

SUPREME COURT OF NIGERIA
FRIDAY 24TH JANUARY, 2003. SC. 285/2000
CORAM:- S. M. A. BELGORE, A. I. IGUH, S. O. UWAIFO,
A. O. EJIWUNMI, E. O. AYOOLA, JJSC

1. THE SHELL PETROLEUM
DEVELOPMENT CO OF NIG LTD
2. MR. R. VAN DEN BERG
3. MR. EGBERT U. IMOMOH
4. MR. JOSHUA R. UDOFIA APPELLANTS
5. MR. JOHN BARRY
6. STEVE RATCLIFFE
7. THE DIRECTOR OF PETROLEUM
RESOURCES, MINISTRY OF
PETROLEUM RESOURCES
AND
E. N. NWAKA RESPONDENT

COMPANY LAW - Contract of employment - Breach - Rule in Foss v. Harbottle - The rule is inapplicable because performance of contract entered into with 3rd party - Is not a matter of internal management of company (H1)

COMPANY LAW - Actions - Jurisdiction - Federal High Court has no exclusive jurisdiction - In actions arising from contract of employment - As same does not pertain to operation of companies (H2)

JURISDICTION - Scope - 1999 Constitution s. 6(6)(b) - A person who claims civil right is entitled to invoke jurisdiction of court - And court is to decide whether such right exists or not (H3)

JURISDICTION - Private law - Right - Grant - Court's grant of declaration of right is predicated on existence of legal right - And such right attaches to property and to the person subject to contract (H4)

MASTER & SERVANT - Contract of employment - Employee status - Right not to be declared redundant must be dependent on the contract - And not on any matter of public law (H5)

ADMINISTRATIVE LAW - Civil justice - Duty of citizens - Extent - Though it is a civil duty of a citizen to expose wrong doing - The duty does not ripen into a right which he can protect - By private litigation (H6)

CONTRACTS - Terms - Pleadings - Party whose claim is based on contractual rights - Should plead the term that gave the right or obligation - And what constituted breach (H7)

ACTIONS - Cause of action - Basis - Ibrahim v. Osim - Facts in statement of claim must set out legal right of plaintiff - And obligation on defendant (H8)

CONTRACTS - Breach - Substituted contract - Proof - Breach does not often arise from substitution of existing contract with fresh contract - As it must be shown that the new contract was without consent of parties (H9)

CONTRACTS - Binding nature of - Where party has agreed to be bound by contract - By taking benefits thereunder - He cannot subsequently ask court to set aside same (H10)

CONTRACTS - Actions - Cause of action - Proof - Where plaintiff's case is based on absence of essential prior approval - Such must be pleaded - Else there would be no cause of action (H11)

FACTS

Plaintiff/respondent sued defendants/appellants at the High Court of Rivers State, Port Harcourt claiming sundry declarations and orders by which he contested an alleged unlawful termination of his employment with 1st appellant. In response, appellants brought a motion praying the court to strike out or dismiss the suit for lack of jurisdiction. Appellants also attacked the various prayers of respondent on the grounds that they either failed to disclose reasonable course of action or were outside the scope of judicial powers exercisable by the court.

Though the learned trial Judge held that the procedure adopted

by appellant in raising their objection was irregular, he heard the application and struck out only two claims for non-disclosure of cause of action. Appellants appealed to Court of Appeal, Port Harcourt which ordered four other additional prayers of respondent to be struck out. Still being dissatisfied, appellants appealed to the Supreme Court. Respondent also cross-appealed. Among the reliefs claimed by respondent were a declaration that he is not a redundant employee of 1st appellant. Appellants on their part questioned the locus standi of respondent to sue for such reliefs. They also question the justiciability of all the claims of respondent.

ISSUES FOR DETERMINATION

- (1) As regard claims 3 and 5, whether
 - (a) respondent had locus standi to sue for reliefs claimed, and
 - (b) only the Federal High Court has exclusive, jurisdiction over these claims and whether they raise justiciable issues; and,
- (2) As regards claims 6, 7 and 11, whether they are not frivolous and vexatious and in abuse of judicial process.

HELD (Unanimously allowing the appeal and dismissing the cross appeal per **Ayoola JSC**)

COMPANY LAW - Contract of employment - Breach

1. The rule in *Foss v. Harbottle* relates to internal management of a company and is based on the futility of the court setting aside or interfering with an irregular act of the company at the suit of a minority of members when such act can be ratified by a majority who have the power to do so. Whether a company's directors or management has power or not to enter into a contract, may be a matter of internal management of the company. However, performance of a contract validly entered into with a third party is not. A breach of a contract of employment, like any other contract of the company, cannot be ratified and justified merely by an act of a majority of members of a company so as to deprive the aggrieved party of a right of action. Learned counsel for the respondent was right in his submission that neither *Foss v. Harbottle* nor Section 299 of the Companies Act applied. (p. 232 G)

COMPANY LAW - Actions - Jurisdiction

2. By the same reasoning by which that submission is upheld the question whether or not the Federal High Court has exclusive jurisdiction in such matters as this must be resolved against the appellants. Although Section 7(1)(b) of the Federal High Court Act (as amended of Decree No. 1991 No. 60) gave exclusive original jurisdiction to the federal High Court to try civil cases and matters connected with or pertaining to the operation of the Companies Act, federal enactments and any other common law action regulating the operation of companies or the promotion of Nigerian enterprise, an action founded on a contractual employment relationship between a company and its employee is not a matter connected with or pertaining to the operation of the companies or the regulation of the operation of a company incorporated under the Companies Act. Claims 3 and 5 cannot be struck out on the basis of the rule in *Foss v. Harbottle* or on the ground that the High Court of Rivers State had no jurisdiction to entertain them. (p. 233 B)

