

SUPREME COURT OF NIGERIA
23RD FEBRUARY, 2001. SC. 163/1995
CORAM:- A. B. WALL, E. O. OGWUEGBU, U. MOHAMMED,
U. A. KALGO, A. O. EJIWUNMI, JJSC

PSYCHIATRIC HOSPITALS

MANAGEMENT BOARD APPELLANT

AND

MRS. DORIS EDOSA RESPONDENT

***APPEALS** - Fair hearing - The appeal was rightly allowed - As the procedure for fair hearing - Was not strictly complied with*

***CRIMINAL PROCEDURE** - Onus of proof - For the prosecution is proof beyond reasonable doubt - And for accused preponderance of probability to exculpate herself from the accusation.*

***EVIDENCE** - Documents - Tendered and admitted by trial court - May be relied on to ascertain truth of a complaint by appellate court - Despite complaints as to its validity.*

***FAIR HEARING** - Technicalities - Once procedure for fair hearing is or is not complied with - Incorrect citation of relevant provisions does not matter*

***PRACTICE & PROCEDURE** - Technicalities - Courts are more concerned with doing substantial justice - And concern themselves with the substance and not the form*

FACTS

The Respondent who was the plaintiff at the trial court was a catering officer at the Psychiatric Hospital, Uselu Benin who is the appellant. According to her in September 1987 she had gone from the office to the market to purchase some items with the knowledge of one Mrs. Aghedo a follow worker in the hospital who had also seen her purchases

on her return from the market. Later in the day on desiring to go and pick up her children from school she had joined the Hospital bus. At the gate of the hospital she was asked to alight from the bus for a search by the security man which was the usual procedure. The security man during the search discovered two tubes of pronto and fresh tomatoes and demanded to know whether the items were not from the Hospital's kitchen. She explained that she had bought them earlier in the day and taken them in through the gate earlier that day.

The security man was not satisfied and took the bag to the office of the security supervisor and the respondent was invited and interrogated. Later she was queried and issued with a letter of suspension from duty without pay. After answering the query she was invited to appeal before the Hospital's Disciplinary committee in December 1987 & her appointment was terminated subsequently. Dissatisfied the Respondent took her complaint before the Psychiatric Hospital Management Board in Lagos. After appearing before a Committee set up by the board, her appointment was finally terminated by the board.

The Respondent thereupon instituted an action at the High Court seeking a declaration that the purported termination of her appointment was unconstitutional, null and void and an order of reinstatement. The trial judge dismissed the action and the respondent appealed to the Court of Appeal which unanimously allowed the appeal. The appellant, who was dissatisfied with the judgment has appealed to the Supreme Court.

ISSUES FOR DETERMINATION

"i. WHETHER THE RESPONDENT'S APPOINTMENT WAS VALIDLY TERMINATED IN ACCORDANCE WITH THE RELEVANT PROVISIONS OF THE PSYCHIATRIC LAWS OF FEDERATION 1990.

ii. WHETHER IN DETERMINING THE CASE OF THE RESPONDENT THE APPELLANT DULY OBSERVED THE PRINCIPLES OF FAIR HEARING AND NATURAL JUSTICE

iii. WHETHER THE LEARNED JUSTICES OF THE COURT OF APPEAL WERE RIGHT IN HOLDING THAT THE RESPONDENT WAS TRIED BY THE APPELLANT IN RESPECT OF A CRIMINAL CHARGE OF STEALING IN BREACH OF SECTION 33(1) AND 33(4) OF THE

*CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1979
AS AMENDED.*

*iv. WHETHER THE LEARNED JUSTICES OF THE COURT
OF APPEAL WERE RIGHT IN RELYING ON EXHIBIT M, IN GIV-
ING JUDGMENT IN FAVOUR OF THE RESPONDENT, WHEN IN
FACT THE RESPONDENT IMPUGNED THE VALIDITY OF SAME."*

