under the following three compartments, to wit:

D "ISSUE NO. 1.

Whether the Learned Justices of the Court of Appeal were right in their view that the guilt of the Appellant on charges of Examination Malpractices was justifiable in the trial court and going further to affirm that guilt. And further, whether the Learned Justices of the Court of Appeal erred in holding that the issues of Criminal jurisdiction of the Governing Council did not arise in the High Court or Court of Appeal. (Grounds 1, 2, 4, 5 & 8).

F ISSUE NO. 2:

Whether the 1st Respondent and its agencies/agents gave the Appellant fair hearing; to what extent did it delegate its powers to those agencies/agents and how binding were the perverse/ ultra vires decision against the Appellant arrived at? (Grounds 3, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 & 22). "

ISSUE NO. 3:

Whether the consideration and determination on issues 4, 5, 6, 7, and 8 in the Appellant's Brief in the Court of Appeal would have determined the appeal in his (appellant's) favour. (Grounds 4, 5, 7, 19, 20, 21 & 22). "

The two issues submitted on behalf of the Respondents as arising for our determination are as follows:-

"(i) Whether or not all the 23 grounds of Appeal and the issues (numbered 13 in all) based on them and consequently the appeal should be struck out on the ground of incompetence as the Supreme Court has no jurisdiction to entertain them since the Appellant did not obtain leave from the Court of Appeal nor that of the Supreme Court to appeal to the Supreme Court on grounds of fact or mixed law and fact pursuant to Section 213(3) of the constitution of the Federal Republic of Nigeria (Enactment) Act CAP.62 Laws of the Federation of Nigeria (1990) and Section 27(2)(b) of the Supreme Court Act CAP 424 Laws of the Federation of Nigeria (1990). B C

(ii) alternatively to issue (i) above, whether or not the Court of Appeal was correct in dismissing the Appellant's Appeal by holding that the 2nd Respondent who wrote Exhibit P3 which the lower court held to be premature and invalid was not an agent of the 1st Defendant/Respondent and that SSD & AC, (whether or not a delegate of the 1st Defendant/Respondent could not bind the Council and that Exhibit P7 written by the 2nd Defendant/Respondent could not bind the Council and that Exhibit P7 written by the 2nd Defendant/Respondent on the directive of the Council was not ultra vires the provisions of the University Act, and the Appellant was given a fair hearing by the Council of the 1st Respondent." D E

Before I embark on the consideration of the three issues I have re-formulated and adopted for the argument of the appeal herein which I view as sufficient to dispose of the appeal, it is pertinent that I dwell briefly on the preliminary objection raised by the learned counsel for the respondents in their Brief as follows:- F

It is the contention of the respondents that it being a fundamental principle of law that a ground of appeal consisting of facts alone or mixed law and facts will not be entertained in this Court unless with the leave of either the Court of Appeal or this Court under Section 213(3) of the 1979 Constitution of Nigeria. The cases of Obijuru v. Ozims (1985) H 2 NWLR (Part 6) 167 at 176; Welli v. Okechukwu (1985) 2 NWLR (Part 5) 63 at 67; Governor of Kaduna State v. Dada (1986) 4 NWLR (Part 38) 687 at 695 and Ojemen & 3 ors. v. His Highness Williams Momodu 11 G

(The Ogirrua of Irua & 2 ors.) (1983) 3 SC.173 at 189 were called in aid. In making a classification of the 23 grounds of appeal, the respondents contended that whether a ground of appeal is a ground of law, a ground of mixed law and fact or a ground of facts, this Court has in several cases laid down some guidelines to be applied. One should not be influenced, it is argued, by the fact that the ground of appeal is couched as an error in law to discern what it is. The ground of appeal itself, it is admonished, should be thoroughly and properly examined and then construed to find out whether it is in fact a ground of mixed law and fact. The cases of Ogbechie v. Onochie (1986) 3 SC. 54 at 58; Board of Customs & Excise v. Alhaji Ibrahim Barau (1982) 10 SC.48 at 139-142; Welli v. Okechukwu (supra); Ojemen v. Momodu (supra) and Adeogun v. Bakare (1986) 5 NWLR (Part 40) 197, 202-203 were cited in support of the proposition. Applying the above stated guidelines to the 23 grounds of appeal, the respondents further argued, these grounds may be classified and categorized as follows:-

Grounds 1, 2, 13, 14, 15, 16, 22 and 23 are grounds of fact; grounds 3, 4, 5, 6, 7, 8, 9, 10, 12, 17, 18, 19, 20 and 21 as grounds of mixed law and fact and ground 11 as a ground of law.

The respondents thereafter submitted that with the above classification, 22 out of the 23 grounds of appeal contained in Appellant's Notice of Appeal - conceding ground 11 to be a ground of law - are either grounds of facts or grounds of mixed law and fact, all of which are incompetent and should be struck out. After submitting that in the Notice in respect of the ground of law only (ground 11) is valid, it is the further contention on respondent's behalf that a Notice and grounds of Appeal containing grounds of law, grounds of fact and grounds of mixed law and fact filed without leave having been obtained, where such leave is required, is irregular and renders invalid the Notice of Appeal in respect of grounds of Appeal that complain of fact only or mixed law and fact. The Notice in respect of the lone ground of law, it is therefore pointed out, is valid vide Lamai v. Orbih (1980) 5-7 SC. 28. We are therefore urged to strike out the 22 grounds which are either grounds of fact or grounds of mixed law and fact which have become invalid and so incom-

petent. In respect of Ground 11, the respondents submitted that it too, is incompetent by reason of the fact that the Appellant has not formulated any single issue of law based on the lone ground, adding that since the appellant combined that ground (which is of law) with other grounds of appeal that are of fact or mixed law and fact (grounds 3, 9 and 12) the distillation which culminate in issue 3; thus by implication ground 11, is deemed as having been abandoned vide, Egbo v. Laguma (1988) 3 NWLR (Part 80) 109 at 115 G -H; Shell B.P. v. Abadi (1974) 1 All NLR (Part 1) 1 at 11. B

The respondents in addition submitted that grounds 13, 14 and 16 of the grounds of Appeal are wrong in that being grounds of errors in law or misdirection in law and fact, they have not stated the particulars and the nature of the misdirection or errors since they offend against Order 8 Rule 2(2) and (4) of the Supreme Court Rules, 1985. Consequently, they should be struck out. The cases of Welli v. Okechukwu (supra), Atuyeye v. Ashamu (1987) 1 NWLR (Part 49) 267 at 279; Adeniyi v. Disu (1958) 3 FSC 104; Faleye v. Otapo (1987) 4 NWLR (Part 64) 186 at 193; Dantumbu v. Adene (1987) 4 NWLR (Part 65) 314, 321 - E 322; Okorie v. Udom (1960) 5 FSC 164 and Anyaoke v. Adi (1986) 3 NWLR (Part 31) 731 at 741 were cited in support of the proposition. C

What may be classified and recognized as errors of law which when addressed to grounds of appeal are categorized as Grounds of Law, may be gleaned from decisions of this Court such as in Comex Limited v. N.A.B. Limited (1997) 3 NWLR (Part 496) 643 at 656, affirming the dictum of Nnaemeka-Agu, JSC in Nwadike v. Ibekwe (1987) 4 NWLR (Part 67) 718 at 744-745. Also the dictum of Eso, JSC in Ogbechie v. Onochie (1986) 2 NWLR (Part 26) 484 at 491 to the effect that:- F

(i) *"It is error in law if the adjudicating tribunal took into account some wrong criteria in reaching its conclusion or applied some wrong standard of proof or, if although applying the correct criteria, it gave wrong weight to one or more relevant factors* G

(ii) *Several issues that can be raised on legal interpretation of deeds and documents, terms of art, words or phrases and inferences* H

drawn therefrom are grounds of law. See Ogbechie v. Onochie No. 1 at 491-492. See also Metal Construction W.A. Ltd. v. Migliore (1990) 1 NWLR (Part 126) 129 - 149 at 548 and Obatoyinbo v. Oshatoba (1996) 5 NWLR (Part 450) 507 at 531.

B (iii) *Where a ground deals merely with a matter of inference even if it be an inference of fact, provided it is limited to admitted or proved and accepted facts.*

(iv) *Where a tribunal states the law on a point wrongly.*

C (v) *Lastly, I should mention one class of grounds of law which have the deceptive appearance of grounds of fact, id est where the complaint is that there was no evidence or admissible evidence upon which a finding or decision was based*

D (vi) *A misunderstanding of the lower tribunal of the law or a misapplication of the law to facts already proved or admitted."*

Applying the above-mentioned classifications I now propose to take a hard look at and to examine each of the 23 grounds seriatim to see whether they fall within such classifications.

- | | | |
|---|-----------|--|
| E | Ground 1 | Wrong inference of law. |
| | Ground 2 | " ditto " |
| | Ground 3 | " ditto " |
| | Ground 4 | Wrong inference of law/misunderstanding of the |
| F | | law. |
| | Ground 5 | Wrong inference of law/misunderstanding of the |
| | | law. |
| | Ground 6 | Wrong inference of law/misunderstanding of the |
| | | law. |
| G | Ground 7 | Wrong inference of law/misunderstanding of the |
| | | law. |
| | Ground 8 | Misunderstanding of the law |
| | Ground 9 | Interpretation of Statute/Wrong inference of the |
| H | | law |
| | Ground 10 | Interpretation of Statute/Wrong inference of the |
| | | law |
| | Ground 11 | Wrong inference of the law |

Ground 12	Misunderstanding of the law.	
Ground 13	Fact	
Ground 14	Fact	
Ground 15	Wrong criteria in reaching a conclusion	
Ground 16	Fact	B
Ground 17	Interpretation of Statute/wrong inference of the law	
Ground 18	Wrong inference of the law	
Ground 19	Misunderstanding of the law	C
Ground 20	Wrong inference of the law	
Ground 21	Misunderstanding of the law	
Ground 22	Wrong inference of the law	
Ground 23	Fact.	

From the foregoing, I am satisfied that all the grounds of appeal save Grounds 13, 14, 16 and 23 are grounds of law. **In any event, whether the grounds of Appeal are grounds of law or not is irrelevant because the appellant also has a right of appeal vide Section 213(2)(b) (C) of the 1979 Constitution which states:-**

"(2) An appeal shall lie from decisions of the Court of Appeal to the Supreme Court as of right in the following cases:-

(c) decisions in any civil or criminal proceedings on questions as to whether any of the provisions of Chapter IV of this Constitution has been, is being or is likely to be, contravened in relation to any person "

Clearly, the decision appealed against herein is on questions whether or not the appellant was given a fair hearing vide Section 33 in Chapter IV of the Constitution (ibid). To that extent, leave is not required as a precondition for appeal even on grounds of mixed law and fact or fact alone. In that wise, grounds 13, 14 and 16 being grounds of fact do not require particulars. Cf Order 8 Rule 2(2) Supreme Court Rules, enjoining the use of particulars only for misdirections or errors in law. Since as regards Ground 10 it is clear that the particulars therein relate to the substantive complaint, setting out the particulars of the alleged misdirection would

not arise. See Chidiak v. Laguda (1964) NMLR 123.

Finally, I hold the view that Ground 11 on its own can sustain Issue 3.

In the result, the preliminary objection is accordingly overruled.

B I will now proceed to the argument of the issues.

ISSUE NO. 1:

C The gravamen of the appellant's complaint was that he was not given a fair hearing, and therefore the issue of his guilt or otherwise, was not in issue before the trial High Court presided over by the learned trial Chief Judge. He certainly was not seeking a re-trial in the High Court, nor was he appearing against the decision of the Governing Council of the 1st respondent. It was therefore not open to the Kwara State High Court to make a finding on his guilt or otherwise. It was also improper, D it was further argued, for the Court of Appeal to have affirmed that guilt. It is trite law, it is contended, that the determination of a trial court must be based on the issues joined by the parties in their respective pleadings. After defining WHAT AN ISSUE IS IN THE DICTUM OF Oputa, JSC in E Ehimare v. Emhonyon (1985) 1 NWLR (Part 2) 177 at 183 our attention was adverted to the substance of the Appellant's complaints as discernible from his pleadings as follows:-

(i) He had been absolved of blame for Examination Malpractices F by a Committee of the Governing Council.

(ii) The Governing Council had no power to try or re-try him on the charges as laid.

(iii) The Governing Council did not give him a fair hearing

G (iv) The decision of the Governing Council was ultra vires the University of Ilorin Act, 1979.

