

**SUPREME COURT OF NIGERIA**  
FRIDAY 12TH JULY, 2002. SC.60/1998  
**CORAM:- S. M. A. BELGORE, I. L. KUTIGI, S. U. ONU,**  
**A. I. KATSINA-ALU, A. O. EJIWUNMI, JJSC**

GODFREY ISIEVWORE	..... APPELLANT
AND	
NATIONAL ELECTRIC POWER	
AUTHORITY	..... RESPONDENT

---

MASTER & SERVANT - Termination - Validity - An employer is entitled to terminate his employee's appointment - For good or bad reason - Or for no reason (H1)

MASTER & SERVANT - Contract of service - Enforcement - Court will not foist an employee on an unwilling employer - Or make an order of specific performance of an ordinary contract of service (H2)

MASTER & SERVANT - Pension - Entitlement - Pensions Decree No 104 of 1979 s. 3 - Appellant is not entitled to pension - As he does not fall into the category of staff entitled to pension (H3)

MASTER & SERVANT - Termination - Reinstatement - Since no specific circumstances warrant reinstatement of appellant - Court of Appeal properly set aside order of reinstatement made by trial court (H4)

***FACTS***

Plaintiff/appellant was an employee of defendant/respondent. Respondent terminated the appointment of appellant as a result of bad record of services of appellant. Consequently, appellant filed this action at the High Court of Edo State, Benin City, claiming for a declaration that the purported termination of his appointment was null and void, an order of reinstatement and entitlement to pension.

Respondent on its part contended that it has the discretion to terminate appellant's appointment subject to his contract of employment. Respondent further stated that appellant has not put in the required number of years to entitle him to pension. At the end of

hearing, the court entered judgment for appellant by ordering his reinstatement. Being dissatisfied, respondent appealed to the Court of Appeal, Benin City. The court allowed the appeal and set aside the order made by trial court. Appellant has therefore appealed to Supreme Court.

**ISSUE FOR DETERMINATION**

Whether the lower court was right in dismissing the Appellant's case having found as a fact that appellant did not enjoy an appointment with a statutory flavour.

**HELD** (Unanimously dismissing the appeal per **ONU JSC**)

*MASTER & SERVANT - Termination - Validity*

**1. It is an established principle of law backed by a plethora of decided case that an employer is entitled to retire/terminate his employee's appointment for good or for bad reasons or no reason at all. The case of *Shitta-Bey v. Federal Public Service* (1981) 1 SC 40 at 56 the locus classicus on cases of this nature along with several other cases and legislations were called in aid and so I see no reason to interfere therewith.**  
(p. 2327 D)

*MASTER & SERVANT - Contract of service - Enforcement*

**2. Moreover, and consistent with the aforesaid principle, is the fact that the court will not foist an employee on an unwilling employer or make an order of specific performance of an ordinary contract of service. Thus, in *U.B.N. v. Ogboh* (1995) 2 NWLR (part 389) 649 at 664 this Court held inter alia as follows:**

***“Employment with statutory backing must be terminated in the way and manner prescribed by the relevant statute and any other manner of termination inconsistent therewith is null and void and of no effect. But in other cases governed by only agreement of the parties and not by statute, removal by way of termination of appointment or dismissal will be in the form agreed to. Any other form connotes only wrongful termina-***

*tion or dismissal but not to declare such dismissal null and void. The only remedy is a claim for damages for that wrongful dismissal.....for his wrongful act, he is only liable in damages and nothing more."*

The Court below was thus right, in my view, in holding that even if the retirement of the Appellant was wrongful, his remedy was in damages and not to be reinstated since doing so would amount to imposing a willing servant on an unwilling master. It is in this wise that I will discountenance the Appellant's submission that his retirement be regulated by the pensions decree. This is the moreso that the relationship between Appellant and respondent was at all material times that of ordinary master/servant. There is no statute or law protecting the relationship in terms of what procedure to observe or must be observed in order to bring the relationship to an end. What indeed regulated this procedure was Exhibit P. 2 - the Handbook and therefore if there was a breach (which is not conceded), it is only the conditions of service that would be applicable and not the pension decree. (pp. 2327 E/2328 D)