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

Appeals - Fair hearing - Procedure was not complied with

1. As complained by the respondent the procedure adopted by the appellant in her trial was not in strict compliance with section 13(1) of the Act and also section 33(1) and (4) of the 1979 Constitution which was applicable at the time material to the action. Since the Board failed to comply strictly with procedure laid in section 13(1) of the Act and section 33(1) and (4) of the 1979 Constitution, the Court of Appeal did the right thing when it allowed the respondent's appeal on this Issue. See *NEPA V. ELFANDI* [1986] 3 NWLR [PT 32] 898. (pp. 617 G/ 618 C)

Fair hearing - Technicalities

2. The important thing in dealing with a trial of any case be it Civil or Criminal, is to ensure that the procedure of fair hearing is strictly complied with. If that is satisfied, it does not necessarily matter whether the correct section of the law making such a provision is correctly cited. (p. 618 E)

Practice and procedure - Technicalities

3. The courts are now more concerned with doing substantial justice than clinging to procedural technicalities and therefore concern themselves with the substance and not the form. (p. 618 F)

Criminal procedure - Onus of proof

4. This apart, the allegation against the respondent involved commission of a Crime which raised the onus to that of proof beyond reasonable

doubt on the appellant. This is a condition precedent if he was to succeed. As for the respondent, she needed only to offer evidence to the preponderance of probability to exculpate herself from the accusation.

I have looked through the evidence adduced by the appellant and
 B I found it to be so contradictory and unreliable on which no reasonable
 tribunal would act. The respondent on the other hand had offered reasonable explanation on the accusation labelled against her including that of misconduct. I cannot find reliable evidence in proof of misconduct
 C against her. Issues (1) and (II) are therefore answered in the negative. (p. 618 G)

Evidence - Documents.

5. In order to ascertain the truth or otherwise of the complaint against
 D fair-hearing, the court had to look at Exhibit M, notwithstanding the
 respondent's complaint against it in the Court of Appeal. Exhibits M and
 K were put in and tendered in evidence by the appellant. The trial court
 properly and rightly accepted them. There was no subsequent ruling by
 E the trial court that the two exhibits were in admissible ab initio, or that
 they were wrongly admitted. In my view the Court of Appeal was perfectly
 right and in order when after looking at Exhibit M, it concluded-

*"On a close examination of Exhibit "M". there is no indication
 F that the Appellant was asked if she wanted to question any of the witnesses
 or that she in fact did. The inference is that she was not given an opportunity
 to cross examine the witnesses who spoke against her which is a clear violation
 of the rule audi alteram partem".*

I therefore also answer Issue (IV) in the affirmative. (p. 620 C)
 G

REPRESENTATION

Okiemuta Mudiaga Odje with Funke Anuwa for the Appellant
 Respondent absent and not represented

H

CASES REFERRED TO

Ngwo & Ors v Nwoye & (1970) 1 All NLR 91
 NEPA v Elfandi (1986) 3 NWLR (Pt 32) 898

Garba v University of Maidugri (1986) 1 NWLR (Pt 18) 550

Mohammed v Kano Native Authority (1986) 1 All NLR 424

Kanda v Government of the Federation of Malaysia (1962) AC 322

Adedeji v Police Service Commission (1967) 1 ALL NLR 67

Aiyetan v Nifor (1987) 3 NWRL (Pt 59) 48

B

Ceekay Traders v G. M Co Ltd (1992) 2 NWRL (Pt.222)132

Salu v Egbeibon (1994) 6 NWRL (Pt 348) 23

STATUTES REFERRED TO

C

Psychiatric Hospitals Management Act, Cap 374 Laws of the Federation of Nigeria, 1990 - S. 13(i), 14.

Constitution of the Federal Republic of Nigeria 1979 - s.33 (i) and S.33(4)

LEAD JUDGMENT BY WALI JSC

D

I dismissed this appeal and reserved my reasons for doing so to today which I now proceed to give.