JURISDICTION - Scope - 1999 Constitution s.6(6)(b)

3. It is, in my opinion, misleading to invoke Section 6(6)(b) to defeat an action at the threshold. A person who claims a civil right is entitled to invoke the jurisdiction of the court. The jurisdiction of the court is to decide whether such right exists or, if it does, whether facts have been averred to show an infringement of such rights or, whether the plaintiff is the person entitled to involve the jurisdiction of the court in regard thereof, is itself an exercise of such judicial power as is envisaged in Section 6(6)(b) of the Constitution. (p. 234 F)

JURISDICTION - Private law - Right - Grant

4. The question whether the respondent's claims 3 and 5 relate to any right of the respondent remains to be considered. Reliance on the decision of this court in *Adesanya v. The President* (supra) offers no help. That was a case in public law where an expanded view of standing to sue may be appropriate. Even

where the action is in public law, a distinction between applicable rule of standing where an infringement of an individual right is the cause of action and one where such is not the case is often recognized.

In private law the jurisdiction of the court to grant declaration of right is predicated on the existence of a right. Legal right in private law, generally, attaches to property, and to the person. A third board category is the right that arises by and from the agreement of the parties. When parties make a contract they make their own law to which they are subject and which creates the rights and obligation which bind them to which the general law only gives recognition and force. The common law we practice recognizes the freedom of contract. (p. 234 H)

MASTER & SERVANT - Contract of employment - Employee status
5. In this case the claim that the respondent was not a redundant employee of the 1st appellant by virtue of his length of service, job performance, job availability and his status must be dependent not on any matter of public law but on his contract of employment. An employee has no general right not to be declared redundant beyond what his contract or a collective agreement provides. Usually, but not invariably, the conditions on which an employee may be declared redundant are found not in terms and conditions of service but in the collective agreement between the employer audits employees. In this case the respondent has not pleaded the terms of any contract as foundation for the declaration he sought in claim 3. Besides, the respondent has failed to satisfy the need to specify which contractual rights were breached by his being made redundant for whatever reason. (p. 235 H)

ADMINISTRATIVE LAW - Civil justice - Duty of citizens - Extent
6. Were the court to indulge entertaining such declarations the whole system of civil Justice will collapse under the weight of officious litigants who believe they are rendering public service by being sentinels of conduct of companies. This is not to diminish the civic duty of a citizen to expose wrong

doing. However, it is not a duty which ripens into a right which the citizen can protect by private litigation. The propositions quoted from the leading Judgment of the court below on which the respondent's counsel relied, indeed, boggle the mind. The propositions failed to distinguish between a performance of
B civic duty and the enforcement of private rights. Be that as it may, It is not the law that where an employee conceives that his contract of employment may be affected adversely due to irregular or illegal conduct of the employer or irregular manner of recruitment which may directly or indirectly affect him,
C he has a cause of action regardless of whether the terms of his contract of employment, including a term as to termination of the contract, have not been breached.
 (p. 236 D)

D CONTRACTS - Terms - Pleadings
7. For the court to assume Jurisdiction to review the decision of a company to re-deploy or not to re-deploy an employee within its organisation in the absence of a contractual term to
E guide it, will not only be an unwarranted interference with the freedom of contract and in the affairs of the company but also an exercise for which the court is ill-suited. I hold that the court below should have held that in regard to claims 3 and 5,
F no justifiable issue had been raised and that those claims should have been struck out. Party whose claim is based on contractual rights should plead the contract, the term which gave the right or created the obligation and what constituted the breach. A significant deficiency in the respondent's plead-
G ings is his failure to make any averments in regard to such things. (p. 237 A)

ACTIONS - Cause of action - Basis - Ibrahim v. Osim
8. Learned counsel for the respondent on the other hand argued that the statement of claim disclosed a reasonable cause of action. He drew the court's attention to paragraphs 1, 5(c), 5(d), 6, 7, 8(a), 10, 18, 20, 21, 25, 34, 35 and 36 and reliefs 6, 7, 8, 10 and 11 of the statement of claim. It is evident that these facts do not by themselves constitute a cause of action.
H

Counsel for the respondent rightly referred to the case of Ibrahim v. Osim (1988) 3 NWLR (Pt.82) 257, 271 - 272 where Obaseki, JSC., said:

“...for a statement of claim to disclose a reasonable cause of action, it must set out the legal right of the Plaintiff and the obligation of the Defendant. It must then go on to set out the constituting infraction of plaintiff’s legal right or failure of the defendant to fulfill his obligations in such a way that if there is no proper defence, the Plaintiff will succeed in the relief or remedy he seeks.”

However, he did not follow up with a demonstration of how his pleadings had compiled with this guideline.

(p. 238 D)

CONTRACTS - Breach - Substituted contract - Proof

9. It is not in every case where a fresh contract is substituted for an existing one that a breach of the prior one would be inferred. The fact must be disclosed that the new one was without the agreement of the parties. In that regard, learned counsel for the appellants put the respondent’s case at the highest when he considered the case on the footing that were duress alleged and proved, it would have vitiated any consent. However, as rightly submitted by counsel for the appellants, there was no duress alleged. It is not difficult to agree with learned counsel for the appellants. It does appear that when the respondent’s statement of claim was settled by his counsel, his counsel was not at all thinking of duress, otherwise his pleadings would have contained the necessary averments. First, it would have shown consent, secondly, the nature of the threat or pressure that is claimed amounted to duress would have been pleaded and, thirdly, the fact that consent was obtained under such pressure and by compulsion would have been averred in the statement. None of these was pleaded.

