

SUPREME COURT OF NIGERIA
2ND MARCH, 2001 SC. 121/1995
CORAM:- M. L. UWAI S CJN, U. MOHAMMED, S. U. ONU,
O. ACHIKE, S. O. UWAI FO, JJSC.

OKOMU OIL PALM COMPANY LIMITED APPELLANT
AND
O. S. ISERHIENRHIEN RESPONDENT

MASTER & SERVANT - Appointment - Power to appoint implies the power to remove - Evidence shows that plaintiff was appointed by the defendant - And not by Federal Civil Service Commission.

MASTER & SERVANT - Civil service Rules - Claim by servant that it regulated his employment - Where not proved - Mere classification of one as a public servant - Will not make the Rules applicable.

MASTER & SERVANT - Parties - Federal civil service commission - Not being a party in the present action - Cannot be forced to take responsibility of plaintiff as its employer - When it did not employ him.

MASTER & SERVANT - Public officers - Decree No.17 of 1984 - Was meant to cover public officers - To conveniently relieve them of their appointments without any legal liability - The Decree is not applicable to the respondent.

MASTER & SERVANT - Public service of the Federation - As widely Defined in s.277 (1) of the 1979 Constitution - Is for purposes of code of conduct of public servants - It is not a ground for a worker being under authority - Of the Federal Civil Service Commission.

MASTER & SERVANT - Wrongful termination - Breach of terms of the contract of employment - Onus of proof in on the employee who filed the action.

PRACTICE & PROCEDURE - *Statement of claim - Defect - Where a party claims as per writ of summons - The statement of claim is not defective thereby.*

FACTS

Plaintiff/respondent was in the employ of the defendant/appellant as chief accountant. The defendant is a limited liability company owned by the Federal Government of Nigeria . Defendant terminated plaintiff's appointment on grounds of poor performance. By correspondence between the parties all terminal entitlements due to the plaintiff were fully settled. Plaintiff thereafter filed an action against the defendant claiming that his termination not being in line with the conditions of service of the defendant is null and void. Plaintiff felt that since by definition he is a public servant, Federal Government Civil Service Rules should have been complied with in removing him from office. But this was not done.

The trial court found in favour of the plaintiff. Defendant's appeal to the Court of Appeal was dismissed as it upheld the trial court's finding. Being dissatisfied defendant has further appealed to the Supreme Court raising 2 issues for determination.

ISSUES DETERMINATION

“(i) Whether the respondent’s appointment was governed by the rules of the Civil Service Commission of the Federal Republic of Nigeria.

(ii) Whether the statement of claim contained any relief.”

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

Wrongful termination - Breach of terms

1. It has been firmly established that when an employee complains that his employment has been wrongfully terminated, he has the onus (a) to place before the court the terms of the contract of employment and (b) to prove in what manner the said terms were breached by the employer. It is not the duty of the employer as a defendant in an action brought by the employee to prove any of these facts: see *Katto v. Central Bank of*

Nigeria (1999) 6 NWLR (pt. 607) 390 at 405. (p. 806 F)

Civil Service Rules - Claim by servant

2. Curiously enough, the first relief sought by the respondent is that, *inter alia*, his letter of termination was, to use his words, in “*utter disregard to the terms and conditions of service of the defendant company*”. Yet he tried to rely on the Civil Service Rules as the conditions regulating his employment with the defendant company. But he has failed totally to prove the terms of his contract of service and that those terms require that his employment could be terminated only by the Federal Civil Service Commission which must also do so in compliance with the Civil Service Rules. Or that his conditions of employment are synonymous with the Civil Service Rules. All that we have is the assumption by him (and the two courts below) that they are synonymous, or that it follows that since the respondent is classified as a public servant the Civil Service Rules apply to him. In my opinion, it does not follow and there is no basis for the assumption. (p. 813 A)

Appointment - Power to appoint

3. This is in accord with the general principle that the power to appoint implies the power to remove, so that even where the power to appoint is silent as to the power to remove, this will be implied. Section 11(1)(b) of the Interpretation Act (Cap.192), Laws of the Federation of Nigeria, 1990 confirms this when it states:

"11(1) Where an enactment confers a power to appoint a person either to an office or to exercise any functions, whether for a specified period or not, the power includes – (b) power to remove or suspend him."

It follows, in my view, that if the plaintiff claims that it is the Federal Civil Service Commission that can discipline or remove him as an employee of the defendant company by his reliance on rule 04102 of the Civil Service Rules, he has a duty to show that he was appointed by the Federal Civil Service Commission or by any person or body to whom the Commission constitutionally delegated that power. The evidence clearly is that he was appointed by the defendant company as contained in the

letter of appointment, exhibit K. To repeat, he also in cross-examination gave evidence that: *“I was not employed by the Federal Government Civil Service Commission but by Okomu Oil Palm Co. Ltd.”* (p. 813 H)

B Public service - As widely Defined in s. 277 (1)

4. The two lower courts relied on the definition of public service of the Federation in S.277(1) of the 1979 Constitution which means the service of the Federation in any capacity in respect of the Government of the Federation, and includes service as *“staff of any company or enterprise in which the Government of the Federation or its agency owns controlling share or interest,”* quite apart from other categories therein mentioned. It was on the face of that definition that they found that the plaintiff was subject to the authority of the Federal Civil Service Commission. With due respect, I do not think that is a conclusion that can rightly be drawn from the mere fact of that definition having regard to what I have pointed out. It is my view that that definition is reflective of and particularly consistent with the provisions in the Fifth Schedule to the Constitution which deal with Code of Conduct for Public Officers. That Schedule refers collectively to SS.62, 101, 158, 159, 189, 256 and 277 of the Constitution. The interpretation para. 21 of the Schedule defines *“public officer”* to mean a person holding any of the offices specified in Part II of the Schedule. That part provides for *Public Offices for the Purposes of the Code of Conduct* containing a long list including *staff of statutory corporations and of companies in which the Federal or State Government has controlling interest.”* This classification in the Constitution must be taken in the context and within the purview of its intendment. It is to see that any person coming within it can be controlled by the Government in the way he acquires wealth and conducts himself in public affairs. It does not bring him by itself under the authority of the Federal Civil Service Commission. (p. 814 E)

H

Parties - Federal Civil Service Commission

5. The lower court was therefore in grave error to hold that the respondent was subject to the Civil Service Rules. Indeed it was a legal *faus*

pax for the lower court to reach a decision which would in effect compel the Federal Civil Service Commission to take over responsibility for the respondent when the Commission was not made a party to the action. Such a decision cannot be expected to bind the Commission in the circumstances in whatever manner. This is based on the ancient principle put in the Latin maxim: *Res inter alios judicatae nullum aliis praejudicium faciunt* i.e. Matters adjudged in a cause do not prejudice those who were not parties to it. It would therefore be wrong to indirectly foist a person in the position of the respondent on the Federal Civil Service Commission as an employee when it neither employed him nor is there any evidence that it has record of him. The Civil Service Rules cannot therefore apply. (pp. 815 C/ 816 A)