The plaintiff's claim as pleaded in paragraph 35 of the statement claim is as follows-

E

"WHEREOF the plaintiff claims against the defendant:-

1. A declaration that the purported termination from the services of the defendant by two letters viz letter No. PH/PE. 1030/61 of 23rd December, 1987 and letter No. PHMB/15/IV/556 dated 28th March, 1988 are unconstitutional, illegal, ultra vires null and void and of no effect.

F

2. An order re-instating the plaintiff to her position on the defendant's employmen with effect from the said 24th December, 1987.

3. An order that all the plaintiff's salaries, allowances, claims entitlements and benefits due and payable be paid to plaintiff with effect from the date of her suspension.

G

DATED at Benin City, this 17th day of November, 1988.

(Sgd.) ? ? ?"

H

The defendant denied the claim, filed a statement of defence which was further amended and in which the joined issue with the plaintiff

After the conclusion of filing and exchange of pleadings, the case proceeded to trial with each side adducing evidence in support of his case. The learned trial judge, Aiwerioghene, J considered the evidence before him and concluded:-

B *"In the event, the plaintiff has failed to establish that the termination of her appointment with the defendant body was wrongful. As this is the bases of all arms of the claim they must fail. The plaintiff's claim is dismissed in its entirety."*

C Aggrieved by the trial court's decision the plaintiff appealed against it to the court of appeal. Benin Division, and that court, after hearing the appeal delivered a considered judgment in which it unanimously allowed it and directed as follows:-

D "The letter of termination of appellant's appointment of 28th March, 1988 under the hand of the Secretary to the Board is accordingly declared null and void. It is hereby further declared that the appellant is entitled to:-

E "(a) Re-instatement in her position with effect from 23rd December, 1987 when the Medical Doctor purportedly terminated her appointment.

(b) Full salaries, allowances, claims entitlements and benefits with effect from the date of her suspension on 24th September, 1987."

F Dissatisfied with the judgment of the court of appeal, the defendant has now appealed to this court

The facts involved in this case can be precisely stated as follows:-

G The plaintiff was a catering officer at the Psychiatric Hospital, Uselu, Benin. At all times material to this case she was working at Uselu Hospital extension at Mile 18 Benin-Ore Road.

H On 22/9/87 the plaintiff obtained permission from one Miss Juliet Aghedo to go to market to do some shopping during which she purchased some items. On her return from the market she showed what she purchased from the market to Miss Juliet Aghedo after which she put them into her handbag. When she was going to pick her children from school at about 1 p.m, the plaintiff joined the hospital vehicle carry-

ing with her, the items she had earlier purchased from the market. At the Hospital gate the security man asked her to alight from the vehicle in order to search her bag to which she obliged. During the search the security man saw in the plaintiff's bag two tubes of pronto and some quantity of fresh tomatoes. He demanded to know if the plaintiff had not B picked the items from the kitchen of the Hospital to which she offered explanation that she bought from the market earlier and had taken same through the gate earlier that same day on her return from the market.

The security man was not satisfied with the plaintiff's explanation and he seized the bag containing the items and took it to the Office of the security supervisor. The plaintiff was invited to the office of the security supervisor where she was interrogated. She was served with a letter of query and suspension from duty without pay emanating from the Office of the Medical Director. The plaintiff promptly answered the D query within 24 hours, after which she received another letter from the office of the Medical Director inviting her to appear before the Hospital's Disciplinary Committee on 21/10/87, which she did. After the proceedings before the Hospitals' Disciplinary Committee and by a letter dated E 23/12/87 the plaintiff's appointment was terminated.

Dissatisfied with the action of the Hospital Disciplinary Committee, the plaintiff took her complaint before the Psychiatric Hospital Management Board in Lagos. The plaintiff appeared before the Committee F set up by Hospital Management Board after which she received a letter dated 23/12/87 from the Secretary of the Board terminating her appointment with a remark that it superceded the earlier letter of termination sent to her by the Medical Director, Psychiatric Hospital, Uselu, Benin City.

Henceforth in this judgment the plaintiff and the defendant will G referred to as the respondent and the appellant respectively.

