

SUPREME COURT OF NIGERIA
FRIDAY 17TH JANUARY, 2003. SC. 162/1996
CORAM:- M. E. OGUNDARE, U. MOHAMMED,
A. I. IGUH, S. O. UWAIFO, A. O. EJIWUNMI,
E. O. AYOOLA, N. TOBI, JJSC

CHIEF TAMUNOEMI
IDONIBOYE-OBU APPELLANT
AND
NIGERIAN NATIONAL
PETROLEUM CORPORATION RESPONDENT

SUPREME COURT - Judgment - Departure - Jurisdiction - The court can overrule its previous decisions - But such must not be exercised to create uncertainty in the law - Or to undermine doctrine of stare decisis (H1)

SUPREME COURT - Judgment - Departure - Conditions - The court may overrule where - Its previous decision is manifestly wrong - Or was given per incuriam - Or hinders proper development of the law (H2)

MASTER & SERVANT - Termination - Validity - Respondent did not act outside the conditions of service in terminating appellant's appointment - As the terms therein have no statutory flavour (H3)

MASTER & SERVANT - Termination - Motive - An employer is entitled to terminate his employee's appointment with or without reason - Provided he acts within the terms of the employment (H4)

MASTER & SERVANT - Termination - Breach - Remedy - Employee's remedy lies in damages - Calculated on the basis of what he would have earned - For the period of notice agreed for ending the employment (H5)

MASTER & SERVANT - Termination - Proof - Basis - Servant that complains of wrongful termination - Must plead and prove the contract of service - As it is not for employer to prove that the termina-

tion was not wrongful (H6)

MASTER & SERVANT - Termination - Determination - Court is not entitled to look outside the contract of service - As it is the best and only way of deciding - Rights of the parties under the contract (H7)

FACTS

Plaintiff/appellant filed this action at the High Court of Rivers State, Port Harcourt, challenging the termination of his appointment by defendant/respondent. Appellant asked for a declaratory relief and an order of injunction restraining respondent from terminating his appointment. Appellant was appointed by defendant/respondent as a staff in Nigeria National Petroleum Corporation. A fraud was discovered in appellant's department in the corporation. He was initially suspended from service and his appointment was eventually terminated by respondent. Appellant was served with a termination letter which gave no reason(s) for ending his employment with respondent. At the trial, respondent contended that the termination of appellant's appointment was proper in the circumstance as same was duly based on the conditions of service (exhibit B) regulating the said appointment. Respondent went ahead to counter claim against appellant in respect of furniture, kitchen equipment, infrastructure put in the official residence of appellant, rentals for the apartment occupied by him, outstanding car loan and touring advance.

The learned trial Judge after considering the terms of the conditions of service, particularly those dealing with termination of staff for inefficiency or for fraud, held that the termination was improper. He therefore found for appellant and held that his (appellant's) employment with respondent was still subsisting. On appeal, the Court of Appeal held that exhibit B regulated the contract of service between the parties. Although the court held that the termination of appellant's appointment was wrongful in that appellant was not paid his one month's salary in lieu of notice (as contained in the contract of service), yet the court overturned the decision of the learned trial Judge on the issue of specific performance in a master and servant relationship. Aggrieved, appellant lodged appeal in Supreme Court. Learned counsel for appellant has by virtue of O. 6 r. 4(4) of the rules of the court, invited the court to depart from some of its previ-

ous decisions.

ISSUES FOR DETERMINATION

1. Whether the Court of Appeal was justified in holding that the learned trial Judge erred in law in deducing a reason for the termination of the employment of the appellant by the respondent from the sequence of events leading thereto.

2. Whether the Court of Appeal was justified in holding that the relationship between the respondent and the appellant was one of mere master and servant which did not invest the appellant with a tenure and legal status. Alternatively,

3. Whether this is not a proper case where declaratory reliefs ought to be granted.

HELD (Unanimously dismissing the appeal per UWAIFO JSC)

SUPREME COURT - Judgment - Departure - Jurisdiction

1. Mr. Ukala on behalf of the appellant has made elaborate effort to submit as to the jurisdiction of this court to overrule its previous decisions. I can hardly see the need for such effort since that jurisdiction is not in any doubt. It has been done in well recorded instances. Indeed, the jurisdiction to do so is now implied in Order 6, r.5(4) of the Supreme Court Rules (as amended in 1999) which provides:

“If the parties intend to invite the Court to depart from one of its own decisions, this shall be clearly stated in a separate paragraph of the brief, to which special attention shall be drawn, and the intention shall also be restated as one of the reasons.”

It must be appreciated that although that jurisdiction exists, it will only be exercised in the most obvious circumstances. It cannot and ought not to be exercised to create uncertainty in the law or to leisurely undermine the salutary doctrine of stare decisis. When a principle of law has been laid down by the court based on an established state of facts, it leads to stability to regard it as a precedent for the way future cases, where facts are substantially similar and where

the very point is again in controversy, are decided. The doctrine is in a sense founded on judicial policy of a public nature. But that policy recognises a balance between the need for certainty and the ends of justice to be dispensed particularly by the final court of the land. (p. 341 F)

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SUPREME COURT - Judgment - Departure - Conditions

2. Therefore it also demands that the Supreme Court should not hesitate to depart from its previous decision in appropriate circumstances:

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Such circumstances may be seen to arise if the party calling upon the Supreme Court to overrule its previous decision is demonstrably able to show (a) that it is manifestly wrong and there is a real likelihood of it constituting a vehicle for perpetuating injustice by a rigid adherence to it; or (b) that it was given per incuriam; or (c) that it hinders the proper development of the law in which a broad issue of public policy was involved: (p. 342 C)

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E *MASTER & SERVANT - Termination - Validity*

3. Section 4(1) of the Act which I have earlier reproduced does no more than authorise the corporation to approve conditions of service as it considers necessary, contrary to the argument of Mr. Ukala that that section provides the force of law behind exhibit to give it the “status of statutory, provisions.” The term “statutory provisions” means what it says, namely the provisions of a statute or, by extension, of a statutory instrument. However, whatever the appellant may consider exhibit B to portray, the respondent did not on this occasion act outside its terms. Clause 52 under which it terminated the appointment of the appellant reads:

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“52. RESIGNATION AND TERMINATION OF APPOINTMENT

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(a) Any employee shall be free at any time, either with or without stating any reason therefore, to resign his appointment with the Corporation upon giving due notice to that effect. The Corporation shall likewise have a reciprocal right to terminate the employee’s appointment upon giving him due

notice. Due notice for the purpose of this paragraph is as follows:-

Category D - 3 months

Categories A, B, C - 1 month

(b) In lieu of due notice the employee or the Corporation may resign or terminate an employee's appointment respectively by paying to the other the amount of basic salary that would have been earned during the period of notice." B

I cannot therefore understand why the appellant has insisted he deserved a better treatment than the common law one his contract of service earmarked for him; and by his own device he now imports 'statutory flavour' into his employment in order to be able to request this court to overrule its decisions on common law master and servant relationship and to seek a relief, which, obviously, he would not be entitled to. C

(p. 342 H/343 G) D

MASTER & SERVANT - Termination - Motive

4. Under the common law, an employer is entitled to bring the appointment of his employee to an end for any reason or no reason at all. So long as he acts within the terms of the employment, his motive for doing so is irrelevant. (p. 344 B) E

MASTER & SERVANT - Termination - Breach - Remedy F

5. In any event, in case of breach, the employee's remedy lies in damages calculated on the basis of what he would have earned for the period of notice agreed for ending the employment. (p. 344 D)

MASTER & SERVANT - Termination - Proof - Basis G

6. A servant who complains that his employment has been brought to an end must found his claim on the contract of service and show in what manner the wrong was done. He must plead and prove the contract of service which is the bed-rock of his case. It is not the duty of the employer as defendant to prove that the termination was not wrongful. H

(p. 347 C)

MASTER & SERVANT - Termination - Determination

7. In the same vein, the court is not entitled to look outside the contract of service as to the terms and conditions. These must be gathered therefrom and/or from other sources which can be incorporated by reference to the contract as the case may be. It is the best and only way of deciding the rights of the parties under the contract. (p. 347 E)

NOTABLE POINT OF INTEREST

C UWAIFO JSC

1. Employment with statutory flavour and that of mere master & servant – Principles of

From a close reading and clear understanding of the cases of Imoloame, Fakuade and Iserhienrhien cited above, the principles relevant to the present discussion which they establish, or upon which pronouncements were made, are simply that (a) where an employment is governed by rules and regulations backed by statute, such as the Civil Service Rules, as to how the employment is made and determined, a person who claims to be a public servant and seeks the protection of those rules and regulations must show that he was employed subject to those rules and regulations otherwise he cannot rely on them as protecting his employment: Iserhienrhien’s case; (b) an employment with a statutory flavour, though basically creating a service relationship, goes beyond the notion of ordinary master and servant whose contractual obligation can any how be effectively brought to an end albeit in breach of contract for which the only remedy is damages: Imoloame’s case; (c) the fact that an organization or authority which is an employer is a statutory body does not mean that the conditions of service of its employees must be of a special character which make the employment one with a statutory flavour and give protection to the employees: Fakuade and Iserhienrhien; (d) where an appointment is determinable by the agreement of the parties simpliciter in accordance with the terms of the contract of service, under no guise can statutory flavour be attached to it but must be regarded as mere master and servant relationship: Fakuade’s case. (p. 337 F)