Public officers - Decree No.17 of 1984

6. In the same way the Public Officers (Special Provisions) Act then known as Decree No.17 of 1984 was meant to cover public officers to conveniently relieve them of their appointments. Such public officers included those under the jurisdiction of the Civil Service Commissions and those not so placed but were classified as public officers. The respondent was not removed under that Decree and so it is inapplicable here. However, the fact that he could have been removed under it did not make him an employee subject to the authority and discipline of the Federal Civil Service Commission. It must be emphasised that the Decree did not completely replace the ordinary procedure of determining the tenure of public officers at the material time. It merely radically complemented it in a way that enabled the “*appropriate authority*” as recognised under the Decree to dispense with the services of a public officer so-called without any liability for the legal consequences that might have followed. The two courts below were obviously under a misconception when they thought that appellant *ran foul of the Decree*”. (p. 816 B)

Statement of claim - Defect

7. I think reference in a statement of claim to the writ for the reliefs claimed makes the statement of claim complete as it incorporates the

writ. It is accepted that the synonym of the word “*incorporate*” includes, roll into one, merge, link with, join together, fuse, assimilate: see BARLETT’S ROGET’S THESAURUS, 1ST edition, para.753.15 at page 663 and para.757.9 at page 668. I am satisfied that Ubaezonu JCA was right in his observation in *Owena Bank* case (supra) at pp.714-715 that “*where the statement of claim states that the plaintiff claims ‘as per writ of summons’, the claim in the writ of summons is incorporated in the statement of claim and become part of it.*” Once there is such incorporation, the statement of claim is taken to contain the relief stated in the writ, which statement of claim would otherwise have been defective and contrary to the requirement of Ord. 13, r.7 reproduced above. I therefore answer Issue No.2 in the affirmative. (p. 818 C)

D REPRESENTATION

Chief Charles Adogah, with him, J. Acha and N. Adogah, Esq. for the appellant.

Respondent absent. Not represented.

E

CASES REFERRED TO

Katto v. Central Bank of Nigeria (1999) 6 NWLR (pt.607) 390 at 405

Amodu v. Amode (1990) 5 NWLR (pt.150) 356 at 370

F Udechukwu v. Okwuka (1956) SCNLR 189

Keshinro v. Bakare (1967) NSCC (vol.5) 279

Francis v. Kuala Lumpur Councillors 1WLR 1411

African Continental Bank Ltd. v. Ewarami (1978) 4 SC.109

G Chief J.O. Fadahunsi v. The Shell Company of Nigeria (1969) NMLR 304 at 309

Adegboyega & Ors. v. Igbinosun & Ors. (1969) 1 NMLR 9 at 12

Amon v. Raphael Tuck & Sons Ltd (1956) 1 ALL ER 273 at 287

Uku v. Okumagba (1974) NSCC (vol.9) 128 at 140

H *Owena Bank (Nig) Ltd v. Nigerian Sweets and Confectionery Co. Ltd* (1993) 4 NWLR (pt.290) 698

STATUTES & RULES REFERRED TO

Constitution of Nigeria 1979 ss. 277 (1) (f), 140 (1) (b) 145(1), 156
Public Officers (Special Provisions) Act, Decree No.17 of 1984 s.4 (1) (c)
Interpretation Act cap192 LFN 1990 s.11 (1) (b)
High Court (Civil Procedure) Rules of Bendel State O. 13 r. 7

B

LEAD JUDGMENT BY UWAIFO JSC

The plaintiff (now respondent) was in the employ of the defendant (now appellant) as Chief Accountant. The defendant is a limited liability company owned by the Federal Government. It terminated the appointment of the plaintiff by letter that his services were no longer required. In this case the plaintiff has contested the termination on the basis that by definition he is a public servant and that the procedure for removing a public servant of his rank should have been complied with but was not. His contention is that the applicable procedure is as provided under the Federal Government Civil Service Rules. He therefore in his writ of summons as well as his statement of claim sought the following reliefs:

“1. A declaration that the purported letter of termination of the plaintiff was issued mala fide and without just cause and in utter disregard to (sic) the terms and conditions of service of the defendant company.

2. A declaration that termination of the plaintiff is unlawful, unconstitutional, null and void and of no effect whatsoever.

3. N50,000.00 (fifty thousand naira) being damages for wrongful dismissal.” (sic)

The defendant terminated the plaintiff’s appointment on grounds, put simply, of poor performance. His letter of termination (exh. E) showed that he had the sum of N38,138.70 to refund to the company. Correspondence passed between the plaintiffs solicitors and the defendant in which they demanded for the terminal entitlement of the plaintiff which was N4,781.11. The defendant appeared to have responded in a letter dated 14 April, 1986 which, although not tendered in evidence, was reflected in the solicitors’ letter dated 24 April (exh. L) as follows:

“We do hereby acknowledge your letter dated 14th April, 1986

and to inform you that our client has no intention to demand any other money from your organisation if and only if his legitimate earning is paid to him without any further delay.”

Upon the receipt of this letter, the defendant wrote to the solicitors on 25 April, 1986 (exh. M) as follows:

“In reference to your letter of 24th April, 1986 we enclose our cheque No.259449 for N4,511.71 comprising:-

Amount as previously agreed

Less expenses still to be accounted for (our letter 10.4.86) 4,781.11
269.40
N4,511.71

This payment is in full and final settlement of all claims your client may have on this company with the proviso that if a satisfactory statement is given for the above amount of N269.40 this will be reimbursed.”

It was after receiving the said amount of N4,511.71 that the plaintiff commenced this action. On 27 March, 1987, the learned trial judge (Akenzua, J), gave judgment for the plaintiff in respect of the first two reliefs but held that the third relief was not proved. Before reaching his decision on the first two reliefs the learned trial judge observed and held *inter alia*:

“From the evidence therefore and by reason of section 277 sub-section 1(f) of the Constitution of the Federal Republic of Nigeria 1979, the plaintiff falls within the category of a public servant not a civil servant because he is a member of the staff of a company in which the Federal Government has controlling shares... That the plaintiff is therefore a public servant and not a civil servant, then the provisions of Rule 04102 applies to him as learned counsel for the plaintiff submitted.”

The Court of Appeal upheld the decision of the trial court. It held that the defendant did not comply with the Federal Government Civil Service Rules which the plaintiff pleaded were applicable to him and which the defendant was said to have denied. It said per Ubaezonu JCA: *“The question now is – did the appellant comply with the provisions of Exhibit J the Civil Service Rules in terminating the appointment of the respondent? The answer of course is No. the appellant did not deny in*

its pleadings that the Civil Service Rules apply to the appointment of the respondent. The appellant did not challenge the admissibility of Exhibit J in evidence. The appellant did not fire one salvo by way of cross-examination of the Civil Service Rules. It does not lie in its mouth at this stage to kick up dust about the reliance of the lower court on the Civil Service Rules. In our adversary system of adjudication, cases in the High Court are conducted on the pleadings. Facts not pleaded cannot be relied on. In the same vein, facts pleaded in the statement of claim but not denied in the statement of defence are deemed to be admitted. The learned trial Judge is therefore right to hold that the appellant in removing the respondent did not comply with the provisions of the Civil Service Rule.” B C