Parties filed and exchanged briefs of argument in compliance with the Rules of this court. One original ground of appeal was first filed while four other additional grounds were later filed with the leave of this H court.

In the brief filed by the appellant the following issues have been raised from the grounds of appeal for consideration and determination by

this court-

"i. WHETHER THE RESPONDENT'S APPOINTMENT WAS VALIDLY TERMINATED IN ACCORDANCE WITH THE RELEVANT PROVISIONS OF THE PSYCHIATRIC LAWS OF FEDERATION 1990.

B ii. WHETHER IN DETERMINING THE CASE OF THE RESPONDENT THE APPELLANT DULY OBSERVED THE PRINCIPLES OF FAIR HEARING AND NATURAL JUSTICE

C iii. WHETHER THE LEARNED JUSTICES OF THE COURT OF APPEAL WERE RIGHT IN HOLDING THAT THE RESPONDENT WAS TRIED BY THE APPELLANT IN RESPECT OF A CRIMINAL CHARGE OF STEALING IN BREACH OF SECTION 33(1) AND 33(4) OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1979 AS AMENDED.

D iv. WHETHER THE LEARNED JUSTICES OF THE COURT OF APPEAL WERE RIGHT IN RELYING ON EXHIBIT M, IN GIVING JUDGMENT IN FAVOUR OF THE RESPONDENT, WHEN IN FACT THE RESPONDENT IMPUGNED THE VALIDITY OF SAME."

E The respondent also formulated four issues in his brief which read-

"i. Whether the court of appeal was right when they held that the appellant's Medical Director exceeded his powers under the Psychiatric Hospitals Management act, CAP. 374, Laws of the Federation 1990.

F ii. Whether the termination of the appointment of the respondent did not accord with the rules of natural Justice.

G iii. Whether the disciplinary committee set up by the appellant's Medical Director and the appellant's appointment, promotions and disciplinary committee had the power to look into criminal allegations against the respondent.

H iv. Whether it was proper for the Justices of the court of appeal to look at and comment on exhibit "M", the record of proceedings on which the appellant's based the termination of the appointment of the respondent."

The issues raised by the respondent have been adequately taken care of by the issues formulated in the appellants' brief and for that

reason I shall adopt the issues raised by the appellant in considering this appeal. I shall take issues (i) and (ii) together.

When arguing issues (i) and (ii) it was submitted that the court of appeal was in error when it stated that the Medical Director exercised his power under section 14(1) of the Psychiatric Hospital Management Act and not section 13(2) of the same Act when he suspended the appellant from duty which was followed by investigation that led to the termination of her appointment. It was also contended that the limited and erroneous application of section 13 of the act by the court of appeal led it to conclude that the proceedings before the disciplinary committee ordered by the Medical Director was beyond his powers.

The case of Ngwo & Ors v Nwoye & Ors. [1970] 1 All NLR 91 at 101 - 102 was cited and relied upon. It was also submitted that fair-hearing of her complaint was accorded her by the Committee set up the Board.

In reply learned counsel for the respondent submitted that the Court of Appeal was right when it stated that the Medical Director exercised the powers provided in section 14(1) of the Act which was in excess of his powers. It was also contended that the respondent did not receive fair hearing before the Board and that the procedure followed in conducting the respondent's trial before the Board was in breach of section 13(1) of the Act.

It should be borne in mind that the respondent was accused of stealing some items from the kitchen of the Psychiatric Hospital, the place she was working. In paragraphs 6 and 7 of the Further Amended Statement of Defence, the defendant/appellant pleaded thus-

" 6 *The Defendant shall establish at the trial that plaintiff remained at Uselu at her own interest and shall adduce evidence that at no time did she show food items she allegedly bought to Miss. Juliet Agbedo nor did she show them to the Security man at the gate as strictly required by the rules and or Regulations of the Defendant. Defendant shall rely on circular and all other relevant documents at the trial.*