(p. 239 A)

CONTRACTS - Binding nature of

10. I agree with the submission of learned counsel for the appellants that since a contract entered into under duress may

be voidable by a party who entered into it under duress, on the facts pleaded by the respondents, to use the appellants' counsel's words, "it is hopeless for the plaintiff to seek to contend that he wants to set aside the contract." By his own pleadings, the new contract had been in existence since April, 1997, his employment was not terminated until December, 1999. From April, 1997, to December, 1999 he must have agreed that the new contract was the one that bound the parties and taken benefits under it. He did not allege a breach of the old one nor did he refuse to be bound by the new one. In the circumstances his suit to set aside the new agreement is utterly frivolous. (p. 239 F)

Actions - Cause of action - Proof

11. I now turn to the cross-appeal. In regard thereto counsel for the respondent contended that the court below was in error in striking out claims 8 and 10 by which the respondent sought a declaration that the 1st to 4th appellants cannot disengage or declare the respondent redundant without a formal permission of the 7th defendant, that is, the Ministry of Petroleum Resources, and consequential injunction.

Quite apart from the fact that it has not been shown in the statement of claim how any Ministerial directive deprived the 1st appellant of its freedom of contract, to such claimed extent that the 1st appellant could not determine it without the approval of a third party, there was no averment anywhere in the statement of claim that there was such prior approval sought or obtained. Where the plaintiff's case is based on absence of an essential prior approval such must be pleaded by him else there would be no cause of action disclosed. There is really no substance in the cross-appeal and I would dismiss it. (p. 240 C)

REPRESENTATION

Chief F. R. A. Williams SAN with T. E. Williams, D. Lamikanra and Mrs. F Gambari-Mohammed, for the Appellants
L. E. Nwosu with P. A. Afuba, for the Respondent

CASES REFERRED TO

Okagbue v. Romaine (1982) 5 S.C. 13
Phillips v. Phillips (1878) 4 QBD 127
Ibrahim v. Osim (1988) 3 NWLR (Pt. 82) 257
Adesanya v. The President (1981) 12 NSSC 146
Bruce v. Odhams Press Ltd. (1936) 1 KB 697 (1936) 3 ALL ER B
Shell Petroleum Development Co Nig v. Otako (1990) 6 NWLR 693
Chukwuma v. Shell Petroleum Development of Nig Ltd (1993) 4
NWLR (Pt. 289) 512

STATUTES REFERRED TO

Companies and Allied Matters Act, s.299
Constitution of the Federal Republic of Nigeria 1999, s.6 C

BOOKS REFERRED TO

Halsbury's Laws of England, 4th Ed. vol. 9 (1) D

LEAD JUDGMENT BY AYOOLA JSC

The respondent in this appeal, Mr. E. N. Nwaka, claimed against the six appellants by a writ issued in the High Court of Rivers State several reliefs, some only of which are now relevant and will be quoted later in this judgment. E

By a motion on notice dated 14th February, 2000, the appellants prayed the High Court:

(1) That the action be struck out or dismissed for lack of jurisdiction to entertain the claim set out in the statement of claim. F

(2) That claims 1-5 be struck out on the ground that each of them falls outside the scope of the judicial powers exercisable by the court of law in Nigeria. G

Further and in the alternative:

(3) That claims 6,7,9,10 and 11 be struck out on the ground that each of them disclosed no reasonable cause of action and is frivolous, vexatious and an abuse of judicial process.

The trial Judge held that the procedure adopted by the appellants was not in compliance with O. 4, r. 2 of the High Court (Civil Procedure) Rules, 1987, in that the appellants should have raised the points of law by their statement of defence. Nevertheless, he considered the application on its merit and struck out claims 4 and 9 as H

disclosing no cause of action. In regard to the rest of the claims, he dismissed the application.

On the appellants' appeal to the Court of Appeal, that court rejected the trial Judge's conclusion on the irregularity of the proceedings. Pats-Acholonu, JCA., who delivered the leading judgment of the court below, held that: Non-compliance does not vitiate a preliminary objection based on lack of jurisdiction alone." On the merits of the application, the court below held that in addition to claim Nos. 4 and 9 already struck out by the High Court, claim Nos. 1,2,8 and 10 should be struck out. The appellants appealed and the respondent cross-appealed. The issues raised by the appellants' appeal are:

- (1) As regard claims 3 and 5, whether
 - (a) respondent had locus standi to sue for reliefs claimed, and
 - (b) only the Federal High Court has exclusive, jurisdiction over these claims and whether they raise justiciable issues; and,
- (2) As regards claims 6, 7 and 11, whether they are not frivolous and vexatious and in abuse of judicial process.

The appellants raised an issue whether O. 24, r. 2 was applicable to the proceedings, but that issue is not now of any practical significance in view of the ruling by the court below in favour of the appellants on the issue from which the respondent had not cross-appealed. Arising from the respondent's cross-appeal are the questions whether claims 8 and 10 were properly struck out. This appeal and the cross-appeal are, therefore, now related to claims 3, 5, 6, 7, 8, 10, 11 which are as follows:

"3. A Declaration that the plaintiff is not a redundant employee of the 1st defendant by virtue of his length of service, job performance, job availability and his status.

5. A Declaration that the 1st, 2nd and 3rd Defendants are engaged in dubious expatriate Staff Quota manipulation and are not entitled to deploy the gains of such unpatriotic exercise to render the Plaintiff redundant.

6. A Declaration that the purported contract of employment dated 12th April, 1997, surreptitiously crafted and forced on Nigerian employees of the 1st Defendant by the 1st Defendant is null, void and of no effect.