*MASTER & SERVANT - Pension - Entitlement*

**3. From the foregoing, it is palpably obvious that Appellant is not entitled to pension having put in only 9 years and that he has on his own volition not yet collected his retirement benefits due to him. There is no evidence to the contrary from the appellant. The appellant clearly, in my firm view, does not fall into the category of staff entitled to pension as stipulated by Section 3 of the Pensions Decree No. 104 of 1979. Hence, I take the firm view that the Appellant's counsel's argument on the applicability of the Pensions Decree is clearly misconceived. (p. 2329 B)**

*MASTER & SERVANT - Termination - Reinstatement*

**4. In CHUKWUMAH'S CASE (supra) at page 539 which border also on the issue of wrongful termination of appointment, Ogundare, JSC delivering the leading judgment stated thus.:**

*"The general law is that the court will not grant specific performance of a contract of service. Therefore a declaration*

*of the effect that a contract of service still subsists will rarely be made. Special circumstances will be required before a declaration is made and its making will normally be in the discretion of the court. There is a long line of cases in support of this proposition of law. Such special circumstances have been held to arise where the contract of employment has a legal or statutory flavour, thus putting over and above ordinary master and servant relationship.”*

See also **SAMUEL IGBE V. GOVERNOR OF BENDEL STATE (1983) 2 SC. 114** where this court refused to order reinstatement of a member of the public service commission who was removed in gross violation of the relevant provisions of the constitution but ordered payment of damages because supervening events made it impossible for their said member to return to his post. As in the instant case no specific circumstances to warrant reinstatement of the Appellant existed. The order of reinstatement made by the lower court was properly set aside by the court below and I so hold. (p. 2329 F)

### **REPRESENTATION**

A. O Okeaya-Inneh Esq., with A. B. Odiete, for the Appellant  
P. O. Osemwenkha Esq., for the Respondent

### **CASES REFERRED TO**

Chukwumah v. Shell Petroleum Co. (1993) 4 NWLR (Pt. 289) 512  
Imoloame v. W.A.E.C. (1992) 9 NWLR (Pt. 265) 303  
Igbe v. Governor of Bendel State (1983) 2 SC 114  
Bankole v. N.B.C. (1968) 2 All NLR 371  
Hill v. Parsons and Co. (1971) 3 All ER 1345  
Adewunmi v. Nig. Produce Marketing Board (1972) 1 All NLR 870  
International Drilling Company (Nig.) Ltd. v. Ajijola (1976) 2 SC 115  
Shitta-Bey v. Federal Public Service (1981) 1 SC 40  
U.B.N. v. Ogboh (1995) 2 NWLR (part 389) 649  
NITEL v. Ikaro (1994) 1 NWLR (Part 320) 350

### **STATUTE REFERRED TO**

Pensions Decree No. 104 of 1979, s. 3

**LEAD JUDGMENT BY ONU JSC**

The Plaintiff, herein Appellant sued the Defendant, herein Respondent in the Edo State High Court holden at Benin claiming as follows:

*“(i) A declaration that the Defendant’s letter dated 29th July, 1991 purporting to retire the Plaintiff from the Services of the Defendant as Senior Artisan (M/R/T) is null and void and of no legal effect.*

*“(ii) A declaration that the plaintiff is still in the services of the Defendant and as such he is entitled to his salaries and emoluments and*

*“(iii) An order that plaintiff be reinstated.”*

Pleadings were ordered, filed and amended but before the case went to trial, the Appellant, in addition, filed a Reply. Because of the vital role the pleadings have played in this case, I set out hereunder the salient paragraphs of the plaintiff’s Amended Statement of Claim, Defendants’s Further Amended Statement of Defence and Plaintiff’s Amended Reply as follows:

**PLAINTIFF’S AMENDED STATEMENT OF CLAIM**

*“(1) The plaintiff is a Nigerian, a public servant in the service of the Defendant as a Meter Reader.*

*“(2) The defendant is one of the parastatal wholly owned by the Federal Government and it is carrying on business of the generating and sales of electricity throughout Nigeria with the States Headquarters at Akpakpava Road, Benin City. All servants of the Defendant including the plaintiff are public servants within the meaning of the Constitution of Nigeria, 1979.*

*“(3) The plaintiff avers that he joined the service of the defendant as a meter Reader at Sapele in 1982 and after working in Sapele for sometime was transferred to Benin city. The plaintiff will at the trial rely and found upon his letter of appointment.*

*“(4) The plaintiff avers that his appointment with the defendant was permanent and pensionable.*

*“(5) The plaintiff avers that on the 15th of August, 1991 the Defendant served the plaintiff with a letter dated 29th of July, 1991 purporting to retire the plaintiff from the service of the defendant. At the trial the plaintiff will rely and found upon the said letter.*

*“(6) The plaintiff is only 30 years old and still has about 30 years to serve before he can be retired compulsorily from the service*

of the defendant at the age of 60 years...

(7) The plaintiff avers that defendant has no right to retire the plaintiff from the service of the defendant as the plaintiff was not informed of having committed any wrong. The plaintiff will contend at the trial that the purported retirement is against the principles of natural justice and as such the purported letter of retirement and or the purported retirement is null and void and of no legal effect. The plaintiff will at the trial rely and found upon the National Electric Power Authority Handbook which contains the condition of service and which handbook was given to the plaintiff at the time he was employed.

(8) The plaintiff avers that in February and March, 1986 he received queries from the Defendant one alleging that the plaintiff abandoned his duty post and the other alleging negligence on the plaintiff. The plaintiff answered the queries and thereafter the defendant exonerated the plaintiff.

(9) The plaintiff avers that in March, 1991 the Defendant wrote the plaintiff a letter falsely querying the plaintiff and one Mr. S. Edafiesumu for fighting in the office when there was no fight. The plaintiff and the said Mr. S. Edafiesumu thereafter the defendant exonerated the plaintiff and Mr. S. Edafiesumu and was asked to dropped (sic) the matter. The plaintiff will rely and found upon the defendant's letter dated 17th of May, 1991.

(10) The plaintiff avers that the purported retirement of the plaintiff by the Defendant's letter dated the 29th of July, 1991 had no connection whatsoever with the queries referred to in paragraphs 8 and 9 above. The queries were based on false and or an unfounded allegations and in any case the defendant had condoned the allegations or accusations contained in the queries.

#### PARTICULARS OF CONDONATIONS

(a) After the queries, the defendant promoted the plaintiff who was a Meter Reader Grade 1 to a Senior Artisan (M/R/F). At the hearing of this action the plaintiff will rely and found upon the defendant letter dated 21/8/90.

(b) The Defendant upgraded the plaintiff from Meter Reader Grade 11 to Meter Reader Grade 1. The plaintiff will rely and found upon the defendant's letter dated 29/1/88 and the one dated 11/3/88 adjusting the plaintiff's salary.

(c) *The defendant also approved a higher scale of salary for the plaintiff. The plaintiff will at the trial rely and found upon the defendant's letter dated 2/10/90 and 19/10/90.*

(d) *The plaintiff got annual increment in his salary for 1986, 1987, 1988, 1989, 1990 and 1991. At the hearing the plaintiff will rely and found upon all letters or documents relevant to the increase in the annual salaries of the plaintiff, and especially the defendants letters to the plaintiff dated the 25th of June, 1991.* B

(e) *The defendant specifically condoned the false allegation of fighting in their letter dated 17/5/91 which letter the plaintiff will rely and found upon at the hearing.* C

In the further Amended Statement of Defence the Respondent pleaded inter alia as follows:

“(2) *The defendant admits paragraphs 2,3, and 5 of the plaintiff's Statement of Claim.* D