REPRESENTATION

E. C. Ukala, SAN with A. C. Morka, Esq. - for the Appellant, for the Appellant

L. E. Nwosu, Esq. - for the Respondent

CASES REFERRED TO

Imoloame v. WAEC (1992) 9 NWLR (pt. 265) 303

Fakuade v. OAU Teaching Hospital Complex Mgt. Board (1993) 5 NWLR (pt. 291) 47

Okomu Oil Palm Ltd. v. Iserhienrhien (2001) 6 NWLR (pt. 710) 660 C

Shitta-Bey v. Federal Public Service Commission (1981) 1 SC 40

Olaniyan v. University of Lagos (No.2) (1985) 2 NWLR (pt. 9) 599

Eperokun v. University of Lagos (1986) 4 NWLR (pt. 34) 162

Fed. Civil Service Comm. v. Laoye (1989) 2 NWLR (pt. 106) 652

UNTH Mgt. Board v. Nnoli (1994) 8 NWLR (pt. 363) 376 D

Jones v. Secretary of State (1972) 1 All ER 145

Bronik Motors Ltd. v. Wema Bank Ltd. (1983) 1 SCNLR 296

Chukwuma v. SPDC Nig. Ltd. (1993) 4 NWLR (pt. 289) 512

Ewarami v. African Continental Bank Ltd. (1978) 4 SC 99

Hanson v. Radcliffe U.D.C. (1922) 2 Ch. 490 E

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

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

STATUTES & RULES REFERRED TO

NNPC Act 1977 (now Cap. 320 LFN 1990, s. 4(1) F

University of Lagos Act No. 3 of 1967, s. 17(1)

Supreme Court Rules (as amended in 1999), O. 6, rr. 4(4), 5(4)

LEAD JUDGMENT BY UWAIFO JSC

In this appeal, the appellant has set down three issues for determination. In the course of arguing issue 2, the appellant in his brief of argument has by virtue of Order 6, rule 4(4) of the Supreme Court Rules (as amended in 1999) invited this court to depart from some of its decisions to which I shall make reference later. The respondent is a creation of a statute deemed enacted by the National Assembly having been promulgated by Decree No. 33 of 1977. It is the Nigerian National Petroleum Corporation Act, 1977 now to be found in Cap. 320, Laws of the Federation of Nigeria 1990. It is H

therefore a Federal Government Corporation which is known to perform a central role in the petroleum industry in Nigeria. Would the fact that the respondent was created by a statute and enjoys commanding relationship with the Federal Government give the employment of its servants statutory flavours? The appellant claims that the respondent being a statutory creation and a Federal Government parastatal, his employment with it has that status. He has pursued that argument right to this court. The respondent says no; it is the contract of service that reflects the type of employment. Who between them has the backing of the authorities as they stand? In the meantime, I will state the short facts of the case.

The appellant was appointed by the respondent with effect from September 1, 1980. Five years later his appointment was terminated with effect from 30 August, 1985. He then brought action against the respondent claiming for

“(i) A declaration that the purported termination of his appointment by a letter AD/Per/C.6610 dated 30th August, 1985 is unlawful, ineffective, null and void.

“(ii) An injunction restraining the defendant, its servants or agents from ejecting the plaintiff from his No. 18 Wogu Street, D/Line, Port Harcourt official quarters or in any manner interfering with the plaintiff’s legal service entitlements until the lawful determination of his contract of service with the defendant.”

The appellant relied on and pleaded in paragraphs 4 and 5 of the statement of claim that the terms of the letter of appointment, which he accepted, governed his appointment. He also relied on the conditions of service of the respondent as stated in a document which was admitted as exhibit B at the trial, and also the Act which set up the respondent and “other policy circulars.” The respondent admitted this in paragraph 3 of the statement of defence.

The termination of the appellant’s employment was by a letter dated 30 August, 1985, (exhibit H) whose body captioned “Termination of Appointment” reads:

“Management has decided to terminate your appointment with effect from today 30th August, 1985.

You are hereby terminated immediately. You should please handover all Corporation’s properties in your care and pay up the balance of any loan owed by you to the Corporation immediately.

The General Manager, Finance and Accounts is by this memo being advised, to pay you a month (sic) salary in lieu of notice."

Although the appellant was initially appointed as a Senior Accounts Supervisor on a salary of N6,420.00 per annum, he had by promotion on 21 June, 1985 become an Assistant Chief Accounts Supervisor on a salary of N8,664.00 per annum. As pleaded by the appellant in paragraph 10 of the statement of claim, it was soon after that promotion that certain allegations of fraud against him were made. This development led to his suspension from duty and eventually to the termination of his appointment by the said letter which made no reference to any allegations of fraud.

The question of allegations of fraud made after the letter of promotion reference No. AD/Per/C.6610 of 30 August, 1985 and the issue of retrospective termination of his appointment were further pleaded in paragraph 11 of the statement of claim. These were denied in paragraph 8 of the statement of defence thus:

"Save as to admitting that the defendant by letter No. AD/Per/C6610 of 30-8-85 lawfully and according to her conditions of service terminated the services of the, plaintiff, the defendant denies all other allegations contained in that paragraph and in particular as concerns fraud and retrospective termination."

It would appear the respondent made it clear that it relied only on the conditions of service to terminate the appellant's appointment. Exhibit H was in pursuance of that. But the learned trial Judge (K. S. Sagbe, J.), after considering the terms of the conditions of service, particularly those dealing with termination of staff for inefficiency or for fraud, and had reasoned that the appellant's appointment was terminated because of the alleged fraud, observed and found inter alia as follows:

"So that since the proper procedure for termination of a staff for inefficiency or even fraud was not adopted the termination of the plaintiff is invalid and of no effect. And since the termination is invalid the plaintiff continues to be regarded as a staff of the Corporation. This is because a contract of service is determinable by the master only upon reasonable notice or on the notice stipulated in the contract of the parties."

The learned trial Judge upon this curious observation, having regard to the simple issue involved in the case before him, in the end

gave judgment for the appellant, holding that he was still in the employment of the respondent; and dismissed the counter-claim in respect of the accommodation rented for the appellant by the respondent and the indebtedness of the appellant to the respondent.

The appeal against the decision was determined by the Court of Appeal, Port Harcourt Division on 20th June, 1995. The grounds of appeal and issues raised for determination from them in respect of the counterclaim were abandoned at the hearing of the appeal. In regard to the declaration made by the learned trial Judge about the subsistence of the employment of the appellant (respondent in the court below), the Court of Appeal made the following relevant observation inter alia:

“On the state of the facts of the case, is the respondent entitled to reinstatement which, in effect, is what the claim for declaration is all about? I think not. The general law is that the courts will not grant specific performance of a contract of service. Therefore a declaration to the effect that a contract of service still subsists will rarely be made. Special circumstances will be required before such a declaration is made and its making will normally be in the discretion of the court ... Such special circumstances have been held to arise where the contract of employment has a legal or statutory flavour thus putting it over and above the ordinary master and servant relationship. It has also been held to arise where a special legal status such as a tenure of public office is attached to the contract of employment. No special circumstances have been disclosed to warrant a declaration being made in favour of the plaintiff in the instant case. It is to be remembered that I have already held that the contract of employment in the instant case between the parties does not have a legal or statutory flavour.

Moreover either party can terminate the contract of employment by giving one month’s notice or one month’s salary in lieu of notice in conformity with the rights of the parties under paragraph 52(a) of exhibit B.”

The court then allowed the appeal and held that going by the contract of service between the parties, the appellant was only entitled to one month’s salary in lieu of notice.

The appellant has now come before this court on three grounds of appeal against the judgment of the court below from which he

formulated three issues for determination as follows:

1. Whether the Court of Appeal was justified in holding that the learned trial Judge erred in law in deducing a reason for the termination of the employment of the appellant by the respondent from the sequence of events leading thereto.

2. Whether the Court of Appeal was justified in holding that the relationship between the respondent and the appellant was one of mere master and servant which did not invest the appellant with a tenure and legal status. Alternatively,

3. Whether this is not a proper case where declaratory reliefs ought to be granted.

Issue 2

I would like to start with issue 2 because of its importance in this appeal. It was in the course of arguing issue 2 that the appellant invited this court to overrule some of its previous decisions which he specifically mentioned as *Imoloame v. West African Examinations Council* (1992) 9 NWLR (Pt. 265) 303; *Fakuade v. Obafemi Awolowo University Teaching Hospital Complex Management Board* (1993) 5 NWLR (Pt. 291) 47; and *Okomu Oil Palm Co. Ltd. v. Iserhienrhien* (2001) 6 NWLR (Pt. 710) 660. I think it will be quite appropriate to deal with that invitation at this stage. The main reason given for asking that those decisions be overruled is that pronouncements made therein run contrary to the principles relied on for the decisions in *Shitta-Bey v. Federal Public Service Commission* (1981) 1 SC 40; (1981) 12 NSCC 19; and *Olaniyan v. University of Lagos* (No.2) (1985) 2 NWLR (Pt. 9) 599.

From a close reading and clear understanding of the cases of *Imoloame*, *Fakuade* and *Iserhienrhien* cited above, the principles relevant to the present discussion which they establish, or upon which pronouncements were made, are simply that (a) where an employment is governed by rules and regulations backed by statute, such as the Civil Service Rules, as to how the employment is made and determined, a person who claims to be a public servant and seeks the protection of those rules and regulations must show that he was employed subject to those rules and regulations otherwise he cannot rely on them as protecting his employment: *Iserhienrhien's* case; (b) an employment with a statutory flavour, though basically creating a service relationship, goes beyond the notion of ordinary master and

servant whose contractual obligation can any how be effectively brought to an end albeit in breach of contract for which the only remedy is damages: Imoloame's case; (c) the fact that an organization or authority which is an employer is a statutory body does not mean that the conditions of service of its employees must be of a special character which make the employment one with a statutory flavour and give protection to the employees: Fakuade and Iserhienrhien; (d) where an appointment is determinable by the agreement of the parties simpliciter in accordance with the terms of the contract of service, under no guise can statutory flavour be attached to it but must be regarded as mere master and servant relationship: Fakuade's case.