H It is further maintained that in his judgment at the trial court, the learned Chief Judge recognized the above four issues which were a summary of the six issues formulated in the Appellant's address at the trial court as the issues in controversy between the parties. In spite of this, however, the judgment of the trial court, it was pointed out, was replete with references to the guilt of the Appellant on charges of Examination Malpractices as exemplified in the following two passages:

(i) *"The evidence adduced by the Defendant and which I accept as nothing but the truth reveals sordid dealings of extreme moral turpitude against the Plaintiff. No attempt was made by Professor Jegede to cross-examine D.W1 on those aspects of evidence. This on the authority of George Nkwa v. Commissioner of Police (1977) NNLR 18 is tantamount to an admission of D.W1's evidence (page 103 of the Record Vol. 1).*

(ii) *I am in no doubt that the Defendants are justified to have dismissed the Plaintiff from the establishment of the 1st Defendant's to prevent further pollution of the 1st Defendant's channel of academic excellence (page 104 of the Record Vol. 1)."*

It was next submitted that from the tenor and content of the above passages the learned trial Judge had formed the impression that the appellant was guilty of the Examination Malpractices and that this singular fact affected his decision. It was contended in addition that where a decision is based on findings of fact on issues not joined by the parties as in the instant case, such decisions must be set aside. Further, it was argued, where a decision is based on an issue not joined by the parties, but rather on an issue highly prejudicial to one party, as in the instant case, such a decision must not be allowed to stand. Hence, rather than set aside this decision, the Court of Appeal, it is submitted, wrongly affirmed the decision of the trial court on this issue of guilt of the Appellant of Examination Malpractices - a matter not shown to be a live issue before that court and which ought not to have been entertained on appeal by the court below. It was further contended that had the respondents wanted to assert that the guilt of the Appellant was an issue in the case, they would have cross-appealed against the finding of the trial court vide Eliochin (Nigeria) Limited v. Mbadiwe (1986) 1 NWLR (Part 14) 47 at 72. In support of this proposition we were referred to some passages in the judgment of the court below which we were urged, fell into the same error as the learned trial Judge when they pronounced on the guilt of the Appellant.

After a careful consideration of the argument proffered by and on behalf of the appellant, I am satisfied firstly, that the learned Justices

of the court below did not say that the guilt of the appellant was justifiable in the trial court. The trial court did not itself try the appellant on charges of Examination Malpractices and did not itself find him guilty of such Examination Malpractices. It therefore follows that the court below did not and cannot affirm any guilt of the appellant. Secondly, the guilt or otherwise of the appellant did not arise from the pleadings. What the appellant pleaded in paragraph 29 of the Statement of Claim was to the effect that:-

"29. The 2nd Defendant by a letter Ref. UI/RO/C/C.16 dated 22nd November, 1988 on behalf of the Governing Council surprisingly found the Plaintiff guilty of all charges of examination malpractices and consequently dismissed him from his post as a Reader in the Department of Chemistry with effect from 21st November, 1988" "

In confirmation of the fact that sequel to what is contained in paragraph 29 of the Statement of Claim the appellant was found guilty, the respondents pleaded in paragraph 20 of the Statement of Defence thus:-

" In reply to paragraph 29 of the Statement of Claim, the defendants aver that Plaintiff was duly heard in respect of the charges of misconduct levelled against him. He was found guilty of the charges and accordingly disciplined in accordance with the provisions of Section 15 of the University of Ilorin Decree No. 81 of 1979. "

It was therefore common ground between the parties that the appellant was found guilty by the Council of the 1st Respondent. Be it noted that this issue was not one of the six issues formulated by the appellant before the trial court and it was not considered as an issue by that court. Albeit, when the trial court was considering one of the issues formulated by the appellant's counsel before the trial court, to wit: whether or not misconduct alleged against the appellant amounts to offences of cheating and forgery punishable under the Penal Code, the trial court held the view that the evidence adduced by the respondents revealed "sordid dealings of extreme moral turpitude against the Plaintiff/Appellant" and held further that all the acts of examination malpractices established against the appellant amount to misconduct which is amenable to the domestic jurisdiction of the University of Ilorin Governing Council by virtue of Section

15 of the Act. The court below upheld this finding.

Be it noted too that the trial court neither tried the appellant nor found him guilty of examination malpractices.

In the case of NEPA v. EL-Fandi (1986) 3 NWLR (Part 32) 884 (a Kaduna Division Court of Appeal case) where the plaintiff/respondent B therein sued for the unlawful termination of his employment for an alleged misconduct and the issue therein was as to whether the defendant/appellant should prove the serious misconduct before the trial court, Akpata, J.C.A. (as he then was) observed inter alia at page 698 of the C Report:-

"..... all that the employer is to establish to justify the dismissal or determination of the appointment is to show:-

- (i) that the allegation was disclosed to the employee,
- (ii) that he was given a fair hearing and D
- (iii) that the panel believed he committed the offence after hearing witnesses "

Although the above case is not binding on this court the underlined portion above provides a guide for the respondents' submissions. **The proposition of law is that in order to justify the appellant's termination of employment, the employer (respondents herein) must prove to the trial court's satisfaction that the Council believed the appellant committed acts of gross misconduct after hearing the case. This was exactly what the learned trial Chief Judge was saying in the instant case where the Council was said to have believed that the appellant committed the acts of gross misconduct alleged.** E F

The onus was on the appellant to prove that the termination of his appointment was wrongful. See College of Lagos University v. Dr. Adegbite (1973) 5 SC. 149 at 162 and the similar Court of Appeal decision in Abomeli v. N.R.C. (1995) 1 NWLR (Part 372) 451. G

In the light of the foregoing, I agree with the respondents that H the appellant asserted his innocence in paragraphs 22, 23, 25, 27 and 30(1) of the Statement of Claim while the respondents denied paragraphs 23, 25, 27 and 30 in their Statement of Defence. Thus, an issue was

joined as to the innocence or otherwise of the appellant on Examination Malpractices. Furthermore, the Respondents, in my opinion, did not retry the appellants on charges of Examination Malpractices. What that court did which was affirmed by the court below, was to examine the proceedings before the Council to see whether or not the appellant was given a fair hearing and also to determine whether or not the alleged examination malpractices amounted to a criminal offence or not and to see whether or not the Council found appellant guilty and the trial court so found. The trial court on examination of the proceedings before the court and the totality of all the evidence decided that the appellant was given a fair hearing and the alleged examination malpractices amounted to misconduct amenable to the domestic jurisdiction of the Council and they did not amount to criminal offences. This is what the Court below affirmed. See Garba v. University of Maiduguri (1986) 1 NWLR (Part 18) 550.

Following from the above, **I take the firm view that the issue of criminal jurisdiction of the Governing Council of the 1st Respondent did not arise in the pleadings of the parties in the trial High Court. Hence, the court below was correct to have so held. This view is premised on the fact that nowhere in the Statement of Claim is the criminal jurisdiction of the Council asserted. Issues, it must be emphasized, are joined in the pleadings, not in the evidence. See Ehimare v. Emhonyon (supra); Adeosun v. Adisa (1986) 5 NWLR (Part 40) 225 at 235 and Akintola v Solano (1986) 2 NWLR (Part 24) 598 at 623 SC. Evidence which is at variance with the pleadings goes to no issue and should be rejected and if admitted should be expunged from the record. See Emegokwue v. Okadigbo (1973) 4 SC.113 at 117; Dike v. Nzeka (1986) 4 NWLR (Part 34) 144, 156 and Lana v. University of Ibadan (1987) 4 NWLR (Part 64) 245, 248-259, 262.**

Exhibit P1 referred to in the appellant's Brief is evidence before the court upon which no issue could be joined by it. **Indeed, from the foregoing, criminal jurisdiction of the Council did not arise and the mere adoption of 6 issues proposed by counsel as arising for deter-**

mination did not mean that such adoption is not a finding of act which requires a cross-appeal before the court below. Such that when a trial court expresses an opinion on an issue not pleaded, such opinion is obiter dictum which if it does not occasion any miscarriage of justice, the judgment stands. See Mora v. Nwalusi & Ors. (1962) 1 All NLR 681, 687 and Ayoola v. Adebayo & Ors. (1969) 1 All NLR 159 at 164. Thus, any argument by counsel on an issue not joined in the pleadings, it was argued, is irrelevant and incompetent and should be disregarded. Vide Lana v. University of Ibadan (supra). Hence, all the arguments proffered by appellant's counsel on Issue 6 are incompetent and they should be disregarded as well. Any issue that does not arise from the pleadings in the court below cannot be raised in any of the grounds of Appeal and argued without leave of the court below as decided in a host of cases in support of that proposition. See Adio v. The State (1986) 2 NWLR (Part 24) 581 at 588; Fadiora v. Gbadebo (1978) 3 SC. 219 at 247; Akpene v. Barclays Bank (1977) 1 SC.219 at 247 and Ejiofodomi v. Okonkwo (1982) 11 SC.74, 116 and 117, to mention but a few. I am therefore of the firm view that the court below was right to hold that the issue of criminal jurisdiction of the Governing Council did not arise in the trial court.

ISSUE NO. 2:

In considering this issue it is only pertinent to break it into three heads viz: whether the learned Justices of the court below misconstrued the extent of the power of the SSD & AC as to whether power was delegated to them; on whom the onus lay to establish the limits of that power and the effect of delegation. It is contended that it is not in dispute that under the law which created the University of Ilorin the University of Ilorin Act, 1979, that power to remove Senior Staff is by the generality of section 15 given to the Council of the University. This power it is pointed out, is made delegable by the combined provisions of Section 2(1)(a) and 2(1)(b) (also hereinafter referred to shortly as the Act). The Council which is a body of persons created by Section 2(1)(b) of the Act not only has powers under Section 2(1)(a) to appoint committees but also to delegate to such committees any of its functions including the

power to remove Senior Staff on grounds of misconduct. It was further submitted that it is not in doubt that it was the SSD & AC of the Governing Council of the University that was being referred to in paragraph 4 of the Statement of Defence as a Committee of that Council. Sequel to this question that arises, it is argued, is whether the power to remove and/or reinstate Senior Staff facing allegations of misconduct was delegated to SSD & AC. The answer to the poser, it is contended, SSD & AC having exercised the power to reinstate the appellant vide Exhibit P3, has by that act raised an evidential presumption that such power was delegated to them. Section 148 (now 149 of the Evidence Act) was cited in support of the proposition, adding that having regard to human affairs of the public office of this nature, it is not feasible that a committee of the Council would exercise a power not delegated to it.

It was also submitted that this presumption of regularity could only have been rebutted by direct evidence, to wit: the production of the terms of reference of SSD & AC showing limits of their power. The onus was on the respondents vide Section 141 (now Section 142) of the Evidence Act, it is maintained, to produce these terms of reference being a fact within their knowledge but that this they failed to do. The dictum of Lord Denning M.R. in Lever Finance v. Westminster LBC (1971) 1 QB.222 at 231 was called in aid, adding that the court below should have invoked against the respondents the provisions of Section 148(d) (now 149(d)) of the Evidence Act to the effect that if the terms of reference of the SSD & AC had been produced they would have been unfavourable to the respondents. The Justices of the court below, it was submitted, erroneously held that the onus of proof to establish delegation lay on the appellant on the principle that he who asserts must prove. It is therefore the appellant's contention that once a presumption is raised as in the instant case, the onus shifts to the other party to rebut it by direct evidence. Furthermore, it is argued, the only direct evidence admissible in this regard would have been the written resolution of Council, i.e. the statutory instrument creation SSD & AC. It was further submitted that the mere ipse dixit of the 2nd respondent was patently insufficient to rebut the presumption of regularity raised in the exercise of powers by

the SSD & AC. In fact, it is argued, the oral statement of the 2nd respondent was inadmissible. The presumption of delegation not having been rebutted, it is contended, the SSD & AC having exercised the power delegated to them in favour of the appellant for re-instating him effectively disentitled the Council from revoking the exercise of that power. B Reliance is placed on Wade, Administrative Law 5th Edition page 326. It is further submitted that it is a trite principle of administrative law that where a power has been delegated the delegating authority will be bound by a decision of its delegate conferring rights on an individual and will C therefore be incapable of rescinding that decision. The case of Western Fish Products v. Penwith D.C. (1981) 2 All E.R. 204 at 219 (per Megaw, L.J.) was cited in support of the proposition. Consequently, it is argued, SSD & AC having re-instated the appellant effectively 'tied the hands' of D the 1st respondent which action disentitled the University Council from rescinding that decision.

Undoubtedly, the power of Council under Section 15(1) of the University of Ilorin Act, Cap.455, Laws of the Federation of Nigeria 1990, is a statutory disciplinary power to remove and discipline an erring academic, administrative and professional staff of the University. In this regard, it is trite law that a statutory disciplinary power cannot be delegated. See Vine v. National Dock Labour Board (1956) 3 All E.R. 939, where in the final appeal to the House of F Lords it was held that the Plaintiff's dismissal by a committee set up by the Local Board under a delegated power to the Committee set up by the Local Board was a nullity because the Local Board had no power to delegate its disciplinary powers.