The learned Justice also made reference to the status of the defendant as a company and the relevance of the Public Officers (Special Provisions) Act, known as Decree No.17 of 1984. he observed as follows: D

“Thus, the appellant is not only a mere limited liability company but is one owned by the Federal Government of Nigeria. Does its ownership make any difference vis-à-vis the question of removal from service being considered in this appeal? The answer is ‘Yes, it does’. Section 4(1)© of the Decree No.17 of 1984 provides – 4(1) In this Act ‘public officer’ means any person who holds or has held any office on or after 31st December, 1983 in – © a company in which any of the Governments in the Federation has a controlling interest.” E F

Thus, the appellant being a company in which the Federal Government not only has a controlling interest but also is completely owned by the Federal Government, the respondent is a public officer within the Public Officers (Special Provisions) Act, Decree No.17 of 1984. I have already held in this judgment that the appellant did not comply with the provisions of the Act in terminating the appointment of the respondent and therefore does not enjoy the protection afforded by S.3(3) of the Act. This may be what the trial Judge meant when he said that the appellant ran ‘foul of the Decree.” G H

The defendant has appealed from the decision of the lower court and has raised the following two issues for determination in the appellant’s brief of

argument:

“(i) *Whether the respondent’s appointment was governed by the rules of the Civil Service Commission of the Federal Republic of Nigeria.*

(ii) *Whether the statement of claim contained any relief.*”

B These two issues were adopted in the respondent’s brief although there was an attempt to recast them.

Issue No.1

I shall treat the issues separately, starting with the first. The facts of this case are short and simple. I have earlier in my prefatory résumé
C given the pith of those facts. The plaintiff, a chartered accountant, was employed by the defendant, a limited liability company, which later terminated the appointment. The complaint of the plaintiff/respondent is that his employment was wrongfully terminated. In other words, he relies on
D the fact or makes the contention that his termination was not in accordance with the conditions or terms of his contract of service. Even though, as will be shown, he admitted that he was employed by the defendant/appellant and not by the Federal Civil Service Commission, he later merely
E alleged that he was employed under the Federal Government Civil Service Rules. These are Rules, as contained in exhibit J, which regulate the contract of service of Federal Civil Servants and, *mutatis mutandis*, some Federal Public Servants. The question must be, in what manner or by
F what method would the respondent in an action like this be expected to demonstrate that his employment was wrongfully terminated?

**It has been firmly established that when an employee complains that his employment has been wrongfully terminated, he has the onus (a) to place before the court the terms of the contract of
G employment and (b) to prove in what manner the said terms were breached by the employer. It is not the duty of the employer as a defendant in an action brought by the employee to prove any of these facts: see *Katto v. Central Bank of Nigeria* (1999) 6 NWLR (pt. 607)
H 390 at 405. In *Amodu v Amode* (1990) 5 NWLR (pt. 150) 356 at 370, Agbaje JSC who read the leading judgment observed:**

“... *it appears clear to me that since it is the plaintiff’s case that his dismissal by the defendant is not in accordance with the terms and con-*

ditions of the contract of service between them it is for the plaintiff to plead and prove the conditions of service regulating the contract of service in question."

I think Wali, JSC expressed it in classic form in that same case at p.373 when he said: "*The term of the contract of service is the bedrock of the appellant's case.*" This underscores the importance of the employee proving the contract of service because that is what he must rely on in the course of showing in what way it has been breached by the employer. B

The lower court, in my view, missed this vital point in the way it made observation per Ubaezonu JCA about facts pleaded but not denied as they relate to this case as already quoted above. I may here recapitulate the essence of that observation before proceeding, for good effect, to comment thereon, and it goes *inter alia*: "*The appellant did not deny in its pleadings that the Civil Service Rules apply to the appointment of the respondent. The appellant did not challenge the admissibility of Exhibit J in evidence. The appellant did not fire one salvo by way of cross-examination of the Civil Service Rules... It does not lie in its mouth at this stage to kick up dust about the reliance of the lower court on the Civil Service Rules. In our adversary system of adjudication, cases in the High Court are conducted on the pleadings. Facts not pleaded cannot be relied on. In the same vein, facts pleaded in the statement of claim but not denied in the statement of defence are deemed too be admitted. The learned trial Judge is therefore right to hold that the appellant in removing the respondent did not comply with the provisions of the Civil Service Rules.*" C D E F

The learned Justice apparently assumed that facts pleaded in connection with the Civil Service Rules by the respondent were not denied by the appellant. He also took the position that an exhibit admitted in evidence (such as exhibit J) without objection could not thereafter be attacked as to its relevance and applicability to an issue for which purpose it was admitted. Finally, he came to the conclusion that the respondent's employment was subject to the Federal Government Civil Service Rules. In other words, by implication, that for the employment to be brought to an end, it must be done in accordance with the Federal Government Civil Service Rules under the authority, or by the direct act, of the Federal G H

Civil Service Commission. As I shall show, the learned Justice, with all due respect, erred on every aspect.

Shortly before the respondent closed his case at the trial court, he brought an application to amend his statement of claim. The application was not
B opposed by the appellant and was accordingly granted. The following paragraphs were introduced to the statement of claim as an amendment:

“30. *The plaintiff avers that the letter of termination dated 17th January, 1986 is illegal, since it contravenes the terms of service between the plaintiff and the defendant.*”

C 31. *The plaintiff avers that the defendant company is owned by the Federal Government and that the conditions of service of the company are in accordance with the Federal Civil Service Rules.*

32. *The plaintiff further avers that the administrative panel set up was*
D *biased and the plaintiff was not given an ample opportunity to defend himself in accordance with the Federal Civil Service Rules, Chapter 4.*

33. *The plaintiff further avers that the termination of the Plaintiff was not in accordance with the condition as laid down in the Chapter 4 of the*
E *Federal Civil Service Rules. The Federal Civil Service Rules will be relied upon during the course of the trial.*

34. *The plaintiff avers that the letters of termination dated 17th January, 1986 is illegal, since it contravenes the terms of service between the plaintiff and the defendant, since the termination is a contravention of*
F *the Federal Civil Service Rules, Chapter 4.*

35. *The plaintiff is 34 years old under a pensionable employment and a senior staff on an annual salary scale of 10,818 and since his termination he has not been employed, and would have been ordinarily retired at*
G *the age of 55 years.”*

The amendment was allowed on 19 February, 1987. Before the amendment the respondent gave evidence-in-chief as follows:

“*I am a Chartered Accountant... I know the defendant. The defendant*
H *employed me as their Chief Accountant but later terminated my appointment.*”

After the amendment was granted, he said further in evidence-in-chief:

“*I was employed under Federal Government Civil Service Rules as Re-*

vised to April, 1974.”

He was then cross-examined and he said as follows:

“I was not employed by the Federal Government Civil Service Commission but by Okomu Oil Palm Co. Ltd.”

The said Okomu Oil Palm Co. Ltd. is, of course, the defendant/appellant. B

By para. 33 of the amended statement of claim, the respondent averred that the termination of his appointment should have been in accordance with Chapter 4 of the Federal Government Civil Service Rules (exhibit J).