Mr. Ukala, SAN in his submission on behalf of the appellant contended that it was a narrow view to regard the appellant as a mere servant of the respondent under the common law in reliance on exhibit as the court below did. He argued that the appellant pleaded and proved that the respondent was created by statute Nigerian National Petroleum Corporation Act (Cap. 320) Laws of the Federation of Nigeria, 1990 - and that the terms of his employment were contained in the conditions of service as per exhibit made pursuant to the said Act. He made further submissions on the point inter alia which I quote from the appellant's brief of argument as follows:

"(1) Exhibit B was undoubtedly made by the respondent pursuant to s. 4(1) of the Act and therefore has the force of law. The terms and conditions contained in exhibit have the status of statutory provisions."

(2) The test of statutory flavour in a contract of service must in our respectful view, rest on a nexus or Link between a particular contract of service and enabling regulations, provision or subsidiary regulations or conditions of service made pursuant to enabling statutory provisions.

(3) It is submitted therefore that even if an enabling statute which gives a statutory body the power to enter into contract of service with any person does not go the whole hog to make express provisions on the conditions of service of such person particularly as regards recruitment and termination of employment, but gives powers to the statutory body to make such provisions in her conditions of service, the persons over whom the condition of service made by the

statutory body prevail are invested (with) a special legal status and the contract of service itself acquires a statutory flavour.”

Mr. Nwosu made submissions on behalf of the respondent in line with the principles laid down in Imoloame and Fakuade, distinguishing the circumstances of this case from those of Olaniyan in particular. He contended that National Petroleum Corporation Act did not make any statutory provision which should be observed for the removal of its employees even when it is by way of a disciplinary action against them; and that in regard to the appellant it was enough if the condition of one month's notice or salary in lieu as contained in exhibit B was complied with in terminating his employment in the ordinary course of events. C

I think the appellant has placed a very wrong reliance on the authorities of Shitta-Bey v. Federal Public Service Commission (1981) 1 SC 40 and Olaniyan v. University of Lagos (No. 2) (1985) 2 NWLR D (Pt. 9) 599 established by this court upon the facts and circumstances that took them outside the common law position of ordinary master and servant tenure of employment. Having so misconceived those authorities he was led to the conclusion that Imoloame v. West African Examinations Council (1992) 9 NWLR (pt. 265) 303 and the other cases cited by him which were based on the common law principle were wrongly decided. With due respect to the learned Senior Advocate, his contention in this regard is wholly untenable. It seems to me this has principally resulted from the glaring error in his submissions (1) and (3) above. As regards submission (3), I am unable to agree that the conditions of service which will give a statutory flavour to a contract of service may be a matter of inference as the submission suggests. I think they must be conditions which are expressly set out by statute such as S.17(1) of the University of Lagos Act, 1967 or statutory regulations made under subsidiary legislation, such as the Civil Service Rules. It is only in that sense that submission (2) made by Mr. Ukala may be said to be valid. E F G

The assertion in submission (1) that the terms and conditions contained in exhibit B have the status of statutory provisions is most astonishing. It may well be true that those terms and conditions were made because of section 4 subsection (1) of the Act which set up the respondent but there is nothing to justify their being regarded as statutory provisions, nor can it be argued that they could not have H

been made even in the absence of that sub-section at least in regard to termination of appointment. Section 4 subsection (1) of the Act simply says:

“*Subject to this Act, the corporation may appoint such persons as members of staff of the corporation as it considers necessary and may approve conditions of service, including provision for the payment of pensions.*”

The conditions of service were to be drawn up and approved by the Corporation. This seems to be exactly what was done as spelt out in exhibit B which begins with: “*The following provisions constitute the general terms and conditions of service approved by the Board of Directors of the Nigerian National Petroleum Corporation in respect of the employment of all staff in the Corporation.*” Those terms and conditions covering sixty clauses were then set out in about eighteen foolscap pages typed double space. Clauses 52, 53, 54 and 55 deal with resignation and termination of appointment, termination for inefficiency, summary dismissal and suspension from duty respectively. Exhibit B is not a statutory regulation nor is it given any statutory authentication. Even if it had been, there is nothing in the terms and conditions which the respondent breached in determining the employment of the appellant as I shall show presently.

In Olaniyan’s case, apart from the Memorandum of Appointment which was the Agreement containing the terms and conditions of service, there was the University of Lagos Act, 1967. Under section 17(1) of that Act, provisions for disciplinary measure against certain categories of officers and staff are made. The Act sets out the procedure that must be followed to remove such employees from the service. When the mandatory procedure is not complied with, any disciplinary action taken against them will be declared null and void. It is those statutory provisions that are regarded as giving them some measure of security and protection. That is the proper sense in which it is said that that kind of employment has a statutory flavour. It cannot be easily determined as that of a mere servant not having such protection can. That was how similar protective statutory provisions were applied also to nullify improper dismissal, termination or retirement in cases like *Shitta-Bey v. Federal Public Service Commission* (1981) 12 NSCC 28; *Eperokun v. University of Lagos* (1986) 4 NWLR (Pt. 34) 162; *Federal Civil Service Commission v. Laoye* (1989)

2 NWLR (Pt. 106) 652; University of Nigeria Teaching Hospital Management Board v. Nnoli (1994) 8 NWLR (Pt. 363) 376. It is remarkable that Olaniyan and Shitta-Bey relied on by the appellant were discussed and distinguished in Imoloame and Fakuade which he has urged this court to depart from as being wrongly decided.

I must, however, emphasise that in Olaniyan and similar cases, the relevant statutory provisions stipulating the disciplinary procedure to be followed are specifically for the protection of some senior cadres of officers and staff not the generality of the staff. It needs no argument that in regard to junior cadres such protection is not available i.e., as made in those provisions. It seems to me the appellant may have misplaced his reliance on Olaniyan to contend that his employment for some reason must enjoy statutory flavour whereas, as will be shown, he was occupying a considerably low cadre as a junior staff of grade in the respondent's employment. It is easy to understand from Olaniyan and Shitta-Bey that the rules and regulations which are claimed by an employee to be part of the terms and conditions of his employment capable of giving it statutory flavour and be of protection to the employee must (1) have statutory reinforcement or at any rate, be regarded as mandatory, (2) be directly applicable to the employee or persons of his cadre, (3) be seen to be intended for the protection of that employment; and (4) have been breached in the course of determining the employment; before they can be relied on to challenge the validity of that determination.

Mr. Ukala on behalf of the appellant has made elaborate effort to submit as to the jurisdiction of this court to overrule its previous decisions. I can hardly see the need for such effort since that jurisdiction is not in any doubt. It has been done in well recorded instances. Indeed, the jurisdiction to do so is now implied in Order 6, r.5(4) of the Supreme Court Rules (as amended in 1999) which provides:

"If the parties intend to invite the Court to depart from one of its own decisions, this shall be clearly stated in a separate paragraph of the brief, to which special attention shall be drawn, and the intention shall also be restated as one of the reasons."

It must be appreciated that although that jurisdiction exists, it will only be exercised in the most obvious circum-

stances. It cannot and ought not to be exercised to create uncertainty in the law or to leisurely undermine the salutary doctrine of stare decisis. When a principle of law has been laid down by the court based on an established state of facts, it leads to stability to regard it as a precedent for the way

B *future cases, where facts are substantially similar and where the very point is again in controversy, are decided. The doctrine is in a sense founded on judicial policy of a public nature. But that policy recognises a balance between the need*

C *for certainty and the ends of justice to be dispensed particularly by the final court of the land. Therefore it also demands that the Supreme Court should not hesitate to depart from its previous decision in appropriate circumstances:* See Eperokun v. University of Lagos (1986) 4 NWLR (Pt. 34) 162 at 193. **Such**

D *circumstances may be seen to arise if the party calling upon the Supreme Court to overrule its previous decision is demonstrably able to show (a) that it is manifestly wrong and there is a real likelihood of it constituting a vehicle for perpetuating injustice by a rigid adherence to it: see Bucknor-*

E *Macleane v. Inlaks Ltd. (1980) 8-11 SC 1, or (b) that it was given per incuriam: see Odi v. Osafire (1985) 1 NWLR (Pt. 1) 17; Bakare v. Lagos State Civil Service Commission (1992) 8 NWLR (Pt. 262) 641; or (c) that it hinders the proper development of the law in which a broad issue of public policy was involved: see Jones v.*

F *Secretary of State (1972) 1 All ER 145 at 149 per Lord Reid who introduced a consideration of public policy, cited in Bronik Motors Ltd. v. Wema Bank Ltd. (1983) 1 SCNLR 296 at 332. The decisions of this court in Imoloame and Fakuade, judging from the facts of*

G *those cases and the various pronouncements made in the decisions, are not in conflict with Olaniyan and Shitta-Bey but indeed recognise the principles and the merit of these cases. The latter cases, incidentally, fit into the submission (2) made by Mr. Ukala but the present case does not. It is my view that the appellant has not made out a*

H *case for overruling Imoloame, Fakuade and Iserhienrhien.*

Section 4(1) of the Act which I have earlier reproduced does no more than authorise the corporation to approve conditions of service as it considers necessary, contrary to the argument of Mr. Ukala that that section provides the force of

law behind exhibit to give it the “status of statutory, provisions.” The term “statutory provisions” means what it says, namely the provisions of a statute or, by extension, of a statutory instrument. However, whatever the appellant may consider exhibit B to portray, the respondent did not on this occasion act outside its terms. Clause 52 under which it terminated the appointment of the appellant reads:

“52. RESIGNATION AND TERMINATION OF APPOINTMENT

(a) Any employee shall be free at any time, either with or without stating any reason therefore, to resign his appointment with the Corporation upon giving due notice to that effect. The Corporation shall likewise have a reciprocal right to terminate the employee’s appointment upon giving him due notice. Due notice for the purpose of this paragraph is as follows:-

Category D - 3 months

Categories A, B, C - 1 month

(b) In lieu of due notice the employee or the Corporation may resign or terminate an employee’s appointment respectively by paying to the other the amount of basic salary that would have been earned during the period of notice.”