7. A Declaration that the only valid contract of employment between the 1st defendant and the plaintiff is the one pre-existing

before 30/4/97 (and regulations by the 7th defendant in that behalf)

8. A Declaration that the 1st to 4th Defendants cannot disengage or declare the plaintiff redundant (Plaintiff being one of the 5 highest-ranking Nigerian citizens in the 1st Defendant's Organisation) without a formal permission of the 7th defendant.

10. An order restraining the 1st to 4th Defendants from terminating, treating or in any manner interfering with the employment, salaries, emoluments, benefits accruing to the plaintiff as an employee of the 1st defendant SAVE and EXCEPT as the 7th Defendant and the National Assembly may sooner or later so approve.

11. An Order setting aside the purported contract dated 12/4/97 unilaterally foisted on the Plaintiff by the 1st defendant as the same is not a contract at all"

The Shell Petroleum Development Company of Nigeria Ltd., (the 1st appellant) is a private limited liability company incorporated in Nigeria and carrying on the business of crude oil and gas prospecting, hydrocarbon development/arid exploitation in Nigeria. The 2nd and 3rd appellants were, respectively, the managing Director and Deputy Managing Director of the 1st appellant while 4th appellant was the General Manager of the 1st appellant with whom the respondent worked as Deputy General Manager up to sometime in April, 1999. The 5th and 6th appellants were expatriate employees of the 1st appellant. The respondent was an employee of the 1st appellant. He claimed to be the 5th highest ranking Nigerian in the 1st appellant's employment and one of the most qualified technocrats in the oil industry in the 1st appellant's company.

On 19th December, 1999, the respondent was by a letter signed by the 4th appellant on behalf of the 1st appellant "released from the company" as his services were no longer required. Attached to the letter was a cheque being payment in lieu of notice in accordance with the terms of his contract of employment. On 12th January, 2000, the respondent commenced this action claiming several reliefs some of which are quoted above and are the subject of this appeal

The respondent's case by his statement of claim was that the 1st appellant by wrongful manipulation of the expatriate quota system brought foreign nationals to work in the company under false descriptions thereby making them to fill posts which could be held by

Nigerian nationals and, in particular, depriving the respondent through such manipulation of the opportunity of occupying a higher post for which he was qualified in the 1st appellant's establishment. He alleged a design to ease Nigerians out of the 1st appellant's establishment and alleged several expatriate quota malpractices by the 1st appellant which he claimed were detrimental to the Nigerian employees of the company. Of direct relevance to his employment, he alleged that on 19th December, 1999, the 4th appellant wrote a letter to him at the behest of the 3rd appellant urging him to leave the 1st appellant's employment on voluntary severance with what he described as a "*financial bait*" of about N30 million if he should sign an acceptance that day or his employment would be terminated automatically with three months pay in lieu of notice. The respondent rejected the offer. The respondent alleged that he could not have been redundant, as the 1st appellant had declared him, upon a re-organisation of the 1st appellant because of his qualification and his performance as a Deputy General Manager Development.

Chief Williams, SAN, learned counsel for the appellants argued that the respondent had no locus standi to sue for reliefs claimed in claims 3 and 5 because his complaint was about illegality or irregularity in the conduct of the affairs of the 1st appellant. He relied on the rule in *Foss v. Harbottle* (1843) 2 Hare 461 and Section 299 of the Companies and Allied Matters Act (the Companies Act.). Mr. Nwosu, learned counsel for the respondent argued that the respondent's action was not based on any provisions of the Companies Act or any law regulating the management or operation of a company incorporated under the said law. The action, he argued, was based on a master/servant relationship and not one to which the rule in *Foss v. Harbottle* applied.

The rule in Foss v. Harbottle relates to internal management of a company and is based on the futility of the court setting aside or interfering with an irregular act of the company at the suit of a minority of members when such act can be ratified by a majority who have the power to do so. Whether a company's directors or management has power or not to enter into a contract, may be a matter of internal management of the company. However, performance of a contract validly entered into with a third party is not. A breach of a contract of

employment, like any other contract of the company, cannot be ratified and justified merely by an act of a majority of members of a company so as to deprive the aggrieved party of a right of action. Learned counsel for the respondent was right in his submission that neither *Foss v. Harbottle* nor Section 299 of the Companies Act applied. B

By the same reasoning by which that submission is upheld the question whether or not the Federal High Court has exclusive jurisdiction in such matters as this must be resolved against the appellants. Although Section 7(1)(b) of the Federal High Court Act (as amended of Decree No. 1991 No. 60) gave exclusive original jurisdiction to the federal High Court to try civil cases and matters connected with or pertaining to the operation of the Companies Act, federal enactments and any other common law action regulating the operation of companies or the promotion of Nigerian enterprise, an action founded on a contractual employment relationship between a company and its employee is not a matter connected with or pertaining to the operation of the companies or the regulation of the operation of a company incorporated under the Companies Act. Claims 3 and 5 cannot be struck out on the basis of the rule in *Foss v. Harbottle* or on the ground that the High Court of Rivers State had no jurisdiction to entertain them. C D E

However, learned counsel for the appellant contended further that claims 3 and 5 did not raise justiciable issues within the judicial powers conferred on courts of law by Section 6 of the Constitution of the Federal Republic of Nigeria. The substance of the appellants' counsel's argument is that the respondent's claims 3 and 5 did not concern any rights of the respondent whatsoever. *Cox v. Green* (1966) Ch 216 was cited in support. F G

"For his part counsel for the respondent adopted the opinion of the Court of Appeal and urged this court to uphold it. The Court of Appeal (per Pats-Acholonu, JCA.), said: H

"If a company is being run by (sic) in such a way that an employee, a senior employee for that matter, conceives that his contract of employment may be affected adversely due to some irregular or illegal conducts demonstrated by the employee company he may

complain by going to court to protect his employment”.