7. *The Defendant avers that plaintiff did not show her handbag to the Security man on demand. Rather she sat tight while the Driver of the vehicle and the passengers alighted to surrender themselves for search-*

ing and when the Security man was searching the others plaintiff took to her heels with her handbag to avoid being searched according to the rules and the regulation s of the Defendant. She was eventually caught up with by the Security man and searched and the food items were found in the plaintiff's handbag during which time plaintiff knelt down and started to beg and confessed even before the Security Supervisor that the food items were the hospital's property she removed from the Catering Department . The Defendant shall contend at the trial that plaintiff's conduct at this stage was a serious breach of Defendant's rules and regulations, to the effect that any staff coming in or going out should submit to search by Security men."

See also the contents of Exhibit D part of which stated-

"It has been alleged that the underlisted food items bought for use in the hospital Catering department were stolen by you on 22nd September, 1987 while you were on duty. The food items were found with you concealed in your handbag after you were intercepted by the Security guard.

1. Quantity of Fresh tomatoes.
2. Two rubber tins of pronto beverage."

The committee of five members set up the Medical Director could not unanimously find the respondent guilty of the theft of two jars of pronto and quantity of fresh tomatoes labelled against her guilty of misconduct for failing to submit her hand bag for search by the security officer on first demand. Her appointment was terminated and on petition against that to the Psychiatric Hospital Management Board, her case was ordered to be retried so as to comply with the provision of fair-hearing under section 13(1) of the Act.

At the conclusion of the re-trial by the Committee set up by the Management Board, the appointment of the respondent was again terminated. There was no finding that she was guilty of theft of the items mentioned

I have carefully gone through the record of proceedings before the committee of the Management Board Exhibit M, but could not site an instance where it was shown that the respondent was afforded the op-

portunity of cross-examining any of the witnesses that testified before the Board against her.

The respondent/plaintiff pleaded in paragraph 4 of the Statement of Claim as follows:-

"The plaintiff will at the trial establish that as a catering Officer she came within the ranks of senior staff and the rules that guide appointment and discipline of senior staff should apply to her." B

In support of this averment the respondent testified thus:-

"I was then the Catering Officer and hold the rank of a Senior Staff on level 07, all the rules and regulations governing the appointment and discipline of Senior Staff should apply to me". C

The respondent was neither cross-examined nor contradicted by the appellant on this evidence on her status and rank as a senior officer.

Section 13(1) of the Psychiatric Hospital Management Act provides as follows- D

"13.-() If it appears to the Board that there are reasons for believing that any person employed as a member of the clinical, administrative or technical staff of the Hospitals, other than the Medical Directors, should be removed from his office or employment, the Board shall require the Secretary to - E

(a) give notice of those reasons to the person in question ;

(b) afford him an opportunity of making representation in person on the matter to the Board; and F

(c) if the person in question so requests, within the period of one month beginning with the date of the notice, make arrangements:-

(i) for a committee to investigate the matter and report to the Board; and G

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

and if the Board, after considering the report of the investigating committee, is satisfied that the person in question should be removed as aforesaid, the Board may so remove him by a letter signed on the direction of the Board". H

As complained by the respondent the procedure adopted by the appellant in her trial was not in strict compliance with section 13(1) of the Act and also section 33(1) and (4) of the 1979 Constitution which was applicable at the time material to the action. In my view the conclusions of the Court of Appeal cannot be faulted in which it stated-

" Under section 19 a "junior officer" means staff of such grade as may be determined from time to time by the Board. In the Court below, the appellant testified without contradiction by cross-examination or otherwise, that she was on Salary Level o7 and therefore Senior Officer".

" On a close examination of Exhibit "M", there is no indication that the Appellant was asked if she wanted to question any of the witnesses or that she in fact did. The inference is that she was not given an opportunity to cross examine the witnesses who spoke against her which is a clear violation of the rule audi alteram partem".