The appellant in his testimony admitted that he could resign his appointment with the respondent on giving a month’s notice or paying salary in lieu and vice versa if his appointment was terminated. He also agreed that he belonged to category C. In his words:

“The NNPC cannot compel me to work for it if I tendered any resignation or paid to it salary in lieu of notice. I am not a management staff of the NNPC. I belong to category C as contained in exhibit ‘B’ page 2 clause 6. By virtue of clause 52(a) at page 17 of exhibit ‘B’ I require a month’s notice in the event of termination of my appointment.”

I cannot therefore understand why the appellant has insisted he deserved a better treatment than the common law one his contract of service earmarked for him; and by his own device he now imports ‘statutory flavour’ into his employment in order to be able to request this court to overrule its decisions on common law master and servant relationship and to

seek a relief, which, obviously, he would not be entitled to.

It is at this stage I shall proceed to consider issues 1 and 3.

Issue 1

Under issue 1, the question is whether the court below was right in denouncing the learned trial Judge's speculation as to the reason the respondent terminated the appellant's appointment when he said it was because of an alleged fraud which the appellant had previously been suspected or accused of. No such reason was given in the letter of termination, exhibit H. ***Under the common law, an employer is entitled to bring the appointment of his employee to an end for any reason or no reason at all. So long as he acts within the terms of the employment, his motive for doing so is irrelevant.*** See this court's decision in Commissioner for Works, Benue State v. Devcon Ltd. (1988) 3 NWLR (Pt. 83) 407 at 423.

In any event, in case of breach, the employee's remedy lies in damages calculated on the basis of what he would have earned for the period of notice agreed for ending the employment: see Western Nigeria Development Corporation v. Abimbola (1966) 1 All NLR 159 at 160-161 also reported (1966) NMLR 381; Nigerian Produce Marketing Board v. Adewunmi (1972) 1 All NLR (Pt. 2) 870 at 871; Chukwuma v. Shell Petroleum Dev. Co. of Nig. Ltd. (1993) 4 NWLR (Pt. 289) 512 at 538 which learned counsel for the appellant, Mr. Nwosu, rightly relied on. I have no doubt that the court below justifiably corrected the learned trial Judge's error.

Issue 3

Issue 3 is whether this is not a proper case where declaratory reliefs ought to be granted. The declaratory relief in this case which obviously the appellant has in mind is the declaration that the termination of his appointment by letter, exhibit H, is unlawful, null and void. In the said letter the appellant was told that apart from surrendering corporation's property in his care, he should pay up the balance of any loan taken from the corporation. He was further told that the General Manager, Finance and Accounts was being instructed to pay him a month's salary in lieu of notice. That was clearly a legitimate way of terminating the employment by which salary in lieu of notice was to be paid. But the appellant now submits that the court has wide powers and discretion to make declarations of right even in a case of mere master and servant relationship - i.e., an employment

with no statutory flavour and so by that be able to declare that the appellant's employment still subsisted. He has placed reliance on *Ewarami v. African Continental Bank Ltd.* (1978) 4 SC 99; (1978) 11 NSCC 269.

It seems to me, with profound respect to learned counsel for the appellant, that the decision of this court in *Ewarami's* case has been misunderstood. This is so because, although in that case the principle in *Hanson v. Radcliffe U.D.C.* (1922) 2 Ch. 490 as to the wide discretion of a court to make a declaration to define the rights of two parties should such a question arise was affirmed, the facts in *Ewarami* were peculiar and do not fit into the present case at all. There, *Ewarami* who was employed as an archivist by the African Continental Bank Limited was subpoenaed as a witness by a defendant against whom a suit was instituted by his employer. Before the date he was to have appeared in court in Benin, his employer posted him away to Jos. The said defendant successfully moved the court to restrain the employer from effecting the transfer until the suit was disposed of. After the injunctive order, *Ewarami* took ill and was placed on sick leave by a doctor. Although he subsequently testified, no formal discharge from appearing had been made by the court. So he stayed away from work on the strength of the medical sick leave certificates he was given. But the Benin City branch of the bank where he was working at the time of the transfer refused to pay his salary.

He then instructed a solicitor to write a letter to his employer. It was in the reply to the solicitor's letter that *Ewarami* learnt for the first time that an earlier letter had been issued to him by his employer instructing him again to proceed on transfer to Jos. It was thought, as averred in the statement of defence, he had been grossly insubordinate to have refused to obey the latest letter of transfer, which then led to his dismissal. The only evidence before the court in a suit for wrongful dismissal was that of *Ewarami* as plaintiff. He claimed not to have received that letter which again instructed transfer. He therefore claimed for a declaration that the purported dismissal was wrongful, illegal and unconstitutional.

The defendant, African Continental Bank Limited (ACB), offered no evidence. The case at the trial court turned on the narrow issue whether a case for dismissal had been made out upon the uncontradicted evidence that the letter of transfer was not received by

the plaintiff which would mean that his dismissal was done upon a mistake of facts. The trial court accepted the plaintiff's case that the letter was not received by him and held that: "His purported dismissal from the employment of the defendant company is null and void" and declared that he was still in the employment of the defendant company.

An appeal was lodged to this court by the ACB. On behalf of the appellant it was argued that the trial court having held that the parties were governed by the common law, erred in granting the declaration. He further contended that declaratory judgments were unknown to contracts governed by the common law and that the only remedy available to a servant against his master for wrongful dismissal was an action for damages. It was part of this argument as to declaratory judgments that led this court to express opinion as to the almost limitless discretionary power of the court to make a declaration as to the rights of two parties, citing among others Radcliffe U.D.C. case. In its reasons for judgment (the appeal having been dismissed peremptorily) reported as *African Continental Bank Ltd. v. Ewarami* (supra), this court observed and held inter alia excluding aspects about the said discretionary power - as follows at p.274:

"There was no material before the court from which it could hold that the respondent had been insubordinate by failing to proceed on transfer to Jos pursuant to a letter of 3rd August, 1973 from the appellants directing that he should do so.

We take the view that the onus of establishing the existence and service of this letter was on the appellants and that they had failed to do so.

Given the above state of affairs, we are satisfied that the learned trial Judge had an unfettered judicial discretion to make the order the subject of this appeal.

The order made by the learned Judge was one, which in our view, he could make having regard to the evidence before him.

As the lower court did not rule that a case for unlawful dismissal had been made out, we would refrain from expressing an opinion on whether at common law only an action for damages would lie.

We were in no doubt that this appeal lacked merit and dismissed it. For the avoidance of doubt, we hold that the learned trial

Judge was right in deciding as he did, and that the respondent must be deemed to have been still in the employment of the appellants and thus entitled to his normal salaries and/or benefits until 13th December, 1977 when we dismissed this appeal and reserved our reasons till a later date."

It is plain to me that the decision in Ewarami's case in no way helps the appellant in the present case. The decision neither altered nor extended the common law position in the matter of master and servant relationship. The case was decided purely on a narrow issue which arose from peculiar facts presented in a strait-jacket.

The respondent in the present case acted strictly within the terms of employment as contained in exhibit B to terminate the appellant's appointment. ***A servant who complains that his employment has been brought to an end must found his claim on the contract of service and show in what manner the wrong was done. He must plead and prove the contract of service which is the bedrock of his case. It is not the duty of the employer as defendant to prove that the termination was not wrongful:*** see *Amodu v. Amodu* (1990) 5 NWLR (Pt. 150) 356 at 370; *Katto v. Central Bank of Nigeria* (1999) 6 NWLR (Pt. 607) 390 at 405; *Okomu Oil Palm Co. Ltd. v. Iserhienrhien* (supra) at 673-674. ***In the same vein, the court is not entitled to look outside the contract of service as to the terms and conditions. These must be gathered therefrom and/or from other sources which can be incorporated by reference to the contract as the case may be. It is the best and only way of deciding the rights of the parties under the contract:*** see *Adegbite v. College of Medicine of University of Lagos* (1973) 5 SC 149 at 162; *International Drilling Company Ltd. v. Ajijala* (1976) 2 SC 115 at 127.

All three issues raised by the appellant for the determination of this appeal are resolved by me against him. This was the inevitable result this court contemplated after hearing, oral argument from the learned Senior Advocate for the appellant; and as we had taken due account of the submissions in the respondent's brief of argument, we did not call on learned counsel for the respondent for his oral argument. I am satisfied that this appeal is without any merit and accordingly I dismiss it with N10,000.00 costs to the respondent.

