

**SUPREME COURT OF NIGERIA**  
2ND JUNE, 2000. SC. 114/1997  
**CORAM:- M. L. UWAIS CJN, A. G. KARIBI-WHYTE,**  
**U. MOHAMMED, A. I. KATSINA-ALU,**  
**A. O. EJIWUNMI, JJSC.**

CAPTAIN E. C. C. AMADI	.....	APPELLANT
AND		
NIGERIA NATIONAL	.....	RESPONDENT
PETROLEUM CORPORATION		

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***ACTIONS** - Notice - Preaction notice - While the issuance of notice by a prospective plaintiff is mandatory - The particulars to be included in the notice are directory*

***ACTIONS** - Notice - Preaction notice - Purpose of the notice - Is not to put hazards in the way of bringing litigation*

***ACTIONS** - Notice - Preaction notice - Form of the notice - Place of abode of the plaintiff - Is not material to the notice*

***APPEALS** - Ground of appeal - Incompetence - Ground of appeal not supported by any issue is incompetent - And argument based on it goes to no issue*

***WORDS & PHRASES** - "Shall" - Meanings of the word "shall" when used in an enactment*

**FACTS**

In the High Court of Lagos State the plaintiff/appellant instituted a suit against the defendant/respondent claiming inter alia: a declaration that his purported suspension and subsequent dismissal are wrongful, illegal, null, void and of no effect; an order restraining the defendant, their servants, agents and/or privies from preventing him from continuing his

job as Head of Operation/Technical Department; N18,700.00 (Eighteen thousand, seven hundred naira) being arrears of salaries from July 1985 to April, 1987; and alternatively N1,000,000.00 (One Million Naira) being special and general damages for unlawful, irregular and malicious determination of his employment and/or breach of his contract of service with the defendant. The plaintiff, was employed by the defendant by a letter dated 17th November, 1978 as a Senior Supervisor. He rose in the employment to the position of a Tanker Captain. On 17th July, 1985 a query was issued by the defendant to the plaintiff and at the same time he was suspended from duty on half pay. Despite this, the plaintiff claims that he did not receive any pay during the suspension period. By a letter dated 31st December, 1986, (Exhibit "A") the defendant dismissed the plaintiff from its employment.

By a letter dated 29th January, 1987 (Exhibit "B") written to the defendant by the plaintiff's solicitors, they contended that the defendant's acts of suspension and dismissal of the plaintiff were malicious, wrongful, unlawful, null and void and of no effect. The solicitors demanded inter alia the reinstatement of the plaintiff on his job, or in the alternative they claimed a sum of N1,000,000.00 (One Million Naira) as special and general damages. Exhibit "B" further gave notice that unless the demands are met, the solicitors will comply with their further instructions by instituting legal proceedings against the defendant. Three months after Exhibit "B" was served on the defendant a writ was taken out by the solicitors on behalf of the plaintiff wherein they claimed as aforesaid. In its statement of defence, the defendant raised the issue of insufficiency of notice to sue. The defendant then filed a motion to strike out the suit for want of jurisdiction on the ground inter alia that the plaintiff did not give to the Defendant the Statutory notice required by section 11(2) of the Nigerian National Petroleum Corporation Act, 1977. The plaintiff reacted by contending that his solicitors letter (Exhibit "B") was sufficient compliance with that subsection. After taken argument on the motion, the learned trial judge held that he had no jurisdiction to entertain the suit on the ground that Exhibit "B" was not in compliance with the notice prescribed in section 11(2) of the Nigerian National Petroleum Act 1977 and struck out the claim. The plaintiff's

appeal to the Court of Appeal was dismissed. He has appealed further to the Supreme Court raising four issues but the appeal was decided on two issues.

**ISSUES FOR DETERMINATION**

*"(a) Whether or not Exhibit 'B' (i.e. letter of demand from Appellant's Solicitors) is a valid notice within the meaning and intentment of the N.N.P.C. Act, 1977.*

*(d) Whether or not the Respondents knew or could have known the Appellant's place of abode as at the time of Exhibit 'B'. "*

**HELD** (Unanimously allowing the appeal per lead judgment of **UWAIS CJN**)

***Words & Phrases - Shall***

1. It is settled that the word "shall" when used in an enactment is capable of bearing many meanings. It may be implying futurity or implying a mandate or direction or giving permission - See Ifezue v Mbadugha, (1984) 1 S.C.N.L.R. 427 at pp. 456 - 7. In the present case we are concerned with whether it has been used in a mandatory sense or directory sense. If used in a mandatory sense then the action to be taken must obey or fulfil the mandate exactly; but if used in a directory sense then the action to be taken is to obey or fulfil the directive substantially - see Woodward v Sarsons, (1875) L.R. 10 C.P. 733 at p. 746. (p. 2102 G)

***Notice - Preaction notice***

2. While the issuance of the notice by a prospective plaintiff is mandatory, the particulars to be included in the notice, which are - cause of action, particulars of claim, name and place of abode of the intending plaintiff and the relief to be claimed - appear to me to be directory. (p. 2103 E)

***Preaction notice - Purpose of the notice***

3. As was held by this Court per Coker, J.S.C. in the case of Katsina Local Government v. Makudawa, (1971) 1 N.M.L.R. 100 at 107, the purpose of giving notice of claim to the Local Government of the claim against it is that it is not taken by surprise but to have adequate time to prepare to deal

with the claim in its defence. The purpose of the notice "is not to put hazards in the way of bringing litigation against it." Furthermore section 23 of the Interpretation Act, 1964 (now Cap. 192 of the Laws of the Federation of Nigeria, 1990) provides:-

B       *"23. Where a form is prescribed by an enactment, a form which differs from the prescribed form not be invalid for the purposes of the enactment by reason only of the difference if the difference is not in a material particular and is not calculated to mislead."* (p. 2103 F)

C       ***Preaction notice - Form of the notice***

4. I do not consider the place of abode of the plaintiff as material to expressing his intention to sue the defendant. After all should the plaintiff issue a writ of summons, which he did later, his address of service would be contained in the writ. At any rate the plaintiff was no stranger to the defendant having been its employee and having been shown to have exchanged correspondence with the defendant after his suspension from duty and dismissal. Perhaps the situation would have been different had the defendant been dealing with a complete stranger and not its employee.  
(p. 2105 G)

***Appeals - Ground of appeal***

F 5. Perhaps I should comment on ground B in the Appellant's notice of appeal. This ground complains that the Court of Appeal failed to consider Appellant's second issue for determination before it and that the failure occasioned miscarriage of Justice. Unfortunately none of the issues for determination formulated before us touches on the complaint. The ground of appeal, not supported by any issue, becomes incompetent. Paragraphs 3.10 of the Appellant's brief of argument argues the complaint in the ground of appeal. This is irregular and goes to no issue. It is unacceptable since there is no issue formulated on the ground. The Respondent also acted in vain when it replied to the Appellant's contention in this regard in paragraphs 5.18 to 5.39 of its brief of argument. (p. 2106 E)

**NOTABLE POINTS OF INTEREST****UWAIS CJN***1. Why counsel should avoid unnecessary preliminary objection*

The chequered history of this case once more brings to light the dilatory effect of interlocutory appeal to the substantive suit between parties. B  
 The action in this case was brought on the 29th day of April, 1987. The motion on notice to strike out the case for want of jurisdiction is dated 15th day of April, 1988; that is about a year after the suit was filed. The ruling of the High Court was delivered on the 20th day of June, 1988. C  
 The appeal against the ruling was delivered by the Court of Appeal on the 16th day of February, 1989. The final judgment on the interlocutory appeal is delivered today by this Court. It has thus taken thirteen years for the case to reach this stage. With the success of the plaintiff's appeal before us the case is to be sent back to the High Court to be determined, D  
 hopefully, on its merits after a delay of 13 years. Surely, this could have been avoided had it been that the point was taken in the course of the proceedings in the substantive claim to enable any aggrieved party to appeal on both the issue of jurisdiction and the judgment on merit in the E  
 proceedings as the case might be. I believe that counsel owe it, as a duty, to the court to help reduce the period of delay in determining cases in our courts by avoiding unnecessary preliminary objections as the one here; so that the adage justice delayed is justice denied may cease to F  
 apply to the proceedings in our courts. (p. 2106 H )

**KARIBI-WHYTE JSC***2. The place of abode of the intending plaintiff under s. 11 (2) did not include that of his agent* G

With due respect to learned Counsel to the Appellant, the provision of Section 11 (2) is very clear and unambiguous on the issue. Whereas the first part of the provision relating to the giving of notice explicitly provides that notice could be given by the intending Plaintiff or his agent, the second part which prescribes the content of the notice is specific with respect to the name and place of abode of the intending plaintiff. It did not H

include that of his agent. The express mention of the name and place of abode of the intending plaintiff in the second part, excludes the possibility of the name and address of the agent as was done in the first part - The maxim expressio unius est exclusio alterius applies. The name and address of the agent having been excluded, only that of the intending plaintiff is required and is directory. The words are sufficiently clear and unambiguous and should be given their ordinary, grammatical meaning - See Owena Bank Nigeria Plc v. N.S.E. Ltd. (1997) 8 N.W.L.R (pt. 515) 15.. I agree with learned counsel to the respondents that the expression cannot be stretched to include the name and address of his agent or Solicitor. (p. 2119 C)

D 3. *The constitutional right of access to the court does not preclude statutory regulations*

The provisions of section 33 (1) is undoubtedly couched in wide absolute terms and is not unqualified. The purport of the provision is to enable right of access to that Court absent legal obstacles in his path neutralising exercise of the right. The constitutional right of access to the Court does not however preclude statutory regulations of the exercise of the right. It is however, not consistent with the exercise of the right of access to court to make regulations which subvert the exercise of the right or render the right nugatory - See Bakare v. A.G. of the Federation (1990) 5 NWLR. 516. Courts guard the words of statutory provisions depriving them of the exercise of their Constitutional jurisdiction jealously. Hence the language of such provisions will be watched and will not be extended beyond their least onerous meaning. - See Sode v. A. G. for the Federation & ors. (1986) 2 NWLR. 586. Regulations of the right to access to the court abound in the rules of procedure and are legitimate. It seems to be accepted that where an enactment regulates the right of access to the Court in a manner to constitute an improper obstacle to access to court, such enactment could be appropriately regarded as an infringement of section 33 (1) rather than an infringement of section 6 of the Constitution. (p. 2120 F)