Then, further: *“I believe that if a highly placed employee is aware that an irregular manner of recruitment in a company of which he works will affect him directly and adversely, he could go to court to ask for a relief.”*

B In particular regard to claim 5 he said

“...I believe the matter cannot be left with the company to right a wrong it is committing.”

C For these views the learned Justice of the Court of Appeal drew strength from the case of *Adesanya v. The President* (1981) 12 NSSC 146, 159-160 where Fatai-Williams, CJN., said:

D *“Any person whether he is a citizen of Nigeria or not who is a resident in Nigeria or who is subject to the law in force in Nigeria has an obligation to see to it that he is governed by a law which is consistent with the provisions of the Nigerian Constitution. Indeed, it is his civil right to see that this is so.”*

E While the question whether claims 3 and 5 in the overall context of the facts averred in the statement of claim raised any dispute that the court should pronounce upon is straight forward, I, for my part, will hesitate to have recourse to Section 6 of the Constitution of the Federation of Nigeria for an answer to that question. Section 6(6)(b) of the Constitution provides that the judicial powers of the courts:

F *“Shall extend to all matters between persons, or between government or authority and to any person in Nigeria and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person.”*

G ***It is, in my opinion, misleading to invoke Section 6(6)(b) to defeat an action at the threshold. A person who claims a civil right is entitled to invoke the jurisdiction of the court. The jurisdiction of the court is to decide whether such right exists or, if it does, whether facts have been averred to show an infringement of such rights or, whether the plaintiff is the person entitled to involve the jurisdiction of the court in regard thereof, is itself an exercise of such judicial power as is envisaged in Section 6(6)(b) of the Constitution.***

H Notwithstanding that recourse to Section 6(6)(b) of the Constitution in not apt, ***the question whether the respondent’s claims***

3 and 5 relate to any right of the respondent remains to be considered. Reliance on the decision of this court in *Adesanya v. The President* (supra) offers no help. That was a case in public law where an expanded view of standing to sue may be appropriate. Even where the action is in public law, a distinction between applicable rule of standing where an infringement of an individual right is the cause of action and one where such is not the case is often recognized. In *Adesanya v. The President of Nigeria* (supra) Fatai-Williams, CJN., said that p.100:

“Admittedly cases where a plaintiff seeks to establish a ‘private right’ or ‘special damages’, either under the common law or administrative law, in non-constitutional litigation, by way of an application for certiorari, prohibition, or mandamus, or for a declaratory and injunctive relief, the law is now well settled that the plaintiff will have locus standi in the matter only if he has a special legal right or alternatively, if he has sufficient or special interest in the performance of the duty sought to be enforced, or where his interest is adversely affected.”

In private law the jurisdiction of the court to grant declaration of right is predicated on the existence of a right. Legal right in private law, generally, attaches to property, and to the person. A third board category is the right that arises by and from the agreement of the parties. When parties make a contract they make their own law to which they are subject and which creates the rights and obligation which bind them to which the general law only gives recognition and force. The common law we practice recognizes the freedom of contract. It is in the light of the categories of rights that Plowman, J., in *Cox v. Green* (1966) Ch 216 defined Justifiable disputes in terms of issues which concern rights of property and right of contract when he said-

“In my Judgment the issue between the Plaintiff and the Defendant are not justiciable disputes at all. The issue between them does not concern any right of property; it does not concern any right of contract; it does not concern any legal rights.”

In this case the claim that the respondent was not a redundant employee of the 1st appellant by virtue of his length of service, job performance, job availability and his status must be dependent not on any matter of public law but on his con-

tract of employment. An employee has no general right not to be declared redundant beyond what his contract or a collective agreement provides. Usually, but not invariably, the conditions on which an employee may be declared redundant are found not in terms and conditions of service but in the collective agreement between the employer audits employees. In this case the respondent has not pleaded the terms of any contract as foundation for the declaration he sought in claim 3. Besides, the respondent has failed to satisfy the need to specify which contractual rights were breached by his being made redundant for whatever reason.

In regard to claim 5, the substance of the declarations sought is that the 1st, 2nd and 3rd appellants were engaged in dubious expatriate staff quota manipulation and that therefore they were not entitled to deploy the gains of such exercise to render the respondent redundant. **Were the court to indulge entertaining such declarations the whole system of civil Justice will collapse under the weight of officious litigants who believe they are rendering public service by being sentinels of conduct of companies. This is not to diminish the civic duty of a citizen to expose wrong doing. However, it is not a duty which ripens into a right which the citizen can protect by private litigation. The propositions quoted from the leading Judgment of the court below on which the respondent's counsel relied, indeed, boggle the mind. The propositions failed to distinguish between a performance of civic duty and the enforcement of private rights. Be that as it may, It is not the law that where an employee conceives that his contract of employment may be affected adversely due to irregular or illegal conduct of the employer or irregular manner of recruitment which may directly or indirectly affect him, he has a cause of action regardless of whether the terms of his contract of employment, including a term as to termination of the contract, have not been breached.**