OGUNDARE JSC

I agree entirely with the judgment of my learned brother Uwaifo, JSC just delivered. He has dealt exhaustively with all the issues canvassed in this case, I have nothing more to add. Suffice it to say that
 B I too dismiss the appeal and abide by the order for costs made by him.

MOHAMMED JSC

C I agree with my learned brother Uwaifo, JSC, that the appellant has not established any material particular to warrant this court departing from its previous decisions. The main issue in this appeal is the argument put forward by the learned counsel for the appellant
 D that the employment of the appellant has statutory flavour and as such it cannot be treated under the common law principle of ordinary master and servant relationship. He specifically mentioned that we should overrule the cases of *Imoloame v. West African Examination Council* (1992) 9 NWLR (Pt. 265) 303; *Fakuade v. Obafemi*
 E *Awolowo University Teaching Hospital Complex Management Board* (1993) 5 NWLR (Pt. 291) 47 and *Okomu Oil Palm Co. Ltd. v. Iserhienrhien* (2001) 6 NWLR (Pt. 710) 660.

The appellant wants this court to hold now that any organization or authority established by a statute its employment will go beyond the notion of ordinary master and servant whose contract of employment may be terminated with good or bad or no reason at all. In other words all employees of establishments created by statute such as Nigerian National Petroleum Corporation, cannot be dealt
 F with under the common law principle of master and servant. They should all be treated as those employments having statutory flavour, in the same way as this court had done in *Shitta-Bey v. Federal Public Service Commission* (1981) 1 SC 40 and *Olaniyan v. University of Lagos* (1995) 2 NWLR (Pt. 9) 599.

H On this issue and with respect, the learned Senior Advocate, Mr. Ukala, cannot be right in the above submission. Before an employment can have statutory flavour the statute must expressly make it so. Otherwise the employment will have to be treated on the basis of the common law principle of master and servant. It is pertinent to

ask, when will a condition of service be regarded to have statutory flavour? The answer is simple. A regulation with statutory flavour must be enacted by the Parliament or any Law making body as a schedule to an Act or Law or as a Subsidiary Legislation. The conditions of service under which the appellant was employed were drawn up by the Board of Directors of the Nigerian National Petroleum Corporation. They have no statutory flavour like S. 17 of the University of Lagos Act and Public Service Commission Regulations which governed the employment of Olaniyan and Shitta-Bey respectively. B

The appellant has therefore failed to establish any ground warranting the overruling of this court's recent decisions on the subject matter of this appeal. Consequently, this appeal has therefore failed and it is dismissed. I also award N 10,000.00 in favour of the respondent. C

D

IGUH JSC

I have had the privilege of reading in draft the judgment just delivered by my learned brother, Uwaifo, JSC and I entirely agree that this appeal is without substance and ought to be dismissed. E

The main issue in controversy between the parties in this appeal revolves on whether or not the appellant's contract of employment with the respondent Corporation was one with statutory flavour. The contention of the appellant is that his employment was one with statutory flavour by reason of the fact that the Nigerian National Petroleum Corporation which is a creation of statute conferred the status of a public officer on him and that his said employment was accordingly regulated by the Nigerian National Petroleum Corporation Act, 1977. The appellant placed reliance on the decision of this court in the case of *Olaniyan v. University of Lagos (No.2) (1985) 2 NWLR (Pt. 9) 599* in support of his submissions. F

The respondent, on the other hand, argued that the contract of employment between it and the appellant, exhibit B, was a simple common law master and servant relationship devoid of any statutory flavour whatsoever notwithstanding the fact that respondent is admittedly a creation of statute. H

I think I should state straight away that the case of *Olaniyan* did not decide that once a company, corporation or Government

Agency is set up by statute, then all the employees thereof ipso facto become children of statute to the extent that their individual agreements of service with the employer automatically become contracts with statutory flavour. Two of the vital ingredients that must co-exist before a contract of employment may be said to import statutory flavour include the following:-

1. The employer must be a body set up by statute.
2. The stabilizing statute must make express provisions regulating the employment of the staff of the category of the employee concerned especially in matters of discipline.

An infringement of the stipulated express statutory provisions by the employer either directly or indirectly by the making of additional regulations which are inconsistent or in conflict with the express provisions of the enabling statute will necessarily call for the court's protective intervention in respect of the contract in favour of the aggrieved employee.

In the present case, the Nigerian National Petroleum Act, 1977 did not make any express provisions for the discipline, hire or fire of its staff. It merely authorised the Board to make such regulations governing the hire and fire of its staff. It is pursuant thereof that exhibit B, the conditions of service tendered by the appellant, was made. It is clear to me that it is only to exhibit B, the common law contract of employment between the parties that the contractual relationship between them in the matter of the hire or fire of the appellant may be ascertained and pronounced upon.

A close study of exhibit B discloses that it made ample provision in connection with the termination or resignation of the appointment of the appellant by the giving of one month's notice or payment of one month's salary in lieu of such notice. There is no allegation that the common law contract, exhibit B, is ultra vires the respondent. It was also not suggested that the contents are in violation of the enabling statute, the Nigerian National Petroleum Corporation Act, 1977. It is clear to me that whereas the employment in the Olaniyan case under the University of Lagos Act is indisputably one with statutory flavour, the employment of the appellant in the present case is a pure common law master and servant relationship with no statutory flavour whatsoever. I can find no reason therefore for departing from what, in my view, is a sound decision of this court in the

Olaniyan case.

It is for the above and the more detailed reasons contained in the judgment of my learned brother, Uwaifo, JSC, that I, too, find no substance in this appeal and the same is dismissed with costs to the respondent against the appellant which I assess and fix at N10,000.00.

B

EJIWUNMI JSC

I have had the privilege of reading in its draft form the judgment just delivered by my learned brother, Uwaifo, JSC. In that judgment the issues in this appeal and the facts thereon have been carefully considered. One of the issues so raised was, whether the Court of Appeal was justified in holding that the relationship between the respondent and the appellant was one of mere master and servant which did not invest the appellant with a tenure of legal status.

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D

In his brief, reference was made to the decisions of this court in *Imoloame v. West African Examination Council* (1992) 9 NWLR (Pt. 265) 303; *Fakuade v. Obafemi Awolowo University Teaching Hospital Complex Management Board* (1993) 5 NWLR (Pt. 291) 47 and *Okomu Oil Palm Co. Ltd. v. Iserhienrhien* (2001) 6 NWLR (Pt. 710) 660. The appellant then sought to argue that this decision be overruled in that the pronouncements made therein run contrary to the principles relied on for the decisions in *Shitta-Bey v. Federal Public Service Commission* (1981) 1 SC 40; (1981) 12 NSCC 19 and *Olaniyan v. University of Lagos* (1985) 2 NWLR (Pt. 9) 599.

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For the reasons given in the said judgment, I agree entirely that the appellant cannot succeed on that issue. Not only will I dismiss this appeal for that reason, it is also clear that the other issues raised in this appeal are not meritorious. I therefore for all the reasons given in the judgment of my learned brother, Uwaifo, JSC also dismiss this appeal in its entirety. The respondent is awarded costs in the sum of N10,000.00.

H

AYOOLA JSC

There is not much to add to the penetrating and exhaustive discussion of the issues in this appeal by my learned brother, Uwaifo, JSC. It cannot be right, as counsel for the appellant had attempted to

do, albeit unsuccessfully, to convert a private law right into a public law right. The respondent's freedom to dismiss or terminate the appointment of the appellant was not restricted by any statute. The appellant's claim was purely contractual. The trial Judge did not treat it as anything different from that, when he based the liability of the respondent on an alleged breach of the Conditions of Service as regards the appellant. The only ground of his decision was that:

"Since the defendant unilaterally repudiated the contract of service in Exhibit "G" and "H" and the plaintiff having not accepted the repudiation by promptly reacting in Exhibit "J" to the purported termination" this is a proper case where the plaintiff is entitled to the declaration sought."

I do not find any substance in the argument that since the Conditions of Service were made under regulation which the respondent was empowered by statute to make the employment became one of statutory flavour. I adopt the view expressed by the English Court of Appeal in *R v. East Berkshire Health Authority, ex p. Walsh* (1985) Q.B. 152 as a useful guide. In that case Donaldson, MR, said at P.165:

"... The ordinary employer is free to act in breach of his contracts of employment and if he does so his employee will acquire certain private law rights and remedies in damages for wrongful dismissal, compensation for unfair dismissal, an order for reinstatement or re-engagement and so on. Parliament can underpin the position of public authority employees by directly restricting the freedom of the public authority to dismiss, thus giving the employee "public law" rights and at least making him a potential candidate for administrative law remedies. Alternatively it can require the authority to contract with its employees on specified terms with a view to the employee acquiring 'private law' rights under the terms of the contract of employment. If the authority fails or refuses to thus create "private law" rights for the employee, the employee will have "public law" rights to compel compliance, the remedy being mandamus requiring the authority so to contract or a declaration that the employee has those rights. If, however, the authority gives the employee the required contractual protection, a breach of that contract is not a matter or "public law" and gives rise to no administration law remedies."

There is really no basis for this court departing from its own

previous decision or even contemplating doing so in this case. The jurisdiction of this court to depart from its own decision should not be invoked with flippancy by raising issues which do not rightly arise in the case and which by reason of the facts of the particular case does not involve the application of any problematic principle of law enun-
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There is no substance in this appeal. I too dismiss it and abide by the order for costs made by my learned brother, Uwaifo, JSC.