By virtue of Section 3(2) of the University of Ilorin Act Cap. G 455, Laws of the Federation of Nigeria, 1990 (ibid) what the University of Ilorin Council set up under Section 5(1) of the Act is an agent of the University. So also is the Registrar who by his appointment is the Chief H Administrative Officer of the University vide Section 5(1), under the 1st Schedule to the Act. See also Carlen v. UNIJOS (1994) 1 NWLR (Part 323) 631 where Ogundare, JSC held at page 654 of the Report as follows:-

"It is clear from the above provisions of the Act that the Council, the Vice-chancellor and the Registrar are creation of the University of Jos Act and each is assigned specific functions as provided for in the Act and in the exercise of such functions."

B See Black's Law Dictionary which defines 'agent' as:

"A person authorized by another to act for him, one entrusted with another's business..... "

C *"One authorized to transact all business of principal, all of principal's business of some particular kind, or all business of some particular place. " etc.*

An agent, in my view, means more or less the same thing as a delegate. Similarly, I hold that SSD & AC is a Committee of Council and an agent or delegate of Council of the University. The principle of law is that the person to whom an office or duty is delegated cannot lawfully devolve the duty upon another, unless he be expressly authorized so to do. See Huth v. Clarke (1890) 25 QBD 391 and Barnard v. National Dock Labour Board (1983) 1 All E.R. 1113.

In the instant case, the power of Council to discipline administrative, academic and professional staff of the University under Section 15(1) of University of Ilorin Act (ibid) was delegated to it by the University of Ilorin. The Council cannot therefore delegate this power to the SSD & AC which is itself a delegate of the Council.

G Under Section 15(1)(c)(i) of the Act, Council in appropriate cases can constitute a joint committee of Council and Senate to investigate the matter and report on it to the Council. Be it noted however that the Committee can only investigate the matter and report on it to Council. The Council has no power to take a final decision; it is the Council that can do so. Beside, there is no proof of any delegation of such power of H Council to the SSD & AC while no evidential presumption of such delegation was raised by the unauthorized exercise of the Council's power by the SSD & AC. Further, the terms of reference of SSD & AC as contained in Section 15(1)(i) of the University of Ilorin Act (ibid) are "to

investigate the matter and to report on it to the Council" and there can be no delegation of its power by Council to the SSD & AC outside the statutory provisions of the Act. Thus, there was no onus on the respondents to prove delegation. On the principle of he who asserts must prove, by virtue of Section 142 of the Evidence Act (ibid), I am in agreement B with the respondents that the onus is on the appellant to prove any delegation of power to SSD & AC by Council and not otherwise. Furthermore, **it not having been established as contended by the appellant that the Council had delegated its power under Section 15(1) of the Act to SSD & AC in excess of the provision of Section 15(1) - (a)(i) C of the Act, the question the appellant raised in paragraphs 7.20 to 7.24 of his Brief as to whether or not the Council is bound by the decision of the delegate, can at best be regarded as hypothetical, academic and theoretical. See Eperokun v. University of Lagos D (1986) 4 NWLR (Part 34) 164 at page 179, where this Court opined that:-**

"It is not part of the function of the Court to entertain and decide hypothetical and academic questions, i.e. questions not arising E from the facts of the case."

See also the cases of National Insurance Corporation v. Power & Industrial Engineering co. Ltd. (1986) 1 NWLR (Part 14) 1, 22 and Akeredolu v. Akinremi (1986) 2 NWLR (Part 25) 710, the latter in which this Court F held at page 728 as follows:-

"Courts of law are not established to deal with hypothetical and academic questions. They are established to deal with matters in difference between the parties. "

As to whether the 2nd respondent is not the agent of the G 1st respondent and therefore does not bind it (1st respondent), it needs to be stressed that Section 2(2) of the University of Ilorin Act (ibid) in the First Schedule thereto identifies the Registrar (2nd respondent) as one of the principal officers of 1st respondent while H Section 5(1) thereof names him as the Chief Administrative Officer of the University responsible to the Vice-Chancellor for the day to day administrative work of the University (1st respondent).

Further, that by virtue of sub-section (2) of Section 5 thereof, he is the secretary to the Council, the Senate, Congregation and Convocation which are some body of persons established by Section 2(3) of the Act. In arguing this point, it was the appellant's contention that the 2nd respondent relying on some sections of the University Act (ibid), to wit:

(a) *Section 3(1) of the Act, paragraph (j) which empowers the University (1st respondent) to employ and act through agents.*

(b) *Section 5(1) of Schedule 2 of the same Act which provides as follows:-*

" There shall be a registrar, who shall be the Chief Administrative Officer of the University and shall be responsible to the Vice-Chancellor for the day to day administrative work of the University
D "

(c) *Sub-section 2 of Section 5 of the same Act which provides:*

"The person holding the office of Registrar shall by virtue of that office be Secretary to the Council, the Senate, Congregation and Convocation. "
E

Three cases, namely :-

(i) Freeman Lockyer (a firm) v. Buckhurst Park Properties (Mangal) Limited (1964) 2 QB.480 at 602 defining what constitutes 'apparent or ostensible' authority;
F

(ii) Verrault & Fill Slittee v. A.G. for Quebec (1976) 57 DLR (3d) 403 at 407 to exemplify the bindingness or otherwise on a principal of acts done within such ostensible authority of an agent as well as to statutory or public principals vis a vis private principals, and
G

(iii) Lever Finance v. Westminster L.B.C. (1971) 1 QB.223 at 230 where in the words of Denning M.R.:

"If an officer acting with the scope of his ostensible authority makes a representation on which another acts, then the public authority may be bound by it, just as much as a private concern would."
H

were cited to demonstrate that the appellant in this case relied on the representation contained in Exhibit P3 - letter of Revocation of Suspension of 17th August, 1988 addressed to the appellant sequel to the latter's

appearance before the SSD & AC -affecting his (appellant's) re-instatement which the learned Chief Judge rightly found in his judgment and the court below did not disturb it.

From the foregoing, it was further argued, that the court below should have held that the 2nd respondent who must act in accordance with the instructions of the Council, Senate, Congregation and Convocation as the case may be, was a servant or agent of the 1st respondent and so bound by the terms of Exhibit P3 which represented an act within the authority of its agent who the 2nd respondent herein is.

I am in full agreement with the appellant that by reason of the 1st leg of the argument proffered above 2nd respondent is a servant or an agent of the 1st respondent for which see Carlen (Nigeria) Ltd. v. UNIJOS (supra). However, with due respect he (2nd respondent) is not the agent of the Council of the 1st respondent.

Such that whenever the 2nd respondent acts for the Council or any other body for which he is a secretary, he must act under the direct control and/or supervision of such body (Council). In which case, if the 2nd respondent purports to issue an instrument removing or re-instating an officer under Section 15(1) of the Act as happened in the instant case, he must do so on the directions of the Council. Consequently, any instrument issued by the Registrar (2nd respondent) under Section 15(1) of the Act (ibid) without the directions of the Council is invalid and not binding on it.

From the foregoing, I am not taken in by the appellant's ingenious argument that the court below should have held that the 1st respondent was bound by the terms of Exhibit P3 which represented an act within the authority of its agent personified in the 2nd respondent. This is because, as the learned Chief Judge rightly and justifiable pointed out in his judgment which the court below aptly affirmed:

" it is my view that no useful purpose other than fanciful academic peregrination would be served by invoking the afore-said principle in the instant case. In my judgment the governing Council is not bound to gloss over or rubber stamp a decision taken by one of its

subordinate committees or by a staff. I am therefore unable to agree with the submission of Professor Jegede that the 1st defendant is bound to reinstate the Plaintiff in accordance with the terms of Exhibit P3."

On whether the findings of the learned Justices of the court below as to what transpired at the meeting of the Governing Council were perverse, it is pertinent to stress that the learned trial Chief Judge after reviewing the evidence placed before the Council, evaluated, weighed and ascribed probative values thereto, accepted the case of the respondents and held that the council undertook a full and thorough investigation of the matter in dispute the outcome of which is that the appellant was given a fair hearing. To this latter point I shall come shortly.

Further, that the Justices of the court below in accepting the findings of that court and in considering this issue whether the trial court evaluated what transpired before the Council, held that the counsel for the appellant failed to proffer any tangible argument to sustain the issue and dismissed it. The court below, in firm view, took this decision on the basis of the preponderance of evidence before the council. It is trite law that findings of primary facts are matters peculiarly within the competence of the court of trial - the assessment, evaluation, appraisal of evidence emanating therefrom and the ascription of probative values thereto being primarily and pre-eminently that of the trial court and any interference by an appeal court therewith is by law, confined to narrow and limited dimensions. See Chief Ebba v. Ogodo (1984) 4 SC.84 at 88-89; Atuyeye v. Ashamu (1987) NWLR (Part 49) 467, 282; Thomas v. Thomas (1947) AC.484, 487; Egri v. Uperi (1974) NMLR 22; Fatoyinbo v. Abike (1956) 1 FSC; Akinloye v. Eyiola (1968) NMLR 92, 95 and Woluchem v. Gudi (1981) 5 SC.279 at 236, to mention but a few.

It is also trite law that it is not the function of an appeal court to substitute its own views for those of the trial court where the issue turns on the credibility of witnesses. See Efe v. The State (1976) 11 SC.75, 81; Sanyaolu v. The State (1976) 5 SC.37, 44 and Okonofua v. The State (1981) 6-7 SC.1 at 14.

With the acceptance of the findings of fact of the trial court by the Justices of the court below, there is in existence two

concurrent findings of fact of the two lower courts which, in the absence of a substantial error shown, this court will not make it a policy to disturb them unless there is a substantial error apparent on the record of proceedings or where there is some miscarriage of justice or a violation of some principles of law or procedure or the findings are shown to be perverse. See Ezeudu v. Obiagwu (1986) 2 NWLR (Part 21) 208, 216, 219; Ibodo v. Enarofia (1980) 5-7 SC.42, 55; Lokoyi v. Olojo (1983) 8 SC.61, 68; Ojomu v. Ajao (1983) 8 SC.22, 53 and Salami v. Oke (1987) 4 NWLR (Part 63) 10. The answer to this question is that the findings of the court below as to what transpired at the meeting of the Governing Council are not perverse.

As to whether there has been a real likelihood of bias at the meeting of the Governing council i.e. whether the appellant was given a fair hearing by the Governing Council of the University my answer is as follows:-

I entirely share the respondents' view that in Nigeria fair hearing is not only a common law right but also a constitutional right. Thus, by virtue of Section 33(1) of the 1979 Constitution (now Cap.62, Laws of the Federation, 1990) it is provided that in the determination of his civil rights and obligations a person is entitled to a fair hearing within a reasonable time by a court or other tribunal established by law. Section 15(1) of the University of Ilorin Act, Cap.455 (ibid) makes similar provision for fair hearing before the appointment of an administrative, academic and professional staff is terminated thus giving the exercise of such disciplinary powers, statutory flavour. See the cases of University of Nigeria Teaching Hospital Management Board & Anor. v. Nnoli (1994) 8 NWLR (Part 363) 376 at page 404 paragraphs A-B; 419, paragraphs D-E; Adeniyi v. Governing Council of Yaba Tech. (1993) 6 NWLR (Part 300) 426; Aiyetan v. NIFOR (1987) 3 NWLR (Part 59) 48; Eperokun v. University of Lagos (1986) 4 NWLR (Part 34) 162; Imoloame v. WAEC (1992) 9 NWLR (Part 18) 303; Olatunbosun v. NISER Council (1988) 3 NWLR (Part 80) 25 and Igbe v. Governor of Bendel State (1983) 2

SC.114. Be it noted also that the standard of fair hearing requires the observance of the twin pillars of the rules of natural justice, namely:

- (i) Audi alteram partem - hear the other side,
- B (ii) Nemo iudex in causa sua - no one should be a judge in his own cause - this is the rule against bias. See Akinfe v. The State (1988) 3 NWLR (Part 85) 729 at 753.

C Failure of any tribunal like the Council of the 1st respondent which has a duty to take decisions to observe any of these two rules renders the proceedings and decision a nullity.

By virtue of Section 15(1) of the University of Ilorin Act (ibid) all that is necessary is :-

- D (i) that the complaints must be brought to the notice of the person and
- (ii) he must be given an opportunity of making representation in person to Council on the matter.