The Court of Appeal held that this averment was not denied and therefore was admitted by the appellant. Learned counsel for the appellant, Chief C

Adogah, has argued that this was erroneous as the Court of Appeal failed to be guided by the record of proceedings. He referred to the relevant aspect of the record. The statement of claim filed by the respondent origi-

nally consisted of paras. 1 to 29. In para. 3 of the statement of defence in D

response to the original statement of claim, the appellant denied all the paras. except paras, 1, 2, 3, 16 and 27. It will be recalled that in the

amended statement of claim, the respondent included paras. 30-35. On the

very day the amendment was granted, the following proceeding took place: E

“Chief Adogah: In view of the amendment just made by the plaintiff with the leave of this Court this morning, I wish to apply for leave to amend,

in consequence of the said amendment to the Statement of Claim, by adding in paragraph 3 of the Statement of Defence two (sic:six) extra F

paragraphs namely, ‘paragraphs 30, 31, 32, 33, 34 and 35’ after the figure ‘29’. I make the application under Order 14 High Court Civil

Procedure Rules, 1976. Mr. Erhabor: No objection. Court: Application granted; the following paragraphs, namely, ‘30, 31, 32, 33, 34, and 35’ G

are hereby given leave to be added to paragraph 3 of the Statement of Defence.”

That amendment was subsequently reflected in the statement of defence, para.3 of which now reads:

“The Defendant denies paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, H
13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, and 29, 30, 31, 32,
33, 34 and 35 of the Statement of Claim.”

It is clear that the lower court was in error to have held that paras. 31-35 of

the statement of claim were not denied.

The defendant has argued that the Federal Government Civil Service Rules are inapplicable to the contract of employment between the plaintiff and the defendant. This, it is contended, is more so as the plaintiff himself admitted he was employed by the defendant, a limited liability company. It would follow, as further argued, that the corresponding power to terminate the employment would reside in the defendant and in no other body. The plaintiff, on the other hand, has argued that although he was employed by the defendant, a company owned by the Federal Government, he is by definition a public officer by virtue of S.277(1)(f) of the Constitution of the Federal Republic of Nigeria, 1979 and S.4(1)© of Decree No. 17 of 1984. But because the defendant does not have conditions of service of its own, the Civil Service Rules of the Federal Government would apply to him. The fact that the defendant did not have conditions of service of its own as contended by the plaintiff was not directly pleaded by him. The nearest he pleaded was in para. 31 of the statement of claim as follows:

“31. The plaintiff avers that the defendant company is owned by the Federal Government and that the conditions of service of the company are in accordance with the Federal Civil Service Rules.”

This averment was denied wholly in para.3 of the statement of defence by virtue of the order made by the trial court on 19 February, 1987 to amend the statement of defence following the amendment made to the statement of claim. There is no evidence that the defendant company operates conditions of service which are similar to (or are in accordance with) the Federal Civil Service Rules; or that the defendant company has adopted the Civil Service Rules or that they have by law been imposed on it. It is true the consensus is that the company is owned by the Federal Government. Upon that fact, it was assumed, it seems, by the plaintiff (and the two courts below) that because the plaintiff was classified as a public servant, the Federal Civil Service Rules as per exhibit J regulated his employment. The trial court specifically made reference to rule 04102 of those Rules in its judgment while the court below indirectly referred to it in its judgment per Ubaezonu JCA when he said: *“The question now is – did the*

appellant comply with the provisions of Exhibit J the Civil Service Rules in terminating the appointment of the respondent? The answer of course, is NO.” The said rule 04102 relied on provides that:

“The power to dismiss and to exercise disciplinary control over servants holding offices in the Federal Public Service of the Federation is vested in the Federal Public Service Commission. This power may be delegated to any member of the Commission or any officer in the Federal Public Service.”

In order to be able to reach any conclusion that the said rule 04102 applies to the plaintiff, it must be shown, in my view, that he was a public officer employed by, or with the authority of, the Federal Civil Service Commission. The Federal Civil Service Commission was established under the 1979 Constitution by S.140(1)(b). Before the 1979 Constitution, there was what may be regarded as an octopus known as the Federal Public Service Commission which covered employees of the Judicial Department and employees in the traditional Civil Service. Although exhibit J is regarded as the Civil Service Rules, references are made therein to the Federal Public Service Commission as if it still exists as a body. For the purposes of the present case, reference to the Federal Public Service Commission may be understood as the Federal Civil Service Commission.

The implication of the lower court’s finding that the applicant was bound to comply with the provisions of the Federal Government Civil Service Rules before terminating the appointment of the respondent is far-reaching. That would suggest strongly on the face of it and by logical thinking that the respondent was employed by the Federal Civil Service Commission and that his employment can only therefore be brought to an end under the authority, or by the direct act, of the Federal Civil Service Commission. Now, under the said Rules, authority to appoint to public offices is stated in rule 02101 as follows:

“Appointments to public offices in the Federal Public Service are made on the authority of the Federal Public (Civil) Service Commission. These appointments are made either:-

(a) by letter written by the direction of the Federal Public Service Commission; or

(b) by formal agreement between the officer and the Federal Government or its appointed agents.

Subject to Rules 02205, 02206 and 02207, Heads of Departments are authorised to appoint eligible candidates to posts in respect of which the powers of appointment have been delegated to them.”

Rules 02205, 02206 and 02207 referred to deal with eligibility for appointment and procedure for appointment. Rule 02207 (a) provides that:

“All applicants for senior posts are required by the Federal Public Service Commission to complete Form No. FC.2 as a result of which their antecedents are carefully scrutinised before they are invited for an interview for appointment.”

There are similar provisions for junior posts. The candidate may thereafter be made an offer of appointment. The provisions then following made in rule 02207 (b) (iii) and (iv) read thus:

“(iii) If the candidate accepts the offer by returning within the specified time limit, Form No. Gen. 75 completed in EVERY PARTICULAR he should be issued with a letter of appointment on Form No. Gen.69C, copies of which should be endorsed to the Permanent Secretary to the Ministry of Establishments and Service Matters, and to the Accountant-General of the Federation and the Auditor-General of the Federation. (iv) In the case of an appointment to the pensionable establishment, Form No. Gen. 60 should accompany the copy of Form No. Gen. 69C sent to the Ministry of Establishments.”

It seems to me a fair conclusion to say that it is when it has been satisfactorily established that an employee was appointed under the Federal Government Civil Service Rules as provided above that the question of his removal in compliance with the relevant provisions of the said Rules can arise.