#### 4. *The purposes of preaction notice*

I have already referred to the provisions of section 11 (2) of the NNPC Act, 1977. I have also analysed the provisions as between the first part relating to giving of the notice to the Corporation of the intention to bring the suit against it, and the second part which prescribes the content of the notice. Although it would seem that the provision regulates the commencement of actions against the Corporation, without removing the adjudicatory powers of the Court in respect of matters concerning the Corporation or denying the individual totally of the exercise of his right to court. These are legitimate purposes of preaction notice and are recognised procedural provisions. As was stated in Ngelegla v. Tribal authority, Nongowa Chiefdom (1953) 14 WACA. 325 at 327, such provisions are to give the defendant "breathing time so as to enable him to determine whether he should make reparation to the Plaintiff." (p. 2121 B)

#### 5. *Non compliance with s. 11 (2) that will be deemed substantial*

I agree with learned Counsel to the Appellant that the omission to state the name and address of the intending plaintiff cannot be an essential precondition for commencing an action against the Corporation where a solicitor or agent is required for service. These are particulars which are sine qua non of an action. For a non-compliance of section 11 (2) to be sufficient to deprive the Court of its jurisdiction, the condition should be such as to make it difficult for the Corporation to make its choice whether to settle with the Plaintiff. Any other non-compliance is in-substantial and should not deprive the court the exercise of its constitutional jurisdiction or deny the Plaintiff access to the courts on the facts before the Court. There is no basis for a denial of access to the courts. The mere omission to provide the address of the residence of the Plaintiff should not be fatal to the claim. (p. 2122 H)

#### 6. *The meaning of miscarriage of justice*

However, I proceed to discuss the issue in the interest of completeness. The cardinal question is whether Appellant suffered any miscarriage of

justice because of this error. I shall rely on the definition of "miscarriage of justice" by Lord Thankerton in Privy Council decision of Devi v. Roy (1946) AC. 508, where his lordship said that it is

".... such a departure from the rules which permeate all judicial procedure as to make that which happened not in the proper sense of the word judicial procedure at all."

Again in the United States decision of Alcorn v. Davies 343 p. 2d. 621, 625-6, Vandyke P.J, adopted the test applied in People v. Watson 292, p2d 243 where it was said:

"... A miscarriage of justice should be declared only when the Court, after an examination of the entire case, including the evidence, is of the opinion that it is reasonably probable that a result more favourable to the appealing party would have been reached in the absence of the error."

It seems to me that not all errors result in miscarriage of justice. There is miscarriage of justice only where there are substantial errors in adjudication, with the resultant effect that the party relying on such errors may likely have a judgment in his favour. (p. 2124 B)

### **REPRESENTATION**

O. Sofola for the Appellant.

T. Kehinde (Mrs.) with A. A. Johnson (Mrs.) for the Respondents.

### **CASES REFERRED TO**

Sode v A-G. of the Federation (1986) 2 N.W.L.R. (part 24) 568

Anisminic v Foreign Compensations, (1969) 2 A.C. 147

Barclays Bank v Central Bank of Nigeria, (1976) 1 ALL N.L.R. 409

Bright v E.D. Lines Ltd. (1952) 20 N.L.R. 79

A-G. of Anambra State v Onuselogu, Enterprises Ltd., (1987) 4 N.W.L.R. (part 66) 547

Uhunmwangbo v Okoje (1989) 5 N.W.L.R. (part 122) 471

U.B.N. Ltd. v. Nwaokwo, (1995) 6 N.W.L.R. (part 400) 227 at p. 149

N.P.A. v. Construzioni (1974) 12 S.C. 81

N.B.C. v Bankole (1972) ALL N.L.R. 327

Salako v L.E.D.B. 20 N.L.R. 169

### **STATUTES REFERRED TO**

Nigerian National Petroleum Corporation Act, 1977; s.11(2) (now s. 12 (2) of Cap. 320 of the Laws of the Federation of Nigeria, 1990). B

Interpretation Act, 1964; s. 23 (now cap. 192 of the Laws of the Federation of Nigeria, 1990).

### **LEAD JUDGMENT BY UWAIS CJN**

This is an interlocutory appeal. The Appellant was plaintiff in the High Court of Lagos State, where he instituted a suit against the Respondent as defendant claiming as follows:- C

*"(i) A declaration that his purported suspension and subsequent dismissal are wrongful, illegal, null, void and of no effect.* D

*(ii) An order that the Plaintiff is still the Head of Operations/ Technical Department.*

*(iii) An order restraining the Defendant, their servants, agents and/or privies from preventing the plaintiff from continuing his job as Head of Operation/Technical Department.* E

*(iv) N18,700 (Eighteen Thousand, Seven Hundred Naira) being arrears of salaries from July, 1985 to April, 1987 at the rate of N850.00 (Eight Hundred and Fifty Naira) per month and thereafter at the same rate of N850.00 (Eight hundred and fifty Naira) until judgment.* F

### **ALTERNATIVELY**

*(v) N1,000,000.00 (One Million Naira) being special and general damages for unlawful, irregular and malicious determination of the plaintiff's employment and/or breach of plaintiff's contract of service with the Defendants."* G

Pleadings were filed and exchanged. As part of its defence the defendant averred as follows in paragraphs 33 and 34 of its Statement of Defence:- H

*"33. The Defendant would at the hearing of this suit raise the issue of law that the court has no jurisdiction to hear this matter in view of the provisions of section 3 (3) of the Civil Service Commissions and*

*other Statutory Bodies (Removal of Certain Persons from office) Decree No. 16 of 1984.*

34. *The Defendant would also at the hearing of this suit raise the issue of law that the suit is incompetent for the plaintiff's failure to comply with the provisions of sec. 11(2) of the Nigerian National Petroleum Corporation Act 1977 in that no written notice of his intention to commence this suit wherein the cause of action, particulars of claim, relief claimed and place of abode of the Plaintiff should have been stated was served by the plaintiff on the Defendant. WHEREUPON the Defendant contends that the Plaintiff's claim is frivolous and misconceived and should be dismissed with cost."*

This was followed by a motion on notice by the defendant praying the High Court to strike out the suit for want of jurisdiction. The motion was heard by Silva, J. on the 15th day of April, 1988. In a considered ruling delivered on the 20th day of June, 1988, the learned Judge upheld the preliminary objection raised by the defendant and struck out the suit for lack of jurisdiction.

Dissatisfied with the ruling, the plaintiff appealed to the Court of Appeal. His appeal was dismissed by the Court (Ademola, JCA, Babalakin, JCA, as he then was, and Awogu, JCA). In doing so the Court stated thus, per Awogu, JCA who wrote the lead judgment- which was supported by other members of the panel) -

"...in the instant appeal, the wording of section 11 (2) (of the Nigerian National Petroleum Corporation Act) is clear enough on the form of the Notice. Exhibit B falls short of the requirement. Accordingly, the appeal fails and is hereby dismissed ...."

(parenthesis and underlining mine)

The plaintiff has appealed further to this Court challenging the decision of the Court of Appeal. Briefs of argument were filed and exchanged by the parties. In the Appellants brief four issues have been pos-  
tulated for our determination. The issues read thus -

"(a) *Whether or not Exhibit 'B' (i.e. letter of demand from Appellant's Solicitors) is a valid notice within the meaning and intend-  
ment of the N.N.P.C. Act, 1977.*

(b) *Even if Exhibit 'B' is not a valid notice (which is denied), whether or not such privileges as conferred by section 11 (2) of the N.N.P.C. Act, 1977 extend to suits of breach of contracts of employment such as in the instant case.*

(c) *Whether or not the Court of Appeal judges (sic) have occasioned injustice to the Appellant when they failed to appreciate the need for them to be guided by the issues raised for determination before them and therefore failed to appreciate the case before them properly and/or failed to invoke the provisions of section 6 of the 1979 Constitution.*

(d) *Whether or not the Respondents knew or could have known the Appellant's place of abode as at the time of Exhibit 'B'.* "

While the Respondent's brief raised three issues for us to determine -

"3.01. *Whether Exhibit B (the letter of demand from the Appellant's Solicitors to the Respondent) is a valid Notice within the provisions of Section 11 (2) of the N.N.P.C. Act.*

3.02. *Did the Appellant suffer any 'miscarriage of justice' because the Court of Appeal failed to pronounce on whether the Notice contemplated by Section 11 (2) of the N.N.P.C. Act applies to suits for breach of contract of employment.*

3.03 *Whether lack of knowledge of the Appellant's place of abode was the basis for the decision of the Court of Appeal.*

As can be observed Respondent's issues for determination correspond with issues (a) (b) and (d) of the Appellant's issues respectively though differently expressed. Appellant's issue (c) is not based on any of the three grounds of Appeal contained in his notice of appeal. It, therefore, goes to no issue. The Respondent is also right when it raised preliminary objection in its brief of argument, which it termed "Rejoinder", that the constitutional point touched by the issue was not raised in the Court of Appeal. I am inclined to discountenance the issue because it is not supported by a ground of appeal and not for the reason stated by the Respondent since any challenge to jurisdiction, being fundamental, could be raised at any time and in this Court even if not raised in the lower courts.

The facts of this case as relevant to the case are briefly as follows.

The Appellant, was employed by the Respondent by a letter dated 17th November, 1978 as a Senior Supervisor. He rose in the employment to the position of a Tanker Captain. On 17th July, 1985 a query was issued by the Respondent to the Appellant and at the same time he was  
B suspended from duty on half pay. Despite this, the Appellant claims that he did not receive any pay during the suspension period. By a letter reference No. AD/PER./C.1996/442 of 31st December, 1986, addressed to the Appellant by the Respondent, the former was dismissed from its employment. The letter which was marked as Exhibit "A" annexed to the  
C Appellant's counter-affidavit in the High Court A. It reads as follows:-

*"NIGERIAN NATIONAL PETROLEUM CORPORATION  
FALOMO OFFICE COMPLEX, IKOYI, PMB 12701, LAGOS*

*Ref: AD/PER/C.1996/442*

D *Date: 31st December, 1986.*

*Mr. E.C.C. Amadi,  
3B, Ajijedidun Street,  
Agunlejika,  
E Ijesha-Tedo,-  
Lagos.*

DISMISSAL

This is to inform you that the Management of the Corporation has  
F decided to dismiss you from services of the Corporation. You are hereby dismissed with effect from 31st December, 1985.