TOBI JSC

C

The appellant was the plaintiff in the High Court, Port Harcourt. In his case in both the statement of claim and the evidence in court, he stated that he was employed by the respondent, the defendant in the High Court as a Senior Accounts Supervisor on 1st September, 1980. He rose to the rank of Chief Accounts Officer. In a letter, exhibit B, to the appellant, the terms and conditions of service were stated therein. D

On 24th June, 1985, the appellant received a letter from the respondent suspending the annual leave as well as suspending him from duty. The letter alleged that fraud was uncovered in his section and that he was involved in the alleged fraud. By letter dated 13th September, 1985, the appellant's appointment was terminated. E

Respondent did not deny the termination of the appellant's appointment. To them, the termination of the appellant's appointment was in accordance with the conditions of service. They denied that the termination of the appellant's appointment had anything to do with the alleged involvement of the appellant in the fraud uncovered in his department. F

Appellant filed an action in the High Court challenging the termination of his appointment. He asked for a declaratory relief and an injunction. The respondent counter-claimed in respect of furniture, kitchen equipment, infrastructure put in the official residence of the appellant, rentals for the apartment occupied by him, outstanding car loan, and touring advance. G

The learned trial Judge gave judgment to the plaintiff. He said in his judgment at page 81 of the record:

"In sum and by way of recapitulation I say that there is no

H

doubt whatsoever in my mind, looking at the trend of events culminating in the termination of plaintiff's appointment that what operated overwhelmingly in the mind of the defendant when writing exhibit 'H' is its alleged plaintiff's involvement in fraud which it said it unearthed, in his section during the period plaintiff was on his annual vacation leave. This, I have said earlier is the reason for the termination of plaintiff's appointment by the defendant, and since a reason has been given it is my duty to see if the reason given is just. I have held earlier that the reason is unjust as the defendant did not appear to have followed the proper procedure for the removal of the plaintiff by not giving him the opportunity to explain and defend himself of the accusation made against him in exhibit "G". The defendant has therefore unilaterally repudiated the contract of service. And having done so the plaintiff is still occupying his position with the defendant in the Nigeria National Petroleum Corporation - and I so declare. The claim therefore succeeds."

On appeal, the Court of Appeal held that exhibit B regulated the contract of service between the parties. Although the Court of Appeal held that the termination of the appellant's appointment was wrongful in that the appellant was not paid his one month's salary in lieu of notice, the court overturned the decision of the learned trial Judge on the issue of specific performance in a master and servant relationship.

Dissatisfied, the appellant has come to this court. As usual, briefs were filed and exchanged. The major issue I would like to deal with in this appeal first, is the contention of learned Senior Advocate for the appellant that this court should depart from and overrule itself in its former decisions in *Imoloame v. West African Examination Council* (1992) 9 NWLR (Pt. 265) 303 and *Fakuade v. Obafemi Awolowo University Teaching Hospital Complex Management Board* (1993) 5 NWLR (Pt. 291) 47 in the light of the decisions of this court in a number of cases, particularly *Shitta-Bey v. Federal Public Service Commission* (1981) 1 SC 40 at 56 and *Olaniyan v. University Of Lagos* (No.2) (1985) 2 NWLR (Pt. 9) 599 at 617 and 618.

The main plank of the argument of learned Senior Advocate, Mr. Emmanuel Ukala, is that the appointment of the appellant had statutory flavour which went beyond the ordinary contractual relationship between master and servant and that the court ought to

have invoked the decisions of Shitta-Bey v. Federal Public Service Commission (supra), Olaniyan v. University of Lagos (supra) and the group of cases.

He vehemently attacked the decisions of this court in Imoloame and Fakuade, calling upon this court to overrule itself in the two cases. Learned Senior Advocate argued that the pronouncements in the cases are in conflict especially with the cases of Olaniyan and Shitta-Bey. To learned Senior Advocate, the continued application of the two cases as precedents will perpetuate injustice in the area of the law of master and servant as it relates to public employment.

Learned Senior Advocate submitted at page 31 of his brief:

"We submit that to allow Imoloame and Fakuade to retain their potency will be to inadvertently allow two streams of dissimilar authorities to flow from the same source - a situation that will becloud the state of law on the subject. It will also perpetuate the injustice of sustaining two different categories of public servants those with a legal status and those without a legal status. This categorisation is difficult to justify bearing in mind that under our law as has been Correctly persisted upon by this honourable court no public officer holds office durante bene placito. That idea of holding office durante bene placito was completely rejected in Olaniyan's case particularly at 613 when Oputa, JSC, said..."

Learned counsel for the respondent, Mr. L. E. Nwosu, submitted in his brief that the appointment was one of contractual relationship between master and servant and not one which had statutory flavour. To him, there was no conflict in the decision referred to by learned Senior Advocate deserving this court overruling itself in Imoloame and Fakuade. He saw a distinction between these two cases and the case of Olaniyan.

Learned counsel took time at pages 5 to 10 in dealing with Olaniyan. Learned counsel said at page 5 of his brief and I quote him:

"The appellant in his brief seems to rely heavily on your Lordships' decision in Olaniyan v. University of Lagos (No.2) (1985) 2 NWLR (Pt. 9) 599 and similar decisions following it. With respect, our understanding of Olaniyan's case is not that when once a company or Government Agency is set up by statute, their employees thereof automatically become children of statute in the manner of

their contract: thus ousting the common law concept of free contract between an employee/employer master/servant. This is the decision in that case."

B Learned counsel contended that Olaniyan's case is predicated on three vital ingredients in order to give an employment statutory flavour. These are

(1) The employee must be a body set up by statute.

(2) The establishing statute must have made express provisions regulating the employment of all the staff or at least staff of the C category of the complainant especially in matters of discipline.

(3) There has been an infringement of those express provisions either directly or via the instrumentality of further and local regulations made by that body but inconsistent with the *ipssisima verba* of the enabling statute.

D In view of the venom poured on the decisions of this court in the case of Imoloame and Fakuade, I will take the facts of each case in turn. But before I do that, I should first take the earlier decisions of this court in Shitta-Bey and Olaniyan; decisions learned Senior Advocate would want this Court to follow.

E First, the case of Shitta-Bey v. The Federal Public Service Commission (1981) 1 SC 40. The appellant was a Legal Adviser in the Federal Ministry of justice. He was alleged to have been involved in a deal involving attempting to import dangerous and prohibited drugs F by one Iyabo Olorunkoya. This resulted in his retirement from the service by the respondent. When all efforts to return to his position failed, he sued. Both the High Court and the Court of Appeal dismissed his suit on the ground that his employment was governed by contractual relationship of master and servant. The Supreme Court G allowed the appeal. In his lead judgment, Idigbe, JSC, of blessed memory said at page 56:

H *"The Civil Service Rules of the Federal Public Service govern conditions of service of Federal Public Servants and they are made pursuant to the powers conferred on the respondent by virtue of the constitutional provisions in the 1963 Constitution and the rules relevant to these proceedings were made in 1974, pursuant to the provisions of section 160(1) of the 1963 Constitution, Act No. 20 of 1963. These Rules, therefore, in my view, have constitutional force and they invest the Public Servant over whom they prevail, a legal*

status; a status which makes his relationship with the respondent and the government although one of master and servant certainly beyond the ordinary or mere master and servant relationship. Under these rules (i.e. The 1974 Civil Service Rules) which, as I already pointed out, have statutory force and, therefore, ought to be judicially noticed..." B

In *Olaniyan and Ors. v. University of Lagos (No.2)* (1985) 2 NWLR (Pt. 9) 599, the appellants were professors in the University of Lagos. All the three professors were appointed professors at different dates. Following the appointment of Professor B. K. Adedevoh as C Vice Chancellor of the University, there were concerted oppositions to his appointment from students and lecturers. A visitation Panel was set up). The Report of the Panel was against the appellants. The appellants turned down the decision of the 2nd respondent that they should withdraw their appointments. This resulted in the subsequent D termination of their appointments.

They filed an action in the court challenging the termination of their appointments. They contended that the termination of their appointments was ultra vires, being contrary to section 17 of the University of Lagos Act No.3 of 1967 as amended. The learned trial E Judge gave judgment to the appellants. The Court of Appeal allowed the appeal of the respondents. It set aside the judgment of the trial Judge.

On appeal to the Supreme Court, it was held inter alia that the F appellants do not hold their offices either at the pleasure of the Federal Government or anybody at all. Rather, they hold same under the provisions of the University of Lagos Act No.3 of 1967. (2) The University of Lagos and the University Council, both being creatures G of statute cannot act except within and under the powers conferred on them by the relevant statute, namely, the University of Lagos Act No. 3 of 1967 as amended. (3) Since the Regulations Governing Service in the University of Senior Staff, and the Memorandum of Appointment of the appellants and section 17 of the University of Lagos Act No.3 of 1967, all derive from section 69(1)(b) of the 1963 H Constitution, Act No. 20 of 1963, they all have constitutional force and invest in the appellants over whom they prevail a legal status which make their relationship with the respondents although one of master and servant, certainly beyond the ordinary or mere master

and servant relationship. It is a relationship of master and servant with statutory flavour; thus conferring a legal status on the appellants.