There is no evidence that the respondent was employed by the authority of the Federal Public/Civil Service Commission by letter written by the direction of the Commission or by formal agreement between the respondent and the Federal Government or its appointed agents as provided in rule 02101. There is no evidence that the procedure for appointment to the public service by the authority of the Commission was fol-

lowed by, or was applicable to, the respondent or the appellant company, nor that the appellant company is an appointed agent of the Federal Government. The respondent himself said that he was not employed by the Federal Civil Service Commission but by the appellant company. **Curiously enough, the first relief sought by the respondent is that, *inter alia*, his letter of termination was, to use his words, in “utter disregard to the terms and conditions of service of the defendant company”. Yet he tried to rely on the Civil Service Rules as the conditions regulating his employment with the defendant company. But he has failed totally to prove the terms of his contract of service and that those terms require that his employment could be terminated only by the Federal Civil Service Commission which must also do so in compliance with the Civil Service Rules. Or that his conditions of employment are synonymous with the Civil Service Rules. All that we have is the assumption by him (and the two courts below) that they are synonymous, or that it follows that since the respondent is classified as a public servant the Civil Service Rules apply to him. In my opinion, it does not follow and there is no basis for the assumption.**

The powers conferred on the Federal Civil Service Commission under the 1979 Constitution [which include powers to appoint or remove a civil/public servant: see S.145(1) thereof] may be delegated only in the manner as provided under S.156 which states as follows:

“156. Subject to the provisions of this Constitution, the Federal Civil Service Commission may, with the approval of the president and subject to such conditions as it may deem fit, delegate any of the powers conferred upon it by this Constitution to any of its members or to any officer in the civil service of the Federation.”

It seems to me, therefore, that it is the Federal Civil Service Commission under S.145(1) of the 1979 Constitution and rule 02101 of the Civil Service Rules which may appoint a civil/public servant. Similarly, under the said provisions, it is the Commission which may discipline or remove such servant, unless the power to appoint or remove/discipline is appropriately delegated under S.156 of the 1979 Constitution and rule 04102 of the Civil Service Rules. **This is in accord with**

the general principle that the power to appoint implies the power to remove, so that even where the power to appoint is silent as to the power to remove, this will be implied. Section 11(1)(b) of the Interpretation Act (Cap.192), Laws of the Federation of Nigeria, 1990

B confirms this when it states:

"11(1) Where an enactment confers a power to appoint a person either to an office or to exercise any functions, whether for a specified period or not, the power includes – (b) power to remove or suspend him."

C It follows, in my view, that if the plaintiff claims that it is the Federal Civil Service Commission that can discipline or remove him as an employee of the defendant company by his reliance on rule 04102 of the Civil Service Rules, he has a duty to show that he was appointed by the Federal Civil Service Commission or by any person or body
D to whom the Commission constitutionally delegated that power. The evidence clearly is that he was appointed by the defendant company as contained in the letter of appointment, exhibit K. To repeat, he also in cross-examination gave evidence that: *"I was not employed by
E the Federal Government Civil Service Commission but by Okomu Oil Palm Co. Ltd."*

The two lower courts relied on the definition of public service of the Federation in S.277(1) of the 1979 Constitution which
F means the service of the Federation in any capacity in respect of the Government of the Federation, and includes service as *"staff of any company or enterprise in which the Government of the Federation or its agency owns controlling share or interest,"* quite apart from other categories therein mentioned. It was on the face of that definition
G that they found that the plaintiff was subject to the authority of the Federal Civil Service Commission. With due respect, I do not think that is a conclusion that can rightly be drawn from the mere fact of that definition having regard to what I have pointed out. It is my
H view that that definition is reflective of and particularly consistent with the provisions in the Fifth Schedule to the Constitution which deal with Code of Conduct for Public Officers. That Schedule refers collectively to SS.62, 101, 158, 159, 189, 256 and 277 of the Constitu-

tion. The interpretation para. 21 of the Schedule defines “*public officer*” to mean a person holding any of the offices specified in Part II of the Schedule. That part provides for “*Public Offices for the Purposes of the Code of Conduct*” containing a long list including “*staff of statutory corporations and of companies in which the Federal or State Government has controlling interest.*” This classification in the Constitution must be taken in the context and within the purview of its intendment. It is to see that any person coming within it can be controlled by the Government in the way he acquires wealth and conducts himself in public affairs. It does not bring him by itself under the authority of the Federal Civil Service Commission.

The lower court was therefore in grave error to hold that the respondent was subject to the Civil Service Rules. Indeed it was a legal *faus pax* for the lower court to reach a decision which would in effect compel the Federal Civil Service Commission to take over responsibility for the respondent when the Commission was not made a party to the action. Such a decision cannot be expected to bind the Commission in the circumstances in whatever manner. This is based on the ancient principle put in the Latin maxim: *Res inter alios judicatae nullum aliis praejudicium faciunt* i.e. Matters adjudged in a cause do not prejudice those who were not parties to it: see Black’s Law Dictionary 6th edition [Centennial Edition (1891-1991)] page 1310. As said per Devlin J. in *Amon v. Raphael Tuck & Sons Ltd* (1956) 1 All ER 273 at 287, a judgment approved by this court:

“*The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action, and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party.*” (Italics mine)

[See *Uku v. Okumagba* (1974) NSCC (vol.9) 128 at 140 where the exact words of Devlin, J. were used per Udoma JSC]. Although this was said on the issue of joinder, it undeniably also stands as a legal expose to lead to the proposition that a person not a party (or privy) to an action would

not be bound by the result. **It would therefore be wrong to indirectly foist a person in the position of the respondent on the Federal Civil Service Commission as an employee when it neither employed him nor is there any evidence that it has record of him. The Civil Service Rules cannot therefore apply.**

In the same way the Public Officers (Special Provisions) Act then known as Decree No.17 of 1984 was meant to cover public officers to conveniently relieve them of their appointments. Such public officers included those under the jurisdiction of the Civil Service Commissions and those not so placed but were classified as public officers. The respondent was not removed under that Decree and so it is inapplicable here. However, the fact that he could have been removed under it did not make him an employee subject to the authority and discipline of the Federal Civil Service Commission. It must be emphasised that the Decree did not completely replace the ordinary procedure of determining the tenure of public officers at the material time. It merely radically complemented it in a way that enabled the “appropriate authority” as recognised under the Decree to dispense with the services of a public officer so-called without any liability for the legal consequences that might have followed. The two courts below were obviously under a misconception when they thought that appellant *ran foul of the Decree*”.

I have discussed matters relevant to Issue No.1 and I am satisfied that I must in all the circumstances answer that issue in the negative.

Issue No.2

The argument of the appellant on issue 2 is based on Order 13, r.7 of the High Court (Civil Procedure) Rules of Bendel State, 1976 applicable to this case. The rule provides that:

“Every statement of claim shall state specifically the relief which the plaintiff claims either simply or in the alternative and may also ask for general relief.”

The reliefs claimed in the writ of summons by the respondent have been reproduced at the beginning of this judgment. Three reliefs were specifi-

cally sought. As to that there is no doubt. At the end of the amended statements of claim, the respondent did not repeat those reliefs but instead he concluded by saying ‘*WHEREOF the plaintiff claims as per writ of summons.*’ The question this evokes is whether it is wrong or misleading, or to put it in the manner of learned counsel for the appellant, B whether it offends against rule 7 stated above.