You should therefore hand over all the Corporation's property in your care to your Head of Department, and make immediate arrangements for settlement of any indebtedness to the Corporation.

G (Signed)

B. Mokwe (Mrs.)

For: General Manager, A & P."

The Appellant contended that his dismissal was contrary to his  
H condition of service and was therefore "discriminatory, wrongful, irregular, malicious and ill-motivated." By a letter dated the 29th January, 1987 written to the Respondent by his Solicitors, Idowu sofola & Co., which was annexed to his counter-affidavit and marked as Exhibit "B", reference

was made to the letters which suspended the Appellant from duty and dismissed him respectively. Exhibit "B" reads in part thus -

".....

*The corporation's acts of suspension and dismissal are malicious, wrongful, unlawful, null and void and of no effect.*

B

*We are instructed to demand an immediate withdrawal of the letters of suspension and dismissal and the prompt reinstatement of our client on his job. In the alternative our client claims a sum of N1,000,000.00 (One million Naira) as special and general damages. We sincerely hope that you will save the embarrassment, inconveniences unpleasantness and expenses which may attend a litigation.*

C

*TAKE NOTICE that unless within 7 (Seven) days hereof, the demands herein are met, we shall be compelled to comply with our client's further instructions by instituting legal proceedings against you without any further notice from our Chambers, a situation which we hope you will not allow to happen in your own interest.*

D

*Yours faithfully,*

*(Signed)*

E

*IDOWU SOFOLA & CO.*

*IS/32/87/ca."*

Three months after Exhibit "B" was served on the Respondent a writ was taken out of the High Court of Lagos State on 29th April, 1987 by the Solicitors on behalf of the Appellant. Later pleadings were filed and exchanged between the parties. In its Statement of Defence, the Respondent raised the issue of insufficiency of notice to sue in paragraphs 33 and 34 thereof, quoted above.

F

At the hearing of this appeal both the counsel for the parties adopted their briefs of argument and did not advance any oral argument. I intend to consider together all the three issues raised by the Appellant, which I consider valid.

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The Appellant argues that the address of his Solicitors contained in Exhibit "B" to his counter-affidavit suffices as his own personal address in meeting the requirement of section 11 subsection (2) of the Nigerian National Petroleum Corporation Act, 1977 (now section 12 (2) of Cap.

H

320 of the Laws of the Federation of Nigeria, 1990). It is being canvassed that the section envisages that a prospective plaintiff may validly serve a notice on the Respondent either by himself or by his agent including a Solicitor. It is submitted that where the provision of a statute is clear and unambiguous it admits of no qualification since the overriding principle for interpretation of statutes is that the Courts have a duty to discover the intention of legislature as deducible from the language of the statute to be construed. The cases of Sode & Ors. v A-G. of the Federation & Ors., (1986) 2 N.W.L.R. (part 24) 568; Anisminic v Foreign Compensation, (1969) 2 A.C. 147 and Barclays Bank v Central Bank of Nigeria, (1976) 1 ALL N.L.R. 409 are cited in support.

Appellant refers to the ratio of the Court of Appeal's decision in holding that the notice given to the Respondent was insufficient and its reliance on the case of Bright v E.D. Lines Ltd. & Anor, (1952) 20 N.L.R. 79. He submits that the decision is erroneous because the Act in question contemplates that a potential plaintiff may bring an action against the Respondent through his agent. It is argued in the alternative that if section 11 (2) is considered to be capable of having two meanings, then, the meaning which preserves the jurisdiction of the court should be adopted in line with the decision of this Court in Sode's case (supra). It is further argued that the facts of Bight's case (supra) relied upon by the Court of Appeal are distinguishable from those of the present case because in the former case the prescribed notice was addressed to the wrong person, not specified by the Railway Ordinance, which is not the situation in the present case. The purpose for which the notice under section 11 (2) is required is argued to be that the prospective defendant is not taken by surprise but given sufficient time to prepare to deal with the claim in its defence as laid down by this Court in the case of Katsina Local Government v Makudawa, (1971) 1 N.M.L.R. 100 at p. 107.

Appellant argues further that this Court has held on number of occasions that to do substantial justice it will rely on substance than form - see Aliyu Bello & 13 Ors. v. A-G of Oyo State, (1986) 5 N.W.L.R. (part 45) 828. It is submitted that if the address in Exhibit B were not sufficient, the Respondent cannot claim or be considered not to know the address of

the Appellant in view of his address written by the Respondent in the letters of 31st December, 1986 dismissing him from service, which preceded Exhibit "B" written on 29th January, 1987.

With regard to issues (b) and (d) it is argued that the Court of Appeal was in error for not considering, in line with the decisions in the cases of A-G. of Anambra State v Onuselogu, Enterprises Ltd., (1987) 4 N.W.L.R. (part 66) 547; Uhunmwangbo v Ojoje (1989) 5 N.W.L.R. (part 122) 471 and U.B.N. Ltd. v. Nwaokwo, (1995) 6 N.W.L.R. (part 400) 227 at p. 149, having held that Exhibit "B" was not sufficient notice, that whether the provisions of section 11 (2) can apply to common law actions for breach of contract including contract of employment as was held in N.P.A. v. Construzioni etc. & anor. (1974) 12 S.C. 81 which differs from the earlier decision in the case of N.B.C. v Bankole, (1972) ALL N.L.R. 327. Other cases cited in support of the submission are Salako v L.E.D.B. and Anor., 20 N.L.R. 169 and The Midland Rly Co. Local Board etc., (1882-3) 11 QBD 788.

In reply, the Respondent argues in its brief that section 11 (2) makes it mandatory for the Appellant to give the Respondent prescribed thirty days' notice and that the notice should contain the following details - (i) cause of action; (ii) particulars of claim, (iii) the name and place of abode of the intending plaintiff and (iv) the relief which he claims should be clearly and explicitly stated. That these provisions which are similar to those of section 97 (2) of the Nigerian Ports Authority Act, 1952 must be complied with strictly. It cites the case of Umukoro v N.P.A., (1997) 4 N.W.L.R. (part 502) 656 at p. 667 D and Montosa Nig. Ltd v. N.P.A. Suit No. ID/685/83 (unreported) judgment delivered on 31st March, 1987 by Onalaja, J. (as he then was). It is submitted that the solicitors' address given by the Respondent in Exhibit "B" is not sufficient to meet the requirement of section 11 (2) which provides that the "name and place of abode of the intending plaintiffs, shall clearly and explicitly" be "stated". Since these words are clear and unambiguous, they must be given their grammatical and ordinary meanings in accordance with the decisions in - Bronik Motors v Weman Bank Ltd., (1983) 1 SCNLR 296; NICON v Power & Industries Engr. C. Ltd., (1986) 1 S.C. 1; Kaycee Nig. Ltd. v

Prompt Shipping Corp., (1986) 1 S.C. 328; Abaye v Ofili & Anor., (1986) 1 S.C. 231. N.P.A. v Ali Akar & Sons, (1965) 1 ALL N.L.R. 259 at p. 263 G-H; Owena Bank Nig. Plc v N.S.E. Ltd., (1997) 8 N.W.L.R. (part 515) at p. 15H and 7Up Bottling Co. Ltd. v Abiola & Sons Ltd., (1995) 3 B N.W.L.R. (part 383) 257 at p. 276 B-C. Again, it is argued that Exhibit B did not state the particulars of claim as prescribed by section 11 (2) and the learned trial judge so found. That the failure of the Appellant to comply with all the provisions of section 11 (2) is fatal and renders the suit incompetent. The cases of Katsina Local Govt. v Makudawa, (supra) at pp. C 105-6 and Anambra State Government v Nwankwo, (1995) 9 N.W.L.R. (part 418) 245 were cited in support of the argument.

Respondent concedes that two issues were raised in the Court of Appeal for the consideration of the Court but only one issue was dealt with D by the Court of Appeal. The second issue not considered reads - "Whether the notice contemplated by section 11 (2) of the N.N.P.C. Act applies to suits for breach of contract of employment." It is being argued by the Respondent that the questions to be considered are: "Is the decision of the E Court of Appeal in not considering the second issue prejudicial to the Appellant?" or "Did the Appellant suffer a miscarriage of justice because of this error?" Relying on the decisions in Devo v Roy, (1946) A.C. 508 at p. 521; Herbert v Lankershim, 71 P. 2d. 220 at pp. 253-4 paragraphs 26-28 F and Alcorn v Davies, 343 p. 2d 621 at pp. 625-626 paragraphs 9-11 the Respondent submitted that not all errors lead to miscarriage of justice but errors that are substantial with the resulting effect that the appellant may likely have a judgment in its favour in the absence of the error. It is G contended that the Appellant in the present case is not likely to have judgment in his favour even if it is suggested that section 11 (2) does not apply to contract between the parties because it affords absolute protection to the Respondent. Reference is being made to the decision of this Court in N.P.A. v Constuzioni (supra) at p. 99 on the provisions of section 87 (2) of the H Ports Authority Act, 1954 (Cap. 155 of the Laws of the Federation of Nigeria, 1958) which has the same provisions as section 11 (2) of the Nigerian National Petroleum Act, 1977. Finally it is submitted that section 11 (2) would not afford protection to the Respondent on an action

founded on contract except where it could be shown that the contract is "done, omitted or neglected to be done under the powers granted by the Act." That the contract of employment entered into between the Appellant and the Respondent was bound to make in accordance with provisions of section 3 (1) of the Nigerian National Petroleum Act which provides -

*"3(1) Subject to this Act, the Corporation may appoint such persons as members of staff of the Corporation as it considers necessary and may approve conditions of service including provision for the payment of pension."*

At the end of the addresses by Counsel for the parties, the appeal was adjourned for judgment. However, a few days later counsel for the Respondent wrote two letters to the Court citing the following cases in support of the Respondent's case - N.N.P.C. v Fawehinmi, (1998) 7 N.W.L.R. (part 559) 598; Atolagbe v Awuni, (1997) 9 N.W.L.R. (part 522) 536; Obeta v Okpe, (1996) 9 N.W.L.R. (part 473) 401 and Fawehinmi Construction Co. Ltd. v. O.A.U., (1998) 6 N.W.L.R. (part 553) 171. Counsel for the Appellant also sent a letter on the same day (9th March, 2000) as the Respondent's first letter, citing two case, namely, Santana Medical Services v N.P.A., (1999) 12 N.W.L.R. (part 630) 189 at p. 202 and Amao v Civil Service Commission, (1982) 7 N.W.L.R. (part 252) 214 at pp. 228-9 which he stated to have approved the decision in N.P.A. v Construzon, (1974) 12 S.C. 81 earlier cited by him in support of the Appellant's case.