Citing the case of Shitta-Bey with approval, Oputa, JSC in his lead judgment, said at pages 618 and 623:

B *“There is no doubt that in this case, the Regulations Ex. P3, the memoranda of appointments (exhs. P1, P18 and P12A and section 17 of the University of Lagos Act NO.3 of 1967 all derived from section 69(1)(b) of the 1963 Constitution, Act No. 20 of 1963. That being so they “all have constitutional force and they invest, the appellants over whom they prevail a legal status which make their relationship with the respondents although one of master and servant certainly beyond the ordinary or mere master and servant relationship... Can it here be seriously contended that the service of the appellants in the University of Lagos, each governed by a Memorandum of Appointment (exhs. P1, P18 and ex. BP12A); by regulations governing service in the University of Lagos; and by the statutory provisions of the University of Lagos Act. No.3 of 1967 is an ordinary relationship of master and servant? Definitely not. If anything, that*
 C *relationship has all the trappings of a contract with statutory flavour.”*
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 E

I can now take the cases of Imoloame and Fakuade. In Imoloame v. West African Examinations Council (supra), the appellant, was until his dismissal the Acting Principal Assistant Registrar and Branch Controller of the respondent, the West African Examinations
 F Council. In 1978, the respondent, relying on the findings made by a Commission of Inquiry set up to inquire into the conduct and activities of members of staff of the respondent, dismissed the appellant. The appellant sued for libel and wrongful dismissal.

G The learned trial Judge dismissed the claim of libel but held that the dismissal of the appellant was wrongful. The Court of Appeal affirmed the findings of the trial court that the appellant was on the evidence wrongly dismissed. The court, however, held that by the nature of the appellant’s appointment, his relationship with the
 H respondent is not one with statutory flavour and that it was wrong for the trial court to order his reinstatement. The court awarded the appellant three months salary in lieu of notice.

On appeal, the Supreme Court dismissed the appeal. The court held that the employment of the appellant had no statutory flavour.

Drawing a distinction between Olaniyan and Shitta-Bey on the one hand, and Imoloame, on the other, Karibi-Whyte succinctly said at page 316:

"In Olaniyan's case the appointment and termination of the status and office as Professor which appellants held was protected by sections 7, 13, 14, 15(b) of the University of Lagos Act. The Shitta-Bey case similarly earlier decided, relied on the non-compliance with the provisions of the Public Service Rules of the Federal Public Service made under and pursuant to the provisions of section 160(1) of the Constitution, 1963. Thus the Civil Service Rules have constitutional force... Learned counsel to the plaintiffs has argued that the powers of exh. M, the conditions of service of the defendant council made under and by virtue of section 4(3) of the West African Examination Council Act 1973 enjoys the same status. I do not think the contention is right. The protection enjoyed by the Professors in Olaniyan's case is derived from their appointment and the status created by the appointment which is governed by the provisions of the University of Lagos Act. In Olaniyan's case the provision for termination is as prescribed in section 17 of the University of Lagos Act of 1967... The instant case is clearly different. Apart from the fact that the appointment of plaintiff was not governed by any statutory provision, and accordingly does not enjoy any statutory protector., the defendant council exercised power to dismiss in exhibit M. It is not correct to argue that because exhibit M was made pursuant to section 4(3) of the West African Examinations Council Act 1973, the tenure of all appointments which enjoy conditions of service are protected by statute. This is clearly not the intention of the Act."

In *Fakuade v. Obafemi Awolowo University Hospital Complex Management Board* (supra), the appellant (the plaintiff) was a nursing sister employed by the respondent in November, 1976. Following an investigation into the loss of a stainless steel bowl in September, 1987, the appellant's appointment was terminated. When all efforts to return her job failed, the appellant sued, seeking for a declaration that the purported termination of her appointment was null and void, and an injunction restraining the respondent. The appellant contended inter alia that her employment was subject to the provisions of the University Teaching (Reconstitution of Boards, etc) Decree No. 10 of 1985. The respondent contended that the

appellant's appointment was not terminated on the basis of the missing stainless steel bowl but as a result of retrenchment which affected 100 other members of staff.

At the trial, the learned trial Judge dismissed the appellant's case. An appeal to the Court of Appeal was also dismissed. On a further appeal, the Supreme Court, also dismissed the appeal. The court held inter alia as follows: (1) The character of an appointment and the status of an employee in respect thereof is determined by the legal character of the contract of employment. Hence where the contract of appointment is determined by the agreement of the parties simpliciter, there is no question of the contract having a statutory flavour. The fact that the other contracting party is the creation of a statute does not make any difference. (2) The fact that an organization or authority which is an employer is a statutory body does not mean that the conditions of service of its employees must be of a special character ruling out the incidence of a mere master and servant relationship. The court must confine itself to the terms and contract of service between the parties.

In his lead judgment, Kutigi, JSC said at page 57:

"The fact that the respondent is a statutory body does not mean that the conditions of service of its employees must be of a special character ruling out the relationship of master and servant relationship. The court must confine itself to the terms of contract of service between the parties which, provides for their rights and obligations. In this case it is the relevant conditions in exhibits H and K that must be construed and nothing else."

In his contribution, Karibi- Whyte, JSC, said at page 63:

"The fact that the respondent is the creation of statute does not elevate all its employees to that status or that the status of master and servant is no longer existent or that their employment or determination of their appointment must necessarily have a statutory flavour. The special statutory provision merely re-enforces the security of tenure provided the servant. There is no doubt, and this must be conceded, that if the determination of appellant's appointment had fallen under section 9 of the University Teaching Hospitals (Re-constitution of Boards, etc.) Decree No. 10 of 1985, the situation should have been different. The cases relied upon by learned counsel to the appellant would have been relevant."

In Shitta-Bey and Olaniyan, this court traced the enabling laws to the 1963 Constitution. In Shitta-Bey, this court held that the Civil Service Rules of the Federal Public Service made pursuant to section 160(1) of the 1963 Constitution provided as follows:

“Any Commission established by this Constitution with the consent of the Prime Minister or such other Minister of the Government of the Federation as may be authorised in that behalf by the Prime Minister, by regulation or otherwise regulate its own procedure or confer powers and impose duties on any officer or authority of the Federation for the purpose of discharging its functions.”

Idigbe, JSC, is therefore correct in making reference to section 160(1) of the 1963 Constitution, a situation which gave rise and credence to the conclusion the learned Justice reached that the employment had a constitutional force. If rules are directly traceable and are traced to a constitutional provision, such rules must be rightly recognised as having constitutional force and by extension, statutory flavour, taking the Constitution generally as a statutory document.

As indicated above, this court held that the Regulations governing service in the University of Lagos Senior Staff, the Memorandum of Appointment and section 17 of the University of Lagos Act, 1967 were derived from section 69(1)(b) of the 1963 Constitution. The subsection provided as follows:

“69(1) Parliament shall have power to make laws (b) for the peace, order and good government of the Federal territory with respect to any matter, whether or not it is included in the Legislative Lists.”

Again, it is in the light of the above constitutional provision and section 17 of the University Act that gave rise and credence to the conclusion reached by Oputa, JSC that the employment had statutory flavour. The big question now is whether there are similar provisions in Imoloame and Fakuade? The answer is a big No. While Imoloame had to do with the West African Examinations Council, Fakuade had to do with the Obafemi Awolowo University Teaching Hospital. In Imoloame, no issue of breach of a section of the law establishing the defendant was before the courts. In that case, the appellant did not rely on the provision of any Act or law which enhanced or clothed the status of his employment with statutory flavour. Of course, the appellant could not have found one in the West Afri-

can Examinations Council. In Fakuade, although the appellant relied on section 9(1) of Decree No.10 of 1985, this court held that the determination of the appellant's appointment did not fall under the section.

In both Imoloame and Fakuade, the appellants relied on conditions of service. In Imoloame, it was exhibit M and in Fakuade, they were exhibits H and K. Such was not the situation in both Shitta-Bey and Olaniyan. Dealing with Olaniyan, learned counsel for the respondent, Mr. Nwosu submitted at page 6 of his brief:

"A reading of the University of Lagos Act as indeed a repetition thereof in the enabling statutes of all Federal Universities will show that the discipline of Senior Staff of Olaniyan's cadre was made an express provision of that enactment."

I entirely agree with learned counsel. He is correct. The Supreme Court in Olaniyan relied heavily on section 17 of the University of Lagos Act, 1967. The court held that the removal of appellants without recourse to the procedure outlined in section 17(1) of the University Act and clause 7 of the agreement was ultra vires the powers of the respondent and therefore null and void.

Again, in both Imoloame and Fakuade, the appellants appointments were not governed or regulated by any statutory provision as opposed to Shitta-Bey and Olaniyan where this court held that the appointments had constitutional force and statutory flavour respectively.

In the light of the foregoing, I am unable to accept the invitation of learned Senior Advocate for the appellant to depart from or overrule the decisions of this court in Imoloame v. West African Examination Council (supra) and Fakuade v. Obafemi Awolowo University Teaching Hospital Complex Management Board (supra).

A case is decided on the facts presented to the court. A case is not decided in vacuo or in a vacuum. Accordingly, a ratio decidendi is based on the facts of a case. Therefore a ratio decidendi in one case may not be applicable in another case where the facts are quite different. Where the facts of the cases are similar, a ratio decidendi in one case may apply to the other.

Decisions of two cases are said to be in conflict when the facts of the cases are exactly the same or generally alike or similar. Where facts in two cases are different, it will be wrong to say that the deci-

sions on the two cases are in conflict. Since the facts are different, the decisions arising therefrom must be different.

From the facts of the case which I have briefly stated in the beginning of this judgment, I have no hesitation to come to the conclusion that the facts of this case are not the same as the facts in either *Shitta-Bey v. The Federal Public Service Commission* (supra) or *Olaniyan v. University of Lagos* (supra). Although the facts of this case are also different from the facts of *Imoloame v. West African Examinations Council* and *Fakuade v. ObafemiAwolowo University Teaching Hospital Complex Management Board* (supra), the cases share in common with this case in respect of conditions of service. As indicated above, in *Imoloame*, the Conditions of Service was exhibit M. In *Fakuade*, the Staff Regulations and Conditions of Service were exhibits H and K. In this case, the conditions of service of the respondent is exhibit B and the letter of appointment of appellant is exhibit A.