Learned counsel for the appellant argues that it is not in compliance with the said rule 7, going strictly by its language, to end a statement of claim with merely claiming that the reliefs sought are as per the writ of summons. He says the reliefs claimed must be specifically inserted in the statement of claim. Argument was further made that because a statement of claim supersedes the writ of summons, whatever is contained in the writ becomes irrelevant on the authority of *Udechukwu v. Okwuka* (1956) SCNLR 189. On the other hand, learned counsel for the respondent contends that to refer in the statement of claim that the reliefs are as per the writ of summons amounts to a claim in that statement of claim by incorporation citing *Owena Bank (Nig) Ltd v. Nigerian Sweets and Confectionery Co. Ltd* (1993) 4 NWLR (pt. 290) 698. D

I think the statement of principle in *Udechukwu v. Okwuka* (supra) by the Federal Supreme Court has been inappropriately relied on by learned counsel for the appellant. In that case which was an action in detinue it was found that the statement of claim did not disclose a cause of action because it did not aver wrongful detention. It was in that connection De Lestang, F.J. observed at p.191: E

“To succeed in a suit in detinue in the circumstances of this case the plaintiff must establish the wrongful detention of his chattel by the defendant. It follows, therefore, that a plaintiff suing in detinue must aver in his statement of claim wrongful detention of his chattel by the defendant. There was no such averment in the appellant’s statement of claim in the present case. It is true that the writ of summons alleges ‘an unlawful detention’ by the respondent, but it is, I think, well settled that a statement of claim when filed, supersedes the writ of summons and must itself disclose a good cause of action.” F G

There is nothing in this observation as to the effect of reference in a

statement of claim to the writ of summons.

The issue that has arisen in the present case directly came for resolution in *Keshinro v. Bakare* (1967) NSCC (vol.5) 279. There, the statement of claim concluded by saying that the plaintiffs claimed as per writ of summons. There was an argument that the statement of claim which did not contain the reliefs claimed had superseded the writ. This court per Lewis JSC held that the statement of principle in *Udechukwu v. Okwuka* (supra) did not apply in a situation as in the present case; and that there was no question of the general rule of supersession since the statement of claim (not being complete) having failed to set out the reliefs claimed in the writ it became necessary to make reference in it to the writ: see p.282. **I think reference in a statement of claim to the writ for the reliefs claimed makes the statement of claim complete as it incorporates the writ. It is accepted that the synonym of the word “incorporate” includes, roll into one, merge, link with, join together, fuse, assimilate: see BARLETT’S ROGET’S THESAURUS, 1ST edition, para.753.15 at page 663 and para.757.9 at page 668. I am satisfied that Ubaezonu JCA was right in his observation in *Owena Bank* case (supra) at pp.714-715 that “where the statement of claim states that the plaintiff claims ‘as per writ of summons’, the claim in the writ of summons is incorporated in the statement of claim and becomes part of it.” Once there is such incorporation, the statement of claim is taken to contain the relief stated in the writ, which statement of claim would otherwise have been defective and contrary to the requirement of Ord. 13, r.7 reproduced above. I therefore answer Issue No.2 in the affirmative.**

In the result, although issue No.2 is resolved against the appellant, this appeal wholly succeeds and is allowed by me. I accordingly set aside the judgments of the two courts below together with the costs awarded by them. I hold that the respondent’s claim has no merit and I therefore dismiss it with N10,000.00 costs in favour of the appellant.

UWAIS CJN

I have had the privilege of reading in draft the judgment read by my learned brother Uwaifo, JSC, I agree with the judgment.

Both the Courts below held that the Respondent being a public officer and the Appellant being a company owned by the Federal Government of Nigeria, the provisions of Public Officers (Special Provisions) Decree No.17 of 1984 (now Public Officers (Special Provisions) Act, Cap. 381 of the Laws of the Federation of Nigeria, 1990) applied to the termination of the appointment of the Respondent. The Respondent contended at the trial in the High Court that by virtue of being a public servant, the provisions of the Federal Civil Service Rules applied to his condition of service.

The first issue formulated in the Appellant's brief of argument is whether the Respondent's appointment as employee of the Appellant was governed by the Federal Civil Service Rules.

Now it is true that under the definition of *public service of the Federation* in section 277 subsection (1) of the Constitution of the Federal Republic of Nigeria, 1979, which is applicable to this case, service in any capacity as a staff of any company in which the Government of the Federation owns controlling share, is "*a service of the Federation*". This definition is not intended to be a general definition for all purposes or to apply to any circumstance outside the reference made in the Constitution to the expression "*public service of the Constitution*". Section 277 subsection (1) of the Constitution in which the expression is defined provides

—
 “277 (1) In this Constitution, unless it is otherwise expressly provided or the context otherwise requires —“.

The expression, *Public Service of the Federation* is used in Part D of Chapter VI of the 1979 Constitution which comes under sections 156 to 161 thereof. The provisions of the sections deal, inter alia, with the application of the Code of Conduct for Public Officers to and the protection of the right to pension as applicable to a person in a public service of the Federation there is no mention, anywhere in the Constitution, to the Federal Civil Service Rules. It cannot rightly therefore be held that the

Rules applied to the Respondent's employment by the Appellant by virtue of the definition of "*public service of the Federation*" under section 277 (1) of the 1979 Constitution.

Section 4 of the Public Officers (Special Provisions) Decree No.17 of 1984, defines the expression *public officer*" to mean any person who holds or held office in inter alia "*a company in which any of the Governments in the Federation has a controlling interest.*" Going by the definition, the Respondent is such a person; but for the provisions of the Decree to have applied to his case, he must have been removed from office by "*the appropriate authority*", which expression has been defined under section 4 subsection (2) of the Decree as follows:-

"(2) *In the operation of this Decree, the appropriate authority –*
(a) in respect of any office which was held for the purpose of any State,
shall be the Military Governor of that State or any person authorised by him; and (b) in any other case, shall be the Head of the Federal Military Government, or any person authorised by him.

The letter, Exhibit "D", which terminated the Respondents' appointment does not show on the face of it that the appointment of the Respondent was terminated by the Head of the Federal Military Government or any person authorised by him, because the letter which was dated the 4th January, 1986 and written by the Acting General Manager of the Appellant stated –

"*In accordance with instructions from the Federal Ministry of Agriculture you are hereby informed that your appointment as Chief Accountant with the Okomo Oil Palm Company has been terminated with effect from 31st December, 1985. we are seeking clarification from the Ministry regarding salary entitlement and recovery of any amounts due from you and shall be advising you on this matter as soon as possible; in the meantime you should not arrange to visit the Estate. Yours faithfully, (SGD) Nwulu, W.L.C. ACTING GENERAL MANAGER*"

Apart from this, if the termination of the Respondent's employment had even come under the Decree, he could not have brought the action against the Appellant because of the ouster of the jurisdiction of the trial court by the provisions of section 3 subsection (3) of the Decree,

which provided –

(3) No civil proceedings shall lie or be instituted in any court for or on account of or in respect of any act, matter or thing done or purported to be done by any person under this Decree and if any such proceedings have been or are instituted before, on or after the making of this Decree, the proceedings shall abate, be discharged and made void.” B

Therefore, both the Court of Appeal and the trial court were in error to have held that the provisions of the Decree applied to the Respondent’s case.