Since the Board failed to comply strictly with procedure laid in section 13(1) of the Act and section 33(1) and (4) of the 1979 Constitution, the Court of Appeal did the right thing when it allowed the respondent's appeal on this Issue. See NEPA V. ELFANDI [1986] 3 NWLR [PT 32] 898; GARBA V UNIVERSITY OF MAIDUGRI [1986] 1 NWLR [PT 18] 550; MOHAMMED V KANO NATIVE AUTHORITY [1986] 1 ALL NLR 424 and KANDA V GOVERNMENT OF THE FEDERATION OF MALAYSIA [1962] AC 322 adopted and followed by this Court in ADEDEJI V POLICE SERVICE COMMISSION [1967] 1 ALL NLR 67.

The important thing in dealing with a trial of any case be it Civil or Criminal, is to ensure that the procedure of fair hearing is strictly complied with. If that is satisfied, it does not necessarily matter whether the correct section of the law making such a provision is correctly cited. The courts are now more concerned with doing substantial justice than clinging to procedural technicalities and therefore concern themselves with the substance and not the form. This apart, the allegation against the respondent involved

commission of a Crime which raised the onus to that of proof beyond reasonable doubt on the appellant. This is a condition precedent if he was to succeed. As for the respondent, she needed only to offer evidence to the preponderance of probability to exculpate herself from the accusation.

I have looked through the evidence adduced by the appellant and I found it to be so contradictory and unreliable on which no reasonable tribunal would act. The respondent on the other hand had offered reasonable explanation on the accusation labelled against her including that of misconduct. I cannot find reliable evidence in proof of misconduct against her.

Issues (I) and (II) are therefore answered in the negative. The substratum of the complaint in Issue (III) is that the Court of Appeal was wrong in holding that the respondent was tried for theft and in breach of section 33(1) and (4) and the 1979 Constitution . It is trite to say that the allegation before both the Committee and the committee set up by the Board was based on theft of two jars of pronto and a quantity of tomatoes alleged to be the property of the appellant. Reading through the contents of paragraphs 6 and 7 the substantial part of paragraph 9 of the Further Amended Statement of Defence, will leave no iota of doubt that the respondent was being accused of committing the Crime of theft of the items mentioned supra. This was the genesis of the allegation of misconduct against her. In fact the proceedings both before the Committee set up by the Medical Director and that set up by the Management Board are replete with pieces of evidence to that effect. Both proceedings were put in evidence at the hearing of the respondent's case in the High Court. See for example Exhibit D, the query/suspension from duty issued to the respondent on the instruction of the Medical Director; Exhibit K, minutes of proceedings before the committee set up by the Medical Director to investigate the allegation in Exhibit D and Exhibit M the extracts from the Minutes of the proceedings of the Committee set up by the Management Board to re-try the respondent's case.

I have adequately covered this issue in my consideration of Issues (I) and (II) supra. I do intend to say more on it. I therefore answer

Issue (III) in the affirmative.

ISSUE (IV)

The complaint in this issue is that the Court of Appeal was wrong when it relied on Exhibit M in its judgment when the respondent had
B impugned its validity.

My short answer to the complaint raised in Issue (IV) is that the argument put forward by the appellant is based on misconception. Ground 4 of the grounds of appeal is subsumed in ground 2 [as amended] of the grounds of appeal. The whole purpose of putting in Exhibit M in particular by the appellant was to show that the provision of section 13(1) of the
C Act as well as that of section 33(1) and (4) of the 1979 Constitution were complied with. It was not put in evidence by the appellant for the purpose of cross-examining and discrediting the respondent and the evidence put in by her to prove her allegation of lack of fair-hearing. The
D appellant did not even cross-examine the respondent and her witnesses on Exhibit M. **In order to ascertain the truth or otherwise of the complaint against fair-hearing, the court had to look at Exhibit M, not withstanding the respondent's complaint against it in the Court of Appeal. Exhibits M and K were put in and tendered in evidence by the appellant. The trial court properly and rightly accepted them. There was no subsequent ruling by the trial court that the two exhibits were in admissible ab initio, or that they were wrongly admitted.**
E
F **In my view the Court of Appeal was perfectly right and in order when after looking at Exhibit M, it concluded-**

*"On a close examination of Exhibit "M". there is no indication that the Appellant was asked if she wanted to question any of the
G witnesses or that she in fact did. The inference is that she was not given an opportunity to cross examine the witnesses who spoke against her which is a clear violation of the rule audi alteram partem".*

I therefore also answer Issue (IV) in the affirmative.