E In the instant case, the learned Chief Judge considered all the evidence before him, considered the allegations of the appellant on the incidents of fair hearing and the relevant laws of fair hearing and came to the inexorable conclusion, rightly in my view, that the appellant was given a fair hearing. The court below in their judgment reviewed the relevant laws of fair hearing and applied these laws to the facts of the case and accepted the learned Chief Judge's findings that the appellant was indeed given a fair hearing. Cf. the Medical Disciplinary Committee v. Mobolaji Alakija 4 FSC.38; Mora v. Nwalusi (1962) 1 All NLR 68 and Yesufu Dele v. Adelabu (1966) G NMLR 105.

H In this regard Professor Bamgboye, Adeniyi, Abiri and Al-haji Kigo could not be said to have prior knowledge of the facts of the case simply because of the part they played in the investigating panels previously. By virtue of Section 15(1)(i) of the University of Ilorin Act (ibid), some members of Council must necessarily be members of the Committee to investigate the matter. This does not vitiate the proceedings. In fact, Professor Mesubi was only

called by Council to produce the two examination scripts in respect of which charges were laid against the appellant and he was neither shown to be a member of the Council nor that he took part in its deliberations. His presence thereat, in my view, did not constitute a real likelihood of bias; nor was any shown. See Ikehi Olue & Ors. B v. Obi Ezenwali & Ors. (1976) 2 SC.23 and Obadara & Ors. v. The President, Ibadan West District Grade B. Court (1965) NMLR 336.

It remains to consider the third and final issue i.e. Issue No. 3 which enquires whether the consideration and determination of issues 4, 5, 6, and 7 in the appellant's Brief in the Court below would have determined the appeal in his (appellant's) favour. C

In arguing these several issues rolled into one, counsel went over a wide range of subjects such as the court below glossing over several issues of law, a denial of fair hearing, necessitating the setting aside ex debito justitiae of the decision that the court below arrived at and failure on the part of the court below to remit the case to the trial court for re-hearing. Having myself carefully perused the trial court's record as well as that of the court below, the appellant's submission that these issues (4, 5, 6 and 7) were not considered by the Justices of the court below, are, in my most respectful view, as will be apparent from my consideration of them as hereunder is misconceived. Now, my treatment of these issues to wit: D E F

ISSUE 4:

"Whether Exhibit P7 is Ultra vires the University of Ilorin Act Cap. 455 Laws of the Federation of Nigeria (1990)"

This issue has nexus with issues 2 and 3 exhaustively considered by the court below no pages 33-41 of the leading judgment of Ogundere, J.C.A on pages 249 to 257 of the Records. The court below explained the relationship between issues 2, 3, 4, 5, 6 and 7 at pages 33-34 of the lead judgment i.e. at pages 245-250 of Volume 11 of the Records. Before that court (the court below) issue 2 was whether the Council is bound by the Act of SSD & AC having delegated its power to it. Issue 3 is whether the Council is bound by the Act of the Registrar (2nd respondent) who wrote Exhibit P3 - the 2nd respondent being an agent of 1st G H

respondent (University of Ilorin).

In considering issues 2 and 3, the Court below came to the conclusion that the Council is neither bound by the decision of SSD & AC nor by the act of the 2nd respondent and so Exhibit P3 is invalid. The Justices of the court below adopted their arguments and findings on issues 2 and 3, and came to the conclusion that issue 4, which is founded on issues 2 and 3, had been answered and consequently dismissed issue 4 at page 47 of the judgment of the court i.e. page 263 of Vol. 11 of the Records.

Further, Exhibit P7 was written by the 2nd respondent on the directives of Council vide Section 15(1) of the Act. This letter (Exhibit P7) was written within 5 months from the date of final decision by council. The date of appellant's suspension was 23/6/88 vide Exhibit P2 whereas the date of final decision by Council as depicted on Exhibit P7 is 21/11/88.

Under Section 15(4) of the Act where the suspension is continued under Section 15(4)(a), the Council had 6 months within which to reach a final decision. By a letter dated 22/9/88 vide Exhibit P5, Council informed the appellant that his case had been listed at the next meeting of Council, thus extending his suspension period. As it took less than 5 months for Council to have written to him on 21st November, 1988 Exhibit P7, there could not have been a glaring violation of the mandatory provisions of the Act vide Section 15(4) (ibid). As Council took less than 5 months within which a decision was reached and Exhibit P7 was written to the appellant within that time frame it was therefore not ultra vires the University of Ilorin Act (ibid) in my opinion.

ISSUE 7:

"Whether Council is bound by the decision of SSD & AC".

This issue is connected with issue 2 which has earlier been considered and determined by the court below. The Justices of that court (court below) having answered the issue in the negative, and dismissed it, I too return a negative answer to issue 7.

ISSUE 5:

"Whether the court properly evaluated what transpired before the Council." It will be enough here to say that the court below having considered what transpired on pages 7, 8 and 9 of the judgment of the court below (i.e. pages 223, 224 and 225 respectively in Vol.11 of the Records) and came to the conclusion that the learned counsel for the appellant failed to proffer any tangible argument to sustain this issue and so dismissed it vide page 47 of the judgment of the court below (i.e. page 263 Vol.11 of the Records), the issue is of no avail to the appellant here and I so hold.

ISSUE 6:

"Whether appellant had fair hearing before Council."

The Justices of the court below considered this issue on pages 41 to 46 of the judgment of the court below i.e. at pages 257 -262 of Vol.11 of the Records. The learned Justices of the Court of Appeal after considering relevant laws and authorities on the principles of fair hearing and natural justice, applied the principles extracted from the various cases cited and laws to the facts of this case and came to the conclusion that the appellant was given a fair hearing by council. Consequently, the Justices of the court below adopted their reasoning and conclusions on pages 41-46 of their judgment contained on pages 257-262 of Vol.11 of the Records and finally dismissed issue 6 at page 47 of the judgment vide page 263 of Vol.11 of the records. This is what the court below meant when they said at page 47 of their judgment:

"Issue 6 must also fail having regard to my opinion herein."

While therefore I agree entirely with the appellant's statements of the effect of failure to observe fair hearing in his Brief in paragraphs 12.9 to 12.11, I am of the respectful view that they are not applicable. And irrespective of the fact that the power of this Court under Section 22 of the Supreme Court Act Cap.424 Laws of the Federation stated in paragraphs 12.12 to 12.14 of appellant's Brief has been correctly stated, its exercise thereof does not arise in this case and I so hold. In the case of Chief James Ntukidem & Ors. v. Chief Asuquo Oko & Ors. (1986) 5 NWLR (Part 45) 909 at 933 this Court held inter alia that:-

"Fair hearing within the meaning of Section 33(1) of the 1979

Constitution means a trial conducted according to all the legal rules formulated to ensure that justice is done to the parties."

As I had occasion to point out in U.N.T.H.M.B.v. Nnoli (supra) at page 402:-

B "Indeed, fair hearing in the context of Section 33(1) (ibid) has been held to encompass "the plenitude of natural justice in the narrow technical sense of the twin pillars of justice, to wit: audi alteram partem and nemo judex in cause sua as in the broad sense of what is not right and fair to all concerned but also seems to be so." See Mohammed v. Olawunmi & Ors. (1990) 2 NWLR (Part 133) 458 at 485; Nwokoro & Ors. v. Onuma & Anor. (1990) 3 NWLR (Part 136) 22.

C In concluding whether a consideration and determination of issues 4, 5, 6, 7 and 8 in the appellant's Brief in the court below would have determined the appeal in appellant's favour and cognate matters I wish to say as follows:-

Firstly, that Exhibit P7 was issued in compliance with the last part of Section 15(4) and so not ultra vires the University of Ilorin Act.

E The sub-section of the Act states:-

"(4) Any person suspended pursuant to subsection (2) or (3) of this section shall be on half pay and the Council shall, before the expiration of a period of three months after the date of such suspension, consider the case against that person and come to a decision as to -

F (a) Whether to continue such person's suspension and if so on what terms including the proportion of his emoluments to be paid to him;

(b) whether to re-instate such person in which case the Council shall restore his full emoluments to him with effect from the date of suspension;

G (c) whether to terminate the appointment of the person concerned in which case such a person will not be entitled to the proportion of his emoluments withheld during the period of suspension; or

H (d) whether to take such lesser disciplinary action against such person (including the restoration of such proportion of his emoluments that might have been withheld) as the council may determine." (Underlining mine for comment).

In effect, the Council must within 3 months come to an interim decision under the four subsections of Section 15(4) (a), (b), (c) and (d) of the Act. Where the Council has taken an interim decision under subsection (a) and (b) of Section 15(4), the Council has an additional period of 3 months within which to come to a final decision. This brings the period to 6 months. Should it be otherwise any delay beyond the interim 3 months is not fatal to the respondent's case in which the underlined word 'shall' should not be read as mandatory but rather as directory. Be that as it may, as the Council took under 5 months within which it came to a final decision and Exhibit P7 was issued in compliance with Section 15(4), the extension is not ultra vires. Besides, my view of the additional period of 3 months, thus making the whole period involved compositely 6 months within which to come to final decision I have also underlined above, would appear to be complete and unassailable if recourse is had to the last portion of subsection 4(d) of section 15 which states:

"and in any case where the Council pursuant to this Section decides to continue a person's suspension or decides to take further disciplinary action against a person, the Council shall before the expiration of a period of three months from such decision come to a final determination in respect of the case concerning any such person."

All told, in the disciplinary action taken by the issuance of Exhibit P7 by the 2nd respondent at the direction of the Council there has been, in my view, no miscarriage of justice.

In the result, all the issues having been resolved against the appellant, this appeal fails and it is accordingly dismissed. The appellant shall pay the respondents costs assessed at N10,000.00 only.

WALI JSC

I have read before now, the lead judgment of my learned brother Onu, JSC and I agree with the reasoning and conclusion contained therein for dismissing the appeal. I wish only to lay emphasis on some of the vital issues raised, to wit-

1. Misconduct; and

2. Interpretation and application of Section 15 of University of Ilorin Act (Cap 455) Laws of the Federation of Nigeria, 1990.

The facts involved in his case have been adequately stated in the lead judgment of my learned brother Onu, JSC and need not be restated.

B The charges of misconduct levelled against the appellant before the committees of the 1st Respondent are as follows-

"(a) That you Dr. T.T. Bamgboye, being a Lecturer in the Department of Chemistry in the Faculty of Science of this University, compromised your position as a Lecturer when, acting in concert with Miss J.C. Maduneme, a student of the Faculty of Science, you permitted the said Miss Maduneme, to submit two answer scripts in respect of the same examination, one ostensibly written under an examination condition while the other was written outside examination conditions, and you recorded or caused to be recorded for her higher marks awarded in the answer script outside examination conditions, an act viewed as a gross misconduct and punishable under section 15 of the University of Ilorin Act, 1979.

E (b) That you, Dr. T.T. Bamgboye, unilaterally and without any reasonable cause altered the marks scored by Miss Adesola Kuye of the Chemistry Department in CHM 201 from 18%, to 28% and later from 28% to 49%, an act viewed as gross misconduct and punishable under section 15 of the University of Ilorin Act, 1979.

F (c) That you, Dr. T.T. Bamgboye, established and maintained unusually close intimacy with some female students of your Department, and such intimacy gave the said Miss Kuye access to your office most of the time thereby, including marking schemes some of which she took under advantage of contrary to University's rules and regulations."

G The appellant was invited before a three-member Department Investigation Panel to investigate some irregularities observed in the 1987 February examination conducted in the Chemistry Department by the 1st Defendant. The appellant appeared before the Panel. The Panel submitted its report to the Dean of Faculty of Science of the 1st Respondent. The Report was put in evidence in this case and marked Exhibit D1. The Dean of Faculty of Science directed a further investigation into the alle-

gation by setting up a four-member Faculty Investigation Panel. This panel's report was Exhibit D2. As there were still some aspect of the irregularities complained of that needed to be further looked into, the panel was reconstituted and the appellant made a written submission to it. At the end of its further investigation, the Panel submitted a written B report which was also admitted in evidence as Exhibit D3 in this case.

As a result of Exhibit D3, the appellant was invited before the Senior Staff Disciplinary and Appeals Committee of 1st Defendant. He was also suspended from duty pending the disposal of the charges lev- C elled against him.

For ease of reference, the Senior Staff Disciplinary and Appeal Committee will be referred to as 'the SSD and AC.'

The appellant in response to the invitation by SSD & AC, ap- D peared before it and defended himself. As a result, the suspension order from duty issued to the appellant was revoked on 17th August, 1988. The revocation order of the appellant's suspension from duty was short-lived, and on 18th November, 1988, he was invited by the Governing council of 1st Respondent over the same charges, as the council was of E the opinion that the appellant did not exonerate himself of the charge levelled against him. The appellant appeared before the Governing Council and defended himself.