It is for these and the fuller reasons contained in the judgment of my learned brother Uwaifo, JSC that I too will allow the appeal with N10,000.00 costs in favour of the Appellant against the Respondent. C

UTHMAN MOHAMMED, JSC

I entirely agree that this appeal has merit and ought to succeed. I have had the preview of the judgment of my learned brother, Uwaifo, JSC, in draft and for the reasons given there in, I also set aside the judgments of the two courts below and allow this appeal. I also dismiss the claim filed by the respondent before the trial court. I award N10,000.00 costs in favour of the appellant Cost awarded in favour of the respondent against the appellant at the High Court and at Court of Appeal to be refunded. D

ONU, JSC

I had the advantage to read before now the judgment just delivered by my learned brother Uwaifo, JSC. I entirely agree with his reasoning and conclusion that the appeal is meritorious. It accordingly succeeds and I allow it. G

It is my desire to add the following few points of mine in expatiation, to wit: H

The respondent who was the plaintiff at the High Court of the defunct Bendel State instituted an action against the defendant (now appellant) claiming among others a declaration that his letter of termination

of appointment was issued in utter disregard of the conditions of service of the appellant and therefore unlawful, unconstitutional, null and void and of no effect whatsoever.

The learned trial Judge (Akenzua, J.) dismissed the respondent's claim for damages but granted the declaration sought. The appellant appealed unsuccessfully to the Court of Appeal sitting in Benin (hereinafter referred to as the Court below) and being unsuccessful and dissatisfied with that court's decision, has now appealed to this Court premises on two grounds of appeal contained in a Notice of Appeal dated 2nd May, 1995.

I will pause here to state briefly the facts of the case on appeal herein as follows:-

The respondent was employed by the appellant sometime in July, 1983 until 4th January, 1986 when his appointment was terminated by the Acting General Manager of the appellant. The main plank on which the respondent's case proceeded was that his conditions of service were governed by the Federal Civil Service Rules as averred in paragraph 31 of his Amended Statement of Claim to the effect that:-

"31 The Plaintiff avers that the Defendant company is owned by the Federal Government and that the conditions of service of the company are in accordance with the Federal Civil Service Rules."

The appellant expressly denied this averment vide paragraph 3 of its Statement of Defence wherein it maintained that the said Federal Civil Service Rules were inapplicable to the contract of service.

The Two issues identified as arising from the grounds of appeal by the appellant although the respondent identified four such issues. For the purpose of this appeal the two issues formulated by appellants are concise enough to dispose of the case, to wit:

- (i) *Whether the respondent's appointment was governed by the rules of the Civil Service Commission of the Federal Republic of Nigeria.*
- H (ii) *Whether the Statement of Claim contained any relief.*

I propose to consider these issues in their order or sequence as follows:

Issue No.1

In ascertaining whether or not the appointment of the respondent

was governed by the Civil Service Commission rules of the Federal Republic of Nigeria, I would first wish to advert to the respondent's letter of appointment viz Exhibit "A" which stated in no uncertain terms thus:

"OKOMU OIL PALM COMPANY LIMITED

OFFICE ADDRESS

2, Ohiro Street, Off Osagiede Street. G.R.A., Benin City, Bendel State, Nigeria. Dated 21st July, 1983 Your Ref.; Our Ref.; Mr.O.S. Iserhienrhien, 84, Siluko Road, P.O. Box 4146 Benin City Dear Sir,

Offer of Appointment as a chief Accountant

I am directed to refer to your application for the post of a Chief Accountant dated 22nd April, 1983 and to inform you that you are successful. You are hereby offered the post of Chief Accountant on a Salary Grade Level 14 i.e. N9,853,320 N320 – N70,818.00 per annum. In view of your position and salary in your present organisation however, you will enter the scale at step III i.e. N10,498.00 per annum. You will be offered a free and furnished accommodation at Okomu, commensurate to your grade as a Management Staff, where you will be expected to reside permanently. Other allowances offerable by the company at present, are based upon Federal Government Directives and Policies on issues like Car allowance, Transport allowance, Leave Bonus, free medical treatment, etc. However, a Company Car will be allocated to your Division for your permanent use during office hours. There are two retained Doctors who visit the project twice weekly to look after the health of the staff. In addition, there is a stand-by clinic manned by a qualified nurse in cases of minor complaints and emergencies. You will be entitled to four weeks annual leave with a corresponding leave allowance/bonus for your grade. As a Chief Accountant, you will head the Accounting Division of the Company and will be responsible to the Board of Directors through the Company Secretary until a General Manager for the Company is appointed.

The Okomu Oil Palm Project/Farm is located at Okomu, some 16 Kilometres from Udo. Udo is some forty Kilometres from Benin City. There is ample supply of water and light, which you shall enjoy freely. The Company is Federal Government owned, mainly engaged in the plant-

ing, processing and producing of Oil Palm Products.

The management of the project is handled by a firm of Experts – CIA CO. Heading the Project, is a Project Manager who is seconded to the project by CIA CO. The management has a tenure of office well spelt
B out in the Management Agreement between the Board of Directors of Okomu Oil Palm Co. Limited and CIACO. It is after the final expiration of their term of office that the Board of Directors may consider the appointment of a General Manager to take over the Management of the
C Farm. Other details about the Company and your appointment will be made available to you from time to time after accepting this offer.

Within 14 (fourteen) days from the date of despatch of this letter to you, you are expected to convey your acceptance of the offer in writing without which you will be deemed to have rejected the offer.

D For the time being, accept my congratulations.

Yours faithfully,

(Sgd)

D.O. Igbinovia

E Secretary

O.O.P.C. LTD.”

The underlined portions of Exhibit ‘A’ will shortly be commented upon in this judgment. In determining whether the respondent’s appointment was
F governed by the rules of the Civil Service Commission of the Federal Republic of Nigeria a careful perusal of the respondent’s letter of appointment (Exhibits ‘A’ & ‘A1’ set out above) becomes pertinent. Irrespective of the impression the underlined portions of these exhibits convey, it is, in my opinion, clear that the respondent was employed by the appellant. There
G is no doubt whatsoever from a reading of these exhibits that the respondent’s letter of appointment was signed by one D.D. Igbinovia – the Company Secretary of the appellant. As can be seen, the Civil Service Commission of the Federal Republic of Nigeria was not a party to the contract of ser-
H vice. Irrespective of the respondent’s insistence at the trial when examined in chief that he was employed under Federal Government Civil Service Rules as revised in April, 1974, he not only admitted under cross examination that: “I was not employed by the Federal Civil Service Com-

mission but by Okomu Palm Co. Ltd.” but went ahead to admit by saying in conclusion:

“The defendant is a Limited Liability Company. The Federal Government has a controlling share in the Company.”