Now it is necessary to point out that although the jurisdiction of the trial court to entertain the plaintiff's action was challenged in paragraphs 33 and 34 of the defendant's statement of defence, on the basis of the provisions of section 3 (3) of the Civil Service Commission and Other Statutory Bodies Decree, No. 16 of 1984 and Section 11 (2) of the Nigerian National Petroleum Corporation Act, 1977, the motion on notice the defendant brought merely asked the trial court to strike out the action on the ground that the appropriate notice under the 1977 Act was not given to the defendant before the action was commenced. It is, therefore, to be noted that the courts below based their decisions on the provisions of the 1977 Act only and, rightly, made no reference whatsoever to the provi-

sions of section 3 (3) of the 1984 Decree.

Section 11 of the 1977 Act is in two parts. It provides -

"11 (1) Notwithstanding anything in any other enactment, no suit against the Corporation, a member of the Board or any employee of the Corporation for any act done in pursuance or execution of any enactment or law, or of any public duties or authority in respect of any neglect or default in the execution of such enactment or law, duties or authority, shall lie or be instituted in any court unless it is commenced within twelve month next after the act, neglect or default complained of or, in the case of a continuance of damage or injury, within twelve months next after the ceasing thereof.

(2) No suit shall be commenced against the Corporation before the expiration of a period of one month after written notice of intention to commence the suit shall have been served upon the Corporation by the intending plaintiff or his agent; and the notice shall clearly and explicitly state the cause of action, the particulars of the claim, the name and place of abode of the intending plaintiff and the relief which he claims."

While subsection (1) deals with the limitation of the time within which an action could be commenced against the Corporation, subsection (2) provides that one month notice of intention to sue must be given to the Corporation before the action is commenced. In the present case we are only concerned with the provisions of subsection (2) upon which the defendant relied in bringing the motion in the High Court for the plaintiff's action to be struck out for want of jurisdiction. The word "shall" as underlined above appears three times in subsection (2).

**It is settled that the word "shall" when used in an enactment is capable of bearing many meanings. It may be implying futurity or implying a mandate or direction or giving permission - See Ifezue v Mbadugha, (1984) 1 S.C.N.L.R. 427 at pp. 456 - 7. In the present case we are concerned with whether it has been used in a mandatory sense or directory sense. If used in a mandatory sense then the action to be taken must obey or fulfil the mandate exactly; but if used in a directory sense then the action to be taken is to obey or fulfil the**

directive substantially - see Woodward v Sarsons, (1875) L.R. 10 C.P. 733 at p. 746; Pope v. Clarke, (1953) 1 W.L.R. 1060; Julius v. Lord Bishop of Oxford, (1880) 5 A. C. (H.L.) 214 at pp. 222 and 235, and State v. Ilori, (1983) 1 S.C.N.L.R. 94 at p. 110. In Liverpool Borough Bank v. Turner, (1861) 30 L.J. Ch. 379 at p. 657 it was held - B

*"No universal rule can be laid down for the construction of statutes 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 and get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed."* C

It appears to me that the first "shall" in subsection (2) imports obligation. No suit could be commenced against the Corporation until a period of one month expires after giving a prescribed notice. The second "shall" seems to me to import obligation also. Before suing the corporation a notice of intention to commence the suit must be given to the Corporation. However, I am of the opinion that the third "shall" connotes direction in the sense in which it is used. It describes the particulars to be contained in the notice of intention to sue. D E

**While the issuance of the notice by a prospective plaintiff is mandatory, the particulars to be included in the notice, which are - cause of action, particulars of claim, name and place of abode of the intending plaintiff and the relief to be claimed - appear to me to be directory. As was held by this Court per Coker, J.S.C. in the case of Katsina Local Government v. Makudawa, (1971) 1 N.M.L.R. 100 at 107, the purpose of giving notice of claim to the Local Government of the claim against it is that it is not taken by surprise but to have adequate time to prepare to deal with the claim in its defence. The purpose of the notice "is not to put hazards in the way of bringing litigation against it." Furthermore section 23 of the Interpretation Act, 1964 (now Cap. 192 of the Laws of the Federation of Nigeria, 1990) provides:-** F G H

*"23. Where a form is prescribed by an enactment, a form which differs from the prescribed form not be invalid for the purposes of the*

**enactment by reason only of the difference if the difference is not in a material particular and is not calculated to mislead."**

In upholding the application brought by the defendant for the suit to be struck out for want of jurisdiction, the learned trial judge held B as follows:-

"What fails for decision in this preliminary point of law is whether or not the solicitor's letter Exhibit B annexed to the Plaintiff/Respondent's counter affidavit is a notice as required by Section 11 (2). If it is accepted as a notice, the next question must be - is it a valid or proper C notice?"

There is no doubt that Exhibit B was duly delivered to the Defendant/Appellant by the Plaintiff's agent i.e. his solicitor. The fact of delivery is not disputed. My view of Exhibit B is that it is the usual D solicitor's demand letter. It could serve as notice, but to do this, it must strictly comply with the provisions of Section 11 (2) which says " the notice shall clearly and explicitly state ...." all the four specific requirements which are in my view conjunctive. If any one of them is missing, E the notice must for that reason be bad.

In my judgment, the only requirements that are clear and explicit in Exhibit B are the cause of action, and the relief sought. These are the allegation of unlawful dismissal, and the demand for reinstatement or alternatively, N1,000,000.00 special and general damages respectively. There are no particulars of claim shown in Exhibit B, and the F Plaintiff's place of abode is nowhere shown on it. I am unable to accept the submission of learned Counsel for the Plaintiff that the place of abode of Plaintiff's agent i.e. his solicitor, will suffice. What Section 11 (2) says G is "place of abode of the intending Plaintiff. This is clear and ambiguous. It does not in my view permit any addition which would bring into it the place of abode of the Plaintiff's agent in the alternative.

From the foregoing, it is clear that the condition precedent set H by Section 11 (2) has not been met by the Plaintiff/Respondent. He cannot therefore commence this action. In the circumstance this Court has no jurisdiction to entertain the suit. It will be and it is hereby struck out."

It is clear from the foregoing that the plaintiff's action was struck

out by the learned trial Judge because Exhibit "B" did not, according to him, satisfy the requirements of Section 11 (2) particularly as it did not "clearly and specifically state ..... all the four specific requirements which are in my view conjunctive. If anyone of them is missing the notice must for that reason be bad. In my judgment, the only requirements that are clear and explicit in Exhibit "B" are the cause of action and the relief sought." The particulars missing from Exhibit "B" were held to be the particulars of claim and the place of abode of the plaintiff's solicitor, who acted as the plaintiff's agent.

On its part, the Court of Appeal dismissed the Appellant's appeal also on the basis that the form of notice given to the defendant was insufficient. It held per Awogu, J.C.A. -

*"..... the wording of section 11 (2) is clear enough on the form of the Notice. Exhibit B falls short of the requirement. Accordingly the appeal fails and is hereby dismissed..... ."*

Could it rightly be held, as was done by the learned trial judge and upheld by the court below, that the fact that the Appellant failed to state in Exhibit B the particulars of claim and his place of abode, the notice is null and void? It is significant that the learned trial judge found that the first two requirements of section 11 (2) which I have held to be mandatory, had been met by the plaintiff. The third requirement which have held to be directive was partly met by the plaintiff as held by the learned trial judge. It is again significant and curious that on the question of place of abode the learned trial judge expected that of the Solicitor who wrote Exhibit "B" to be given and not that of the intending plaintiff as stated by section 11 (2). Be that as it may, could the missing particulars in Exhibit B amount to "material particular" and is "calculated to mislead" the defendant as held down by section 23 of the Interpretation Act?

**I do not consider the place of abode of the plaintiff as material to expressing his intention to sue the defendant. After all should the plaintiff issue a writ of summons, which he did later, his address of service would be contained in the writ. At any rate the plaintiff was no stranger to the defendant having been its employee and having been shown to have exchanged correspondence with the defen-**

**dant after his suspension from duty and dismissal. Perhaps the situation would have been different had the defendant been dealing with a complete stranger and not its employee.** Again, as to the particulars of his claim, these clearly be gathered or inferred from Exhibit, "B" which stated that the plaintiff's dismissal; was in total disregard of the Condition of Service and all rules and procedure" and that his suspension from duty and dismissal were "malicious, wrongful, unlawful null and void and of no effect."

It follows that in my opinion all the requirements of section 11 (2) had been met by the plaintiff. The trial Court and the Court of Appeal were in error and misdirected themselves when they held otherwise.

With these I have dealt with issues (a) and (d) in the Appellant's brief of argument. Issue (b) is based on whether Exhibit "B" is not a valid notice under Section 11 (2). This does not arise since I have held that Exhibit B has met the requirements of the section. The question, therefore, becomes hypothetical and academic. Consequently, it will be futile and out of place for us to determine it. As for issue (c) I have already held that it is incompetent since it is not hinged on any of the three grounds of appeal filed by the Appellant.