(3) *The defendant denies paragraphs 1,4,6,7,8,9,10,11 and 12 of the plaintiff's Amended Statement of Claim and hereby puts the plaintiff to the strictest proof of these paragraphs at the trial of this suit.*

(4) *The defendant stoutly denies paragraph 4 of the Amended Statement of Claim and further states that the plaintiff's appointment as a junior staff was subject to the conditions of service of the Defendant, which entitled them to determine the relationship if and when the need arises. The defendant shall found upon a copy of their conditions of service or the handbook, which governs the relationship between the defendant and its employees during the trial of this action.* E F

(5) *That due to the monstrous losses being suffered by the Defendant Authority and the dwindling subventions from the Federal Government the defendants management deemed it fit to reorganize the defendant authority by terminating or retiring redundant staff in order to make the defendant authority more viable and efficient and in doing so took into cognisance the bad record of service of the plaintiff.* G H

(6) *In pursuance of the aforesaid decision the Defendant retired the plaintiff whose record of service was bad. The defendant shall found upon a copy of their letter Ref. No. 0227/21/2642/91 and dated 29//7/91 sent to the plaintiff retiring him during the trial of*

this suit.

(7) The defendant avers that it was established by decree No. 2 of 1972 and is solely owned by the Federal Government and acted under same in carrying out the general policy of the Federal Government in effecting the said reorganization aimed at making it more efficient and viable.

(8) The Defendant further states that due to the reorganization and rationalization of staff that took place in the defendant authority, and pursuant to the Public Officers (Special Provisions) Decree No. 17 of 1984 the services of plaintiff were no longer required and hence same was conveyed to him.

(11) The Defendant avers that the plaintiff has a bad record of service as a result of his conduct, actions and attitude to work, which were detrimental to the Defendant authority. The Defendant shall found upon the various queries issued to the plaintiff Ref. No. HEO/SAP/ADM/PI/95/220 of 22/2/85 for abandoning his duty post and the serious warning issued him thereafter Ref. No. HEO/SAP/ADM/P.1/95/302 of 26/3/85 and Query SEO/SAP/ADM/P.1/95/467 of 17/3/86 for negligence of duty and the warning Ref. No. 261170/swo/adm/p.i/95/824 of 25/6/86 in relation thereto.

(12) The Defendant further states that the plaintiff's conduct whilst on duty was very unbecoming and engaged himself in fighting bouts while on duty. The defendant shall found upon query 26101/ADM/C.30/VOL.XVIII/572 of 18/3/91 in relation to the plaintiff conduct of fighting while on duty and the plaintiff's reply thereto all of which the management considered before retiring him.

(13) The defendant further states that the action of the plaintiff in fighting whilst on duty amongst other unconscionable acts were considered by the management as being inimical to the defendant sufficient enough to warrant his termination/retirement after considering a reply from the plaintiff to their letter notifying him of their intention to determine his appointment.

(14) In further answer to paragraph 7, which is denied, the Defendant states that they had the discretion to retire and/or terminate the plaintiff's appointment and did so in consonance with the conditions of his appointment and by virtue of Decree No. 17 of 1984.

(15) The Defendant will rely on other legal and equitable de-



fences during the trial of this suit governing master/servant relationship.

(16) In further answer to paragraph 10 the Defendant states that the unbecoming acts of the plaintiff was not condoned at any point in time by the plaintiff.

(17) The defendant denies paragraph 11 of the plaintiff's Amended Statement of Claim and states that since the plaintiff had not put into service the required number of years and was neither entitled to pension nor salaries for the period he was not in service.

(18) In answer to paragraph 12(a), (b) and (c) of the plaintiff's statement of claim which is stoutly denied the defendant states that the plaintiff is not entitled to any of the reliefs being sought and will urge the court to dismiss the claim as being misconceived, speculative, vexatious and an abuse of the process of the court."