Under cross-examination, appellant said at page 39 of the record:

“Exhibit B is not the only document which regulate my contractual obligations to the NNPC. The letter of appointment exhibit A is also a relevant document in so far as my conditions of service with NNPC are concerned.”

Does the evidence of the appellant show that his contractual relationship with the respondent had a statutory flavour? That gives rise to the question: when is an employment said to be clothed with statutory flavour? In *Imoloame*, *Karibi- Whyte*, JSC said at page 317:

“As I have already stated in this judgment there is an employment with statutory flavour when the appointment and termination is governed by statutory provisions... It is accepted that where the contract of service is governed by the provisions of statute or where the conditions of service are contained in regulations derived from statutory provisions, they invest the employee with a legal status higher than the ordinary one of master and servant. They accordingly enjoy statutory flavour.”

See also *Shitla-Bey v. The Federal Civil Service Commission* (supra); *Olaniyan v. University of Lagos* (No.2) (supra) *Eperokun v. University of Lagos* (1986) 4 NWLR (Pt. 34) 162; *Professor Olatunbosun v. Nigerian Institute of Social and Economic Research*

Council (1988) 3 NWLR CPt.80) 25; Dr. Bamgboye v. University of Ilorin (1999) 10 NWLR (Pt. 622) 290.

B An employment is said to have a statutory flavour if the employment is directly governed or regulated by a statute or a section or sections of the statute delegate power to an authority or body to make the regulations or conditions of service as the case may be. In the case of the latter, the section or sections of the statute must clearly and unequivocally govern or regulate the employment of the plaintiff and must be unmistakably clear in the provision as to delegated C legislation. The regulations and or the conditions of service must be implicitly borne out from the section or sections delegating or donating the authority. In other words, there must be a clear nexus between the delegating section or sections and the regulations or conditions of service conveying a legal instrument or a document which is D of similar content. In such situation, the regulations or conditions of service must commence with the provision of the enabling statute; something to the following effect or purport and as it relates to this appeal:

E *"In exercise of the powers conferred by, section 4(1) of the National Petroleum Corporation Act, 1977 as amended and of all other powers enabling me in that behalf, I hereby make the following Regulations and or Conditions of Service."*

F In my view, if exhibit B was so couched, I would have agreed with the submission of learned Senior Advocate that the conditions of service had a statutory flavour, provided that the person issuing it must be a person in law or by the Constitution who can issue a statutory instrument in the form of a subsidiary legislation.

G Let me consider the three cases cited by learned Senior Advocate to buttress his argument that the contract had a statutory flavour. I will not consider Shitta-Bey because I have taken so much of it in this judgment. I will deal with the other two: Adene v. Dantubu (1994) 2 NWLR (Pt. 328) 509 and Ndoma-Egbav v. Government of Cross River State (1991) 4 NWLR (Pt. 188) 773.

H In Adene, the Supreme Court held that a subsidiary legislation has the force of law. The court held that the Kaduna State (Designation of Land in Urban Area) Order, 1982 which came into force on 26th August, 1982 and is relied upon in this case being a subsidiary legislation, has the force of law.

In *Ndoma-Egba v. Government of Cross River State* (1991) 4 NWLR (Pt. 188) 773, a case I wrote the lead judgment, I held that by section 18 of the Interpretation Act, “Law” includes “Instrument”, having the force of law. Since the instrument setting up the Commission of Inquiry in the case derives its life from section 3 of the Commission of Inquiry Law, Cap. 27 of the Laws of Cross River State, the Instrument has the force of law. B

It is trite law that a ratio decidendi is determined in the light of the facts of the case. Both Adene and *Ndoma-Egba* had nothing to do with employment. While Adene involved a land matter, *Ndoma-Egba* had to do with quashing of proceedings by certiorari on a matter of a contractual nature. Above all, in both cases, there was no relationship of master and servant and so the two cases are inapposite. I have earlier said that *Shitta-Bey*, by its facts, clearly had a statutory flavour. C D

In my humble view, and with the greatest respect to learned Senior Advocate, the employment of the appellant had no statutory flavour. By exhibit B, the employment was clearly and unequivocally one of master and servant.

And that takes me to the issue whether the appointment of the appellant was properly terminated in accordance with exhibit B. Exhibit B, which is the Nigerian National Petroleum Corporation Conditions of Service, provides in paragraph 52 under the subheading “*Resignation and Termination of Appointment*”: E

“(a) Any employee shall be free at any time, either with or without stating any reason therefore to resign his appointment with the Corporation upon giving due notice to that effect. The Corporation shall likewise have a reciprocal right to terminate the employee’s appointment upon giving him due notice. Due notice for the purpose of this paragraph is as follows: Category D 3 months Categories A, B and C 1 month. F G

(b) In lieu of giving due notice the employee or the Corporation may resign or terminate an employee’s appointment respectively by paying to the other the amount of basic salary that would have been earned. H

By paragraph 52(a) of exhibit B, both parties have the reciprocal right to resign or terminate the appointment respectively, or as the case may be, by giving due notice. The sub-paragraph provides

for the periods for the notice. While staff in Category D should give or be given 3 months notice, staff in Categories A, Band C should give or be given 1 month notice. It is clear in the evidence that the appellant was a Category C staff and therefore entitled to one month's notice or one month's salary in lieu of notice.

B Exhibit H. the letter of Termination of Appointment, is relevant. It is addressed to the appellant. I should reproduce it here:

"Dear Sir

Termination of Appointment

C *Management has decided to terminate your appointment with effect from today, 30th August, 1985.*

You are hereby terminated (sic) immediately.

You should please hand over all Corporation's properties in your care and pay up the balance of any loan owed by you to the
D *Corporation immediately.*

The General Manager, Finance and Accounts is by this memo being advised to pay you a month's salary in lieu of notice.

Yours faithfully

....."

E In my humble view, paragraph 4 of exhibit complies strictly with paragraph 52(b) of exhibit B. And so I ask, why the furore? I do not see any.

By paragraph 52(a) of exhibit B, neither the appellant nor the respondent had a legal duty to give any reason for the resignation or
F termination of the appointment, respectively. And that was exactly what the respondent did in exhibit H. In my humble view and with the greatest respect to the learned trial Judge, he had no legal reason to go beyond and outside exhibits B and H to raise all the dust and
G canker in this matter in the way he did.

The appellant averred in paragraph 12 of his statement of claim as follows:

"The plaintiff has never been recalled from suspension nor was he informed of the result of the investigations into the fraud."

H In answer to paragraph 12, the respondent averred in paragraph 9 of his statement of defence:

"The defendant in answer to paragraph 12 of the statement of claim will say that the defendant's suspension from service was not connected at all with his termination from employment less his obli-

gations to the corporation. Furthermore, the defendant allude to any fraud or make a specific finding to the effect in its letter of termination. Simply put the defendant no longer required the service of the plaintiff."

The learned trial Judge said at page 70 of the record:

"So that exhibit "H" coming so soon after exhibit "G" which accused the plaintiff of fraud, one cannot but say that plaintiff was terminated as a result of, his alleged involvement of the fraud unearthed in your Advance Section. The termination of the plaintiff cannot therefore be said to be harmless and without reason. It is my view that exhibit "G" supplied the reason for defendant's termination of plaintiff's appointment. It was therefore found not necessary for defendant to repeat it in exhibit "H."

With respect, the learned trial Judge went too far. He had no jurisdiction to speculate outside exhibit H. court has no jurisdiction to interpret or construe contractual documents more favourable to a party outside the terms and conditions provided in the document or documents. It is trite law that parties are bound by the four walls of the contract and the only duty of the court is to strictly interpret the document that gives rise to the contractual relationship.

It is the position of the common law that where an employer does not give any reason for the termination of the appointment of an employee in accordance with the terms and conditions of the employment, the employer is not bound to give evidence as to any reason or reasons for the termination of the appointment. And here, a trial Judge has no right to use a possible proximate conduct on the part of an employer or employee or read into a letter of termination what is not there, and particularly when the letter complies strictly with the conditions of service.

The court below dealt with the issue. Katsina-Alu, JCA (as he then was) correctly observed at pages 210 and 212:

"If the learned trial Judge had paid scant attention to the pleadings, it would have been clear to him that the plaintiff's case was not that he was denied a hearing or an opportunity to be heard with respect to the alleged fraud prior to the issuance to him of exhibit 'H' the letter of termination. His oral testimony in court did also not allude to the breach by the defendant of the rules of natural justice. The finding of the learned trial Judge in this regard was plainly not

supported by the case of the plaintiff. He was therefore in grave error. The issue also succeeds ... In the result this appeal succeeds and it is allowed."

A party who has opened his heart, mind and eyes to enter into an agreement is clearly bound by the terms of the agreement and he cannot seek for better terms midstream or when the agreement is a subject of litigation, when things are no longer at ease. Although a party may seek for better terms, the court is bound by the original terms of the agreement and will interpret them in the interest of justice. A party has no right to elevate an ordinary contract of master and servant to the status of one with statutory flavour just because he will have a better deal. The courts will not allow that. It is in the light of the above and the fuller reasons given in the lead judgment by my learned brother, Uwaifo, JSC, that I too dismiss the appeal I abide by all the consequential orders he made including the order as to costs. Appeal dismissed.

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