**Perhaps I should comment on ground B in the Appellant's notice of appeal. This ground complains that the Court of Appeal failed to consider Appellant's second issue for determination before it and that the failure occasioned miscarriage of Justice. Unfortunately none of the issues for determination formulated before us touches on the complaint. The ground of appeal, not supported by any issue, becomes incompetent. Paragraphs 3.10 of the Appellant's brief of argument argues the complaint in the ground of appeal. This is irregular and goes to no issue. It is unacceptable since there is no issue formulated on the ground. The Respondent also acted in vain when it replied to the Appellant's contention in this regard in paragraphs 5.18 to 5.39 of its brief of argument.**

Finally, this appeal succeeds and it must be allowed. The chequered history of this case once more brings to light the dilatory effect of interlocutory appeal to the substantive suit between parties. The action

in this case was brought on the 29th day of April, 1987. The motion on notice to strike out the case for want of jurisdiction is dated 15th day of April, 1988; that is about a year after the suit was filed. The ruling of the High Court was delivered on the 20th day of June, 1988. The appeal against the ruling was delivered by the Court of Appeal on the 16th day of February, 1989. The final judgment on the interlocutory appeal is delivered today by this Court. It has thus taken thirteen years for the case to reach this stage. With the success of the plaintiff's appeal before us the case is to be sent back to the High Court to be determined, hopefully, on its merits after a delay of 13 years. Surely, this could have been avoided had it been that the point was taken in the course of the proceedings in the substantive claim to enable any aggrieved party to appeal on both the issue of jurisdiction and the judgment on merit in the proceedings as the case might be. I believe that counsel owe it, as a duty, to the court to help reduce the period of delay in determining cases in our courts by avoiding unnecessary preliminary objections as the one here; so that the adage justice delayed is justice denied may cease to apply to the proceedings in our courts.

On the whole the appeal succeeds and it is hereby allowed with N10,000.00 costs to the Appellant against the Respondent. The case is hereby remitted to the High Court of Lagos State to be heard by another Judge other than A. O. Silva, J.

### KARIBI-WHYTE JSC

I have read the leading judgment of my Lord, the Chief Justice of Nigeria, Hon. Justice M. L. Uwais in this appeal. I agree entirely with his conclusion that this appeal succeeds and be allowed.

This is an appeal against the judgment of the Court of Appeal, Lagos Judicial Division, which on the 16th February, 1989 dismissed the appeal of the Appellant.

The facts of this case are very short, undisputed and concisely stated are as follows -

Appellant was in full time, permanent and pensionable employ-

ment of the Respondent Corporation. On the 16th July, 1985, Respondent wrote to him in a letter suspending him from the employment on half-pay during the period of suspension. In another letter dated 31st December, 1986 he was dismissed with effect from 31st December, 1985. Appellant thereafter filed a suit against the Respondent for a declaration that his purported suspension and subsequent dismissal were wrongful, illegal, null and void and of no effect. He sought for an order restraining the defendant, their servants, agents and/or privies from preventing him from continuing his job as Head of Corporations/Technical Department. Appellant claimed N18,700, being arrears of salaries from July, 1985 to April, 1987 at the rate of N850 per month until judgment.

In the alternative, he claimed for N1,000,000, being special and general damages for unlawful, irregular and malicious determination of his employment or breach of his contract of service with the Defendant's Corporation. Both parties filed their pleadings. In the statement of claim the Plaintiff in paragraphs 9, 10, 11, 12, 13, 14, 15 averred as follows -

"9. The Plaintiff says that on or about the 17th July, 1985, the Defendants caused to be served on him two different letters both Ref. AD/PER/C. 1996/VOL. 111/343, and also both dated 16th July, 1985, one being headed "QUERY" and the other "SUSPENSION FROM DUTY." The Plaintiff will rely on both letters at the trial.

10. The Plaintiff duly replied to the query and will rely on same at the trial.

11. The Plaintiff says that although the letter of Suspension expressly put the Plaintiff "on half pay from the period, "he was not paid any amount.

12. The Plaintiff continued to offer his services which offer was continuously turned down and rejected.

13. By a letter Ref. AD/PER/C. 1996/442 dated the 31st December, 1986, the Defendants purported to DISMISS the Plaintiff from their services "with effect from 31st December, 1985" - the Plaintiff having been kept away from his job on suspension for one and a half (1 1/2) years and the 'dismissal' expressed to take a retrospective effect.

14. While he was on 'suspension' the Plaintiff made several rep-

resentations to the Defendants for his reinstatement, without result. The Plaintiff will found on his several letters to the Defendants, including letters dated 23/5/86 addressed to the Honourable Minister and the Managing Director; 23/7/86 to the Managing Director; 27/8/86 to the Hon. Minister and 8/8/86 to the Hon. Minister.

15. The Plaintiff will show at the trial of this action that the Defendants failed, refused and/or neglected to comply with, adhere to or in any way, to follow the procedure stipulated for suspension and/or dismissal as enjoined by the 'Conditions of Service' binding the parties or at all."

Defendants having denied paragraphs 1, 4, 7, 8, 13, 14, 15 in paragraph 1 of the statement of defence admitted paragraphs 9, 10, 11, of the statement of claim in paragraph 2 of their statement of defence. Paragraphs 32, 33 and 34 of the Statement of Defence which is the crux of this matter aver as follows -

"32. The Defendant avers that the Plaintiff is not entitled to any damages be it special or general and that all he is entitled to is the sum of N204,30 as pleaded above.

33. The Defendant would at the hearing of this suit raise the issue of law that the court has no jurisdiction to hear this matter in view of the provisions of Section 3 (3) of the Civil Service Commissions and other statutory Bodies (Removal of Certain Persons from office) Decree No. 16 of 1984.

34. The Defendant would also at the hearing of this suit raise the Issue of law that the suit is incompetent for the Plaintiff's failure to comply with the provisions of Sec. 11 (2) of the Nigerian National Petroleum Corporation Act 1977 in that no written notice of his intention to commence this suit wherein the cause of action, particulars of claim, relief claimed and place of abode of the Plaintiff should have been stated was served by the Plaintiff on the Defendant. WHEREUPON the Defendant contends that the Plaintiff's claim is frivolous and misconceived and should be dismissed with cost."

In Plaintiff's reply to the averment in paragraph 34 of the statement of defence, he averred as follows -

"In further denial of paragraphs 18-34 of the Defendants statement of defence, he categorically denies the application of the Civil Service Commissions and other Statutory Bodies (Removal of Certain Persons from Office) Decree No. 16 of 1984 as pleaded or at all and aver that he complied with Section 11 (2) of the Nigerian National Petroleum Act 1977."

Defendants then filed a Motion to strike out the suit for want of jurisdiction on the following grounds -

(a) *The Plaintiff/Respondent did not give to the Defendant/Applicant the Statutory notice required by Sec. 11 (2) of the Nigerian National Petroleum Corporation Act, 1977.*

(b) *This is a point of law which is likely to be decisive of this litigation.*

The immediate reaction of learned Counsel to the Plaintiff was the filing of a counter affidavit in which it was averred as follows -

(4) *That to my knowledge and according to the information from both the Plaintiff and his Counsel, which I believe, the Plaintiff instructed our Chambers, Idowu Sofola & Co. to take up the matter on his behalf.*

(5) *That our said Chambers issued a letter Ref. IS/32/81/Ca. of the 29th January, 1987, addressed to the Managing Director of the Defendant's Corporation and copies to their minister and General Manager, which I personally served on the same 29th January, 1987, a copy of which letter is attached hereto and marked "B".*

(6) *That my Despatch Book was signed as evidence of the receipts of the letters referred to at paragraph 5 above, a copy of the relevant page of the Book is exhibited and marked Exhibit C."*

The Defendants' motion came up for hearing. After argument the learned trial Judge held on the 20th June, 1988 that he had no jurisdiction to entertain the suit on the ground that Exhibit "B" was not in compliance with the notice prescribed in section 11 (2) of the Nigerian National Petroleum Act 1977 and struck out the claim.

Appellant appealed to the Court of Appeal on two grounds of appeal challenging the interpretation of Section 11 (2) of the NNPC Act 1977 by the learned trial Judge. After hearing arguments of the parties

and considering their briefs of arguments, the Court of Appeal relying on the interpretation of the provisions of section 40 (2) of the Railways Ordinance Cap. 191 which provided for notice similar to the one now in issue, the Court on the 16th February, 1989 dismissed the appeal. It held that Exhibit B fell short of the requirement. Considerable weight was given to the opinion of Ademola J in Bright v. E. D. Line Ltd. & anor. (1952) 20 NLR. 79 where the learned Judge construed the provision of Section 40 (2) of the Railways Ordinance as follows:-

*"There might have been some weight in that argument if the Ordinance had merely enacted that it should be brought to the notice of the Railway administration that an action would be brought against it. But it is clear that it is not mere knowledge but a proper notice in accordance with the section of the ordinance is clear enough as to who must be served and the method of service."*

A similar, but not identical notice is now before us. Appellant has filed three grounds of appeal. Both learned Counsel to the parties filed their briefs of argument which they adopted and relied upon in argument before us. He has also formulated four issues for determination arising from the grounds of appeal. Learned Counsel to the Respondent had formulated only three issues for determination. I set out below the issues formulated by both learned Counsel.

#### APPELLANT'S ISSUES FOR DETERMINATION.

*"(a) Whether or not Exhibit 'B' (i.e. letter of demand from Appellant's Solicitors) is a valid notice within the meaning and intention of the NNPC Act 1977.*

*(b) Even if Exhibit 'B' is not a valid notice (which is denied), whether or not such privileges as conferred by Section 11 (2) of the NNPC Act 1977 extend to suits of breach of contracts of employment such as in the instant case.*

*(c) Whether or not the Court of Appeal judges have occasioned injustice to the Appellant when they failed to appreciate the need for them to be guided by the issues raised for determination before them and therefore failed to appreciate the case before them properly and/or failed to invoke the provisions of Section 6 of the 1979 Constitution.*

(d) *Whether or not the respondents knew or could have known the Appellant's place of abode as at the time of Exhibit 'B'.*

RESPONDENT'S ISSUES FOR DETERMINATION

B *"1. Whether Exhibit B (the letter of demand from the Appellant's Solicitors to the Respondent) is a valid Notice within the provisions of Section 11 (2) of the N.N.P.C. Act.*

C *2. did the Appellant suffer any "miscarriage of justice" because the Court of Appeal failed to pronounce on whether the Notice contemplated by Section 11 (2) of the N.N.P.C Act applies to suits for breach of contract of employment.*

*Whether lack of knowledge of the Appellant's place of abode was the decision of the Court of Appeal."*

D I consider the issues for determination as formulated by the Respondent sufficient for the purposes of this appeal. Issue 1 which relates to the adequacy vel non of the notice in Exhibit "B" is identical in both formulations and seems to me the point on which the Appellant suit was struck out in the High Court and on which the Appeal was dismissed in the Court E below. Appellant seems to rest the fate of the appeal entirely on his argument on the determination of this issue.