H It is for these reason that I dismissed this appeal on 27/11/2000 and affirmed the judgment of the Court of Appeal.

On 27th November, 2000 I dismissed the appellant's appeal and indicated that I would give my reasons for the judgment today. I now give my reasons. I had the advantage of reading in draft the reasons for the judgment just read by Wali, J.S.C. and I agree with them.

The Medical Director wrongly exercised his power under section 14(1) of the Psychiatric Hospitals Management Board Act Cap. 374 Laws of the Federation of Nigeria, 1990. This subsection deals with the discipline of junior officers. It is section 13(1) of the Act which regulates the removal and discipline of senior officers which should have been applied. The purported termination of the employment of the plaintiff was rightly found by the courts below to be wrongful. A wrong procedure was used. B C

A close reading of Exhibit "M" - the proceedings of the Appointments, Promotions and Disciplinary Committee, showed that the plaintiff was not given fair hearing as enshrined in section 33(1) of the Constitution of the Federal Republic of Nigeria, 1979 which was then applicable. The courts below found that the plaintiff was not given the opportunity to cross examine her accusers. The appellant having acted outside section 13 of the Act, the justness or rightness of its decision became irrelevant. The court below was right when it declared the termination null and void. See N.E.P.A v Elfandi (1986) 3 NWLR (Pt. 32) 884 Garba & Ors. v University of Maiduguri (1986) 1 NWLR (Pt. 18) 550 and Kanda v Government of the Federation of Malaya (1962) A. C. 233. D E F

It was for the above reasons and the fuller reasons given by Wali, JSC that I dismissed the appeal. G

MOHAMMED JSC

On 27th November, 2000, I dismissed this appeal and announced that I would give my reasons later. I have now gone through the reasons given by my learned brother, Wali, JSC, and I agree entirely with him. He has considered adequately the arguments put forward by both parties in this appeal and following the facts and the law relevant to this appeal which were highlighted in my lord Wali's judgment I do not have any H

other point to add thereto. I abide by all the consequential orders made by my learned brother, Wali, JSC. in his judgment.

B KALGO JSC

I have had the privilege of reading before now the reason for judgment given by my learned brother Wali JSC, in this appeal. I agree with all the reasons and adopt them as mine. I however wish to emphasise some of them in the following paragraphs.

C On the 27th of November 2000 when this appeal was heard, I found that there was no merit in it and I dismissed it. I however promised to give my reasons for dismissing the appeal today and I now do so.

D The respondent was a catering officer in the service of the ap-
pellant at Uslu, Benin City. She was accused of stealing some quantity
of fresh tomatoes and two tins of pronto beverage at her place of work.
She was suspended from work and a Disciplinary Committee set up by
the Medical Director of the appellant to conduct an enquiry into the accu-
E sation. After the inquiry, the Medical Director by a letter dated 23rd
December, 1987 (Exhibit F) terminated the appointment of the respon-
dent. She appealed to the Executive Secretary of the appellant in Lagos
and she was invited to appear before the Appointment, Promotions and
F Disciplinary Committee in Lagos. At the end of the Committee proceed-
ings (Exhibit M) the Executive Secretary of the Appellant by a letter dated
28th March 1988, (Exhibit J) terminated the appointment of the respon-
dent, superceding Exhibit F mentioned earlier.

G The respondent challenged her termination in the trial high Court
Benin City which dismissed her claims. She then appealed to the Court
of Appeal Benin City which allowed her appeal and ordered her reinstate-
ment and payment of her accrued benefits. The appellant appealed to
this Court.