On 22nd November, 1988 the Governing Council ordered sum- F mary dismissal of the 1st appellant from its services.

It was as a result of the appellant's dismissal by the 1st Respon- dent that the former filed the present action seeking for the following declarations -

"(1) *declaration that the letter dated 17th August, 1988 written G by the 2nd defendant to the Plaintiff revoking the Plaintiff's suspension and restoring his full employments in accordance with Section 15(4) (b) of the University of Ilorin Act 1979 has absolved the Plaintiff of all blame in respect of the charges of alleged examination malpractices.* H

(2) *Declaration that the letter of the 2nd defendant dated 18th November, 1988 inviting the Plaintiff to appear before the Governing Council of the 1st Defendant is ultra vires the Defendants thereby it is*

null and void.

(3) Declaration that the deliberations of the Governing Council of the 1st Defendant on 21st November, 1988 on the charges of alleged examination malpractice by the Plaintiff are ultra vires the said 1st Defendant Governing Council thereby are null and void.

(4) Declaration that the consequent letter of the 2nd Defendant dated 22nd November, 1988 dismissing the Plaintiff from the 1st Defendant's establishment is ultra vires thereby it is null, void and of no effect whatsoever.

IN THE ALTERNATIVE

(5) Declaration that the deliberations of the Governing Council of the 1st Defendant on 21st November, 1988 on the charges of alleged examination malpractice by the Plaintiff are null and void on the ground that the Rules of Natural Justice were not complied with.

(6) Declaration that the consequent letter of the 2nd defendant dated 22nd November, 1988 dismissing the Plaintiff from the 1st Defendant's establishment is null, void and of no effect whatsoever.

(7) An order reinstating the Plaintiff to his former position as Reader in the Department of Chemistry in the 1st Defendant's establishment without prejudice to the payment of his salary and other emoluments.

(8) An order restraining the Defendants from further interfering with the Plaintiff's lawful execution of his duties as a Reader in the Department of Chemistry in the 1st Defendant's establishment."

After a full hearing during which both sides called evidence in support of averment in their respective pleadings, the learned Chief Judge, in his well considered judgment remarked-

"It seems to me from the totality of the evidence adduced in this suit and also from the tenor of the address of Professor Jegede learned Council for the plaintiff that no serious attempt has been made to disprove the defendants evidence that there were examination malpractice in the chemistry Department of the 1st defendant and that the Plaintiff was deeply implicated in these malpractices."

On the issue of charges of misconduct against the appellant, the

learned Chief Judge, after a meticulous consideration of the evidence in relation thereto, particularly that of D.W. 1, the Dean of Faculty of Science in 1st Respondent, he made the following finding :-

"The evidence adduced before me in this case and which I accept in its entirety is that the plaintiff committed examination malpractices in respect of candidates with marks recorded on scripts No. 81/2731 and 84/7595. The evidence adduced by the defendants and which evidence I accept as nothing but the truth reveals sordid dealings of extreme moral turpitude against the plaintiff. No attempt was made by Professor Jegede to cross examine 'D.W.1' on those aspects of his evidence. This, on the authority of George Nkwa vs. Commissioner of Police (1977) NNLR. 93 is tantamount to an admission of D.W.1's evidence.

In my view all these acts of examination malpractices established against the plaintiff amount to misconduct which is amenable to the domestic jurisdiction of the University of Ilorin Governing Council by virtue of section 15 of the Act.

The facts in the instant case are not in pari materia with those in Federal Civil Service Commission & 2 Ors. vs. J. O. Laoye (1989) 2 NWLR (Part 106) 652."

Section 15(1) of the University of Ilorin Act provides as follows:-

"15- (1) If it appears to the council that there are reasons for believing that any person employed as a member of the academic or administrative or professional staff of the vice-chancellor, should be removed from his office for employment on the ground of misconduct or of inability to perform the functions of his office or employment, the council shall-

- (a) give notice of those reasons to the person in question;*
- (b) afford him an opportunity of making representations in person on the matter to the council; and*
- (c) if he or any three members of the council so request within the period of one month beginning with the date of the notice, make arrangements-*
 - (i) for a joint committee of the council and the senate to inves-*

tigatethe matter and to report on it to the council; and

(ii) for the person in question to be afforded an opportunity of appearing before and being heard by the investigating committee with respect to the matter;

B and if the council, after considering the report of the investigation committee, is satisfied that the person in question should be removed as aforesaid, the council may so remove him by an instrument in writing signed on the directions of the council".

C In considering the provision supra, the learned Chief Judge stated-

"Section 15 of the University of Ilorin Act confers on the University Staff a "special status" over and above the normal contractual relationship of master and servant. Consequently the only way to terminate such a contract of service with statutory flavour is to comply religiously with the procedure laid down in the statute. See Olaniyan vs. University of Lagos (1985) 2 NWLR 599, Shitta-Bey vs. Federal Republic Service Commission (1981) 1 S.C. 41 at 56 and Olatunbosun vs. NISER Council (1988) 3 NWLR (Part 80) 25. It seems to me that it would be a clear and illegal derogation of the power of the Governing Council to hold that it cannot overrule or set aside the decision of its Committee. Although I find the submission of Professor Jegede that there has been delegation of the power of the Council to the SSD & AC in respect of this matter quite ingenious and attractive, I am unable to accept it. In the first place there is no iota of evidence of such delegation neither was any documentary evidence adduced to that effect. The rule of practice in civil cases is that he who asserts must prove his assertion. I do not think that the provision of section 148(d) can apply because under the University of Ilorin Act, the Governing Council of the 1st defendant cannot validly abdicate its responsibility to the SSD & AC. See Hart vs. Military Governor of Rivers State and Others (1976) 10 N.S.C.C. 622.

H It is therefore my firm view that the decision of the SSD & AC as conveyed vide Exhibit 'P3' does not in any way fetter the competence of the Governing Council to re-open the issue as it did."

These findings were affirmed by the Court of Appeal when it

opined thus-

"It was obvious that the proceedings before council was based on the two scripts of Miss Maduneme and of Miss Kuye which were not available to the S.S.D. & A.C. These were shown to the appellant at the council meeting of 21st November, 1988 for his comments. He admitted the markings were his or those of the graduate assistant who helped him with the marking. He did not deny responsibility for the enhanced pass marked on the two scripts or that he did not give Miss Kuye the key to his office. The council could not be said to have denied him fair hearing. It was the appellant who offered no valid defence to the charges. The council was therefore right to decide and to record the following conclusions extracted from Exhibit D4:

363 *"After carefully deliberating over the evidence before it, Council made the following observations:*

(i) *That with regard to the first charges, it was felt that Miss Maduneme's examination scripts marked by another lecturer was assessed 0 out of 50 but later Dr. Bamgboye assisted her to write another paper which he, Dr. Bamgboye marked and awarded 45 out of 50 marks;*

(ii) *that all marks recorded by Dr. Bamgboye in respect of Miss Maduneme were falsified;*

(iii) *that in one question Dr. Bamgboye awarded Miss Maduneme 51 marks out of 50;*

(iv) *that on the basis of the foregoing evidence (i - iii), Dr. T.T. Bamgboye was found guilty of alteration and falsification or results of Miss Maduneme;*

(v) *that Dr. Bamgboye was liable to explain why Miss Kuye's marks were altered in a way that enabled her to earn a predetermined percentage;*

(vi) *that Dr. Bamgboye was found guilty of maintaining unnecessarily close intimacy with a student, an association described as being beyond normal Teacher/student relationship; and*

(vii) *that on the strength of the evidence before it, Professor Yoloye should be requested to answer disciplinary charges on this case.*

364 *In view of the foregoing observations, Council directed as follows:*

(i) *That Dr. T.T. Bamgboye be removed from the services of this University by summary dismissal, in accordance with the provisions of Section 15 of University of Ilorin Act, 1979.*

(ii) *that the two examination scripts belonging to Miss Maduneme be kept very carefully by the administration, and that authenticated copies should be given to the Registrar for safe keeping.*

(iii) *that professor V.L.A. Yoloye be required to answer disciplinary charges in connection with Miss Kuye."*

X X

"It is therefore crystal clear that the Departmental Investigating Committee, the Faculty Investigating Committee, or the Senior Staff Disciplinary and Appeals Committee which investigate any officer's misconduct, has a duty to make a report to Council, it has no power to hear and determine, definitively the matter as only the Council under Section 15 of the Act has the power to hear and determine definitively any allegations of misconduct against any officer. Therefore the arguments of learned counsel for the appellant, that the S.S.D. & A.C. was either the agent of Council, or had its disciplinary power delegated to it are misconceived."

The 1st appellant, as revealed both in the proceedings in the trial court, was afforded full opportunity of defending himself before the panel established by 1st Respondent and finally before the Governing Council of the 1st Respondent. There was no substance in the allegation of bias made by the appellant.

The provision of section 15(1) clearly shows that the power of removing any person employed by the 1st Respondent as a member of the academic or administrative or professional staff, other than the vice-chancellor, is vested in the Governing Council of the 1st Respondent. Any other Committee or panel set up by the 1st Respondent through any of its organs to investigate any allegation of misconduct against any of the officers mentioned in section 15(1) (supra) can only make recommendation of its findings to the Governing Council for the latter's final decision. The Governing Council is not bound to rubber-stamp and endorse such recommendation and can re-investigate the matter as pro-

vided for in subsection (1)(c) of section 15 and take appropriate decision.

The allegations of malpractices amount to gross misconduct as revealed in the charges levelled against the appellant and the evidence adduced in support thereof, and in my view within the province and competence of the 1st Respondent to investigate and take necessary disciplinary action against any of its erring officers mentioned in section 15(1) supra. The Governing Council would have failed in its duty if it had reacted otherwise.

It is for these and the more elaborate reasons contained in the lead judgment of my learned brother Onu, JSC that I also hereby court and the Court of Appeal on both issues of law and fact are hereby confirmed.

Costs of N10,000.00 are hereby awarded to the Respondents against the appellant.

IGUHJSC

I have had the privilege of reading in draft the judgment just delivered by my learned brother, Onu, J.S.C. and I agree entirely that this appeal lacks substance and should be dismissed.

The central issue for resolution is whether or not the allegations of serious examination malpractices in the Chemistry Department of the University of Ilorin were established against the appellant. In this regard shocking and unbelievable revelations were made against the appellant. The facts were that following the search for two chemistry examination scripts of two female students, the door of the office of the appellant was opened. It was therein that two chemistry examination scripts of one Miss Maduneme, one obviously written under examination conditions and the other well written in a more leisurely and relaxed condition were recovered. Several markings from low to high marks appeared on the first script. On the second script, appeared very high marks. The script of one Miss Kuye was similarly discovered in the appellant's office with alterations of examination marks from low to very high marks.

Following these amazing discoveries, various investigations by the Departmental Committee, Faculty Committee and the Senior Staff Disciplinary and Appeal Committee of the 1st respondent University were instituted to unravel the puzzle surrounding these patent irregularities.

B The investigation ultimately came up before the Governing Council of the 1st respondent University on the 21st day of November, 1988.

Before the said Governing Council of the University, the following acts of gross misconduct were preferred against the appellant, namely

C -
(a) *That you Dr. T. T. Bamgboye, being a Lecturer in the Faculty of Science of this University, compromised your position as a Lecturer when, acting in concert with Miss J.C. Maduneme, a student of the Faculty of Science, you permitted the said Miss Maduneme to submit two*
D *answer scripts in respect of the same examination, one ostensibly written under an examination condition while the other was written outside examination conditions, and you recorded or cause to be recorded for her, higher marks awarded in the answer script outside examination conditions, an act viewed as a gross misconduct and punishable under section*
E *15 of the University of Ilorin Act, 1979.*

(b) *That you, Dr. T.T. Bamgboye, unilaterally and without any reasonable cause altered the marks scored by Miss Adesola Kuye of the*
F *Chemistry Department in CHM 201 18% to 28% and later from 28% to 49%, an act viewed as gross misconduct and punishable under section 15 of the University of Ilorin Act, 1979.*

(c) *That you, Dr. T. T. Bamgboye, established and maintained unusually close intimacy with some female students of your Department,*
G *and such intimacy gave the said Miss Kuye access to your office most of the time thereby exposing her to examination materials, including marking schemes, some of which she took undue advantage of contrary to University's Rules and Regulations. "*

H It is crystal clear from the certified true copy of the record of proceedings before Council, Exhibit D4, that its investigations were thorough and that the appellant fully defended himself with regard to each and every misconduct levelled against him. At the end of the defence and

the submissions of the appellant, Council after meticulously deliberating over the evidence before it made the following observations -

"(i) *That with regard to the first charge, it was felt that Miss Maduneme's examination script marked by another lecturer was assessed 0 out of 50 but later Dr. Bamgboye assisted her to write another paper which he, Dr. Bamgboye marked and awarded 45 out of 50 marks;*

(ii) that all marks recorded by Dr. Bamgboye in respect of Miss Maduneme were falsified;

(iii) that in one question, Dr. Bamgboye awarded Miss Maduneme 51 marks out of 50;

(iv) that on the basis of the foregoing evidence (i - iii), Dr. T. T. Bamgboye was found guilty of alteration and falsification of results of Miss Maduneme;

(v) that Dr. Bamgboye was unable to explain why Miss Kuye's marks were altered in a way that enabled her to earn a predetermined percentage;

(vi) that Dr. Bamgboye was found guilty of maintaining unnecessarily close intimacy with a student; an association described as being beyond normal teacher/student relationship; and

(vii) that on the strength of the evidence before it, Professor Yoloye should be requested to answer disciplinary charges on this case."