As pleaded by the respondent, the 2nd appellant wrote to the respondent that the company could not find a Job for him in his company following the re-organisation of the company. If, of course, the contract of employment stipulates that an employee should be found a Job after reorganization the court will enforce such contrac-

tual term. But where there is no such term an employee whose appointment had been terminated is left with a remedy for wrongful termination should such termination be in breach of the contract of employment. **For the court to assume Jurisdiction to review the decision of a company to re-deploy or not to re-deploy an employee within its organisation in the absence of a contractual term to guide it, will not only be an unwarranted interference with the freedom of contract and in the affairs of the company but also an exercise for which the court is ill-suited. I hold that the court below should have held that in regard to claims 3 and 5, no justifiable issue had been raised and that those claims should have been struck out.**

Before I turn to a consideration of the rest of the Issues In this appeal, it is right to observe that **party whose cm is based on contractual rights should plead the contract, the term which gave the right or created the obligation and what constituted the breach. A significant deficiency in the respondent's pleadings is his failure to make any averments in regard to such things.**

Claims 6, 7 and 11 related to the contract of employment. The respondent averred that there was a contract which "pre-existed" before 30 April, 1997, and that that contract was unilaterally and retrospectively cancelled on 5th April, 1997. He alleged that the cancellation was "a grand design to short circuit the Ministerial Directives" of the Ministry of Petroleum Resources. In his action brought by the respondent in his personal capacity and not as representing "Nigerian Employees of the 1st Defendant" the respondent sought in claim 6 a declaration that the contract of 12th April, 1997 was "*sur-reptitiously crafted and forced on Nigerian Employees of the 1st Defendant.*" Nowhere did he aver that it was forced on him and how. The respondent also averred that the directors of Petroleum Ministry of Petroleum Resources "*the 7th defendant have in place a standing regulation to the effect that before the employment of any Nigerian personnel; of a certain status and above in an oil company..... is terminated, retired or declared redundant, a prior approval of the 7th defendant's Ministry must be sought and obtained.*" However, there was nothing to show that the sanction for breach of any such regulation was the annulment of whatever was done in its breach.

Learned counsel for the appellants was ready to concede that “when the 1st defendant ‘cancelled’ the then existing contract of employment with effect from 30/4/97, it most certainly committed a breach of that earlier contract.” He argued, however that the cancellation was effective to put an end to the contract. For this reason, it was argued, the respondent’s claim could not stand. Learned counsel for the appellants further argued that:

(i) the contract cannot be set aside on the ground of duress because it had been voluntarily acted upon by the respondent;

(ii) there was no averment capable of supporting a finding that the agreement was signed under duress; and

(iii) as regards the claim that the only valid contract of employment was the one pre-existing before 30 April, 1997, nowhere in the statement of claim was there an averment of any such contract.

Learned counsel for the respondent on the other hand argued that the statement of claim disclosed a reasonable cause of action. He drew the court’s attention to paragraphs 1, 5(c), 5(d), 6, 7, 8(a), 10, 18, 20, 21, 25, 34, 35 and 36 and reliefs 6, 7, 8, 10 and 11 of the statement of claim. The averment of facts in the paragraphs referred to by the respondent’s counsel are those already adverted to earlier in this judgment. They related to the claimed expertise of the respondent, the 1st appellant’s alleged abuse of the expatriate quota system and alleged cancellation of a prior contract of employment. ***It is evident that these facts do not by themselves constitute a cause of action. Counsel for the respondent rightly referred to the case of Ibrahim v. Osim (1988) 3 NWLR (Pt.82) 257, 271 - 272 where Obaseki, JSC., said:***

“...for a statement of claim to disclose a reasonable cause of action, it must set out the legal right of the Plaintiff and the obligation of the Defendant. It must then go on to set out the constituting infraction of plaintiff’s legal right or failure of the defendant to fulfill his obligations in such a way that if there is no proper defence, the Plaintiff will succeed in the relief or remedy he seeks.”

However, he did not follow up with a demonstration of how his pleadings had compiled with this guideline.

Learned counsel for the appellants had put the respondent’s

case at the highest when he approached the matter on the footing that a cancellation of a previous contract of employment was a breach of contract. However, **it is not in every case where a fresh contract is substituted for an existing one that a breach of the prior one would be inferred. The fact must be disclosed that the new one was without the agreement of the parties. In that regard, learned counsel for the appellants put the respondent's case at the highest when he considered the case on the footing that were duress alleged and proved, it would have vitiated any consent. However, as rightly submitted by counsel for the appellants, there was no duress alleged. It is not difficult to agree with learned counsel for the appellants. It does appear that when the respondent's statement of claim was settled by his counsel, his counsel was not at all thinking of duress, otherwise his pleadings would have contained the necessary averments. First, it would have shown consent, secondly, the nature of the threat or pressure that is claimed amounted to duress would have been pleaded and, thirdly, the fact that consent was obtained under such pressure and by compulsion would have been averred in the statement. None of these was pleaded.** In Halsbury's Laws of England, 4th Ed. Vol. 9(1) the law was put thus:

"In so far as the basis of duress rests on pressure rather than an absence of consent, it is the nature of the pressure which becomes crucial. As some sorts of pressure are legitimate, a distinction has to be drawn between legitimate and illegitimate pressure, further, as such illegitimate pressure merely renders a contract voidable, the contract may be ratified....."

I agree with the submission of learned counsel for the appellants that since a contract entered into under duress may be voidable by a party who entered into it under duress, on the facts pleaded by the respondents, to use the appellants' counsel's words, "it is hopeless for the plaintiff to seek to contend that he wants to set aside the contract." By his own pleadings, the new contract had been in existence since April, 1997, his employment was not terminated until December, 1999. From April, 1997, to December, 1999 he must have agreed that the new contract was the one that bound the par-

ties and taken benefits under it. He did not allege a breach of the old one nor did he refuse to be bound by the new one. In the circumstances his suit to set aside the new agreement is utterly frivolous.