The underlined last pronouncement notwithstanding, it cannot be doubted B that the respondent’s appointment was duly terminated by the appellant vide Exhibits D and E and not by the Federal Government of Nigeria or any of its agencies. It follows therefore that the parties at all material times understood that the rules of the Federal Civil Service Commission C were inapplicable. And since the appellant is a limited liability company with powers to sue and be sued in its own name and powers as a corporate entity, it is illogical to contend that its operations are governed by the Civil Service Rules. The spirit of the corporate existence of companies will be negated should this state of affairs be allowed to have sway. Besides, D Section 11(1) of the Interpretation Act Cap. 192 Laws of the Federation of Nigeria provides as follows:

1(1) Where an enactment confers a power to appoint a person either to an office or to exercise any functions, whether for a specified period or E not, the power includes:

(a) power to appoint a person by name or to appoint the holder from time or to exercise any functions, whether for a specified period or not, the power includes. (b) power to remove or suspend him. (c) F ”

If the appellant by virtue of its powers of being a legal entity could employ the respondent, it would equally be invested with powers to terminate the respondent’s appointment. The court below in my view was therefore wrong when it erroneously found that the appellant did not fire G one salve (sic) by way of cross-examination challenging these facts about the application of the Civil Service Rules sequel to the termination of his appointment. See Francis v. Kuala Lumpur Councillors 1 WLR 1411 and African Continental Bank Ltd. v. Ewarami (1978) 4 SC.109 H

Besides, having a controlling number of shares in a company is not synonymous with its ownership once it is incorporated as an entity of its own and having its own separate legal existence.

Whatever impression was therefore given in this case that the Federal Civil Service Commission sat in the background and maintained a direct or remote control over the activities of the appellant by applying thereto its rules – a corporate entity with its own legal existence – must be rejected as a wrong and ill-conceived legal proposition.

Quite apart from the respondent's admission on oath under cross-examination that he was not employed by the Federal Civil Service Commission but by the appellant – a limited liability company, the averment that the rules of the Federal Civil Service Commission governed the contract of employment was expressly denied. A cursory glance at the trial court's notes of record vide page 54 reveals thereof as follows:-

"Chief Adogah: In view of the amendment just made by the Plaintiff with the leave of court, this morning, I wish to ask for leave to amend, in consequence of the said amendment to the Statement of Claim by adding in paragraph 3 of the Statement of Defence two extra paragraphs namely, "paragraphs 30, 31, 32, 34, and 35 after the figure "29". I make this application under Order 14 High Court Civil Procedure Rules 1976. Mr. Erhabor: No objection. Court: Application granted, the following paragraphs, namely "30, 31, 32, 33, 34 and 35 are hereby given leave to be added to paragraph 3 of the Statement of Defence." Paragraph 3 of the Statement of Defence was consequently amended as follows:

"The Defendant denies paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 23, 24, 25, 26, 28, and 29, 30, 31, 32, 33, 34 and 35 of the Statement of Claim."

Had the learned Justices of the court below adverted their minds to the foregoing points including the various exhibits and amendment before the trial Judge, they would have arrived at a different conclusion.

The respondent having been paid his outstanding emoluments/benefits in full, his action became of no avail. Besides, I am of the firm view that the provisions of the Public Officers (Special Provisions) Decree No.17 of 1984 in Section 4(1) do not and could not apply to his case whatsoever.

My answer to issue 1 is in the negative.

Issue 2 enquires whether the Statement of Claim contained any

relief.

To this end, it is the appellant's contention that by virtue of Order 13 Rule 7 of High Court (Civil Procedure) Rules of Bendel State, 1976 which was applicable at the material time and by a long line of decided cases, the clause "*whereof the Plaintiff claims as per writ of B summons*" was endorsed. In support of the proposition, the cases of Chief J.O. Fadahunsi v. The Shell Company of Nigeria (1969) NMLR 304 at 309 and Adegboyega & Ors. v. Igbinosun & Ors. (1969) 1 NMLR 9 at 12 as well as the Practice and Procedure of the Supreme Court, Court of Appeal and High Courts of Nigeria by Dr. T. Akinola Aguda (1980) Paragraphs 19.10 at page 247, were cited. Having gleaned the respondent's statement of claim, the writ of summons (for which see page 2 of the Records) and the cases cited, I am satisfied that he (respondent) has formulated a prayer to which the appellant ought to re-act. See the purport of part of the Original Writ of Summons at pages 1 and 2 thereof, to wit:

"TO OKOMU OIL PALM COMPANY LIMITED OF OKOMU OIL PALM COMPANY LIMITED."

We command you to attend this Court holden at Iguobazuwa the 20th day of October, 1984 at 9 0'clock in the forenoon to answer a suit by O.S. ISERHINRHIE of No. 5B OMOREGIE OKONZUWA STREET, BENIN CITY against you. The plaintiffs claim is indorsed on the reverse side hereof.

Take notice that if you fail to attend at the hearing of the Suit or any continuation or adjournment thereof, the court may allow the plaintiff to proceed to judgment and execution.

SIGNED AND SEALED this 14th day of July, 1986.

Summons

Service

Mileage

Transport

Other

CR NO. 1250660 OF 14/7/86

(SGD)

Fees paid

N150.00

0.20

0.30

2.00

B N152.00

Initial

Snr. Registrar

WRIT OF SUMMONS

C INDORSEMENTS

1. The Plaintiff's claim is for UNLAWFUL TERMINATION AND SUM OF N50,000.00

2. The Plaintiff's address for service is 5B OMOREGIE OKUNZUWA STREET, BENIN CITY

D 3. The address of the Plaintiff's Solicitor is No.35 LAWANI STREET, BENIN CITY.

4. Other Indorsement (when required by law).
(SGD)

E Signature of (Solicitor for) Plaintiff

Name in full (in Block letters)"

As the respondent's statement of claim was subsequently amended – see page 44-50 and particularly page 49-50 of the Record, I hold that it contained a relief vide paragraphs 31-35 thereof wherein he pleaded:

F 31. The Plaintiff avers that the Defendant company is owned by the Federal Government and that the conditions of service o the company are in accordance with the Federal Civil Service Rules.

G 32. The Plaintiff further avers that the administrative panel set up was biased and the plaintiff was not given an ample opportunity to defend himself in accordance with the Federal Civil Service Rules, Chapter 4.

H 33. The Plaintiff further avers that the termination of the Plaintiff was not in accordance with the conditions as laid down in the Chapter 4 of the Federal Civil Service Rules. The Federal Civil Service Rules will be relied upon during the course of the trial.

34. The Plaintiff avers that the letters of termination dated 17th January, 1986 is illegal, since it contravenes the terms of service between the

Plaintiff and the defendant, since the termination is a contravention of the Federal Civil Service Rules Chapter 4.

35. The Plaintiff is 34 years old under a pensionable employment and a senior staff on an annual salary scale of N10,818 and since his termination he has not been employed, and would have been ordinarily retired at the age of 55 years. Whereof the Plaintiff claims as per Writ of Summons." (Underlining is mine for emphasis)

My answer to this issue is thus rendered in the affirmative.

The above answer notwithstanding, the appellant's appeal succeeds. For these reasons and the fuller ones set out in the leading judgment of my learned brother Uwaifo, JSC I too allow the appeal and accordingly set aside the decision of the court below. I make similar consequential orders inclusive of those relating to costs as contained in that judgment.

ACHIKE, JSC

I had the privilege of reading before now the leading judgment just delivered by my learned brother, Uwaifo, JSC. I entirely agree with him that substantially, notwithstanding that Issue No.2 was resolved against the appellant, the appeal wholly succeeds and is allowed by me. Accordingly, I set aside the judgments of the two lower courts, including the costs awarded by them. In my opinion the respondent's claim was wholly baseless and unmeritorious, I therefore dismiss it with N10,000.00 costs against the respondent.

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H