By reason of the foregoing findings, Council directed as follows :-

"(i) That Dr. T. T. Bamgboye be removed from the services of this University by summary dismissal, in accordance with the provisions of section 15 of University of Ilorin Act, 1979.

(ii) That the two examination scripts belonging to Miss Maduneme be kept very carefully by the Administration, and that authenticated copies should be given to the Registrar for safe keeping.

(iii) That Professor V. L. A. Yoloye be required to answer disciplinary charges in connection with Miss Kuye.

(Sgd.)

(Registrar & Secretary to council)"

It is as a result of this summary dismissal of the appellant that he instituted the present action against both defendants/respondents. This ac-

tion by the appellant was dismissed by the trial court.

Commenting on the proceedings, Exhibit D4, the learned trial Chief Judge observed as follows :-

B *"It is from Exhibit 'D4', elaborately set out above, that the Council undertook a full and thorough investigation of the matter in dispute and gave the plaintiff a fair hearing. The plaintiff defended himself before the Council arrived at its decision."*

He went on :-

C *"It seems to me from the totality of the evidence adduced in this suit and also from the tenor of the address of Professor Jegede, learned Council for the plaintiff, that no serious attempt had been made to disparage the defendants' evidence that there were examination malpractices in the Chemistry Department of the 1st defendant and that the Plaintiff*
D *was deeply implicated in these malpractices."*

He continued :-

E *"In the light of the foregoing, I have given careful consideration to the plethora of evidence adduced in this case and I am unable to agree with Professor Jegede that the plaintiff did not have a fair hearing when he appeared before the Council on 21/11/88. Exhibit 'D4' is a good account of what transpired before the governing council on 21/11/88. I accept Exhibit 'D4' in its entirety. "*

F He then concluded :-

G *"The evidence adduced before me in this case and which I accept in its entirety is that the plaintiff committee examination malpractices in respect of candidates with marks recorded on scripts NO. 81/2731 and 84/7595. The evidence adduced by the defendants and which evidence I accept as nothing but the truth reveals sordid dealings of extreme moral turpitude against the plaintiff. No attempt was made by Professor Jegede to cross examine 'D.W.1' on these aspects of his evidence. This, on the authority of George Nkwa vs. Commissioner of Police (1977) NWLR. 98 is tantamount to an admission of D.W.1's evidence.*

In my view all these acts of examination malpractices established against the plaintiff amount to misconduct which is amenable to the domestic jurisdiction of the University of Ilorin Governing Council

by virtue of section 15 of the Act However in the instant case all the allegations relate to examination malpractices and I venture to think that the best people to investigate such and mete out appropriate punishment are the people of the ivory tower fame themselves. It is firmly my view that the issue here is incontestably one that belongs to the domestic domain of the 1st defendant and as such the issue of misconduct is properly looked into and punished by the 1st defendant in accordance with section 15 of the Act In the result, I hold that the plaintiff has woefully failed to establish on the preponderance of evidence his entitlement summons. I am in no doubt that the defendants are justified to have dismissed the plaintiff from the establishment of the 1st defendant in order to prevent further pollution of the 1st defendant's channel of academic excellence. "

On appeal, the above observations and findings of the trial court were endorsed by the court below which dismissed the appellant's appeal before it. The appellant has now further appealed to this court.

Section 15 of the University of Ilorin Act No. 81 of 1979 provides inter alia that power to remove a member of the academic or administrative or professional staff of the University other than the Vice Chancellor from his office on the ground of misconduct or inability to perform the functions of his office is vested only in the Council. Apart from investigations by various committees of the University, the gross acts of misconduct levelled against the appellant were finally looked into by the Governing Council of the University in accordance with the provisions of the Law as a result of which Council was satisfied that the acts complained of were established against him.

I agree entirely that the various allegations of examination malpractices established against the appellant amounted to grave acts of misconduct which, in my view, belong to the domestic jurisdiction of the University of Ilorin Governing Council. It seems to me clear also that they were carefully investigated by Council and disciplinary measure meted out to the appellant in accordance with the provisions of Section 15 of the University of Ilorin Act, 1979. The findings of the trial court on the appellant's gross acts of misconduct as affirmed by the court below are

concurrent finding of fact which are neither perverse nor unsupported by evidence. They were also not reached as a result of any wrong approach to the evidence or a wrong application of a principle of substantive law or procedure. In these circumstances this court has no reason
B whatsoever to interfere with them. See Enang v. Adu (1981) 11 - 12 S.C. 25 at 42, Nwadike v. Ibekwe (1987) 4 N.W.L.R. (Part 67) 718, Igwego v. Ezengo (1992) 6 N.W.L.R. (Part 249) 561 at 576 etc. I therefore accept that the gross acts of misconduct found against the appellant
C by both courts below are entirely disgusting and I entertain no doubt whatever that the appellant was properly and appropriately dismissed summarily by the respondents in the present case.

I cannot end this judgment without condemning in the strongest possible term the unbelievable acts of gross misconduct established against
D the appellant in this case. Without doubt, they point at the extreme and abysmal decline in the conduct, I hope, of a microscopic percentage of the academic staff of our institutions of higher learning. It is a situation so disgusting, deplorable and unthinkable that if not seriously checked
E must necessarily destroy all academic standards and values in our institutions of higher learning. I think our Universities must leave no stone unturned in checking such appalling acts of gross misconduct in our various institutions if our academic standards must remain stable and
F credible.

It is for the above and the more detailed reasons contained in the judgment of my learned brother, Onu, J.S.C. that I, too, dismiss this appeal as utterly speculative, baseless and lacking in substance. I abide
G by the order as to costs made in the leading judgment.

UWAIFO JSC

I read in draft the leading judgment of my learned brother Onu
H JSC. I think he has fully considered all the issues raised on the appeal and resolved them satisfactorily. I agree with his reasoning and conclusions.

I intend to comment on only one or two aspects of the case.

First, was the Council of the University of Ilorin precluded from taking disciplinary action against the appellant on the basis of the allegations against him which are said to be criminal in nature? Second, did the Council comply with the procedure laid down in section 15 of the University of Ilorin Act 1979 (Cap.455) Vol.23, Laws of the Federation of Nigeria, 1990 (the Act)? Third, were the disciplinary proceedings fundamentally defective because a period of 3 months' allowable in the first instance for the suspension of the appellant during the disciplinary proceedings was exceeded?

It is now a well-established principle of law that when an office or employment has a statutory flavour in the sense that its conditions of service are provided for and protected by statute or regulations made thereunder, any person holding that office or is in that employment enjoys a special status over and above the ordinary master and servant relationship. In the matter of discipline of such a person, the procedure laid down by the applicable statute or regulations must be fully complied with. If materially contravened, any decision affecting the right or reputation or tenure of office of that person may be declared null and void in an appropriate proceeding: see Shitta-Bey v Federal Civil Service Commission (1981) 1 S.C. 40 at 56 -57; Olaniyan v University of Lagos (N0.2) (1985) 2 NWLR (pt.9) 599 at 612-613; 622-623; Eperokun v University of Lagos (1986) 4 NWLR (pt.34) 162 at 201; Olatunbosun v NISER Council (1988) 3 NWLR (pt.80) 25 at 41.

The appellant fails within the category of a person in an employment or office with a statutory flavour. Section 15 of the Act applies to him. The relevant portion of the said section reads:

"15. (1) If it appears to the council that there are reasons for believing that any person employed as a member of the academic or administrative or professional staff of the University, other than the vice-chancellor, should be removed from his office or employment on the ground of misconduct or of inability to perform the functions of his office or employment, the council shall-

- (a) give notice of those reasons to the person in question;*
- (b) afford him an opportunity of making representations in per-*

son on the matter to the council; and

(c) If he or any three members of the council so request within the period of one month beginning with the date of the notice, make arrangements -

B *(i) for a joint committee of the council and the senate to investigate the matter and to report on it to the council, and*

(ii) for the person in question to be afforded an opportunity of appearing before and being heard by the investigating committee with respect to the matter;

C *and if the council, after considering the report of the investigating committee, is satisfied that the person in question should be removed as aforesaid, the council may so remove him by an instrument in writing signed on the directions of the council.*

D *(2) The vice-chancellor may, in a case of misconduct by a member of the staff which in the opinion of the vice-chancellor is prejudicial to the interests of the University, suspend such member and any such suspension shall forthwith be reported to the council.*

E *(3) For good cause, any member of staff may be suspended from his duties or his appointment may be terminated by council; and for the purposes of this subsection 'good cause' means -*

(a)

F *(b)*

(c) conduct of a scandalous or other disgraceful nature which the council considers to be such as to render the person concerned unfit to continue to hold his office; or

(d)

G *(4) Any person suspended pursuant to subsection (2) or (3) of this section shall be on half pay and the council shall, before the expiration of a period of three months after the date of such suspension, consider the case against that person and come to a decision as to-*

H *(a) Whether to continue such person's suspension and if so on what terms (including the proportion of his emoluments to be paid to him);*

(b) whether to reinstate such person in which case the council

shall restore his full emoluments to him with effect from the date of suspension;

(c) whether to terminate the appointment of the person concerned in which case such a person will not be entitled to the proportion of his emoluments withheld during the period of suspension; or

(d) whether to take such lesser disciplinary action against such person (including the restoration of such proportion of his emoluments that might have been withheld) as the council may determine,

and in any case where the council, pursuant to this section, decides to continue a person's suspension or decides to take further disciplinary action against a person, the council shall before the expiration of a period of three months from such decision come to a final determination in respect of the case concerning any such person."

There is no doubt in my mind that from the steps taken to discipline the appellant, there was compliance with s.15 of the Act. The Council acted as a domestic tribunal. The High Court is merely to act in its supervisory jurisdiction or judicial control to ensure that the procedure laid down by law was observed by it. It is not to act as if it was sitting on appeal against the decision of that tribunal: see West African Examination Council v Mbamalu (1992) 3 NWLR (pt.230) 481 at p.496; U.N.T.H.M.B. v Nnoli (1994) 8 NWLR (pt 363) 376 at p.401.

The allegations made against the appellant were amply supported by evidence. It is true they have some connotation of criminality. But what the council would be concerned about is whether the appellant acted in abuse of his office. This is provided for in s. 15(3)(c) permitting the suspension from duty of an employee of the academic or administrative or professional staff of the University or his termination of appointment for good cause which includes "conduct of a scandalous or other disgraceful nature which the council considers to be such as to render the person concerned unfit to continue to hold his office." This is similar to what some professional bodies adopt in the discipline of their members which is regarded as 'conduct deserving of the strongest reprobation': see Felix v General Dental Council (1960) 2 All ER 391 at 399-400 P.C., and, as said by Lord Jenkins in that case at p.400, to make such a

charge good, there must be "some element of moral turpitude or fraud or dishonesty in the conduct complained of." Looked at in that way, the Council was quite entitled to proceed to discipline the appellant of the scandalous or disgraceful way he compromised the academic standards of the University through his association with the female students concerned.

Arguments have been canvassed on behalf of the appellant that because his suspension lasted beyond 3 months it was in contravention of s.15(4) of the Act and therefore it rendered the disciplinary proceedings a nullity. I think this is a complete misconception of that provision of the Act. I believe one can say that the purpose of giving a time limit in that provision is to ensure that a person on suspension during a disciplinary proceeding is not made to suffer undue hardship by an excessive length of suspension when he is placed only on half pay. I do not see how by exceeding 3 months the disciplinary proceeding is rendered a nullity. In fact the Council is empowered to exceed the 'initial 3 months' period by not more than a further 3 months. From what happened in the present case, the suspension lasted some 5 months. Unless there is clear evidence to the contrary, I must assume that the Council took liberty under s.15(4) read as a whole to exceed the initial 3 months. In any event, I am of the view that if the period allowed, whether the initial 3 months or the further 3 months, is exceeded, that will not render the disciplinary proceedings a nullity.