I find that claims 3 and 5 raised issues which the court cannot
 B adjudicate on, that claims 6 and 7 are frivolous and vexatious and an
 abuse of process and that in regard to claims 6, 7 and 11 the State-
 ment of Claim disclosed no reasonable cause of action. For these
 reasons the court below should have struck out those claims. I would
 C allow the appellants' appeal.

***I now turn to the cross-appeal. In regard thereto coun-
 sel for the respondent contended that the court below was in
 error in striking out claims 8 and 10 by which the respondent
 sought a declaration that the 1st to 4th appellants cannot dis-
 D engage or declare the respondent redundant without a formal
 permission of the 7th defendant, that is, the Ministry of Petro-
 leum Resources, and consequential injunction.*** The court be-
 low relied on the case of Chukwuma v. Shell Petroleum Develop-
 ment of Nigeria Ltd. (1993) 4 NWLR (Pt.289) 512 to hold that the
 E directive of the 7th defendant could not affect the contractual rela-
 tionship of the parties. The respondent argued in the cross-appeal
 that the court below was in error. In Chukwuma's case this court
 refused to rely on an extraneous agreement and policy statement
 not part of the contract between the parties and not incorporated
 F into the contract as basis of the plaintiff's action.

I do not see the need for the issue made of the relevance or
 otherwise of Chukwuma's case to this case. ***Quite apart from the
 fact that it has not been shown in the statement of claim how
 G any Ministerial directive deprived the 1st appellant of its free-
 dom of contract, to such claimed extent that the 1st appellant
 could not determine it without the approval of a third party,
 there was no averment anywhere in the statement of claim
 that there was such prior approval sought or obtained. Where
 H the plaintiff's case is based on absence of an essential prior
 approval such must be pleaded by him else there would be no
 cause of action disclosed. There is really no substance in the
 cross-appeal and I would dismiss it.***

The respondent was indeed misguided or ill-advised not to

have accepted the offer of severance pay made to him by the 1st appellant. He misconceived the role of the National Assembly in thinking that it was set up to interfere in private contracts between persons. He confused his duty to expose wrong-doing with his contractual rights and paid scant regard to the limits of his contractual rights. For all these he deserves some sympathy but not judgment in his favour. The action was misconceived in its entirety. In the result, I allow the appellants' appeal and set aside the judgment of the court below concerning claims 3, 5, 6, 7 and 11. I strike out those claims. I dismiss the respondent's cross-appeal. The appellants are entitled to N10,000.00 costs, being costs of the appeal and the cross-appeal.

BELGORE JSC

The rule in civil cases is that a matter not pleaded goes to no issue. The case of *Chukwuma v. Shell Petroleum Development of Nigeria Ltd.* (1993) 4 NWLR (Pt. 289) 512 has no relevance to this case. Therefore, the case of the plaintiff on the alleged non-approval by the Minister which has not been pleaded is not relevant in this case. The Plaintiff, now respondent, certainly made a grave mistake to reject the severance pay offered him.

This action is entirely misconceived and has therefore no merit. For the further reasons in the judgment of my learned brother, Ayoola, JSC., which I also adopt, I allow the appeal with N10,000.00 costs to the appellant.

IGUH JSC

I have had the privilege of reading in draft the judgment just delivered by my learned brother, Ayoola, JSC., and I entirely agree that this case arose as a result of a total misconception of the plaintiff's legal rights under his contract of employment with the 1st defendant. The plaintiffs, claims, quite clearly, disclose no reasonable cause of action and it is for this and the more detailed reasons contained in the leading judgment that I too, allow the defendants' appeal and dismiss the plaintiffs cross-appeal. I award to the appellants costs of both the appeal and the cross-appeal which I assess and fix at N10,000.00.

UWAIFO JSC

I have had the opportunity to read in advance the judgment of my learned brother, Ayoola, JSC. I am satisfied that he has fully dealt with the issues which arose in this appeal. For the reasons he
 B meticulously set out in the judgment which I respectfully adopt as mine, I entirely agree with the conclusions. I too allow the appeal and dismiss the cross-appeal with costs as awarded in that judgment.

C

EJIWUNMI JSC

I have had the privilege of reading before now the draft of the judgment just delivered by my learned brother, Ayoola, JSC.

In the said judgment, he has carefully considered the issues
 D raised on the facts, and the appeal was deservedly allowed. Also, the cross-appeal of the respondent was shown to be devoid of any merit. I agree with him entirely. I also allow the appeal and dismiss the cross-appeal.

The facts in this case reveal that the respondent had risen to a
 E very senior position in the services of the 1st appellant. Indeed before he left the services of the 1st appellant, he was one of the most highly rated employees of the 1st appellant, when for reasons best known to the appellant, he was declared redundant. He was then
 F asked to withdraw from the company with a parting gift of the sum of N30,000,000.00 (Thirty Million Naira). That offer was refused, and he decided to pursue this action, which he commenced with a writ of summons. By this action, he alleged that the 1st appellant had brought
 G about the alleged redundancy with which he was labeled as part of its plan to employ expatriates who either had no quota to work in this country, or for whom it had fraudulently obtained visas. Be that as it may, the respondent by his pleadings did not specifically make averments to justify that he was forced to accept a new contract. His pleadings were directed to showing the conduct of the appellant with
 H regard to the employment of other persons. This was followed by a Motion on Notice wherein the plaintiff/ respondent sought for the following orders:-

“(1) An order of interlocutory injunction restraining that 1st to 4th defendants, their servants, proxies, agents, hirelings from treat-

ing in any manner or continuing to so treat the plaintiff as being redundant, disengaged, terminated, retired or for that purpose denying or continuing to so deny him of his salaries, emoluments, benefits, accommodation, office and all such rights associated or attached to an employee of his status pending the determination of this suit or the sooner determination of the plaintiff's petition to the National Assembly and approval for his release by the 7th defendant. ^B

(2) An order of interlocutory injunction restraining the 1st to 4th defendants from treating or continuing to treat the 5th and 6th defendants as their Development Director and New Business Gas and Planning Director respectively pending the determination of this suit. ^C

(3) Any further or other orders as this Honourable Court may deem fit to make in the circumstances."