H The report of the inquiry into the allegations conducted by the
Appointment, Promotions and Disciplinary Committee in lagos (Exhibit
M) was the main report upon which Exhibit J was issued terminating the
appointment of the respondent. It is abundantly clear that no where in

Exhibit M, was it shown that the respondent was confronted with the accusation of the theft of the items concerned for which she was required to make her representation and no where in that report was she shown to have cross-examined any of the 13 witnesses who gave evidence before the Committee. In fact contrary to all such proceedings, B instead of hearing all the witnesses first and then call the respondent last, it was the respondent who was the 1st witness. She was not called even at the end of the Committee's proceedings before making its recommendations. Furthermore when the Board came to consider the report of the Committee as can be seen on P. 111 - 112 of the record, the respondent C was also not heard at all.

From this, it is evidently obvious to any reasonable man, that the respondent was denied the opportunity of being heard on the allegations made against her. The allegation of theft is a very serious allegation and D before finding a person guilty of such an offence, save where the person accused voluntarily confessed to the allegation, he or she should be given a chance to make a defence and cross-examine witnesses called to prove the allegation as in this case. In this case the respondent was not allowed E to cross-examine witnesses who were heard by the Committee, as the record has shown. This means that the whole proceedings was unfair and unjust and grossly in contravention of the rules of fair hearing contrary to the provisions of S.33 of the 1979 Constitution applicable at the F time material to this case. See Aiyetan v Nifor (1987) 3 NWRL (Pt. 59) 48; Ceekay Traders v G.M.Co. Ltd (1992) 2 NWRL (Pt. 222) 132, Salu v Egbeibon (1994) 6 NWLR (Pt. 348) 23.

Also from the record of appeal, there is ample evidence that the G respondent had pleaded that she was a senior officer on Grade level 7 at the time of the incident and this was admitted by the appellant in paragraph 4 of the amended Statement of Defence as being on normal promotion. The respondent gave evidence in support of this pleading which H was not challenged by the appellants at the trial. It is therefore presumed that the appellant must have accepted that the respondent was a senior officer at the material time. Therefore the appropriate section to deal with the situation of the respondent under the psychiatric Hospitals Man-

agement Board Act (Cap. 374 of 1990 Laws of Nigeria) is S. 13 (1) of that Act. The other subsections of that section are not relevant here since no Committee to investigate and report the matter to the Board is mentioned in any of them. And it was wrong to proceed against the respondent under S. 14 of the Act since that section deals only with junior Staff. But looking at what transpired in this case, including all relevant document thereon, there is no doubt that the provisions of S. 13 of the Act have not been complied with at all in relation to the respondent.

I therefore agree with the Court of Appeal when it said on P. 165 of the record:-

"On a close examination of Exhibit "M" there is no indication that the appellant was asked if she wanted to question any of the witnesses or that she in fact did. The inference is that she was not given an opportunity to cross-examine the witnesses who spoke against her which is clear violation of the rule audi alteram partem the question is not whether the decision of the Board was wrong or right. Once it acted within its jurisdiction as provided under section 13 of the Act, the justness or correctness of its decision is irrelevant provided the rules of natural justice were observed, which were breached in this case".

Finally I find that the appellant did not conduct the investigation into the allegation of theft against the respondent in accordance with the rules of natural justice and that she was denied fair hearing in the course of the proceedings. I also find that her removal was not in compliance with provision of Section 13 of the Psychiatric Hospital Management Board Act which applied to her as senior officer. It was for these reasons and those fully set out in the judgment of my learned brother Wali JSC, which I now adopt as mine that I dismissed this appeal on the 27th of November; 2000.

EJIWUNMI JSC

At the conclusion of addresses by learned counsel for the parties, this appeal was dismissed by me, and reserved my reason for doing so till today.

In this regard I have had the privilege of reading before now the reasons given by my learned brother Wali, JSC for dismissing the appeal. As I agree entirely with his reasons for reaching that conclusion, this appeal would also be dismissed by me. It follows that I also dismiss the appeal and award to the respondent costs in the sum of N10,000.00 only.