In a situation like this, one has to look at the provisions of the Act to decide whether the period prescribed for concluding the disciplinary proceedings is really intended to be mandatory or directory. If it is mandatory, the failure to keep within the prescribed period may lead to a nullification of the proceedings; but if directory, it will not. There are some authorities which suggest how to determine which way to go. In Liverpool Borough Bank v Turner (1861) 30 L.J. Ch. 379 at p.380, Lord Campbell observed:

"No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of courts of justice to

try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed. "

In a later case of Howard v Bodington (1877) 2 P.D.203 at p.211, Lord Penzance put it this way:

"I believe, as far as any rule is concerned, you cannot safely go further than that in each case you must look to the subject-matter, consider the importance of the provision and the relation of the provision to the general object intended to be secured by the Act, and upon a review of the case in that aspect decide whether the enactment is what is called imperative or only directory. "

See also O'Reilly v Mackman (1983) 2 AC 237 at 275-276 per Lord Diplock.

I have already said that the whole purpose of stating some time limit in s.15(4) of the Act is so that a person suspended and placed on half-pay may not be put on a long ordeal or half-pay, only to be removed from his employment, in some cases, and then made to forfeit the other half-pay. That is why everything possible ought to be done to keep within the time limit. It is not, in my view, meant that non-observance will be fatal to the disciplinary proceedings itself to the extent that the decision arrived thereat will be null and void. It is in essence a directory provision notwithstanding the use of the word 'shall'. I can however conceive a situation where failure to comply has become so indefensible that it may provide the affected employee an actionable wrong which may make it possible to have the proceedings terminated or aborted before a final decision is reached. That has not been an issue raised before us.

I, too, hold that there is no merit in this appeal and accordingly I dismiss it with N10,000.00 costs to the respondents.

AYOOLA JSC

I have had the advantage of reading in draft the judgment prepared by my learned brother, Onu, J.S.C. I agree with his conclusion that this appeal should be dismissed. I too would dismiss it.

Notwithstanding the numerous issues for determination formulated by Professor Jegede, counsel for the appellant, in the appellant's brief of argument, the main issues which appear to me decisive of the appeal are (i) whether the senior staff Disciplinary and Appeal Committee B ("the Committee") having tried the appellant and come to a decision the University Council ("the Council") could re-open the trial and come to a fresh decision, (ii) whether the proceedings before the Council were fair and (iii) whether the decision of the Council was taken outside the time C prescribed in section 15 (4) of the University of Ilorin Act, Cap 455 LFN; 1990 ("the Act") so as to become invalid by reason thereof.

The first of the issues stated earlier arose because upon the finding of examination malpractices in the Chemistry Department of the University by faculty Investigation Panel in which the appellant was implicated, the appellant was invited to appear before the Committee to defend D himself against specific charges of examination malpractices. The appellant appeared before the Committee and defended himself. The proceedings before the Committee apparently resulted in a revocation of the E suspension order imposed upon the appellant. In this letter (Exh P3) dated August 17, 1988 conveying the revocation order, the Registrar of the University wrote that:

"In accordance with the provision of Section 15 Sub-section 4 F (b) of the University of Ilorin Decree of 1979, your full emoluments shall be restored to you with effect from 23rd June 1988, the effective date of the suspension order".

On 22nd September, 1988 the Registrar wrote to the appellant a letter G (Exh P5) intimating him of the fact that the council at its meeting held on Saturday, 3rd September, 1988 received the Report and Recommendations of the Committee in respect of the charges against him and that the Council had listed the said Report and Recommendations for its consideration very soon. By a subsequent letter dated 18th November 1988 H (Exh P6) the appellant was invited to appear before the Council on 21st November, 1988 when it would deliberate on the Reports and Recommendations. Apparently, the appellant appeared before the Council and made representation to it. On 21st November, 1988 the Council took a

decision to dismiss the appellant having found him guilty on all charges levelled against him. He was removed from his post as a lecturer in the Department of Chemistry with effect from 21st November, 1988.

Before the High Court, it was contended and the Learned Chief Judge agreed, that the act of the Registrar in Writing the letter of revocation of suspension Exhibit P3 was binding on the University. The Chief Judge held however that it was within the legal competence of the Council to overrule Exhibit P3. He further held that the Council was not bound to gloss over or rubber-stamp a decision taken by one of its subordinate Committee or by a staff. The Chief Judge being of the opinion that although the Committee could be set up by the Council by virtue of section 21(1) of the Act, it was just a Committee of the Council which could not claim to be at par with the Council and that as such its decision could not tie the hands of the Council, rejected the contention of the appellant's counsel that there had been a delegation of the power of council to the committee, there being no evidence of such delegation.

Before the Court of Appeal it was contended that there was a presumption of delegation by virtue of the presumption courts are permitted to draw by virtue of section 148 of the Evidence Act, and that, consequently, the Council had no power to re-try the appellant on the charges of examination malpractice from which he had been absolved. The Court of Appeal rejected both contentions. Several views canvassed in the leading judgment delivered by Ogundere, JCA (with which Aikawa and Okunola JJ.C.A. concurred are: (i) That statutory disciplinary functions cannot be delegated (ii) That the Committee was merely a machinery for the discharge of, by the University of Ilorin, certain of its functions. All its acts are subject to the Council's approval and the Council could resume its authority (iii) That the Council itself was an agent which could not delegate its mandate.

On this appeal, the appellant's counsel repeated much the same arguments as have been canvassed in the High Court and the Court of Appeal. Reliance was placed on section 21(a) of the Act which empowered the Council to appoint committees and to authorize a committee established by it to exercise on its behalf such of its functions as it may

determine. It was argued that the Committee being one established pursuant to section 21(a) of the Act the Court of Appeal should have invoked section 148(d) of the Evidence Act and presume that having regard to the conduct of human affairs in public institution of this nature, it is not feasible that a committee of council would exercise a power not delegated to it and that the onus was on the respondent to rebut the presumption. It was argued that the Committee having exercised the power delegated to them in favour of the appellant by reinstating him effectively disentitled the Council from revoking the exercise of that power.

It is clear from the judgment of Oyeyipo CJ that he did not feel impelled to approach the matter strictly as a matter of fact so as to presume the existence of a total devolution of the Council's disciplinary powers to the Committee. Rather he was of the opinion that the matter should be resolved by an appreciation of the relevant provisions of the Act. Upon that approach, he held, as has earlier been stated, that the Committee as a Committee of Council could not claim to be at par with the Council so that its decision would tie the hands of the Council. More pointedly, he held:

" I do not think that the provision of section 148 (d) can apply because under the University of Ilorin Act, the Governing council of the 1st Defendant cannot validly abdicate its responsibility to the SSD & AC. See Hart v Military Governor of Rivers State and others (1976) 10 N. S. CC 622."

The Court of Appeal (per Ogundere, J.C.A.) also approached this branch of the matter from a similar perspective.

Professor Jegede, the learned counsel for the appellant, in his careful and attractive submission approached the matter on the footing that the question that arose for resolution was a factual question whether or not on the basis of the presumption of fact stated in section 148 of the Evidence Act, the High Court and the Court of Appeal should not have presumed the existence of a fact that the Council delegated its disciplinary powers to the Committee.

It is evident that the presumption which the court is empowered to draw having regard to the common course of natural events, human

conduct and public business in their relation to the facts of the particular case is, by virtue of section 148 of the evidence Act, of the existence of any fact which it thinks likely to have happened. Section 148 has no relevance where the particular question in issue is one of law and not of fact. Hence, where the question was, as in this case, whether, as a matter law, the Council could delegate its disciplinary powers to the Committee, section 148 of the Evidence Act has no relevance to the resolution of that question. Even if the Council had purported to delegate its disciplinary powers to the Committee, the fact of delegation will not by itself confer validity on the act of delegation if it is not valid by virtue of the relevant law.

The question which should have been the focus of the appellant's contention on this appeal should have been whether the High Court and the Court of Appeal were right in the views they held that the Council could not, as a matter of law, delegate its disciplinary power to the Committee. That question has not been asked by the appellant on this appeal and it is right to assume that the appellant accepted the validity of those views. Where a material view of the trial court or the Court of Appeal has not been challenged on a further appeal to this court, it should be in exceptional circumstances that this court would proceed on its own to consider the question of the validity of those views. Even when we so, we must give an opportunity to counsel to address us on that question.

Once the appeal proceeds on the footing that the Council could not validly delegate its disciplinary powers to the Committee, the argument founded on a presumption of fact by virtue of section 148 of the Evidence Act must collapse or, at least, become inconsequential. A finding that the Council did in fact delegate disciplinary powers to the Committee will not, as earlier said, confer legal validity on the delegation of power.

While, surprising as it may be, Counsel for the appellant glossed over the opinion of the High Court and the Court of Appeal that if the Council had purported to delegate its disciplinary power, such would be invalid, counsel for the respondent argued trenchantly in support of these views held by the two courts. He described it as trite law that a statutory

disciplinary power cannot be delegated and I agree with that view. The only modification that it is expedient to add to the proposition of law is that such power cannot be delegated unless there is an express statutory authority to delegate. Sovereign law makers who grant statutory disciplinary power to a body or authority can also authorize such body or authority to delegate such power. A concise statement of the legal position with which I agree is put thus in de Smith's Judicial Review of Administrative Action (2nd Ed: 1968) at page 207 thus:

"As a general rule, where a function vested in another administrative body incorporates a judicial element, the decision must be made by that body and not by one of its committees or officials unless there is express statutory authority to delegate power to decide."

Barnard v National Dock Labour Board (1953) 2 Q B 18, and Vine v. National Dock Labour Board (1957) AC 488, (1956) 3 ALL E.R 939. In the latter case Lord Somervell of Harrow (1956) 3 ALL ER 939, 951) said:

"I am, however, clear that the disciplinary powers, whether 'judicial' or not, cannot be delegated. "

In the same case and on the same question Viscount Kilmuir L.C. at 1943 said

"It is necessary to consider the importance of the duty which is delegated, and the people who delegate."

I do not doubt that the proposition is now well known and well established as not to need citation of authorities to support it, that a person or body exercising disciplinary powers, such as in the present case, is under an implied duty to act judicially in accordance with the rules of natural justice.

Section 15(1) of the Act which vests disciplinary powers in the Council provided that such powers are to be invoked "if it" appears to the council that there are reasons for believing that any person employed as a member of the academic or administrative or professional staff of the University other than the vice-chancellor, should be removed from his office or employment on the ground of misconduct or of inability to perform the function of his office or employment. Section 15(3) of the

Act empowers the Council to suspend any member of staff from his duties or terminate his appointment for good cause. The provisions of section 15(1) (a) and (b) which, respectively, require the Council to give notice of the reasons which make it appear to the council that disciplinary powers should be invoked to the person in question and afford him an opportunity of making representation in person on the matter to the Council, puts it beyond peradventure that the council has a duty a duty to act judicially.

Although the Council has power pursuant to section 21 (1) (a) of the Act to appoint committee to exercise on its behalf such of its functions as it may determine, such general provision will not enable the council to delegate such disciplinary powers as were vested in it by section 15 of the Act. The language of that section and the nature of the powers make the conclusion inescapable. I venture to think that although it may appear to it by any other means, usually it is when the Council would have received the report and recommendations of the Committee that it would "appear" to it that there are reason for believing that the member of staff concerned deserved to be removed from his office or employment on the ground of misconduct.

I agree with the submission of counsel for the respondents and the opinion of the Chief Judge, and Ogundere JCA that the council could not delegate its disciplinary powers. I hasten to add that it can delegate to the Committee the functions which inheres in it incidental to the exercise of its disciplinary powers of conducting hearing or other investigations to collect materials on which its decision will be based. At the end of the day, the decision to exonerate the member of staff from blame or to remove him from office is that of the council.

Even if this aspect of the appeal had turned on evidential presumptions pursuant to section 148 of the Evidence Act, it would still have been difficult to accept appellant's counsel's argument on this aspect of the appeal. In applying section 148 of the Evidence Act the court cannot ignore, but must take with consideration, the totality of the facts of the case. It will be wrong and out of tune with section 148 of the Evidence Act to presume the existence of any fact which it thinks likely

to have happened, regard being had to the "common course of material events, human conduct and public and private business" without relating those factors to all of the facts of the case that are relevant to the fact the existence of which was in question.