F Learned Counsel to the Appellant submitted in his brief of argument that he was relying on the same argument he urged on the Court below, which is that the address of his solicitor should suffice as his own personal address as required by section 11 (2) of the Nigeria National Petroleum Act 1977. He argued that since section 11 (2) envisaged service of the notice by the Plaintiff or by his Agent, the Respondent could not reasonably insist that a notice from the Agent is not in compliance with G the provisions of the section.

H Learned Counsel accepted the general principle that where the language of the provisions of a statute is unambiguous and clear, it should be given its plain natural meaning. He however argued that since the duty of interpretation is to discover the intention of the legislation as deduced from the words used, there is the duty to ensure that the right of access to the courts is not taken away as restricted by the words of the statute. He cited Sode & ors. v. A-B Federation & ors. (1986) 2 NWLR (pt. 24) 568;

Anisminic v. Foreign Compensations Tribunal (1969) 2 AC. 147; Barclays Bank v. Central Bank of Nigeria (1976) 1 All NLR. 409.

It was submitted that the ratio of the judgment of the Court of Appeal is that Exhibit B did not suffice as a valid notice within the intendment of section 11 (2) of the NNPC Act. The Justices relied on Bright v. E. D. Lines Ltd. & Anor. (1952) 20 NLR 79 in coming to this decision which Appellant regards as erroneous. It was submitted that the said provision is capable of two meanings. In such a circumstance the meaning which preserves the ordinary jurisdiction of the court should be preferred. - Sode v. A.G. of the Federal & ors. (supra). Learned Counsel distinguished the case of Bright v. E.D. Lines Ltd. (supra) as one in which the notice was addressed to the wrong person. Further, it was submitted that the provisions of the Ordinance were very clear and unambiguous and that the proper notice had accordingly not been sent. Learned Counsel cited in support the decision of this Court in Katsina Local Government v. Makudawa (1971) 1 NMLR. 100 at p. 107 where section 116 (2) of the Local Government Law similar to section 11 (2) was construed. The Court stated the purpose of the notice as follows -

*"The purpose after all of section 116 (2) is solely to give Local Authority sufficient notice of claims against it so that it is not taken by surprise but has adequate time to prepare to deal with the matter in its defence. Its purpose is not to put hazards in the way of bringing litigation against it, any more than the requirement of section 116 (1) is to formulate in technical terms the claim, though not to establish in his notice a good cause of action."*

Learned Counsel to the Appellant submitted that the Court below appreciated the fact that if Respondent knew the place of abode of the Appellant at the time the notice, Exhibit B was written, i.e. on January 20, 1997, failure to repeat the Plaintiff/Appellants place of Abode in Exhibit B, could not be fatal. It was submitted the Defendant at the time of writing Exhibit A, the letter of dismissal in December 31, 1986 knew the place of abode of the Plaintiff.

Finally on this issue, learned Counsel summed up his submission by stating that the purpose of giving notice is to warn the Defendants of

the claim and to give them an opportunity to settle if they wish. The Plaintiff's address is required to enable Defendant make any comment if they wish through that address. It was submitted that since Plaintiff was acting through a solicitor, it should be sufficient for the benefit of the Respondents as required by section 11 (2) of the NNPC Act. It could never have been the intention of the statute that in cases where the Plaintiff acts through Solicitors (agents) the Corporation should still go over the Solicitors (agents) to deal with the client. It was submitted that the section cannot be conceived as requiring the address of the client as well as that of the agent solicitors.

In his own submission learned Counsel to the Respondents referred to the provision of Section 11 (2) of the NNPC Act 1977 and pointed out that it made it mandatory for a minimum period of 30 days to be given as notice to the Corporation by the intending plaintiff. It was submitted that the notice shall state (i) the cause of action (ii) the particulars of claim (iii) the name and place of abode of the intending plaintiff (iv) the relief claimed. Citing Montosa Nig. Ltd. v. Nigeria Ports Authority suit No. ID/ E 685/83 of 31/3/87 (unreported), Umukoro v. NPA (1997) 4 NWLR (pt. 502) 656, it was submitted that the provision of section 97 (2) of the NPA Act, which are in pari materia with section 11 (2) of the NNPC Act 1977 are to be complied with strictly.

It was submitted that in the interpretation of statutes, words used are to be given their ordinary, natural grammatical meanings, where they are plain clear and unambiguous. Learned Counsel relied for this proposition on Bronik Motors v. Wema Bank Ltd. (1983) 1 SCNLR. 296, Nicon v. Power & Industries Engr. Co. Ltd. (1986) 1 SC. 1, Kaycee Nigeria Ltd v. Prompt Shipping Corporation (1986) 1 SC. 328, Abaye v. Ofili & anor. (1986) 1 SC. 231; NPA. v. Ali Akar & Sons (1965) 1 All NLR. 259; Owena Bank Plc v. N.S.E. Ltd. (1997) 8 NWLR (pt. 515) 15 and 7UP Bottling Co. Ltd v. Abiola & Sons Ltd. (1995) 3 NWLR (pt. 383) 257 at p. 276.

Learned Counsel then referred to the relevant expression of the place of above of the intending Plaintiff" in Section 11 (2) of the NNPC Act 1977. He argued that this is properly referable only to the place of

residence or business of the Plaintiff and cannot be extended to include the address of his agent or solicitor as contended for by learned Counsel to the Appellant. The noninclusion of the expression "or his agent" in the provision was deliberate. Accordingly, the address of Counsel to the Appellant cannot satisfy the provisions of Section 11 (2) B

It was further submitted that the learned trial Judge found that Exhibit B did not state the particulars of claim. Finally it was submitted that failure to comply with the provisions of Section 11 (2) of the NNPC Act 1977 renders the suit against the Respondent incompetent. The decisions in Katsina Local Authority v. Makudawa (1971) 1 NMLR. 100 and Anambra State Government v. Nwankwo (1995) 9 NWLR (Pt. 418) 245 were cited and relied upon. The learned trial Judge was right to have struck out Appellant's suit. C

Since the resolution of this issue is dependent upon the interpretation of the provisions of Section 11 (2) NNPC Act 1977. It is crucial to consider the contentions of learned Counsel on the issue. The provisions of section 11 (2) of the NNPC Act, 1977 is that D

*"No Suit shall be commence against the Corporation before the expiration of a period of one month after written notice of intention to commence the suit shall have been served upon the Corporation by the intending Plaintiff or his agent; the notice shall clearly and explicitly state the cause of action, the particulars of the claim, the name and place of abode of the intending Plaintiff and the relief which he claims."* E F

The competing contentions between Appellant that Exhibit "B" has satisfied the above requirements, and Respondent that it did not rely on the interpretation of the provision by the Court of Appeal. The real issue before us is whether the court below are right to hold that Exhibit B did not comply with the requirement as to notice prescribed in Section 11 (2) of the NNPC Act, 1977. It is relevant to refer to the judgment of the Court below construing the provision, where it was said at p. 85, G

*".... according to the defence, the Plaintiff's whereabouts was unknown and he could not be served with the letter of dismissal until "he petitioned the Honourable Minister of Petroleum in late 1986 and his whereabouts was then known to the Defendant." In other words, the H*

Plaintiff's address remained unknown even as of Exhibit B; whereas Section 11 (2) required him to state his "place of abode."

The Court of Appeal accepted the opinion of the learned trial Judge that compliance with Section 11 (2) is a condition precedent to the commencement of any suit against the Respondent. It would seem to me clear from the judgment that the Court of Appeal relied entirely on the authority of Bright v. E.D. Lines (1952) 20 NLR. 79 in its determination whether Exhibit "B" was in compliance with the provisions of the said Section 11 (2) of the NNPC Act 1977. It is helpful to reproduce the relevant part of the judgment in full. I do so hereunder -

*"In Bright v. E. D. Lines Ltd. & Anor. (1952) 20 NLR. 79, the issue was Notice under Section 40 (2) of the Railway Ordinance, Cap. 191, which provided for notice similar to the one now in issue. The lawyer had written on behalf of claimants and ended the letter thus:*

*"I am to state that if on or before the 18th instant the claim is not satisfied, my instructions are to take out a writ against you, and without further notice."*

As it turned out the letter was addressed to the Wharf Superintendent, Nigerian Railway, Port Harcourt, instead of to the General Manager, Nigerian Railway, Ebute-Metta. In addition, the details of the claim were not sufficiently set out. It was however, argued that so long as the Railway Administration was aware of the claim, it was enough. Adetokunbo Ademola J, (as he then was) did not agree, and said at page 80:-

*"There might have been some weight in that argument if the Ordinance had merely enacted that it should be brought to the notice of the Railway Administration that an action would be brought against it. But it is clear that it is not mere knowledge but a proper notice in accordance with the section on the Ordinance that it required. The wording of the Ordinance is clear enough as to who must be served and the method of service."*

So too in the instant appeal, the wording of Section 11 (2) is clear enough on the form of the Notice. Exhibit "B" falls short of the requirement." This is the interpretation challenged by the Appellant.

It is important to observe that the decision in Bright v. E. D. Lines

Ltd. (supra) relied upon by the Court of Appeal is a judgment of the High Court. Besides, the Case is distinguishable on the facts. The ratio decidendi of that case was that there was non-compliance with section 40 (2) because Notice was addressed to the wrong person, namely to the Wharf Superintendent, Nigerian Railway, Port Harcourt, instead of the General Manager, Nigerian Railway, as required by sections 2, 41 of the Railway Ordinance. Accordingly, no notice was sent within the Meaning of Section 40 (2). The name and address of the intending Plaintiff considered in the instant case was not a requirement of section 40 (2) and was not considered. It follows that where the requirement of notice is that it should be served on a particular person, service on person other than the person stipulated is a non-compliance with the provision. This is what Bright v. E. D. Lines & anor. (supra) can be held to have decided.