Finally, in his Amended Reply to the Statement of Defence the Respondent pleaded as follows:

"(2) The plaintiff joins issues with the defendant in paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15 of the Further Amended Statement of Defence.

(3) The plaintiff was and still is a meter reader with the defendant. There has been no re-organization in the meter reading section or in other section. On the contrary the work in the meter reading has increased and the defendant has even employed more hands in that department since the purported retirement of the plaintiff.

(4) As a specific reply to paragraph 9 of the Statement of defence the plaintiff avers that he did not collect any money from the defendant since he was purportedly retired. The plaintiff has not even collected his salary for August, 1991 even though he was served with the purported letter of retirement on the 15th of August, 1991. The plaintiff has not also collected his bonus due to him for 1990 and payable in 1991 and transport allowance for June, July, and August, 1991."

The trial Court (per Omorodion, J.) after hearing the parties and the addresses of counsel, entered judgment for the Appellant in the following terms.

"From the foregoing the plaintiff's case succeeds. I hereby enter judgment for the plaintiff as per the writ of summons and claims. Accordingly therefore, the following declarations are hereby made:

(a) *It is hereby declared that the defendant letter dated 29/7/91 purporting to retire the plaintiff from the service of the defendant as a senior artisan (M/R/F) is null and void and of no legal effect.*

(b) *It is hereby declared that the plaintiff is still in the service of the defendant and as such he is entitled to his salaries and or emoluments.*

(c) *It is hereby ordered that the plaintiff be re-instated forthwith. The plaintiff is entitled to cost assessed at N500.00"*

Being dissatisfied with the said decision, the defendant/respondent appealed to the Court of Appeal, Benin Division which allowed the appeal and set aside the order of reinstatement. It is against the latter decision that the Plaintiff/Appellant has now appealed to this Court.

Briefs of argument were filed and exchanged by the parties. The plaintiff/appellant (who I shall in the rest of this judgment refer to simply as appellant) submitted three issues as arising for determination but at the hearing of this appeal on 6th May, 2002, withdrew the third issue, which was accordingly struck out. The two issues the Appellant was left with to argue before us are as follows:

(1) Whether the Justices of the Court of Appeal were right in deciding the case as if it was a case of wrongful dismissal?

(2) Whether the learned Justices of the Court of Appeal were right in not considering the provisions of the pension decree?

The Respondent's one issue for determination as formulated on the other hand, was proffered as follows:

Whether the lower court was right in dismissing the Appellant's case having found as a fact that appellant did not enjoy an appointment with a statutory flavour.

I propose to deal with this appeal by considering the respondent's sole issue, which, in my view, is succinct and more precise than the two issues submitted at appellant's instance, which indeed it overlaps.

Arguing the lone issue, it was submitted that the evidence led by the Appellant from the pleadings was that prior to his retirement, he was a meter reader with the respondent.

Evidence was further led to the effect that he was employed as a meter reader in 1982 and was later promoted to Senior Artisan Meter Reader Officer.

Furthermore, it was the Appellant's case that Exhibit P2, the Conditions of Service of the Appellant otherwise called "*the handbook*", regulated the relationship between himself and his employers, the Respondent. There was a finding of fact on this issue by the trial court which after reviewing the evidence led, observed that the Appellant did not enjoy an appointment with a statutory flavour. The finding was further affirmed by the Court below which held *inter alia* that:

*"Since the Conditions of service of the Respondent in this case was (sic) contained in the Handbook Exhibit "P2" and not in any statute we have to say that his appointment has no statutory flavour. That being the case he could only claim in damages for wrongful retirement and no more. The learned trial Judge was therefore wrong in ordering the reinstatement of the respondent."*

It is pertinent to note that there is no appeal against the concurrent findings of fact - a crucial fact conceded to by the Appellant.