B In the present case, other facts to which regard should be had
are: (i) the fact that the Committee had sent its Report and Recommen-
dations to the Council for its consideration; (ii) the Council received the
Report and Recommendations for its consideration and (iii) the appel-
C lant acceded to the request that it should appear before the Council to
make and did make representation on the Report and Recommendations.
Had these facts which are very relevant to the extent of the functions
delegated to the Committee, been adverted to, the fallacy in the submis-
sion of learned counsel for the appellant, that the Committee "having
D exercised the power to re-instate the appellant -- have raised an evidential
presumption that such power was delegated to them." Would have been
evident. It may well be a valid presumption to draw that had the power
to exercise such power been delegated to the Committee, the council
E would not have received the Report and Recommendations and proceeded
to take the steps of considering them, receiving representation from the
appellant and further evidence and taking a decision thereon.

Where the facts of a particular case are such that the court can-
F not reasonably presume the existence of a particular fact as likely to have
happened, the matter should fall to be determined not on the basis of
presumption but on the basis of the evidence adduced and the burden of
proof. In this case, the trial court was right not to have invoked the
presumption permitted by section 148 of the Evidence Act. The burden
G remained on the appellant to show that exorbitant disciplinary powers as
have been asserted by him had been delegated to the Committee. That
burden he did not discharge.

The question whether the 2nd defendant, the Registrar, was an
H agent of the University or has bound the University by his letter (Exh P3)
revoking the appellants' suspension becomes purely academic in the face
of the conclusion that the Council had no power to, and did not, delegate
to the Committee its disciplinary powers. A letter written by the Regis-

trar before a decision had been taken by the Council on the matter was beyond the powers of the Registrar and could not be binding on the Council so as to estop that body from exercising its lawful and statutory powers pursuant to section 15(1) and (3) of the Act. The conclusion must follow, inexorably, that, notwithstanding the letter (Exh P3) the Council was right to have Proceeded with the disciplinary exercise. B

The appellant contended that even if the Council had rightly proceeded with the exercise subsequent to the letter Exhibit P3, the proceedings were vitiated by unfairness. Hence, arose the second of the issues earlier identified. The grounds of unfairness alleged, as contained in the appellant's brief of argument, are (i) that the appellant should have been given a fresh hearing; (ii) that some of the members who took part in the hearing before the Council had fore-knowledge of the facts as members of the Committee; (iii) that one witness Professor Mesubi, gave evidence behind the back of the appellant who had no opportunity of cross-examining him, and that the said witness took active part " in the Council chamber" while proceedings lasted. D

The Chief Judge, on the question of fairness of the hearing, said: E

"I have given careful consideration to the plethora of evidence adduced in this case and I am unable to agree with Professor Jegede that the plaintiff did not have a fair hearing when he appeared before the Council on 21st November, 1988. Exhibit 'D4' is a good account of what transpired before the governing Council on 21st November, 1988." F

This conclusion was not based solely on Exhibit D4 but also on the evidence of the 1st defence witness and the Chief Judge's inability to find actual or likelihood of bias by virtue of the presence of the Vice-chancellor at the Council hearing. The Court of Appeal came to the conclusion that the Council had discharged its duty to act fairly in that the appellant had been given a hearing and that "the case was judged on documentary evidence where no likelihood of bias could be traced." G

The question that has to be addressed is whether proceedings H before the Council disclosed trace of procedural impropriety. New evidence to be taken into consideration consisting of examination scripts of the student concerned was brought to the notice of the appellant who

was given an opportunity of meeting the new evidence. The fact that the appellant was given an opportunity to make fresh representation must have been notice to him that the Council was not satisfied with the report and recommendations of the Committee absolving him of the charges.

B He did not request the Council to re-open the hearing in its totality. The only criticisms of the proceedings before the Council which should merit some closer consideration are that Professor Bamgboye who took part in the investigation of the charges against the appellant also participated in the decision to dismiss the appellant and that Professor Mesubi was called in to make comments before the appellant was called in by Council.

C Fairness of proceedings requires among other things, that a person who is tainted by likelihood of or actual bias should not take part in the decision making process where the adjudication is under a duty to act D fairly. Furthermore, the person whose conduct is the subject of inquiry should have an opportunity of knowing what evidence has been given against him and to challenge hostile evidence.

However, when, an allegation of infraction of these principles of E fairness is made before a tribunal exercising supervisory jurisdiction, the proceedings will not be vitiated unless that tribunal is able to come to the conclusion, upon an objective view of the circumstances, that there is a real likelihood of bias; and in regard to the second requirement, that a F miscarriage of justice has been occasioned. The test of real likelihood of bias has been stated in several English cases and the principle to these cases have been received into our law. In Olue & Or v. Enenwali & Ors (1976) NSCC 63 at pp 63 -67 the principles and approach stated in Regina v Camnorne Justice Ex parte Pearce (1955) 1 Q B 41 and in Metropolitan Properties Co. (F.G.C.) Ltd v. Lannon (1969) 1 Q B 577 were received G into our law. The test, put succinctly, is that:

"There must be circumstances from which a reasonable man would think it likely or probable that the (decision maker) as the case may be, H would or did, in fact, favour one side unfairly."

The learned Chief Judge's approach to the complaint of the appellant may not be free from justifiable criticisms when he commented thus:

"Neither the Vice-chancellor, Professor Bamgboye nor Profes-

sor Mesubi could be said to have any axe to grind against the plaintiff. Both Professor Bamgboye and Professor Mesubi were at the material time plaintiff's senior colleagues in the faculty of Science."

The learned Chief Judge seemed to have looked for evidence of actual bias whereas the issue was whether the parts Professor Bamgboye and Professor Mesubi had played at the pre-hearing stages would make a reasonable man think that there was real likelihood of bias. The learned Justices of the Court of Appeal were of the view that section 15 of the Act made inevitable the presence of the Vice-chancellor and Professor Bamgboye at the hearing before the Council, they being members of that body. There is however nothing in section 15 which expressly or impliedly exempted any member of the Council who could reasonable be charged with actual or real likelihood of bias from disqualification. The right of a person to a fair hearing is so fundamental to our concept of justice that it could neither be waived not taken away by a statute, whether expressly or by implication. However, the true question in this case was whether in the circumstances of the case means was real likelihood of bias. That question is to be approached not in a theoretical or academic fashion but with due regard to the realities.

No one would reasonably regard the Vice-chancellor who was the Chairman of the Committee which exonerated the appellant from blame to be likely to be biased against the appellant. Professor Mesubi was not shown to have taken part in the decision making process. Professor Bamgboye's participation in the proceedings would, in my view, have vitiated the proceedings but for the fact that, as held by the Court of Appeal and not challenged on this appeal, "the appellant's case was judged on documentary evidence where no likelihood of bias could be traced." Where a decision is based on documentary evidence the authenticity of which is not challenged and whose cogency is not dependent on interpretation, no room is left for any suspicion of bias in the decision maker. Where the document speaks unhesitatingly of innocence and the decision maker pronounces guilt his verdict would more easily and readily be vitiated by irrationality than by a suspicion of bias. For the same reason that the decision was based on documentary evidence, the issue made on

Professor Mesubi's evidence is inconsequential and did not affect the fairness of the proceedings.

The principles of fairness applicable to cases such as this where the decision maker has a duty of fairness, must not be regarded as a technical doctrine. What is of paramount importance is that the court after having regard to the totality of relevant circumstances should be able to come to the conclusion that the proceedings have been substantially fair. In this case, the conclusion of the court below and the High Court that the proceedings were not vitiated by unfairness cannot be disturbed; notwithstanding that, technically, certain aspects of the proceedings should have been avoided.

The third issue which I have identified for comment concerns the question whether the decision given by the Council was not ultra vires having regard to the provisions of section 15 (4) has been set out in the judgment of my learned brother Onu, JSC. Section 15(4) of the Act set out the decision which the Council could arrive at and the time prescribed. The Learned Chief Judge held that the provisions of section 15(4) of the Act are mandatory and imperatives. None of the parties has urged anything to the contrary on this appeal. The limited issue on this appeal, therefore, is not whether the provisions of section 15(4) of the Act in regard to time are mandatory or directory but whether the Council acted within the prescribed time.

Section 15 (4) enjoins the Council where a member of staff is placed on suspension, with half pay pursuant to section 15(2) and (3) before the expiration of three months after the date of such suspension, to consider the case against that person and make to a decision. The decision to which it can come. I summarize as follows: (a) whether to continue such person's suspension and if so on what terms; (b) whether to re-instate such person; (c) whether to terminate the appointment of the person concerned; or (d) whether to take such lesser disciplinary action against such person as the Council may determine. Where the Council decides in terms of (a) or (d), it has an additional period of three months to take a final decision. It is common ground that the decision to terminate the appellant's appointment was taken more than three months

after the date of suspension of the appellant, the appellant having been suspended on 23rd June, 1988. However it was taken within six months of the date of such suspension.

Professor Jegede, Learned Council for the appellant, argued in the High Court and on the appeal before the Court of Appeal that the decision of the Council given outside the three months period was null and void. The High Court while agreeing that the word "shall" in sub-section 4 or section 15 denotes peremptoriness dismissed that submission thus;

"It is clear to me from Exhibit 'P5' that the Council on 22/9/1988 sent a signal warning to the plaintiff to the effect that the report of the SSD & AC which looked into serious allegations of examination malpractices in the chemistry Department against him had been laid before it. It is my view that stricto sensu the time should only begin to run from that day. I therefore agree with Mr. Obasa Learned Counsel for the defendant that the provision to section 15(4) (d) applies. To hold otherwise would be to subscribe (sic) technicality and extreme legalism."

Although copious submissions were made to them on the appeal before them, their Lordships of the Court of Appeal completely failed to make any pronouncement on this important aspect of the appeal. It is now left to this court to consider the validity of the Learned Chief Judge's conclusion.

There is no ambiguity about the provisions of section 15(4) of the Act. The Council has only three months from the date of the suspension of the member of staff concerned to make one of the specified decisions. It is only when it decided either to continue such person's suspension or to take lesser disciplinary action against him that an additional three months from the date of the interim decision is permitted. The grant of an additional period of three months in those circumstances is understandable since the Council would require further time to bring the matter to a final conclusion.

There being no evidence in this case that the Council expressly decided to continue the suspension of the appellant, it is left to see whether in the circumstances of the case could be implied. The view expressed

by the Learned Chief Judge could only be valid if such implication be made.

In the letter of suspension (Exh P2) dated 22nd June, 1988 the appellant was informed that he would remain suspended from duty until the charges against him have been disposed of by the University Council. By the letter (Exh P5) dated 22nd September, 1988 the appellant was notified that the Council had on 3rd September, 1988 received the Report of the Committee in respect of the charges and that the report had been listed for consideration. The clear implication of these two letters read together is that the appellant's suspension would continue until final determination of the charges by the Council, and, that when on 3rd September, 1988 the Council received the Committee's report and recommendations but did not terminate the suspension earlier imposed, by implication, it had decided to continue it until, as earlier communicated to the appellant by Exh P2, the charges were finally disposed of by the council. Even if the earlier date, 3rd September, 1988, is taken as the date of the implied decision to continue the suspension, the final decision to terminate the appellant's appointment taken on 21st November, 1988 is within the additional period or three months permitted for a final decision to be taken. In the result, the chief Judge's conclusion that the impugned decision was not ultra vires must be upheld .

Enough has been said to show that the main props on which this appeal stood, notwithstanding the careful and well researched submissions presented by the appellant's Counsel, cannot stand. In regard to some of the other issues which need not elicit as lengthy comments as have been provoked by the three issues commented on, few comments must be made in deference to counsel's industry.

Where the supervisory jurisdiction of a court is invoked not on the ground of irrationality, it will be misconceived and erroneous for that court to embark on a consideration of the merits of the decision. In the present case, although the trial Chief Judge made some remarks which tended to imply that he found that the appellant was guilty of misconduct, it is clear that, at the end of the day, those remarks were made in order to identify the nature of the charges and that the Chief Judge did not dispose of the

case on the ground that the appellant had been guilty of misconduct. On the question of the jurisdiction of the council, the submission that the proceedings related to charges of a criminal nature must be rejected. In my view where gross misconduct can be proved without the need to find the member of staff guilty of acts amounting to a criminal offence, a B tribunal conducting disciplinary proceedings cannot rightly be held to be trying a criminal charge. A breach of examiners ethics in the conduct of an examination or a falling below the standard of behaviour expected of a University teacher may, depending on the depravity of the act, amount to gross misconduct. It does not necessarily need to amount to a crime for C it to be visited by disciplinary measures. My view of the charges levelled against the appellant is that they are, in substance, not of a criminal nature.

I need to add that had the grounds on which the decision of the D Council was challenged been established, the appellant would have been entitled to have the decision quashed, however reprehensible his conduct may have appeared to be.

For the reasons which I have stated, I would dismiss the appeal. E I abide by the order for costs made in the judgment of my learned brother, Onu, JSC.

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