It is common ground that where the words of the provisions of a statute are clear and unambiguous, it should be given its plain, ordinary, grammatical meaning, without qualification. Learned Counsel had submitted that the overriding principle of interpretation of statutes is that the courts are under a duty to discover the intention of the law maker as deducible from the language of the provision construed.

Section 11 (2) of the Nigerian National Petroleum Act, 1977 provides as follows -

*"No suit shall be commenced against the Corporation before the expiration of a period of one month after written notice of intention to commence the suit shall have been served upon the Corporation by the intending Plaintiff or his agent; and the notice shall clearly and explicitly state the cause of action, the particulars of the claim, the name and place of abode of the intending plaintiff and the relief which he claims."*

It seems quite clear on analysis of the above section and from the use of the expression "shall" therein, that the sub-section makes it mandatory to give notice to the Corporation, and that no suit shall be commenced before the expiration of one month, after written notice of intention to commence the suit shall have been served upon the corporation by the intending Plaintiff or his agent. This first part is very wide and the opening phrase "No suit

shall be commenced" prohibits the commencement of all suits whatsoever. This was the decision of this court in Fawehinmi Construction Co. Ltd. v. Obafemi Awolowo University (1998) 6 NWLR. 171, where the provisions of section 46 (1) University of Ife Edict, in pari materia with Section 11 (2) of the NNPC Act, 1977 was so construed. It also provides that the suit shall have been served upon the Corporation by the intending Plaintiff or his agent. Thus the question of service of notice shall be made upon the Corporation by the Plaintiff or his agent.

The second part which uses the same imperative expression "shall" prescribes the content of the notice required in the first part. The notice shall clearly and explicitly state (a) the cause of action (b) particulars of claim, (c) the name and place of abode of the intending plaintiff (d) the relief claimed. It seems to me therefore that the requirement of the service of notice upon the Corporation of intention to commence a suit against them which shall be made by the intending Plaintiff or his agent is mandatory, but the contents of the notice are directory statutory requirements - see Katsina Local Authority v. Makudawa (1971) 1 NMLR. 1000 at 105-6, Umukoro NPA (1997) 4 NWLR. 656.

There is no doubt, and it has not been disputed by Appellants that the provision of Section 11 (2) of the NNPC Act, 1977 is a pre-condition for the commencement of suits against the Corporation. The issue before us is whether Exhibit B which has not stated the name and place of abode of the intending Plaintiff complied with the provision? It was the contention learned Counsel to the Appellant that it is the duty of the Court so to construe the provision of the statute as to protect and preserve the right of access to the courts which may be taken away or restricted by the provision. It was submitted citing the dictum of this Court in Katsina Local Authority v. Makudawa (supra) that -

*"The purpose after all of section 116 (2) is solely to give the Local Authority sufficient notice of claim against it so that it is not taken by surprise but has adequate time to prepare to deal with the matter in its defence. Its purpose is not to put hazards in the way of bringing litigation against it, any more than the requirement of Section 116 (1) to formulate in technical terms the claim to give notice of the facts relied on*

*for the claim, though not to establish is his notice a good cause of action."*

Herein the question of what kind of non-compliance will constitute a contravention of Section 11 (2). Learned Counsel had argued that it could not have been intended by the statute that in cases where Plaintiff acts through Solicitors or agents the Corporation should be able to go over the head of the Solicitors to deal with the Plaintiff. It was submitted that no lawful purpose is to be found in the section being conceived as requiring the address of the client as well as that of the agent solicitors.

With due respect to learned Counsel to the Appellant, the provision of Section 11 (2) is very clear and unambiguous on the issue. Whereas the first part of the provision relating to the giving of notice explicitly provides that notice could be given by the intending Plaintiff or his agent, the second part which prescribes the content of the notice is specific with respect to the name and place of abode of the intending plaintiff. It did not include that of his agent. The express mention of the name and place of abode of the intending plaintiff in the second part, excludes the possibility of the name and address of the agent as was done in the first part - The maxim expressio unius est exclusio alterius applies. The name and address of the agent having been excluded, only that of the intending plaintiff is required and is directory. The words are sufficiently clear and unambiguous and should be given their ordinary, grammatical meaning - See Owena Bank Nigeria Plc v. N.S.E. Ltd. (1997) 8 N.W.L.R (pt. 515) 15.. I agree with learned counsel to the respondents that the expression cannot be stretched to include the name and address of his agent or Solicitor.

Learned counsel for the Appellant urged on us the argument that the Court should not accept a construction which results in the restriction of or complete taking away of a person's right of access to the Courts. It was submitted that the adoption of the construction of Section 11 (2) suggested by Respondent has such effect.

The argument of Counsel is founded on the exercise by the Courts of the judicial powers of the Constitution vested in it. It also touches and concerns the exercise by the legislature of its legislative powers and the extent to which the legislature can trench upon the exercise of judicial

powers.

The exercise of the judicial powers of the Constitution provided in Section 6 (1) which is vested in the courts named, provides the scope of the exercise in Section 6 (6) (b), It provides that -

B *"The judicial powers vested in accordance with the foregoing provisions of this section.*

x x x x x x

C *(b) shall extend to all matters between persons or between government or authority and any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the Civil rights and obligations of that person."*

These provisions are complemented by section 33 (1) of the Constitution which provides that:

D *"In the determination of his civil rights and obligations including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a Court or other tribunal established by law and constituted in*  
 E *such manner as to secure its independence and impartiality."*

It is clear that apart form the definition of the nature and extent of judicial powers, section 6 does not deal directly with the right of access to Court. It is obvious that section 6 concerns itself with the delimitation of the separation of powers between the Judiciary and the other departments of the  
 F Constitution.

The provisions of section 33 (1) is undoubtedly couched in wide absolute terms and is not unqualified. The purport of the provision is to enable right of access to that Court absent legal obstacles in his path  
 G neutralising exercise of the right. The constitutional right of access to the Court does not however preclude statutory regulations of the exercise of the right. It is however, not consistent with the exercise of the right of access to court to make regulations which subvert the exercise of the right  
 H or render the right nugatory - See Bakare v. A.G. of the Federation (1990) 5 NWLR. 516. Courts guard the words of statutory provisions depriving them of the exercise of their Constitutional jurisdiction jealously. Hence the language of such provisions will be watched and will not be extended

beyond their least onerous meaning. - See Sode v. A. G. for the Federation & ors. (1986) 2 NWLR. 586.

Regulations of the right to access to the court abound in the rules of procedure and are legitimate. It seems to be accepted that where an enactment regulates the right of access to the Court in a manner to constitute an improper obstacle to access to court, such enactment could be appropriately regarded as an infringement of section 33 (1) rather than an infringement of section 6 of the Constitution.

I have already referred to the provisions of section 11 (2) of the NNPC Act, 1977. I have also analysed the provisions as between the first part relating to giving of the notice to the Corporation of the intention to bring the suit against it, and the second part which prescribes the content of the notice. Although it would seem that the provision regulates the commencement of actions against the Corporation, without removing the adjudicatory powers of the Court in respect of matters concerning the Corporation or denying the individual totally of the exercise of his right to court. These are legitimate purposes of preaction notice and are recognised procedural provisions. As was stated in Ngelegla v. Tribal authority, Nongowa Chiefdom (1953) 14 WACA. 325 at 327, such provisions are to give the defendant "breathing time so as to enable him to determine whether he should make reparation to the Plaintiff."

In the recent decision of this Court of Atolagbe v. Awuni (1997) 9 NWLR. 536 a split decision of 5:2 held that Section 15 of the Chiefs (Appointment and Deposition) Law of Kwarra State, as amended by edict No. 3 of 1988 which provided that a condition precedent of the payment of a non-refundable fee of N10,000 to the Accountant-General of the State to the institution of an action by a person aggrieved by a decision of the Governor or other appointing authority in a chieftaincy matter where an appointment has been made, is not inconsistent with the provisions of section 6 (6) (b). It was held that section 15 of Edict No. 3 of 1988 did not curtail the right of a person to sue in a chieftaincy matter. It is merely a condition precedent which must be fulfilled before an action can be instituted. This and similar decisions of this court which have held that a pre-action notice is not in-consistent with section 6 (6) of the Constitution

should not be taken to mean that in certain circumstances the particular requirement can never constitute infringement of the exercise of judicial powers by the courts or abridge the citizen's right of access to the court. Such last mentioned situations will definitely be inconsistent with the Constitution.

In the same decision a condition precedent was defined as one which delays the vesting of a right until the happening of an event. Section 11 (2) NNPC Act, 1977 has prescribed the conditions for commencing actions against the Corporation. If the rationale behind the provision as accepted is to give the Corporation breathing time so as to enable it to determine whether it should make reparation to the Plaintiff, the importance of strict compliance with the provision prescribing the name and address of the Plaintiff as against the guaranteed right of access to the Court enshrined in section 31 (1) read together with section 6 (6) (b) of the Constitution becomes of critical importance. Access to the court means approach or means of approach to the court without constraint.

In my opinion a legitimate regulation of access to courts should not be directed at impeding ready access to the courts. There is no provision in the Constitution for special privileges to any class or category of persons. Any statutory provision aimed at the protection of any class of persons from the exercise of the Court of its constitutional jurisdiction to determine the right of another citizen seems to me inconsistent with the provisions of section 6 (6) (b) of the Constitution. The complaint of the non-compliance with any of the prescribed contents of the notice under Section 11 (2) is not that no notice has been served. It is that the notice is defective. Hence substantial compliance could have been made enabling the corporation to decide the course of its action viz-a-viz the suit. It will be inequitable to regard such a situation as equivalent to absence of notice. If it is otherwise, a situation has now been erected of an unnecessary and improper legal impediment to access to Court inconsistent with the constitutional rights of the Courts under section 6 (6) (b) and of the citizen under section 36 (1).