***It is an established principle of law backed by a plethora of decided case that an employer is entitled to retire/terminate his employee's appointment for good or for bad reasons or no reason at all. The case of Shitta-Bey v. Federal Public Service (1981) 1 SC. 40 at 56 the locus classicus on cases of this nature along with several other cases and legislations were called in aid and so I see no reason to interfere therewith.***

***Moreover, and consistent with the aforesaid principle, is the fact that the court will not foist an employee on an unwilling employer or make an order of specific performance of an ordinary contract of service. Thus, in U.B.N. v. OGBOH (1995) 2 NWLR (part 389) 649 at 664 this Court held inter alia as follows:***

***"Employment with statutory backing must be terminated in the way and manner prescribed by the relevant statute and any other manner of termination inconsistent therewith is null and void and of no effect. But in other cases governed by only agreement of the parties and not by statute, removal by way of termination of appointment or dismissal will be in the form agreed to. Any other form connotes only wrongful termination or dismissal but not to declare such dismissal null and void. The only remedy is a claim for damages for that wrong-***

***ful dismissal.... for his wrongful act, he is only liable in damages and nothing more.***” (Underlining is mine for emphasis).

See also CHUKWUMAH V. SHELL PETROLEUM CO. (1993) 4 NWLR (Part 289) 512 at 560; IMOLOAME V. W.A.E.C. (1992) 9 NWLR (part 265) 303 at 318 where in this court per Karibi Whyte, B JSC it was held that:

“*The principle is that where there has been a purported termination of a contract of service a declaration to that effect that the contract of service still subsists will rarely be made. See Bankole v. N.B.C. (1968) 2 All NLR 371; Francis v. Municipal Council of Kuala Lumpur (1962) 3 ALL E.R. 633. As a general rule, reinstatement is not ordinarily the remedy for breach of contract of service. Specific performance or reinstatement is generally not the remedy in respect of personal service. However, in “special circumstances,” specific D performance may be granted in contracts of service. These circumstances depend upon the particular facts of each case.*”

See also NITEL V. IKARO (1994) 1 NWLR (Part 320) 350 at 364. ***The Court below was thus right, in my view, in holding that even if the retirement of the Appellant was wrongful, his E remedy was in damages and not to be reinstated since doing so would amount to imposing a willing servant on an unwilling master. It is in this wise that I will discountenance the Appellant’s submission that his retirement be regulated by the pensions decree. This is the moreso that the relationship F between Appellant and respondent was at all material times that of ordinary master/servant. There is no statute or law protecting the relationship in terms of what procedure to observe or must be observed in order to bring the relationship to an end. What indeed regulated this procedure was Exhibit P. 2 - G the Handbook and therefore if there was a breach (which is not conceded), it is only the conditions of service that would be applicable and not the pension decree.***

H Furthermore, the learned counsel to the Appellant appears to be of the mistaken view that the retirement of the Appellant disentitled him to his pension or retirement benefits if he is entitled to some. There is nothing further from the truth because Exhibit “P1” his retirement letter did not expressly or impliedly take away his right to his retirement benefits. He was expressly informed therein that:

*“His entitlement will be computed and paid.”*

Indeed, there is no evidence on the records that he was denied his retirement benefits except those that the Respondent has conceded it is owing him. See the evidence of DW.1 who testified on behalf of the respondent by stating unequivocally that:

*“At the time the plaintiff was retired he had not put in the number of years to entitle him for pension. The plaintiff did not collect his retirement benefits.”*

***From the foregoing, it is palpably obvious that Appellant is not entitled to pension having put in only 9 years and that he has on his own volition not yet collected his retirement benefits due to him. There is no evidence to the contrary from the appellant. The appellant clearly, in my firm view, does not fall into the category of staff entitled to pension as stipulated by Section 3 of the Pensions Decree No. 104 of 1979. Hence, I take the firm view that the Appellant’s counsel’s argument on the applicability of the Pensions Decree is clearly misconceived.***

Counsel to the Appellant has in his brief erroneously contended that the court below decided the case as it same were a case of wrongful dismissal. Be it noted that the fulcrum upon which revolved the decision of this case is a well established principle of law that a court cannot impose in an ordinary contract of service a willing servant on an unwilling master and this was what was established by the two main authorities used in deciding the appeal before it, namely. OGBOH V. U.B.N. (supra) at page 671 and CHUKWUMAH V. SHELL PETROLEUM DEVELOPMENT CO. (supra) at page 560.