Thereafter, the respondent by an order made by the trial Court ^D applied for leave to serve by substituted service the writ of summons and other processes in respect of this matter on the 3rd to 7th defendants/appellants. An interim order of injunction was also made in favour of the plaintiff/respondent and the matter was adjourned to the 28th of January, 2000. The plaintiff/respondent by its Statement of Claim whereon he claimed against the appellant for the following reliefs:- ^E

"1. A declaration that the plaintiff is entitled to occupy the position of Development Director in the 1st defendant's company following the resignation of the plaintiff's former office, position and responsibilities as Deputy General Development Director to that of Development Director. ^F

2. A declaration that the 1st defendant had no lawful authority to appoint one John Barry as the Development Director, the 1st Defendant having brought the said John Barry into the country on an expatriate quota approval for the position of a General Manager, Operations, (which ceased to exist in 1992), and not as a Development Director, the said John Barry being junior in rank, cognate qualification, experience and length of service to the plaintiff. ^H

3. A declaration that the plaintiff is not a redundant employee of the 1st defendant by virtue of his length of service, job performance, job availability and his status.

4. A declaration that the 1st defendant has no legal authority

to employ one Steve Ratcliffe as New Business Gas and Planning Director as there was no expatriate quota covering such appointment.

B 5. A declaration that the 2nd and 3rd defendants are engaged in dubious expatriate staff quota manipulation and are not entitled to deploy the gains of such unpatriotic exercise to render the plaintiff redundant.

C 6. A declaration that the purported contract of employment dated 12 April, 1997, surreptitiously crafted and forced on Nigerian Employees of the 1st defendant by the 1st defendant is null, void and of no effect.

D 7. A declaration that the only valid contract of employment between the 1st defendant and the plaintiff is the one pre-existing before 30/4/97 (and regulations by the 7th defendant in that regard).

8. A declaration that the 1st to 4th defendants cannot disengage or declare the plaintiff redundant, (plaintiff being one of the 5 highest-ranking Nigerian citizens in the 1st defendant's organisation) without a formal permission of the 7th defendant.

E 9. A declaration that the ongoing inquiry into the plaintiff's complaint against the 1st defendant by the National Assembly in relation to the 1st to 4th defendants' discriminatory victimization and conduct inimical to the economy and Constitution of the Federal Republic of Nigeria is proper and valid.

F 10. An order restraining the 1st to 4th defendants from terminating, treating or in any manner interfering with the employment, salaries, emoluments, benefits accruing to the plaintiff as an employee of the 1st defendant SAVE and EXCEPT as the 7th defendant and G the National Assembly may sooner or later so approve.

11. An order setting aside the purported contract dated 12/4/97 unilaterally foisted on the plaintiff by the 1st defendant as the same is not a contract at all."

H But following the entry of the appellant into the action, a motion dated 14/2/2000 was filed on their behalf for these orders:-

"(i) The plaintiff's action herein be struck out or dismissed on the ground that this Honourable Court has no jurisdiction to entertain any of the claims set out in the Statement of claim.

(ii) Claims 1, 2, 3, 4 and 5 be struck out on the ground that

each of the said claims fall outside the scope of the judicial powers exercisable by Courts of Law in Nigeria.

Further and in the Alternative

(iii) Claims 6, 7, 9, 10 & 11 be struck out on the ground that each of them discloses no reasonable cause of action and is frivolous, vexatious and an abuse of judicial process.” B

The trial court then considered the merits of the application in spite of the view of the respondent that the procedure adopted by the appellant was not in compliance with Order 4 rule 2 of the High Court (Civil Procedure) Rules, 1987, and struck out claims 4 & 9 as disclosing no cause of action. The appellants appealed against that ruling to the Court below where claims 1, 2, 8, & 10 were also struck out. The appellants have now appealed further to this. Court while the respondent also cross-appealed. C

It is manifest from his pleadings that the respondent wanted to expose the unsavory conduct of the 1st appellant with regard to how they employ their expatriate staff, he needed to have pleaded also such facts that pertain to his own employment and how he was eventually “released” from his employment by the 1st appellant. In this respect, he should have averred in his pleading such facts as are material and necessary for the purpose of formulating a complete cause of action. It is necessary that such pleaded facts should be such as will put the other party on his guard, and tell him all that he will have to meet when the case comes on for trial. See *Phillips v. Phillips* (1878) 4 QBD 127, 139; *Bruce v. Odhams Press Ltd.* (1936) 1 KB 697; (1936) 3 ALL ER. 287, 294; *Okagbue v. Romaine* (1982) 5 S.C. 13; *Shell Petroleum Development Company of Nigeria v. Graham Otako & Ors.* (1990) 6 NWLR 693. D E F

In the result, I must conclude that the respondent did not assist G in his own case by his own pleadings so as to have a justiciable cause of action. I will therefore for the above reasons and the fuller reasons given in the lead judgment of my learned brother, Ayoola, JSC., allow the appeal and dismiss the cross-appeal. I also abide by the costs in the lead judgment. H