I agree with learned Counsel to the Appellant that the omission to state the name and address of the intending plaintiff cannot be an essential

precondition for commencing an action against the Corporation where a solicitor or agent is required for service. These are particulars which are sine qua non of an action. For a non-compliance of section 11 (2) to be sufficient to deprive the Court of its jurisdiction, the condition should be such as to make it difficult for the Corporation to make its choice whether to settle with the Plaintiff. Any other non-compliance is in-substantial and should not deprive the court the exercise of its constitutional jurisdiction or deny the Plaintiff access to the courts on the facts before the Court. There is no basis for a denial of access to the courts. The mere omission to provide the address of the residence of the Plaintiff should not be fatal to the claim. B C

Learned Counsel to the Respondent has submitted that the question whether S. 11 (2) is inconsistent with S. 6 (6) (b) of the Constitution was not canvassed in the courts below and did not arise from any of the grounds of appeal filed. This argument ignores the scope of the interpretation of the amplitude of the words of the provision. The effect of interpretation is to give meaning to the words used within its legal milieu. It is not far fetched to employ constitutional provisions to justify the issue of access vel non to the courts denied by a particular provision. Besides, it is well settled that any issue concerning the jurisdiction of the Court, can be raised at any stage of the proceedings or on appeal. This is a matter affecting the exercise of the jurisdiction. It is properly raised before us D E F

I shall now consider the third issue for determination which is whether lack of knowledge of the Appellants abode was the basis for the decision of the Court of Appeal .

I have already discussed this issue in this judgment. I agree with the submission of learned Counsel to the Respondent that it could not be conclusively inferred from the judgment of the Court of Appeal that lack of knowledge of Appellant's place of abode was the basis of the decision of the Court. It is clear that it was satisfied that Exhibit "B" did not comply with the provisions of Section 11 (2) of the NNPC Act, 1977. It reached this conclusion after examining the findings of the learned trial Judge and agreeing with him. It is clear from the judgments of the Courts below that no particular item of the preconditions prescribed in Section 11 (2) was G H

relied upon for determining the question of non-compliance.

The consideration of the second issue which concerns substantive issues is to me unnecessary. The Court having determined the invalidity of Exhibit "B", and that the Court lacked the necessary jurisdiction, B it is therefore irrelevant and unnecessary to decide whether Appellant suffered any miscarriage of justice because of the failure to pronounce on whether the Notice contemplated by Section 11 (2) applied to suits for breach of contract of employment.

However, I proceed to discuss the issue in the interest of completeness. The cardinal question is whether Appellant suffered any miscarriage of justice because of this error. I shall rely on the definition of "miscarriage of justice" by Lord Thankerton in Privy Council decision of C Devi v. Roy (1946) AC. 508, where his lordship said that it is

D *"... such a departure from the rules which permeate all judicial procedure as to make that which happened not in the proper sense of the word judicial procedure at all."*

Again in the United States decision of Alcorn v. Davies 343 p. 2d. 621, E 625-6, Vandyke P.J, adopted the test applied in People v. Watson 292, p2d 243 where it was said:

F *"... A miscarriage of justice should be declared only when the Court, after an examination of the entire case, including the evidence, is of the opinion that it is reasonably probable that a result more favourable to the appealing party would have been reached in the absence of the error."*

It seems to me that not all errors result in miscarriage of justice. There is miscarriage of justice only where there are substantial errors in G adjudication, with the resultant effect that the party relying on such errors may likely have a judgment in his favour. As I have already stated, since the suit has been determined in limine and as a threshold issue, without discussion of the merits of the action, the determination of the question H whether section 11 (2) of the NNPC Act, 1977 applied to contract between the parties is unnecessary.

I should state that the ipsissima verba of Section 11 (2) affords absolute protection to the Corporation - See Fawehinmi Construction Co.

Ltd v. O. A. U. (1998) 6 NWLR. 171. The expression "No Suit" in Section 11 (2) NNPC Act, 1977, has been construed in Section 46 (1) of the University of Ife Edict as wide and all embracing. It was construed as covering all suits and whatever causes of action and not limited to anything done pursuant to any Act or Statute. It relates to all or any type of action. It is wider and different in application from section 97 of the Ports Authority Act. - See NPA v. Construzioni Generali (1974) 12 SC. 81. Katsina Local Authority v. Makudawa (1967) 1 NMLR. 100. The question of the nature of the action would not have made any difference to the decision. C

It is obvious that Appellant did not suffer any miscarriage of justice because the Court below failed to discuss the issue whether the notice contemplated by Section 11 (2) NNPC Act, 1977 applied to suits in breach of contract of employment. D

For the reasons I have given in this judgment that the non compliance with Section 11 (2) of the NNPC Act, 1977 by the mere omission to state the home address of the Plaintiff is not sufficiently substantial to deprive the Plaintiff his constitutional right of access to the Court under section 31 and the courts of the exercise of their jurisdiction under section 6 (6) (b) of the Constitution 1979. I will accordingly allow this appeal, set aside the judgment of the Court below. The case is accordingly remitted to the High Court of Lagos State, to be heard before another Judge other than Silva J. F

Appellant is entitled to the costs of this which I assess at N10,000.

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### MOHAMMED JSC

I entirely agree with my Lord the Chief Justice that Exhibit B satisfied the requisite notice which is a precondition to filling any suit against the N.N.P.C. G

It is my view that section 11 (2) of National Petroleum Corporation Act, 197 is not contrary to Section 6 (6) of the Constitution. Section 11 (2) of the Act provides: H

*"No suit shall be commenced against the corporation before the*

*expiration of a period of one month after written notice of intention to commence the suit shall have been served upon the corporation by the intending plaintiff or his agents and the notice shall clearly and explicitly state the cause of the action, the particulars of the claim, the name and place of abode of the intending plaintiff and the relief which he claims"*

The wordings of Section 11 (2) of N.N.P.C. Act are plain and clear. Where the legislature has used in an enactment language so free from ambiguity and so clear and explicit as to leave no doubt as to its meaning, the court must construe the enactment according to its expressed intention. See the opinion of this court in Owena Bank Nigeria PLC v. N.S.E. Ltd. (1977) 8 N.W.L.R. (Part 515) 15 and Barclays Bank v. Central Bank of Nigeria (1976) All N.L.R. 409.

It is instructive therefore that compliance with the provisions of Section 11 (2) of N.N.P.C. Act 1977 is a condition precedent to instituting a suit against the respondent. Cases constantly occur in which, although everything has happened which would at common law prima facie entitle a man to a certain sum of money, or vest in him a certain right of action, there is yet something more which must happen, in the particular case, before he is entitled to sue, either by reason of the provision of some statute or because the parties have expressly so agreed. This is something called a condition precedent. It is not of the essence of such a cause of action, but it is essential. It is an additional formality superimposed on the law. See Prince J.S. Atolagbe & Anor. v. Alhaji Ahmadu Awuni & 2 Ors. (1977) 9 N.W.L.R. (Part 522) 536 at 566 and English Supreme Court Practice (White Book) 1991 Edition Order 18/7/10. This court had held in Atolagbe v. Awuni (Supra) that the Kwara State Edict No. 3 of 1988 which directed for payment of N10,000.00 as a condition precedent to instituting an action in chieftaincy matters in Kwara State is not contrary to the provisions of Section 6 (6) (b) of 1979 Constitution.

In Bright v. E.D. Lines Ltd. & Anor. (1952) 20 N.L.R. 79 Ademola J (as he then was) dealt with an issue of failure to give the statutory notice before filing suit against E.D. Lines Ltd. as was provided by Section 40 (2) of the Railway Ordinance, Cap. 191. The learned judge in that case

held as follows:

*"There might have been some weight in that argument if the Ordinance had merely enacted that it should be brought to the notice of the Railway Administration that an action would be brought against it. But it is clear that it is not mere knowledge but a proper notice in accordance with the section of the Ordinance that is required. The wording of the Ordinance is clear enough as to who must be served and the method of service."*

Also another relevant authority is the decision of this court in the case of Katsina Local Authority v. Alhaji Barmo Makudawa (1971) 1 NMLR 100 which has been referred to by both counsel in this appeal.

In that case, a judgment was given by Katsina Upper Area Court against the Katsina Local Authority in a suit in which Alhaji Barmo Makudawa claimed #2,152,105 being cost of 105 cattle sold and delivered to Katsina Local Authority through its employee, Sarkin Shanu. Katsina Local Authority appealed to the High Court, Kaduna arguing inter alia, that by virtue of Section 116 (1) of Local Authority Law, the debt was statute barred and that by virtue of Section 116 (2) the proceedings of the trial court was nullity. The High Court dismissed the appeal. On further appeal to the Supreme Court, this court, per Coker J.S.C., held that the proceedings (before the Upper Area Court) did not come within the types of actions described in Section 116 (1) of the Local Authority Law and as such, the competency of proceedings cannot be challenged on that score. The learned justice further held that the ground of appeal complaining that the proceedings contravened the provisions of Section 116 (1) was misconceived and must fail.

Although Katsina Local Authority failed in its appeal before the Supreme Court, Coker J.S.C. dealt with the submission of the Attorney-General of North Central State, Mamman Nasir (as he then was) that compliance with Section 116 (2) of Local Authority Law was a pre-condition which was fundamental to jurisdiction as such non compliance with the sub-section would have the effect of nullifying the whole proceedings. This court agreed with the submission of the Attorney-General in the following words:

"We are clearly of the view that section 116 (2) of the Local Authority Law prescribes a condition precedent to the competence of any action commenced against a Local Authority and that compliance with the sub-section as a pre-condition of such competence. The sub-section requires such notice as it therein prescribed to be served on the Local Authority and stipulates that at least one month shall expire before the suit can be legally commenced. It follows therefore, in our view, that where it is established that no such notice was served or that the sub-section is not otherwise complied with, any suit commenced in contravention of the provisions of the sub-section is wrongly commenced and should not be entertained by any court".

For these reasons and the fuller reasons in the judgment of the Chief Justice of Nigeria this appeal succeeds and it is allowed. The ruling of the High Court and the judgment of the court below affirming that ruling are both set aside. I abide by all the consequential orders made in the lead judgment.

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E

### KATSINA-ALU JSC

I have had the advantage of reading in draft the judgment of my learned brother Uwais, CJN in this appeal. I agree with it and, for the reasons which he has given, I, too, would allow this appeal and remit the case to the High Court of Lagos State to be heard by another Judge other than Silva J. I also award N10,000.00 costs to the Appellant.

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G

### EJIWUNMI JSC

I have had the privilege of reading in draft the judgment of my lord M.L. Uwais CJN. As I agree entirely with the reasons given for allowing the appeal, the appeal is also allowed by me. I also abide with the consequential orders made in the said judgment.