***In CHUKWUMAH’S CASE (supra) at page 539 which border also on the issue of wrongful termination of appointment, Ogundare, JSC delivering the leading judgment stated thus.:***

***“The general law is that the court will not grant specific performance of a contract of service. Therefore a declaration of the effect that a contract of service still subsists will rarely be made. Special circumstances will be required before a declaration is made and its making will normally be in the discretion of the court. There is a long line of cases in support of this proposition of law. Such special circumstances***

*have been held to arise where the contract of employment has a legal or statutory flavour, thus putting over and above ordinary master and servant relationship.”*

**See also SAMUEL IGBE V. GOVERNOR OF BENDEL STATE (1983) 2 SC. 114 where this court refused to order reinstatement of a member of the public service commission who was removed in gross violation of the relevant provisions of the constitution but ordered payment of damages because supervening events made it impossible for their said member to return to his post. As in the instant case no specific circumstances to warrant reinstatement of the Appellant existed.** See Francis v. Kuala Lumpur Councilors (1962) 1 WLR 1411; Hill v. Parsons and Co. (1971) 3 All E.R. 1345. **The order of reinstatement made by the lower court was properly set aside by the court below and I so hold.**

In the result, my answer to the lone issue is rendered in the affirmative.

For all I have been saying I find no merit in this appeal which therefore fails and is dismissed by me. I award N10,000.00 costs to the Respondent.

---

### **BELGORE JSC**

I find no merit in this appeal and as my learned brother has adumbrated in his judgment I also dismiss it. I award N10,000.00 costs to the respondent against the appellant.

---

### **KUTIGI JSC**

I read in advance the judgment just rendered by my learned brother Onu, J.S.C. I agree with his reasoning and conclusions so beautifully and clearly set out. I also find no merit in the appeal. It is accordingly dismissed with costs as assessed.

---

### **KATSINA-ALU JSC**

I have had the advantage of reading in draft the judgment of my learned brother Onu JSC in this appeal. I entirely agree with it.

For the reasons which he has given I too dismiss the appeal. I abide by the order for costs.

---

***EJIWUNMI JSC***

The judgment just delivered by my learned brother Onu JSC<sup>B</sup> was read by me in its draft form. This case arose from the retirement of the plaintiff from the services of the defendant as a Senior Artisan. The plaintiff then sought for a declaration that he is still in the services of the defendant and therefore entitled to his salaries and emoluments. He also sought for an order that he be reinstated.<sup>C</sup>

The trial Court upheld the claims as aforesaid. The defendant then appealed to the Court below and that court reversed the orders of the trial court. The plaintiff has now appealed to this court.

In a nutshell, the claims of the appellant would appear to be<sup>D</sup> based on the assumption that his appointment was wrongfully terminated. It seems to me that all the authorities are to the effect that where he was able to establish that his appointment was wrongly terminated, he would be entitled to damages. And this would be what was due to him for the period of notice.. See *Adewunmi v. Nigerian Produce Marketing Board* (1972) 1 All NLR 870; *WNDC v. Abimbola* (1966) 1 All NLR 159; *Akinfosile v. Mobil* (1969) NCLR 253; *International Drilling Company (Nig.) Ltd. v. Ajijola* (1976) 2 S.C. 115; *Imoloame v. WAEC* (1992) 9 NWLR (pt. 265) 303 at 318 and also *Chukwuma v. Shell petroleum* (1993) 4 NWLR (pt. 289)<sup>F</sup> 512 at 560.

It is for the above reasons and the fuller reasons given in the judgment of my learned brother Onu JSC., that I also dismiss this appeal. The respondent is hereby awarded costs in the sum of<sup>G</sup> N10,000.00 only.